

FROM AN ENGLISH OFFICE WINDOW  
MIDDLE TEMPLAR

*Commercial Arbitration*

Business men have always protested against delay in litigation and, after various attempts to obtain satisfaction from the judicature, took action on their own account to remedy the defect. In 1892 a tribunal was established by agreement between the Corporation of the City of London and the London Chamber of Commerce for "the speedy and inexpensive settlement of disputes arising in the course of business without having recourse to litigation". This stirred the Judges of the King's Bench to action by the allocation of commercial business to what was called the "Commercial Court", though it had no legal status as such. The court attained considerable popularity under Mr. Justice Mathew, who took a particular interest in it and was well known for his dislike of all unnecessary technicalities in legal procedure. Other judges followed, but in recent years there has been no one with the same standing, though the latest edition of the Encyclopaedia of the Laws of England, published in 1938, claims that the expectation of the judges that confidence of the commercial community in the High Court would be restored has been "fully justified" by the result.

Murmurs of a desire for legal reform have been heard again and in the meantime the London Court of Arbitration continues its useful career. At a recent luncheon given at the Mansion House by the Lord Mayor to its members it was claimed that the Court has never had an award by any of its arbitrators—at present numbering one thousand—challenged or found wanting. Its extended use was naturally commended to the business men of the City of London.

*National Insurance*

Although the introduction of a scheme of National Insurance for the Dominion of Canada has some special difficulties not existing in England, there may be some interest in the series of English measures on the subject. The Ministry of National Insurance was established by an act passed in 1944. The act granting family allowances was passed in the following year and came into operation from August 1st, 1946. The National Insurance Act provides health and unemployment insurance, widow's benefit, maternity benefit, orphan's benefit (called guardian's allowance), retirement pensions and death grant. This

has been supplemented by the National Insurance (Industrial Injuries) Act, which supersedes workmen's compensation. To these measures is to be added a new Public Assistance scheme, which will supplement benefits for insured persons in financial difficulties and provide grants for those in need who are left outside the national insurance scheme altogether. In the meantime a useful survey of the acts already passed has been made in a special number (August 1946) of the *Industrial Law Review*, which is a new publication with a promising future. The Carswell Company Limited are the agents in Canada and it may be commended to the attention of those who are interested in labour legislation, since it is under the direction of a lawyer, Mr. F. N. Ball, who has made a special study of the subject.

### *The Common Law*

Sir Henry Slesser from his retirement has contributed a notable article to *The Times* on the Common Law. That the subject should be receiving attention in the leading journal of the lay press is in itself worthy of note. A vast spate of legislation in every field is challenging the old static notion of legal right. The courts of law are being superseded by quasi-judicial bodies with no necessary knowledge of the judicial art. In particular the learned writer refers to the new act dealing with industrial injuries from an accident that "arises out of and in the course of employment". The familiar phrase has been adopted from the workmen's compensation acts, but the new tribunal is not a court of law nor is it bound by the judicial decisions interpreting that phrase.

Passing to the effect of legislation upon the individual, the ex-Lord Justice finds that "the old common law preserved his right to be a free man". Legislation restricting the hours and conditions of work is now generally accepted though not always with a good grace. But the force of the argument in *The Times* article is strikingly supported by a contribution to the *Modern Law Review* dealing with the spare-time activities of employees. There it is asked "why it is that the law has done so little to protect the employee against the temptation of his using his spare time for work instead of recreation". The answer, of course, is that it would be impractical to enforce such legislation. "In a democratic community the use of a person's leisure hours lies beyond the border of the province of the law." So the writer contends that "it is for the trade unions to see to it that the freedom to use for work what should be a period of rest is not

abused by the individual". Surely in this proposal is reached the apotheosis of interference with the liberty of the individual. The trade union is invited to become more of a tyrant than the capitalist employer at his worst.

Finally Sir Henry Slessor asks, "is it possible to maintain the old traditional common law in this collective life?" It is not to be found in those countries under the old Roman law. "Only in the greater part of the British Empire and in the United States" he points out "has the common law found favour; an old practitioner in the common law may be excused if he points out the coincidence that only in those countries has that familiar blend of liberty and order, of toleration and duty, found a permanent footing."

#### *A Unique Estate*

Among the measures that have received the royal assent during the late session of Parliament is one believed to be unique. It relates to the estates of the Marquess of Abergavenny. They have been in the possession of the family of Neville for more than four centuries. More than fifty years ago a writer in the Dictionary of National Biography was able to claim (*sub. tit.* Edmund Neville, 1605-1647) that the holder of the title at that date represented "an unbroken Neville descent in the male line of twenty-one generations, from Geoffrey de Neville in the reign of Henry III, and a still longer one through Geoffrey's father, Robert Fitz-Maldred, a pedigree without parallel among English noble families".

The Abergavenny estates have been strictly entailed and illustrate the development of that form of tenure which was so admirably elucidated by Holdsworth in the third and seventh volumes of his history of English law. The entail, however, appears to have been unique in so far that in the sixteenth century there was inserted by Act of Parliament a remainder to the Crown in the event of heirs failing and the entail was forbidden. At the present time there are probably several hundred lives ahead of the Crown so that the payment of £750 for surrendering the right appears to be quite an adequate compensation. It is this provision which has rendered necessary an Act of Parliament; the present peer is now enabled to raise money and make other arrangements to meet the taxation falling upon his estates.

*The Output of Parliament*

Although political controversialists are disposed to say that the present Government have been passing legislation on an unprecedented scale and with indecent haste, the facts do not support the accusation. Seventy bills had received the Royal Assent before the vacation and eight remain to be passed into law when both Houses meet in October. The Parliamentary correspondent of *The Times* recalls that in 1919 the Coalition Government managed to pass 102 bills and even then, in the words of *The Times*, they were "shedding bills like leaves in autumn" as the session drew to a close. There is a noticeable repetition in some of the subjects, *e.g.* town planning, health insurance and housing. It may be that in the sphere of social legislation the measures passed this year are more comprehensive than those approved in 1919, but most of our friends in the Dominions would regard this as a healthy sign of activity in the "Mother Country", and evidence of a desire to make up for time lost in the past.

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## THE BRAVE NEW WORLD

*Cade.* Be brave, then; for your captain is brave, and vows reformation. There shall be in England seven half-penny loaves sold for a penny: the three-hooped pot shall have ten hoops; and I will make it felony, to drink small beer: all the realm shall be in common; and in Cheapside shall my palfrey go to grass: and, when I am king, (as king I will be)—

*All.* God save your majesty!

*Cade.* I thank you, good people:—there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord.

*Dick.* The first thing we do, let's kill all the lawyers.

*Cade.* Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? that parchment, being scribbled o'er, should undo a man? Some say, the bee stings: but I say, 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since. (Shakespeare: Henry VI, Part II, Act IV, Scene II)