FROM AN ENGLISH OFFICE WINDOW

MIDDLE TEMPLAR

Advanced Legal Studies

The Long Vacation has been marked by the announcement of the establishment of an Institute of Advanced Legal Studies under the auspices of London University. Its aim is to carry into effect proposals made in 1934 by a committee under the chairmanship of Lord Atkin. Later another committee, under Lord Macmillan, was appointed to advise as to the best method of implementing their recommendations. As a former chairman of the University Court, Lord Macmillan was in a happy position to take action, shortly after the cessation of hostilities, and a long desired project is about to become a reality largely through his energy and interest. The existing Institute of Historical Studies has provided a precedent for the relationship between the new Institute and the University.

One of the chief points of the Atkin Committee's report was the need for the provision of material for research. As regards Continental law London University has just received by bequest the library of Dr. Huberich, who had a comprehensive collection especially in the field of commercial law. The Nuffield Foundation have made a grant to enable the Institute to build up a library of Dominion and Empire laws. The first need undoubtedly will be, as the Atkin Committee anticipated, the provision of a union catalogue of the resources available at least in London, and possibly also in Cambridge, where the Squire Law Library has specialised in foreign law, and in Oxford and Edinburgh. Accommodation has been found in close proximity to the University and with Lord Macmillan as the first Chairman of the Institute there is every prospect of a successful future.

Simplification of Statutes

The Lord Chancellor has announced his intention to proceed with the long-needed consolidation of the statute law. The critics of the present government who blame them for taking on too much fail to recognize that they inherited the results of years of neglect. The state of the laws of this country is a notable example, which directly or indirectly affects every citizen. An increasing proportion of the community must refer to the text of statutes in their daily occupations. This was particularly noticeable during wartime, but it is a normal development and, although there may be a certain amount of resentment, it is healthy

that the citizen should realise that law conditions the whole of his activities.

Sporadic efforts have been made from time to time to improve the statute book, but the Government take the view that no real improvement can be accomplished until the business of statute-law reform receives a definite place among the duties of Parliament and the executive government of the day.

The reform is to be carried out by an extension of the office of Parliamentary Counsel. It was in 1869 that the lack of uniformity of language, style and arrangement in laws which were intended to find their place in a common statute book stimulated the then Chancellor of the Exchequer, Mr. Lowe, to create the office of Parliamentary Counsel to the Treasury, as a successor to the Home Office Counsel who had been responsible for departmental bills. To that office was appointed Mr. Edward, afterwards Lord Thring, and to the improvement of the statute law he persistently devoted his long and active life. He was for many years Chairman of the Statute Law Committee, of which he was an original member, and in that capacity he instituted the chronological table and index, which are the primary means of finding one's way about the statutory law of Great Britain. To his initiative was also due the compilation of the revised statutes, which originally reduced 118 volumes of statutes to 18 volumes. Sir Courtenay Ilbert in summing up his activities in the Dictionary of National Biography concluded, "in the process of consolidation, although a great deal still remains to be done, much was done in Thring's time and under his guidance, and his name takes the first place in the history of this important task". That was written thirty-five years ago and little has been done officially in the intervening period, though some publications under private enterprise have assisted to fill the gap. Until the basic material is reduced in compass, the bulk of the statute law still remains an obstacle to ready reference.

Accordingly the Parliamentary Counsel's Office is to have a new department, which will consider the steps necessary to bring the statute book up to date by consolidation and revision, and will superintend the publication and indexing of all statutes, revised statutes and statutory instruments. The term consolidation has been defined to mean "the combination in a single measure of enactments relating to the same subject matter, but scattered over different Acts" (Ilbert, Legislative Methods and Forms, p. 111). Codification, on the other hand, "is the reduction with a systematic form of the whole of the law relating to a

given subject, that is to say, of the common law, the case law and the statute law" (Thring, Preface to Practical Legislation, p. v).

In order that Parliament may have a direct interest in the work of the Department there will be a supervisory committee consisting of the Lord Chancellor as Chairman, Sir Granville Ram who has just retired from the office of Parliamentary Counsel as vice-Chairman and the Attorney General, the Lord Advocate, three members of the House of Lords, including a Lord of Appeal, and three members of the House of Commons. It is estimated that ten years may be required to overtake arrears, but it is intended to make a beginning with consolidating bills in the next session of Parliament.

