FROM AN ENGLISH OFFICE WINDOW

MIDDLE TEMPLAR

Welfare of Bar Students

The four Inns of Court have decided to appoint a full-time officer whose duties will be to attend to the general welfare of Bar students, particularly students from overseas. Among other things he will be called upon to assist them in obtaining suitable living accommodation. For years before the war there was a grave need for arrangements to be made for these men, of whom many drifted into unsatisfactory accommodation simply because they had no means of knowing how to keep out of it. During the war excellent work has been done for service men as well as students by various organizations, among which the Victoria League has taken a notable lead. Although this departure is cordially welcome it does not go so far as some would wish in providing for overseas students. They would like to see a residence provided for overseas students under the auspices of the Inns of Court. There is an ancient precedent at Lincoln's Inn, where in the seventeenth century separate accommodation was provided for Irish students.

Diplomatic Immunity

The housing difficulties of the present time have led to a case presenting an unusual aspect of diplomatic immunity. Mr. P, as the executor of a woman who had been tenant of a flat under a lease, let it to Mr. B with the usual condition that he could not sublet without the previous consent in writing both of Mr. P and the head landlords. Mr. B applied to Mr. P for permission to sublet to an official of the Turkish Embassy. Permission was refused on the ground that if the tenant committed any breaches of the covenant proceedings could not be taken owing to his diplomatic immunity. Mr. B thereupon applied to the head landlords, who were willing to give their consent provided that the application came through Mr. P. Without further discussion Mr. B sublet and gave possession to the Turkish official. Mr. P thereupon claimed possession. The defence was that he had acted unreasonably; in practice no difficulty could ever arise owing to the refusal of an official of a foreign power to give up possession of premises for pressure could be applied through his Embassy, which would inevitably be effective (*The Times*, December 10th, 1946). Macnaughten J. in giving judgment for the defendant observed that to some it might appear an advantage rather than a disadvantage that a tenant was entitled to diplo-

matic privilege, for such a person would presumably be able to discharge his obligations and if he did not discharge them personally his Government behind him would feel bound to do so.

The Nazi Failure

Sir David Maxwell Fyfe has returned from Nuremberg with a reputation head and shoulders above any of the advocates in the general estimation of members of the Bar who have witnessed the proceedings. He has not merely conducted the case (the main burden fell upon him although Sir Hartley Shawcross took his share at important stages), but he has contributed conspicuously to the object lesson of the trial as displaying the standard of British justice. The esteem in which he is held by the general public was shown at a crowded meeting of the Royal Empire Society when not only every seat in the large Assembly Hall was filled but something like one hundred people stood throughout the proceedings.

Sir David's examination of the failure of Nazism showed that he had exhaustively examined all the remaining German official documents. For example, he knew that Raeder was opposed to the attack on the Soviet Union because he had seen all that survived of his contemporary memoranda. He believed that Ribbentrop sympathized with and forwarded a memorandum of Keitel's which also opposed it. But Hitler reached a condition when it was impossible even to present facts which did not harmonize with his pre-conceived views and decisions.

Sir David in his analysis of the production programme referred to Speer, the Minister of Production, as the ablest Nazi of all. Hitler merely looked upon Speer as a technical adviser and would not permit him to discuss personal or political problems. Speer felt this very strongly and said that the sacrifices made on both sides after January 1945 were without sense. Up to the end Hitler was completely satisfied with himself and only blamed the German people for any failure.

Sir David left the impression, which has also been given by others with close opportunity for observation, that the war of 1939-1945 was lost by the Germans through incredible mistakes rather than won by the Allied Forces by any display of constructive brilliance in the conduct of war.

Appeals to the Privy Council

The constitutional question determined in *Attorney-General of Ontario and others* v. *Attorney-General of Canada and others* is

by this time familiar to your readers and its effect has been generally anticipated in this country. But it may be of interest to note the line taken by *The Times* in a leading article in the issue (January 14th, 1947) reporting the decision. After recapitulating the circumstances that led up to the appeal, it quotes from the judgment to show that "the fetter upon the legislative power of the Dominion" imposed by the British North America Act has been removed by the Statute of Westminster. "It would contradict the spirit of that Statute" adds *The Times* in the words of the Lord Chancellor "to concede anything less than the widest amplitude of power to the Dominion legislature". Therefore "it must be within the power of the Dominion Parliament to enact that the jurisdiction of its Supreme Court shall be ultimate".

