

FROM AN ENGLISH OFFICE WINDOW MIDDLE TEMPLAR

International Relations of Lawyers

The annual meeting of the Bar Association was notable for an announcement by the Attorney General that in conjunction with the Lord Chancellor he had invited a visit from representatives of the Polish Bar. He had also suggested an exchange of visits with representatives of the Russian Bar and expressed a hope that it would be possible to revive the exchange of visits with the American Bar Association.

In the meantime the Law Society have arranged a most interesting conference with French lawyers to be held during the first week of June in London. Papers on a comprehensive range of subjects have been prepared by English and French lawyers and circulated beforehand so as to form the basis of a discussion. They include the organization and remuneration of the legal profession, the distribution of issues between judicial and administrative tribunals and proceedings between the citizen and the State, as well as subjects of legal practice such as evidence and procedure for enforcement of judgments.

A Woman Librarian

The Sex Disqualification Act 1919 enabled women to become members of the Inns of Court, but the appointment of a woman as librarian nevertheless comes as a bit of a shock. The departure has been made by the Middle Temple who have appointed Miss K. Butterwick as an assistant on the library staff. She comes from Leeds Public Library and holds the professional diploma of the Library Association. It is not the first time that a woman has made history within the precincts of the Middle Temple Library. Before women could be admitted as members of the Inns of Court the Benchers allowed a distinguished French woman lawyer with a remarkable knowledge of English law to pursue her studies there. But prejudices were sufficiently strong that she was not permitted to read with the other members and had to be in a room by herself. Nevertheless it is to the credit of the Inn that in this as in other matters connected with the use of the Library they have always pursued a liberal and progressive policy.

Soldier's Right as a Citizen

An interesting case recently came before the Privy Council which does not seem to have found its way into the law reports.

It raised the question whether a soldier has the right of every citizen to appeal to the Crown as the fountain of justice. A commissioned officer in the Indian Army appealed against the decision of a court-martial on the ground that his defence had been hampered and there had been a grave miscarriage of justice. The Privy Council took a narrow view of the case by basing their decision on the fact that the jurisdiction of the Privy Council rested on statute and that there was no authority to hear an appeal under the Indian Army Act 1911 (*The Times*, January 21st, 1947). On broad principles McArthur the well known authority on Naval and Military Courts Martial lays it down that the military law is subordinate to the civil and municipal laws of the Kingdom (Vol. I, p. 38). In these days when the position of the men in the forces of the Crown is undergoing considerable modifications in the direction of treating them as ordinary citizens there seems to be some justification for reconsidering their legal status.

Marriage by Proxy

The first occasion for a decision on the question whether marriage by proxy is legal in this country was presented in *Apt (otherwise Magnus) v. Apt*, [1947] 1 A.E.R. 620. Two German Jews who had known each other for some time escaped from Nazi oppression shortly before the war. The woman came to England with her family and acquired an English domicile. The man went to the Argentine but there was no evidence whether he acquired a domicile of choice. In 1940 the man, having known the woman for some years, wrote a proposal of marriage and since the woman, owing to wartime restrictions on travel, could not proceed to the Argentine arrangements were made for a marriage by proxy in accordance with Argentine law. Efforts were made by the parties to meet but without success. In the autumn of 1945 the husband ceased to correspond and it seemed clear that the attachment was undergoing a quite natural cleavage. Accordingly the wife petitioned for a decree of nullity.

Lord Merriman, the President of the Divorce Court, recognizing that a precedent was being created which might have far reaching implications, exhaustively examined the material authorities. An important point was whether the marriage by proxy violated any principle and the learned President decided that celebration of marriage by proxy is a matter of the form of the ceremony and not an essential of the marriage, that there is nothing abhorrent to Christian ideas in the adoption of that form

and that, in the absence of legislation to the contrary, there is no doctrine of public policy which would prevent the validity of the marriage if it were valid in the country where it was performed. Accordingly the petition for nullity was dismissed.

The 'New Town' Procedure

The Court of Appeal have reversed the decision of Henn Collins J. in the *Stevenage* case (see the May issue at page 487) and justified the course taken by the Minister of Town and Country Planning. Lord Oaksey, formerly known as Lawrence L. J., in delivering the judgment of the court dismissed the allegation of bias by observing "even assuming that the Minister had been biased when he made his speech at Stevenage it was still necessary to show that that state of mind continued until he made the order". The onus was on the objectors and they had not discharged it. The fair way, he added, in which to deal with the allegation would have been to cross-examine the Minister but the objectors had made no attempt to call him. As regards the sewage disposal and water supply the evidence did not contend that the proposals are impracticable. These matters had been considered by the Minister who was justified in thinking that any difficulties could be overcome in carrying out the project.

