From an English Office Window

MIDDLE TEMPLAR

Parliamentary Language

The Journal of the Society of Clerks-at-the-Table in Empire Parliaments, which is edited with much learning and industry by Mr. Owen Clough in South Africa, has an entertaining feature enshrined in a mass of information about a variety of matters of parliamentary procedure. In response to a questionnaire Mr. Clough has collected the rulings in the legislative assemblies throughout the Empire. A member may be called a "fool" and even a "rat", but it must not be said that "he never had a conscience", nor, in Canada, that he is a "scandalmonger". Anything that suggests in the slightest degree that the conduct of a member has approached to being treasonable is at once suppressed by the Speaker. This series has been running for some years so that it contains an expanding range of fine distinctions, though at the same time there is evidence of the maintenance of a uniform standard. To say that a member's statement is an offensive lie is no more permissible than it was four years ago to declare that he told an abominable lie. Even an unadjectival lie has been disallowed. "Blackleg" is a thing which no one likes to have applied to him but in Queensland you may not call a man either a "mug" or a "shrimp" in the House — so sensitive are the legislators. It is a fascinating list of rulings but space forbids a continuance of quotations.

Freedom under the Law

Lord Justice Denning has delivered a valuable course of three lectures at London University under the terms of a charity established by the late Miss Emma Warburton Hamlyn of Torquay. The object of the charity is the advancement "among the Common People of the United Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and the Ethnology of the Chief European Coun-

tries, including the United Kingdom, and the circumstances of the growth of such Jurisprudence to the intent that" such people "may realize the privileges which in law and custom they enjoy in comparison with other European Peoples and realizing and appreciating such privileges may recognize the responsibilities and obligations attaching thereto".

The Lord Justice has risen to this opportunity with an inspiring and learned statement of the subject which meets a real need at the present time. To be one of the common people of England, he said, was the greatest privilege available to any man, "for the common people of England have succeeded to the greatest heritage of all — the heritage of freedom". In one of the lectures he gave illuminating examples to show how the individual man himself had contributed to secure that freedom. "The fundamental safeguards have been established, not so much by lawyers as by the common people of England, by the unknown juryman who in 1367 said that he would rather die in prison than give a verdict against his conscience, by Richard Chambers who in 1629 declared that never till death would he acknowledge the sentence of the Star Chamber, by Edmund Bushell and his eleven fellow-jurors who in 1670 went to prison rather than find the Quakers guilty, by the jurors who acquitted the printer of the Letters of Junius, and by a host of others. Those are the men who have bequeathed to us the heritage of freedom."

Nationalized Industries

There is so much misunderstanding in Canada and elsewhere as to the effect of nationalisation that it is important to direct attention to *Tamlin* v. *Hamesford* (65 Times Law Reports 422), decided just before the Long Vacation. The action, which arose under the Rent Restriction Acts, necessitated the consideration of the status of the British Transport Commission, the body now having control of the nationalized railways. The county court judge had held that property of the Transport Commission was vested in the Crown. Denning L.J., in delivering the judgment of the court, after discussing the similarity of the functions of these national statutory corporations with those of commercial corporations, went on to say of the Transport Commission, a typical example, "It is not the Crown and has none of the privileges or immunities of the Crown. Its servants are not civil servants and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. . . .

It is not a Government department nor do its powers fall within the province of Government." This defines the status of the newly created corporations dealing with electricity, railways, etc., though the Post Office, as the Lord Justice pointed out, is an exception since it is a government department and its servants are civil servants. The reason for the exception is that centuries ago the carriage of mail was a Crown monopoly, so its continuance became a State undertaking.

The Law of Libel

Sir Valentine Holmes, whose retirement from the Bar on account of ill health is widely regretted by the profession, gave an important address to the Institute of Journalists on the need for the reform of the law of libel. The tendency in this century has been to make the defendant's position unduly difficult. Public opinion demanded that an individual's reputation should not be lightly impugned. The law awaits amendment in accordance with the recommendations of a committee of which Lord Porter was chairman and Sir Valentine was one of the members. It was suggested in a note on the subject (*supra*, p. 196) that when the recommendations are carried out the anxiety in the life of editors may be lessened, and work diminished for the legal advisers in newspaper offices. An example of the almost ludicrous present state of affairs has just come under my notice. The editor of a well-known legal periodical received a review of an important book by a contributor who is a recognized authority on its subject. It was critical to some extent of the way in which the author had done his work so the editor deemed it necessary to read the whole carefully to consider whether in any way it infringed the law of libel. This position, of course, is due to the various decisions that, as Sir Valentine pointed out, have made the law too rigid. He appealed for a return to basic principles, which were interpreted satisfactorily by the judges in the nineteenth century. He enunciated them, according to *The Times* report (October 5th, 1949), as follows:

(i) that before a defendant can be held liable for publishing a libel he must have been guilty of conduct which would be blameworthy in a man of ordinary intelligence and foresight, using ordinary care;

(ii) that the prima facie right of the plaintiff to be protected against the publication of imputations on his reputation must be surrendered when the circumstances or occasion of the

publication are such that the advantage to the community of freedom to publish demands it — except in a case where the defendant is actuated by malice;

(iii) that the same prima facie right must be surrendered when the circumstances are such that the advantage to the community demands complete freedom to publish, even though the defendant may be actuated by malice.

Commenting upon the lecture, *The Times* observed in a leading article: "Against none of these three principles can legitimate objection be taken, and the Porter Committee did not propose to tamper with them. It is not the law but its application, as it has come to be interpreted in recent generations, that has put a grievous curb upon the right of the public to be told the truth." Editors have to play for safety, with the result that facts and even opinions are suppressed which should be known if the public is to be in a position to form a right judgment.

Custody of Drugs

There has been an epidemic of thefts of drugs from doctor's cars. The police issued a notice with a view to securing great care. The laxity with which medical men leave dangerous drugs exposed is in striking contrast with the meticulous care enjoined upon the staffs in hospitals and other institutions. Both are governed by the regulations made under the Dangerous Drugs Act, 1920. In accordance with the regulations of 1937 dangerous drugs must be kept in a locked receptacle which can only be opened by the owner or some person authorized by him. Under this regulation the police proceeded against a doctor who left his drugs in an unlocked leather case in his car, which he parked while he was in a cinema. The car was stolen and found three days later with the doors open and the unlocked leather case containing the drugs on the seat. For the doctor it was contended that the locking of the car complied with the regulation. It was much safer for him to leave the drugs in an unlocked case in a locked car than to leave them in a locked case in an unlocked car. The magistrate convicted and fined the doctor £3. The doctor appealed. The Lord Chief Justice, Lord Goddard, giving the judgment of the Divisional Court (*The Times*, Oct. 20th, 1949), "had no doubt that it was impossible to say that a motor car was a receptacle within the meaning of the regulation".