FROM AN ENGLISH OFFICE WINDOW

MIDDLE TEMPLAR

The Queen at the Middle Temple

Since the election of the Queen as a Bencher of the Middle Temple the frequency of her visits has shown her lively appreciation of her unique position. No other Royal Bencher of an Inn of Court has ever been so really at home within its precincts. The latest visit was quite an exceptional occasion. For the first time since the ancient Hall had passed through the attacks of a vicious Hun it was used for a public gathering. True, the fine stained glass windows are not yet in position and the structure still shows signs of damage, but Benchers, members and Students of the Inn were able to assemble in strength for the proceedings leading up to the opening by Her Majesty of the temporary Library.

The Treasurer, Mr. Craig Henderson, K.C., in a few preliminary remarks explained that the former Library, having survived almost throughout the war, was rendered dangerous by a flying bomb which fell in close proximity in June 1944, so that it has been necessary to take down the greater part of the building; though there are not many regrets over a building that was never regarded as being very suitable for its purpose.

The Queen, who was accompanied by the Earl of Athlone, in declaring the new building open said that a library of books of law provided a picture of history and man's progress. Their own library contained a wide and comprehensive range of books concerned with law in many countries besides their own. In the pages of those books they could read of the struggle between force and law, fought nowhere more strongly from the earliest times than in this country. The concepts of the rights of man had established themselves as legal principles, and the supremacy of the Courts had shielded and fortified their existence.

The rule of law meant the supremacy of law, yet it was the servant of society, not its master. It was not rigid or unchanging; the influences of custom and adaptation lent to it an in-dwelling and creative principle. The evolution of our common law — with which, she believed, their own inn was particularly associated — provided just that union of firmness and flexibility which admitted the supremacy of law and prevented its tyranny. The restraining power of law guarded the principles of the past; its administration by enlightened men moulded those principles to the spirit of the age.

We might hope that some day the rule of law would govern all human relationships, without regard to the limitations of frontiers or states. But its extension into international affairs could only be assured by the acceptance and proclamation of common ideals and by the recognition of an international society. The forward march of law had not, then, reached its goal. The books in their great library were milestones along the path on which we had come and signposts pointing to the way ahead. In looking at them they could take heart in the history of our justice and in the justice of our history. Their library was a memorial to the past and a challenge to the future.

There has been much surmise as to the source from which she derived her inspiring words, but the firmness with which she spoke showed that conviction lay behind them, especially when she referred to the necessity for the rule of law to prevail over all human relationships.

The new building is a good piece of team-work, the result of excellent co-operation between the Inn's Surveyor, Mr. Swanson, and the Librarian, Mr. Sturgess. It occupies the site of Brick Court, which was familiar to visitors as containing the chambers of Goldsmith and Blackstone. The building was destroyed in 1940 and in its place was substituted a huge water tank. Skilful use has been made of this tank as the basement for the new building, with space for approximately fifty thousand volumes. For the upper part of the building, with accommodation for another twenty-five thousand, material has been used from the ruins of the surrounding destruction. The internal arrangement is well designed for its purpose and although many regret that the Inner Temple could not see their way to combine to provide one Library for the two Inns, it is appreciated that excellent temporary provision has been made and during the interval which must elapse before either Inn can make permanent provision there will be opportunity for promotion of a policy that so obviously is directed to efficiency and economy.

Short Titles

Anyone concerned in any way with legislative drafting would be well advised to acquire copies of a series of three reports issued by a Select Committee on Statutory Rules and Orders. Their small size is no criterion of the value of their contents for they embody the ripe experience of Sir Cecil Carr, who as Counsel to the Speaker of the House of Commons was asked to assist the Committee in a vast undertaking. Primarily

the Committee's appointment was due to the public concern about the development of administrative powers, so that they were asked to report to the House any provisions excluding an order from challenge in the court or any unusual or unexpected use of the powers conferred by the statute. Finally they were asked to report if for any special reason the form or purport of an order calls for elucidation. In the course of the reports valuable advice and information have been given in the drafting of various types of subordinate legislation.

The third report of the Committee is based upon the examination of nearly one thousand statutory rules and orders, which leads them to comment upon the procedure for the correction of mistakes found in the original order after it has been laid on the table of the House. Perhaps the most practically useful section is that dealing with short titles, which are a necessary item in administrative regulations, especially when they are in use by the general public. They do not need to attempt to give a catalogue of contents nor to set out the full name of the parent statute. The report goes on to observe: "Not every instrument, naturally, can have so compendious a name as 'The Cucumbers Order' or 'The Spoilt Beer Regulations' but ingenuity might usefully be employed to cut down such a cumbrous label as 'The Artificial Insemination (Importation and Exportation of Semen and Artificial Semen) Regulations'." The Committee advocate that short titles should be descriptive rather than technical. They also dealt with the methods of numbering. It is good to find a committee paying attention to improvements of this kind, for in the aggregate they mean an enormous saving of time and trouble for those engaged in making use of documents of this nature.

