Legal Aid

The Government have introduced a bill to carry out the recommendations of the Rushcliffe Committee on providing legal aid and advice for persons with limited financial resources (see article by Robert Egerton, 26 Can. Bar Rev. 950).

The general organization of the scheme is placed upon the legal profession through the Law Society, with the addition of representatives of the General Council of the Bar and under the general guidance of the Lord Chancellor, who will have an advisory committee consisting of laymen as well as lawyers. The country will be divided into twelve regions and for each three there will be an Area Committee consisting of some fifteen practising barristers and solicitors appointed respectively by the Bar Council and the Law Society. The successful working of the scheme will depend largely upon the efficiency of the Area Committees which will deal with the general directions, such as authority to employ counsel and the whole of the finances. The Area Committees will appoint local committees who in their turn will delegate the responsibility to consider and determine applications for legal aid to a “certifying committee”.

The aid will be confined to proceedings in courts of law. The Government have decided to exclude tribunals of a semi-judicial character, the inclusion of which might prejudice the working of the whole scheme at the outset by over-weighing it. They have also excluded actions for libel and slander, for breach of promise of marriage, actions by common informer and a few others, though this list may be varied in the light of experience.

Applicants will have to obtain a legal aid certificate from the certifying committee, who must be satisfied that there are reasonable grounds for taking, defending or being a party to the proceedings in question.

The financial eligibility of the applicant will be determined by the local National Assistance Board who are developing a
code of guiding principles enabling them to operate with sufficient variation to fit particular circumstances. The general effect is to enlarge the range of the people receiving assistance, which hitherto admittedly was too low.

As regards the remuneration of the profession, full scale fees and costs are to be paid in county court cases. In cases in the House of Lords, Court of Appeal and High Court remuneration of counsel and solicitors will be paid out of the Legal Aid Fund provided by the Treasury and will be 85 per cent of the amount allowed on taxation of their fees and profits costs. Indirectly the 15 per cent is the price the profession pays for being allowed control of the organization. There are analogies in the services provided by a combination of State and voluntary enterprise. There is no compulsion either on solicitors or barristers to undertake the work. The panel will be provided by volunteers.

**Bottle Parties**

A Licensing Bill now before Parliament proposes an extension of the government’s business in the sale of intoxicating liquor. For some time that trade in Carlisle and two Scottish towns has been the property of the State. It is now proposed to extend the arrangement to the eight new towns proposed in England and the four in Scotland. Power is also taken to extend the area to adjacent districts if it is necessary in order to secure effective management.

A miscellaneous part of the Bill deals with “bottle parties”, which are generally regarded as undesirable though there are visitors who consider them to be the only bright spot in London life. No doubt some of the readers of the Canadian Bar Review can provide their own definition. The Bill does not attempt to give one. The section which is directed to their suppression reads: “It shall be unlawful outside the permitted hours to supply or consume intoxicating liquor at any party organised for gain and taking place in premises kept or habitually used for the purpose of parties so organised at which intoxicating liquor is consumed”.

The explanatory memorandum accompanying the Bill makes it plain that these provisions apply to bottle parties, though throughout the draftsman only refers to parties organised for gain “provided that a party shall not be deemed to have been organised for gain by reason only that any person concerned in the organisation thereof took part or intended to take part in the playing of any game, or made or intended to make bets with respect thereto, if the arrangements were such as to give them no
greater chance of winning than any other person”. A power of search similar to that which exists in the case of licensed premises may assist perhaps in the effective operation of the Act in due course.

A Tangle of Authorities

Politicians have their respective points of view on the advantages and disadvantages of planning by government departments. So also has the individual. Here is a practical example typical in many respects of a variety of occupations. The owner of a limestone quarry, stimulated by the desire to aid his country by increasing the export trade, decided to extend the quarry. The Board of Trade backed by the Treasury supported his patriotic wish. The Ministry of Health were willing to encourage him since they wanted some of the produce of his quarry for houses. So also did the Ministry of Transport who had need of it for roads. The local inhabitants saw danger in the prospect of further inroads upon their fair countryside. They had the right to make objection under the Housing and Town Planning Act, 1947, and in their objection they were backed by a voluntary organization, the Council for the Preservation of Rural England. If their objection is overruled they will have the satisfaction of knowing that the Central Land Board under the Housing and Town Planning Act will be able to levy a development charge owing to the extension of the quarry over virgin soil. Students of that Act regard it as one of the most knotty pieces of legislation placed upon the Statute Book for many years. The estate agents anticipate a harvest and no doubt lawyers will be called to the rescue.

Thirty Cats

In the United States can be found many and varied reasons for divorce but Great Britain seems to have provided something quite unique. A couple were married in 1920 and lived together for twenty-two years. Cassells J. found that, by October 1942, the husband’s health had been impaired by his wife’s cruelty, a cruelty that consisted of making false accusations against him. At that time the wife had six or seven cats. That number had increased to 25 or 30 when he returned on a short visit at Easter 1944. They were allowed to roam all over the house, which smelt very badly as a result. When the husband asked the wife to get rid of them and set up a home again she replied that she preferred her cats to him. Cassels J. held that the
wife's conduct over the cats amounted to constructive desertion (*The Times*, October 28th, 1948). The case came before the Court of Appeal on the point of law whether the case was *res judicata* owing to a decision of the justices on an application by the wife for a maintenance order. Bucknill L.J., Morton and Asquith L.JJ. concurring, held that the wife and her cats had driven the husband out of the home so that he was entitled to his decree.

*Prothonotary*

Students of the history of English law will be well advised to add to their libraries a little publication from the Public Record Office. Primarily it is the catalogue of a unique exhibition of treaties which has been displayed there. The introduction discussing the making and form of treaties refers to the office of Prothonotary who was an official of the Chancery before 1200. It is observed that "the history of this official has been surprisingly neglected by modern writers", though also "surprisingly" the attached bibliography contains no reference to Holdsworth's History of English Law which does pay attention to the office. As the representative of the Sovereign who had the sole prerogative of making treaties, he was the official draftsman and his association with the Chancery also had a similar relationship. The conclusion reached by Mr. Hilary Jenkinson, who as Deputy-Keeper for the Master of the Rolls of the Public Record Office has written this monograph, is that "the Prothonotary was originally in fact and for six centuries in theory the Principal Royal Official charged with writing of English Full Powers and Treaty Ratifications, their enrolment and the preservation of the Rolls: to which may be added during the early part of the period a considerable share in the drafting of the Articles".

Although the exhibition contained only fifty-two out of about five thousand original treaty documents, it was remarkably impressive both for its range and form. It began with a Perpetual League between England and France in 1197 and included the Treaty concluded with Portugal in 1386 which has remained in operation ever since. In many cases the documents were beautifully illuminated, while others had remarkable seals contained in boxes, known as "skippets", which sometimes were in elaborately decorated silver or silver gilt. At a time when international relations are so much under discussion the publication forms an illustrative and inspiring display of Great Britain's place in the affairs of the world.