

FROM AN ENGLISH OFFICE WINDOW
MIDDLE TEMPLAR

British Nationality

Although nationality is a highly technical subject, upon which it is risky for anyone other than an expert to make statements, the Bill now before Parliament dealing with British nationality cannot pass without mention in these notes. An official statement (Cd. 7326, His Majesty's Stationery Office) explains its provisions. Until 1946, the United Kingdom, Canada, Australia, New Zealand and South Africa all had statutes which defined who were British subjects and the United Kingdom statute applied in India, Newfoundland, Southern Rhodesia, Burma and Ceylon. These statutes are described for the sake of convenience in the memorandum as a "common code in which alterations could only be made as a result of consultation and agreement between the members of the Commonwealth". Changes could only be made after some delay, and where speedy action was necessary, for instance with regard to the nationality of married women, devices were adopted that were only technically in accordance with the common-code system. Thus there developed a tendency for the different Commonwealth statutes to diverge from one another and the common code was becoming unworkable.

The Canadian Citizenship Act, 1946, while recognizing the common status of British subjects, was regarded as a departure from the "common code" system. It was followed by a conference of expert representatives, which agreed upon a general scheme, subsequently the subject of correspondence between the various governments. The purpose of the scheme is to provide a substitute by defining the persons who are citizens of the several parts of the Commonwealth, with provisions for maintaining the common status of British subjects throughout the Commonwealth. Thus there is a clear recognition of the separate identity of particular countries of the Commonwealth, while clarifying the position with regard to diplomatic protection and enabling the Government to define with precision the persons belonging to its country and on whose behalf it may be negotiating treaties. The essential features of such a system are that each of the countries shall by its legislation determine who are its citizens, shall declare those citizens to be British subjects and shall recognize as British subjects the citizens of the other countries. To carry out that purpose there has been general agreement upon the following section one, which is the key clause of the Bill:

(i) Every person who under this Act is a citizen of the United Kingdom and colonies or who under any enactment for the time being in force in any country mentioned in the next following sub-section is a citizen of that country shall, by virtue of the citizenship, be a British subject.

(ii) The following are the countries hereinbefore referred to, that is to say, Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon.

Eire is the subject of special provisions and Burma is not included in the Act. The United Kingdom and the colonies are to be one community for citizenship purposes. Permanent provisions are made for the acquisition of citizenship by birth or otherwise after the Bill has become law and, secondly, to prescribe which of the persons who are British subjects at the time of the commencement of the new Act shall become citizens of the United Kingdom and colonies.

In stating the position thus briefly it is recognized that it is only a prefatory note to the study of a vast subject, which has received inadequate attention in the legal literature of this country. This gap has now been filled by Mr. Mervyn Jones, who has had access to the records of the Home Office and Foreign Office, which are the departments primarily concerned with its problems and which have had to interpret its provisions. In a work just published on "British Nationality, Law and Practice" he has also provided a fairly full treatment of the legal position of British protected persons. Of them Mr. W. E. Beckett, the Legal Adviser to the Foreign Office, observes in a foreword that they are "a large class, perhaps one hundred million in number, about whom virtually nothing is at present to be found in any legal work, although they are, together with British subjects, nationals of His Majesty in that sphere where after all nationality is principally important, namely, the international sphere".

The Bar Council

The annual report of the Bar Council announces the formation of a Joint Standing Committee with the Benchers of the four Inns. The Bar Council has eight members to correspond with the two representatives of each of the four Inns. Sir William McNair, K.C., has been elected Chairman and the Under Treasurer of Gray's Inn will act with the Secretary of the Council as Joint Secretaries.

Besides consolidating the representation of the Bar, the Council has also taken steps to constitute a body, representative of both branches of the profession, by forming a joint standing

committee with the Law Society. Among other matters it has stimulated action by the Government to bring into operation the proposals of the Rushcliffe Committee for the extension of local aid to litigants.

An interesting development of the Council's activities has been carried out through a committee known as the External Relations Committee. Arrangements were made with the British Broadcasting Corporation for a leading King's Counsel to give three talks on the Common Law: (1) its history, (2) its substance, and (3) its practice and the position of the Bar and Inns of Court in English life generally. The services of the legal profession were thus brought to the notice of the general public.

Besides dealing with these matters of general interest, the Council maintained its vigilance in professional matters and saw to it that the Bar is adequately represented upon two important committees dealing respectively with procedure in the Supreme Court and County Court. The subject of trials by courts martial also engaged the attention of the Council when evidence was given before a Committee under the chairmanship of Mr. Justice Lewis.

Friendly relations with the Canadian and American Bar Associations are reported with gratification and, as an extension of its international connections, the Council may become a member of the International Law Association with a view to taking part in the observance of the 75th anniversary of its inauguration in Brussels in September 1948.

Scotland

"Conscious of the widespread desire in Scotland that the Scottish people should have increased opportunities of dealing with affairs of purely Scottish concern", the Government have expressed themselves "anxious to do everything possible within the framework of the British Constitution and the existing Parliamentary system to meet Scottish desires while preserving Scotland's rights in Parliament". A Scottish Bill may go to the Standing Committee on Scottish Bills for consideration in principle. On return it may be given, if necessary by a division, a second reading without debate. The types of bill to which, in the Government's view, it would be suitable and convenient to apply the new procedure would be Bills of a technical nature applying only to Scotland, which, though debatable, are not controversial in a Party sense; certain Bills which make for Scotland provision similar to that already made or proposed for

England and Wales; and certain Bills of purely Scottish interest for which time cannot immediately be found under existing arrangements.

Estimates may also be referred to the Standing Committee on Scottish Bills and come back to the Committee of Supply. The Government accepted this proposal from Scottish members, led by Mr. Walter Elliot who sits on the other side of the House.

Economic affairs are to be dealt with by a specially constituted Scottish Economic Conference, consisting of representatives of the Scottish Council (Development and Industry), the Scottish Board for Industry, the Highlands and Islands Panel, the Chairman of the Scottish Tourist Board and representatives of government departments and State appointed organisations concerned with economic matters, including the nationalised industries. Its functions will be purely consultative. Information in relation to its activities will be published in an annual review. As regards the nationalised industries, the whole scheme of their development from offices established in Scotland, especially in Edinburgh, is directed to secure that they are properly related to Scottish needs.

Divorce Instead of Nullity

When the House of Lords delivered their decision in the case of *Baxter v. Baxter* (64 Times L.R. 8), much discussion took place in the lay and professional press. Mr. Baxter asked for a decree of nullity on the ground that his wife had refused to consummate the marriage by insisting on his use of contraceptives. The case overruled *Cowen v. Cowen* (173 L.T. Rep. 176), which had caused uneasiness to lawyers and litigants. The decision of the House of Lords, so far as Baxter and his wife were concerned, was rather of a negative character and left them both in an indeterminate position. It is worthwhile to note the sequel here, because it involved no point of law and may not find its way into the law reports. On April 6th, Finmore J. had before him the petition of the wife for a divorce on the ground that her husband had deserted her. They were married in 1934 and it was stated that on several occasions subsequent to 1939 he had threatened to leave his wife and that he had finally done so in November 1944, when there was no suggestion that he was leaving because his wife had insisted on the use of contraceptives (The Times, April 7th, 1948). The parties met after the House of Lords decision and Mr. Baxter again refused his wife's request that he should return to her. The suit in the Divorce Court was undefended and a decree nisi granted.