

## LONDON LETTER.

*By Our Special Correspondent.*

The Temple, May, 1928.

It is unthinkable that I should write this letter without referring to changes in Judicial officers. Since I last wrote Lord Cave's death has taken place. Upon his judicial qualities it is quite unnecessary that I should say anything, for I suppose that no recent Lord Chancellor sat more regularly in the Privy Council than he, or in the course of so sitting was called upon to decide more momentous questions relating to the Dominions and particularly that of Canada. But this at least should be said: no recent Lord Chancellor has been regarded with more affection by the profession or bore in the estimation of all men a character more befitting his high office.

Sir Douglas Hogg, whose identity is now concealed under the title of Lord Hailsham, succeeds to an office which no one doubts his capacity to fulfil but to which, if rumour speaks true, he did not aspire.

Lord Justice Sargent's retirement, though taking place when his natural force was no whit abated, was generally anticipated. He is succeeded in the Court of Appeal by Mr. Justice Russell, and Mr. Maugham succeeds the latter in the Chancery Division. Neither of these appointments is capable of any legitimate criticism and none has been heard.

There has recently been tried in the King's Bench Division an action, the legal issues in which may quite possibly undergo further consideration, but the facts of which are of sufficient interest to the profession to justify some account being given of them. A man was injured in a street accident and was taken to hospital. Shortly after his admission he received a communication from a body, calling itself a legal aid society, offering to take up his case upon his signing a document whereby he agreed that the society should receive ten per cent. of any damages which he might recover. He agreed to these terms and was put in contact with the society's solicitor. At a later stage he appears to have signed a retainer in the usual form whereby he became liable for the costs of the solicitor, but the real arrangement between them seems to have been that nothing should be payable by him if the action failed. A County Court action was

in fact launched and ultimately came to trial, but the plaintiff not appearing, it was struck out with costs. According to the solicitor, the failure to appear was due to the plaintiff's failure to answer his letters. The order for costs was, of course, unfruitful, and the defendant's Insurance Company sued the solicitor, in the defendant's name, for champerty and maintenance, laying as damages the sum they had had to pay as costs and disbursements in the abortive action—a sum of some £70. It was not seriously denied that such "legal aid" societies as that in the present case have agents in or about hospitals who report accidents to them and that this procedure was followed in the case in question. The plaintiff's case was that the "legal aid" society and the solicitor were not two entities but one; this was, however, strongly denied by the solicitor, who swore that his remuneration was not in any way dependent upon the ten per cent. which the "society" claimed for expenses. After a long hearing before Mr. Justice Branson and a jury, the jury found for the plaintiff.

Mr. Justice Finlay has recently presided over a committee which was set up to consider the question of legal aid for the poor, and in one of its reports it reviews the activities of legal aid societies. Many of these are conducted in connection with religious or philanthropic bodies. They are purely charitable in object; perform an important function in an admirable manner; and are altogether beyond criticism. The Committee recognized that there are other so-called "legal aid" societies of a very different type and whose activities lead to many abuses. But it did not consider their activities to be on such a scale as to call for drastic action.

To the profession the question of speculative litigation is an anxious and important one. Of course either a solicitor or counsel may agree to appear for a litigant without fee. In such a case the solicitor must defray from his own pocket the necessary disbursements and cannot hope to recoup himself unless his client succeeds with costs. But even if this happens he will not be entitled to any profit costs out of the other side nor counsel to any fee, so that the adverse party reaps the benefit of their generosity. But if the solicitor and counsel are content so to act they are guilty of no professional impropriety.

But speculative litigation properly so called is not conducted on these lines. It is conducted upon the basis that the client pays nothing if he fails and the other side pays everything if the client succeeds. In order that this system may be worked it is almost necessary for the solicitor to find counsel who will appear on these

terms. It is an elementary rule of the Bar that counsel's fee shall not depend upon the result of the action, and counsel who agrees to these terms is guilty of grave professional misconduct. It is, perhaps, the most lamentable aspect of this class of litigation that it leads to young counsel being tempted to agree to work on these terms, which if they do and the fact becomes known—as it usually does—leads in its turn to a blot upon their professional reputation which they can never efface.

In the past, however counsel who have never themselves yielded to such temptation, have said quite openly that unless others do so great injustice to poor litigants must result.

However true this may once have been the Poor Persons Rules so far as the High Court is concerned, have robbed it of all force. Cases in which there is a reasonable hope of success can now be brought in the High Court and conducted in a competent and professional manner. Court fees are remitted, the solicitor cannot in any circumstance recover except for his costs out of pocket: counsel gets nothing. But the manifestly hopeless case will not survive the preliminary scrutiny, and such, if prosecuted at all, gravitate to the speculative solicitor. It were well for the client if such actions never saw the light.

But there is no poor persons procedure in the County Court, this being regarded as the poor man's court. But Court Fees have so surprisingly increased since the war that the poor man may be forgiven if he expresses some doubt on the truth of this aphorism.

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