The Times then proceeds that "neither in Canada nor in Britain will this common-sense conclusion be taken to imply that the sentiment of Imperial unity has weakened since Canada first became a Dominion eighty years ago. What it implies is that the machinery through which this sentiment finds expression requires revision in the light of changed circumstances." While "the judgment does not affect the relations between the two members of the Commonwealth", inside Canada "it may affect the relations between the Dominion Government and the Provinces". It is recognized, however, that "any controversies to which this part of the Privy Council judgment may give rise will be for Canada herself to regulate". The Judicial Committee, although at times its decisions have caused a good deal of disturbance and even annoyance, has done a useful day's work. Its detachment from the environment of the questions which come before it is very valuable. In the speed and complications of modern life there is a contribution to be made by wise counsellors who stand aside from the fray, for in law as in other matters the looker-on sees most of the game. If some of the industrial conflicts which have disturbed the well-being of this country could be referred to an independent tribunal sitting in Ottawa both parties might return with a healthier outlook on their duty to the community.

Reconciliation and Divorce

In June 1946 the Lord Chancellor appointed a committee under the chairmanship of Mr. Justice Denning to report upon procedural reforms with a view to expediting the hearing of divorce suits and reducing costs. Their work has been carried out with expedition. The adoption of their recommendation for the appointment of Commissioners to supplement the Divorce

Court judges, combined with the simplification of procedure by amended rules of court, has enabled progress to be made with arrears and the development of the Law Society's legal-aid organization has expedited the preparation of the cases through decentralisation all over the country. The most important item however in the reference to the Committee was to report "whether any (and if so, what) machinery should be made available for the purpose of attempting a reconciliation between the parties, either before or after proceedings have been commenced". To this, which goes to the root of the whole situation, the Committee have devoted their third and final report (Cmd 7024, H.M. Stationery Office). It is an illuminating document, which may well be useful in other jurisdictions since the evidence before the Committee showed that efforts in other countries, with the possible exception of the rural cantons of Switzerland, have not met with success.

The Committee find that the deplorable increase in the number of divorces is largely due to external difficulties, such as those arising from the housing shortage and other conditions due to the war. Nevertheless there had been a steady increase before it was accelerated by the events of the last seven years, with the result that a state of affairs has been reached when "every thinking person is profoundly disturbed by the prevalence of divorce and its effect on the family life and the national character". Attempts towards reconciliation have been a natural and spontaneous result of this anxiety. The work done however has been incidental for the most part to other activities and until recently has been somewhat haphazard and lacking in comprehensive knowledge of the problem and of all its specialised aspects.

Reconciliation has received statutory recognition in the Summary Procedure (Domestic Proceedings) Act 1937 by which the magistrates were enabled to request the probation officer or any other person to attempt to affect a reconciliation between the parties. The probation officers have done their work so well that they have gained the confidence of the public. The war gave occasion for the activities of service organisations, particularly the Sailors', Soldiers' and Airmens' Families Association, to render assistance to members of the Services in their domestic troubles. Figures submitted to the Committee show that "the estimated number of reconciliations effected under the Army and R.A.F. Legal Aid Scheme was approximately 27,000 or 25 per cent of the total number of divorce applications, but it is only right to say that there is no record of how many of these reconciliations proved permanent".

More recently the Marriage Guidance Council, which was reconstituted in 1943, has opened a number of clinics in London and several in the Provinces where marriage guidance is treated on a scientific and specialised footing by carefully selected people called counsellors, most of whom possess professional qualifications. These counsellors are trained to recognize in any particular case the nature of the marital disharmony and to diagnose it, then to deal with the case in the most appropriate way, sometimes themselves endeavouring to effect reconciliation, but often referring the parties to a specialist in a particular subject. These specialists are called "consultants". They are professional men and women who are willing to give part of their time to the work. They fall into five categories: (1) Medical, (2) Psychological, (3) Ethical and spiritual, (4) Social, and (5) Legal. Once the matter is put into the hands of a consultant it remains with him and there arises a relationship directly between the doctor and his patient, the lawyer and his client, or as the case may be. The consultant gives his advice if the party cannot afford to pay for it, but in other cases he may charge a normal fee. The work of the Council has received a measure of acceptance in every section of the community and the main lines upon which it operates have provided a pattern for adoption by the religious communities and other organisations.

