

From an English Office Window

MIDDLE TEMPLAR

Supreme Court Procedure

A Committee under the chairmanship of Sir Raymond Evershed, Master of the Rolls, has been sitting for two years to "consider what reforms of practice and procedure should now be introduced, whether by legislation or otherwise, for the purpose of reducing the cost of litigation and securing greater efficiency and expedition in the dispatch of business". They include two High Court judges, Lynskey and Willmer JJ., Sir Thomas Barnes, the Treasury Solicitor who contributed to the *Canadian Bar Review* (vol. xxvi, p. 387) on the Crown Proceedings Act, 1947, and such well-known men as Geoffrey Crowder, the Editor of the *Economist*, Professor Goodhart and Sir Alan Herbert (A.P.H.). They have issued an interim report which proposes the extension of the jurisdiction of the county courts, and in this respect perhaps is of little interest to Canadian readers. The principal subject of their report of general interest deals with the complaint which has been made for many years of the waste of time for litigants, witnesses and their professional advisers by the uncertainty when cases will be put down for trial. The Committee understand "that dates for cases are fixed throughout the Commonwealth" and so far as they have been able to ascertain "England is the only civilized country in the world where litigants are not told, as a matter of course, the date on which their actions will be heard". The present procedure is based on the theory that no judge's time should ever be unoccupied. But since the result is to waste the time of a number of other people the balance of convenience and of the national interest is to arrange for the fixing of dates. The Committee accordingly make practical proposals with that object, which will involve some increase in the number of judges. In that connection there is an interesting appendix to their report which shows the number of judges in 1871 and at decennial periods since. The population in 1871 approached 23 millions. At the present time it is estimated

at 43½ millions. The number of judges of the King's Bench Division at that date was 18 and is now two more. The number of County Court judges in 1871 was sixty as fixed by the County Court Act, 1858, and this is still the number. Nevertheless the judges expressed their willingness to undertake the extra work proposed for them without any addition to their number.

Juvenile Delinquency

The Commissioner of Police of the Metropolis provides an interesting point upon juvenile delinquency in his annual report. In agreement with experienced police officers he finds "that some children's Courts entirely fail to impress on the young offenders brought before them the seriousness of their act and that repeated bindings over or probation orders only serve to engender a contempt for the law". In the additional forms of treatment provided under the Criminal Justice Act, 1948, he sees a prospect that punishment may be more effective in leading to reform.

To these observations figures in the Criminal Statistics provide an interesting supplement. The number of children under fourteen years of age found guilty of indictable offences has increased by nearly fifty per cent in the last ten years. The girls have doubled in number. The percentage placed under the supervision of a probation officer, however, is substantially less. For all age groups there was a slight increase, in the case of males from 20 to 22 per cent, but the latter was ten per cent less than in 1937. The variations in the case of women and girls are approximately the same though the percentage placed under the care of a probation officer is higher. The compiler of the criminal statistics merely records the figures without comment.

Bequest to Strengthen Bonds of Empire

Sir Henry Strakosch, a well-known financier with extensive interests in South Africa, by his will left a substantial sum to be used by the trustees for any purpose designed "to strengthen the bonds of unity between the Union of South Africa and the Mother Country", and which, incidentally, would "conduce to the appeasement of racial feeling between the Dutch and English speaking section of the South African community". The question arose whether this was a valid charitable trust. Methods of carrying out the trust might undoubtedly be beneficial to the community but they would not necessarily be charitable. Rox-

burgh J. gave as an example that action to strengthen the bonds of unity between the two countries might be taken by advocating greater harmony in certain branches of English and South African law but the promotion of changes in the law of either country could not be regarded as a charitable purpose (*Re Strakosch*, [1947] 2 All E.R. at p. 607).

The Court of Appeal gave permission for the Government of South Africa to be added as a party to the proceedings. Accordingly the appeal was supported by an affidavit by Field Marshal Smuts setting forth various methods through education by which the trust could be carried out. But the Court of Appeal could not escape the conclusion reached by Roxburgh J. that not all methods of carrying out the trust would necessarily be charitable. The testator might have created an educational trust but his intention "foundered in a charted but dangerous sea, when a single timely word would have saved it from disaster" (*ubi sup.* at p. 609). The Court of Appeal associated themselves with the regret of Roxburgh J. that the bequest failed for uncertainty (*The Times*, May 16th, 1949).

The Limit of Taxation

Lord Macmillan, who was chairman of a Royal Commission on the Codification of Income Tax Law nearly twenty years ago, has an illuminating article on the subject in *The Sunday Times* (Sept. 11th). Primarily the theory was that "taxation should be kept as low as possible consistently with the State's obligation to defend the realm, maintain law and order and provide certain essential public services". Now it is regarded "as a prime instrument in achieving a social revolution". The latest figures of the Commissioners of Inland Revenue show that, after paying income tax and surtax, only 70 persons were left with a disposable income of over £6,000. To attain that amount it was necessary to have a gross income of about £100,000. It is thus practically impossible for anyone to accumulate out of his savings even a modest fortune. Death duties rising to a maximum of 75 per cent prevent any fortunes already in hand from being passed on to another generation. The logical conclusion of these two processes in combination is that all will be reduced to a uniform low financial level. There is good cause for the Chancellor of the Exchequer to issue a warning that the policy of "soaking the rich", as it is elegantly phrased, has reached the limit of saturation. Lord Macmillan pursues the subject with his usual

illuminating clarity and reaches the conclusion that "a drastic revision of our present fiscal system will become imperatively necessary if we are to remain a great nation".

Legal Periodicals

Little more than twelve months since the establishment of the Institute of Advanced Legal Studies by the University of London (see vol. xxvi, p. 853), it has shown the practical value of its work to any who comes to study law in what is still the metropolis of the British empire of learning. The custodians of the various libraries possessing collections of law books have recognized the Institute as a suitable centre for the collection of information about them. There has been ready co-operation in the compilation of the recently published Survey of the legal periodicals of all nationalities held in British libraries. Thus the survey is not confined to London but includes Scotland and Wales as well as the principal centres in the Provinces. Nor is it a list of libraries only, since it includes libraries which form part of a larger organization such as Canada House. It is to be hoped that the reception given to this survey will encourage the Institute to proceed with the publication of the Union Catalogue of Commonwealth law reports, statutes and treaties now in course of preparation.

The Population Problem

The Report of the Royal Commission on Population for which the Government were waiting (see *supra*, p. 704) before giving any guidance on artificial sterilisation is now available. After a few observations on the extent to which resort is made to it the Commissioners conclude that "the subject raises serious moral, legal and professional questions which we do not think it our business to discuss in this report". Nevertheless the Commission have produced a valuable survey of the present trends of population which is a subject of primary importance to the Commonwealth and Empire. A discussion of details is beyond the scope of these pages, but one point may be noted here. The Commission realised the desire among the nations of the Commonwealth to maintain the British stock so that the problems presented by their inquiry are of concern to all. Accordingly the Commission recommended that they should be studied jointly and their complications form the subject of combined research.