Cost of Litigation

The Lord Chancellor has appointed a strong committee to make recommendations "for the purposes of reducing the cost of litigation and securing greater efficiency and expedition in the dispatch of business" in the Supreme Court. The chairman will be Lord Justice Evershed who has recently been promoted from the King's Bench. The membership of the Committee is widely representative. It includes two High Court Judges, the Treasury Solicitor, the Editor of the *Economist*, Mr. Geoffrey Crowther, the Secretaries of the Railway Clerks Association and the Union of Post Office Workers, Professor Goodhart, Sir Arnold Gridley, President of the Association of British Chambers of Commerce, A. P. Herbert, correctly described as Sir Alan, Professor T. H. Marshall, the economist, besides representatives of both branches of the profession, practising and holding officers in the courts.

A supplementary committee will have the same purpose in reference to procedure in the County Courts with Mr. Justice Austin Jones who was recently promoted from the County Court to the High Court as chairman. Its composition will be of a similarly varied character though somewhat smaller in number.

The effectiveness of the work of bodies of this character has been assisted in other recent inquiries by a provision in the terms of reference, which also appears in these, that they shall make interim reports on any matter which may appear to the committee to merit immediate attention or to warrant separate treatment.

Particular attention is drawn to the hardship falling upon litigants through the expense entailed in determining a point of law, especially when there is considerable difference of judicial opinion as the case proceeds on appeal. The Committee are asked "to consider what appropriate machinery might be evolved to enable cases involving points of law of exceptional public interest (arising in any Division of the High Court or in the Court of Appeal) to be determined wholly or partly at the public expense, whether by making the Attorney General or the King's Proctor a party to litigation or otherwise".

There seems to be good prospect of an interesting and useful series of reports.

Four Centuries Ago

The first published volume of the Journal of the House of Commons contains the record of their proceedings just four centuries ago. The extent to which history repeats itself is remarkable. On the other hand the cynic might say that it shows how little progress has really been made in the course of centuries. The first entry is "The Bill for Bringing up of Poor Men's Children". The subject has been engaging the attention recently of the House of Lords as well as the House of Commons upon the reports of a committee considering the best means of bringing up children whether in foster homes or institutions.

On November 9th 1547 there is the bill that 'Clothiers shall not take aliens to their Prentices'. The admission of aliens to various industries especially the coal mines has been the subject of prolonged discussion. But perhaps the measure with the most modern connotation is "The Bill for a Treasure House in every Shire for keeping of the Records". The destruction of records during the war has stimulated the desire for the safe custody of those which remain but a County Record Office in every County is still an aim awaiting accomplishment. As these three entries occur within the first week of the record it can be appreciated that a prolonged search would record an extensive similarity in the current affairs of the sixteenth and twentieth centuries.

The Duchy of Lancaster

The post of Attorney General of the Duchy of Lancaster after being held by Sir Herbert Cunliffe K.C. for a quarter of a century has since had two occupants in little more than twelve months. His successor was Mr. D. L. Jenkins, K.C. who has now become a High Court judge. In his place has been appointed Mr. G. R. Upjohn the son of a distinguished member of the Chancery Bar, who after seeing active service during the war became Chief Legal Adviser in Italy and then Vice President of the Allied Control Commission.

The County Palatine of Lancaster to which the Attorney General is attached as the representative of the Crown derives its jurisdiction and the right to have its own court from a charter granted by Edward III in 1351. Formerly it had its own courts both of law and equity. But the Judicature Act 1873, (36, 37 Vic. c. 66, s. 99) enacted that the County Palatine of Lancaster should cease to be a County Palatine so far as respects the issue of special commissions of assize or other like commissions, but not otherwise, and that commissions might be issued for trial of all causes and matters, as in other counties. The appellate jurisdiction of the Palatine Court was abolished in 1890 (53 & 54 Vic. c. 23, s. 4) but there still remains a useful amount to be done as a court of first instance.

THE MOST ELEGANT SPOT IN THE METROPOLIS

At length they all to mery *London* came,
 To mery *London*, my most kyndly Nurse,
 That to me gave this Lifes first native sourse:
 Though from another place I take my name,
 An house of auncient fame.
 There when they came, whereas those bricky towres,
 The which on *Themmes* brode aged backe doe ryde,
 Where now the studious Lawyers have their bowers
 There whylome went the Templer Knights to byde,
 Till they decayed through pride:

(Edmund Spenser: Prothalamion. 1596)