The experience derived from their work enables the Committee to set forth the conditions that are desirable for effective reconciliation. The earlier that efforts are made to remove marital disharmony the more favourable are the prospects of their success. They are greater too if there are children than when there is none. The Committee lay great stress upon the fact that there must be no kind of compulsion but that the movement on the part of either or both of the parties towards reconciliation must be entirely voluntary and that the parties must have full confidence in the persons to whom they may go for advice and assistance. It is necessary also that any action taken towards reconciliation should not in any way be associated with the legal machinery for obtaining divorce and the parties must be satisfied that no information given can in any way prejudice their legal rights. It is clear that work of this kind demands people of wide sympathy and understanding who at the same time can recognize when the specialised knowledge of a doctor or other professional man is desirable. Because the personal factor is so important the Committee consider that the "Churches, Voluntary Societies and individuals have a greater chance of success than any State

institution would have unless it was able to escape the tendency of such an institution to become impersonal".

The welcome that has been accorded to the work done by the probation officers, the Welfare Services and Legal Aid Sections of the Forces, the Marriage Guidance Council, the Family Welfare Association and many other voluntary societies and individuals has satisfied the Committee that it is a feasible proposition to establish a Marriage Welfare Service to afford help and guidance both in preparation for marriage and also in difficulties after marriage.

> It should be sponsored by the State but should not be a state institution. It should evolve gradually from the existing services and societies just as the probation system evolved from the Court Missionaries and the Child Guidance Service from the children's clinics. It should not be combined with the judicial procedure for divorce but should function quite separately from it. The principal aims of the Marriage Welfare should be:—
>
> First: To make available a sufficient number of suitable persons to give advice and to see that their availability is generally known.
> Second: To encourage young people to seek competent advice in preparation for marriage.
>
> Third: To encourage married couples to seek competent advice as soon as serious conflicts arise.
>
> Fourth: To attempt reconciliation whenever a break has occurred.

The Committee are of the opinion that financial assistance can quite properly be provided by the State to these voluntary organisations and that their work may be made known by such means as giving information at the offices of Registrars of Marriage. The nucleus of a body of competent officers is already available in the probation officers, who would become Court Welfare Officers. "It will be the duty of the Court Welfare Officer", the Committee concluded, "to give guidance where the parties or one of them wish to make use of his services, and particularly, to endeavour to effect reconciliation if it is a suitable case for him to handle; or to refer the parties to one of the voluntary societies, a doctor, a clergyman or any other person if that appears to be the best way of dealing with it. If one of the parties lives in a district a considerable distance away, the officer should be able to call on another Court Welfare Officer of that district to assist in the case. One of the advantages of adapting the probation system to this work is the existence of officers in all parts of the country who can render assistance."

There is one direction in which the State can and should do more in the way of marriage guidance, namely in the ceremony of

marriage itself. "In so far as the Churches are concerned, the marriage service is as a rule a model of what the ceremony should be where the parties have a sound religious faith; but in Register Offices the parties are commonly given no guidance at all as to the obligations which they are undertaking. It is provided by Statute, and indeed no more is required, that each party should declare that he knows not of any lawful impediment to the marriage and that the man shall say to the woman that he takes her to be his lawful wedded wife, and vice versa. In practice that is frequently the whole of the ceremony. In our opinion the form of marriage in Register Offices should be revised so as to emphasise the solemnity of the occasion and clearly to express the principle that marriage is the personal union, for better or for worse, of one man with one woman, exclusive of all others on either side so long as both shall live. If this fundamental principle is expressed, there is no need to go on to deal with the grave breaches which give rise to dissolution. The parties at that stage are, or should be, contemplating the performance of their obligations, not the breach of them. The obligations should be expressly brought home. The effect of a breach should be left to the law."

The Committee were particularly concerned with the disastrous effects upon children through the dissolution of a marriage and advocate that the welfare of the child should be specifically before the judge in any divorce proceedings and not merely left as an incidental consideration to be adjusted by some compromise arrangement between the parties. They point out that the procedure of the Court of Chancery is much more satisfactory than that of the Divorce Division in providing for the custody, maintenance and the education of children and their recommendations are directed to assimilating the procedure in the Divorce Court more closely to that of the Chancery Court.

The report of the Committee covers a number of other points, especially as regards procedure, but its outstanding proposal is the endeavour to provide some means by which reconciliation may create a durable marriage as the foundation for the restoration of family life to the advancement of the nation's welfare.