The Lord Mayor at the Law Courts

One of the characteristics of post-war mentality is a general desire to restore ancient ceremonies. So much has been destroyed that it seems to be a natural wish to revive any custom with well-established usage. Before the war many people thought that the Lord Mayor's show was rather a cheap and tawdry anachronism, which caused a tiresome interference with business. This year the date happened to be a Saturday, so revival did not have that consequence and the children had a great occasion to see a pageant of "Work and Play". It was an event when residents from the Provinces, who seem to lose no opportunity to come up to London, were able to enjoy the colour and

pageantry of the Lord Mayor and Aldermen in state carriages, with the Forces well represented and the civilians demonstrating a wide range of pastimes and athletics.

The attendance of the Lord Mayor at the Law Courts dates from the time when he was regarded as an accounting officer of the King and had to take the oath in the Court of Exchequer. The Lord Chief Justice, Lord Goddard, accompanied by Macnaghten and Lewis JJ. attired in their full robes, received Sir Bracewell Smith. Goddard L.C.J. took the opportunity to explain the operation of the Calendar Act 1775 and that the act passed in the same year dealing with the law sittings had changed the date from the Feast of St. Simon and St. Jude, October 28th, to November 9th. The Lord Mayor signed the statutory declaration and made the customary claim to the rights and privileges of the City of London. The site of old Temple Bar just outside the Law Courts recalls one of these, since whenever the King visits the City he is met there to enter with the approval of the Lord Mayor, and distinguished visitors, such as Lord Alexander when he came to receive the Freedom of the City, are met in the same way.

Actions Against the Crown

The case of *Adams* v. *Naylor*, [1946] 2 All E.R. 241, has led to an interesting correspondence in *The Times*, which is quite unusual in having produced a letter from Lord Simon, who delivered the judgment of the House of Lords, in explanation of it. The case in itself, though giving rise to a difference of judicial opinion in the lower courts, rested primarily upon the interpretation of a statute (Personal Injuries (Emergency Provisions) Act, 1939, c. 82) dealing with injuries "caused by the use of explosive in combating the enemy". Two boys were playing on a sandhill which had been constructed as a minefield. One was killed and the other seriously injured. Proceedings were taken against the officer of the Royal Engineers who was at all times in control of and responsible for the maintenance and safeguarding of the minefield. It was argued that no enemy was at or near the spot and that "combat" implied active fighting against an actual intruder. This interpretation was not accepted, so that the remedy on behalf of the boys was obtainable as a compensation for war injuries.

Lord Simon, in delivering the judgment, added observations in reference to the position of the defendant, who had been described as the "nominal" or "nominated" defendant, since

the Crown could not be sued in tort. "Such language" he went on "seems to suggest that the issues at trial are issues between the parties and the Crown and that the defendant is mentioned as a party merely as a matter of convenience." This is not the true position. Proceedings may be taken against a servant of the Crown when as a matter of custom the Crown may stand behind the defendant and pay the costs and damages awarded against the defendant. But the action is between the parties and the courts have nothing to do with the fact that the Crown will provide the damages from public funds if judgment is against its servant.

Thereupon issued a correspondence in *The Times* dealing with the desirability of an amendment of the law as proposed in the report of a Committee under the chairmanship of Lord Hewart in 1927. That Committee, however, did not recommend that the Crown should become liable to be sued in tort, contrary to the general impression, for the simple reason that its terms of reference were based on the assumption that an alteration in the law was both desirable and feasible. The Committee were asked to draft a bill and did not even recommend for adoption their own draft. They merely said that if the proposed changes in the law were to be effected that was the sort of way in which to do it.

Lord Simon then went on to explain in his letter (*The Times*, October 1st, 1946) that the idea of a departmental dummy was quite novel and wholly contrary to the principle involved. It may be desirable to give the injured subject a direct remedy against the Crown, but if a servant is to be sued it must be the servant who was personally liable and not a sort of whipping boy put up by the department.

Further correspondence drew attention to the situation that arises where the Crown is the occupier of a factory and there has been a breach of the factory acts through which one workman has suffered damage. No servant of the Crown is liable, so, pace Lord Simon, says another correspondent, there has developed "a system of legal fictions by which a nominated defendant is put up to answer". Sufficient attention has been directed to the subject that it will probably be raised when Parliament meets and there is even prospect of a long delayed bill being introduced to amend the law.