Plea of Insanity

In the course of an appeal by a man who had murdered his five and a half year old son, the Court of Criminal Appeal gave an interesting direction upon a point of procedure. At the trial the prison doctor who had made a report on the prisoner's state of mind was called to give evidence for the prosecution. Afterwards a medical witness was called for the defence and was cross-examined by counsel for the Crown. Morris J., in delivering the judgment of the court, observed that "counsel on both sides acted with the best of motives, and while it was right and proper that the prosecution should make available to the defence the statement of its medical witness, and arrange for him to be called as a witness, the proper course was for the defence to call any witness whose evidence was directed to the mental state of the accused, that being a matter in regard to which it was for the defence to raise the issue" (The Times, Sept. 3rd, 1947). The court realised that a different course had been followed only with a desire to be extremely fair to the prisoner. Nevertheless it was for the defence to call any evidence directed to the issue of insanity. On a point of detail the case illustrates the general anxiety to give heed to the mental condition of offenders. Slowly, though it may be hoped surely, we are approaching the time when the courts will have medical advice upon some approved basis free from conflict of medical opinion. It can hardly be regarded as satisfactory that when the court has definitely decided against substituting a verdict of guilty but insane for the verdict of guilty it should be open to "others who had powers in the matter beyond those possessed by the Court" to reverse the decision in practice.

Nationals of India

All through the war there were only two occasions on which my direct progress to the Temple from my home was interfered with by the activities of the Germans. To these exceptions must now be added the day of the declaration of the independence of India. The High Commissioner had issued an invitation through the press to all nationals of India to assemble at India House. The result was such a gathering as to make necessary a diversion of the traffic analogous to that when a bomb was in the way. The press reports of the jubilation of the people were no mere journalese. The Indians really did look happy and pleased in quite an unaccustomed manner. Of course in London most of the Indian nationals we see have a developed political consciousness. The form of the invitation from the High Commissioner is not without significance. It would seem strange for the High Commissioner of Canada or Australia to issue a notice to nationals of Canada or Australia. In theory and perhaps in law it may be argued that there are not degrees of national independence but it looks as if they exist in fact.

Courts Martial

Lewis J., who served throughout the European War of 1914-1918, has been presiding over a committee of inquiry into court-martial procedure. They have issued an interim report which has not been published, in the technical sense, but the findings have been made available through a statement circulated with the papers of the House of Commons by the Secretary of State for War.

The recommendations put into effect forthwith are that the judge advocate ceases to retire with the court when it considers its finding. For the present there will be no change in the practice whereby he retires with the court for consideration of sentence. The announcement of the findings and sentences of courts martial, instead of being postponed as has been the usual practice, is to be made in open court as soon as they have been determined.

As a useful detail a copy of the charge sheet is to be supplied confidentially to all the members of a court martial shortly in advance of the trial.

Other recommendations which are under consideration include a proposal to render the judicial character of the office of Judge Advocate General more evident by making him the nominee and subordinate of the Lord Chancellor. The service ministers would

still have the responsibility, however, for accepting or rejecting his advice. That portion of the work of the J.A.G.'s department concerned with the direction of prosecutions is to be transferred wholly to the service departments. These proposals are no reflection upon the extent to which justice is done the sailor, the soldier and the airman at the present time but they do reflect the general desire to ensure that it will continue to be done in the future.

Eating Dinners

Mr. Gilchrist Alexander, an "ancient" of the Middle Temple, is fearful that the eating of dinners, which has been discontinued during the war, may fall into desuetude altogether. So he recalls in the Law Times (August 9th) the ancient customs attaching to Dinner in Hall. As to the requirement that a student must eat a certain number of dinners he claims that it is "founded on sound common sense and a spirit of compromise. The eating of dinners takes the place of residence in the Inn. Obviously the Inns of Court could not accommodate the thousands of students from all over the world who desire to be called to the Bar, if the conditions of residence were imposed as a requisite for call." But long before students came from all parts of the world they ate in messes in the Middle Temple Hall. Bruce Williamson, the historian of The Temple, traces the origin of this custom to the Knights Templars. When the lawyers came into the possession of the Templars' property they also adopted some of their habits. Tradition does not tell us whether the custom of summoning the diners by the blowing of a horn in the courts of the Temple is derived from the same source. The earliest recorded reference to this is in the minutes of the Inner Temple in 1621. As the practice prevailed in both Inns it looks as if it were also derived from the Templars. It has been discontinued in the Inner Temple for at least a quarter of a century, but the horn was heard during term time in the Middle Temple up to September 1939. Mr. Alexander gives details as to the cost of meals within his memory and the customs in regard to the seating, the drinking of wine and reading of Grace, followed by the taking of snuff. Austerity may deprive us of some of the creature comforts but there will still remain the clash of intellect which makes the eating of dinners a real contribution to the education of the lawyer.