LONDON LETTER.

It is becoming increasingly obvious that the conduct of Imperial and foreign affairs is once more going to be one of the most difficult tasks of a Labour Government. The principle of consultation upon foreign policy laid down by the Conference of 1926 was enunciated for governments, and not for oppositions. Upon certain questions, notably the resumption of diplomatic relations with Russia, the present Ministers had deeply committed themselves in their election propaganda, and the necessity of redeeming these pledges clearly makes it impossible to give effect to the principle of consultation. If questions of foreign policy are to be made party issues, perhaps this consequence is inevitable, but it is certainly unfortunate. Everyone is agreed that cases of urgency may arise in which consultation is impossible, but there was certainly no urgency in the matter of renewing formal relations with Russia. On the contrary, it seems clearly to be one of those cases where it is most important that any action taken by the Imperial Government should command the support of public opinion throughout the Empire.

In this connection another point of some consequence calls for notice. In the Henderson-Dovgalevsky Protocol of the 3rd October it was provided that the exchange of ambassadors should be subject to the approval of Parliament. Since then the question has come up for debate in both Houses, with the result that the policy of the Government has been approved by the House of Commons, but condemned by the House of Lords. Notwithstanding this the exchange of ambassadors has taken place, and Mr. Henderson has been driven to seek from the Law Officers an *ex post facto* "opinion" which may justify his action. So the Law Officers have solemnly advised him to the effect that in English political language the words "responsible to Parliament" are frequently used as if they were equivalent to "responsible to the House of Commons." Most of us could have told him that without consulting the Attorney-General, and this method of interpretation might be helpful, if the Protocol were a political pamphlet or a leading article. Unfortunately it happens to be an international legal document, and it seems incredible that any arbitral tribunal could interpret the word "Parliament" as equivalent to "House of Commons." If Mr. Henderson had meant the House of Commons, he could easily have said

so. The seriousness of the blunder lies in the fact that it gives the Russians a plausible ground for asserting, if it suits them to do so, that we have failed to observe one of the conditions precedent to the renewal of diplomatic intercourse, and have therefore discharged them from the observance of the others. If so, the bad draftsmanship is something much worse than what the Law Officers call a "slip of form."

Meanwhile our courts have had occasion to consider an important aspect of Russian life. In *Nachimson* v. *Nachimson*, decided on 16th December, the question at issue was whether the English Courts could recognise a marriage celebrated under the law of Soviet Russia. In 1924 the parties had been duly married in Russia according to the only possible legal form, and the marriage had been subsequently dissolved by a certificate issued from the Russian Consulate in Paris. The evidence shewed that the issue of a certificate was a purely ministerial act which could be demanded as of right by either party. Upon these facts Mr. Justice Hill held that there was now in Russia no legal method of celebrating any marriage which our courts could recognise as such.

For this startling conclusion the learned judge found authority in the well-known words of Lord Penzance that "marriage, as understood in Christendom, may be defined as the voluntary union for life of one man and one woman to the exclusion of all others."[1] Since the case before Lord Penzance was one of a polygamous marriage, it is clear that his words are merely an *obiter dictum* in their bearing upon the problem of marriages that may be dissolved by consent or at the will of either party. Russia is not the only country where such a rule prevails, and it is notorious that in nearly all countries, including England, divorce usualy takes place by consent in fact, if not in form. If Mr. Justice Hill's decision is approved and followed it may have alarming consequences. Parties who have married in perfect good faith in Russia or in certain other countries may find, when they come to settle in England, that their children are illegitimate and that the English law does not protect their union or confer upon them any matrimonial rights. It is much to be hoped that a higher court will have the opportunity of considering the full implications of this doctrine.

* * The present policy of the Irish Free State Government with regard to the Privy Council appeals is causing grave anxiety to all who are interested in the maintenance of friendly relations between Great Britain and Ireland. The proposal to nullify by legislation

[1] *Hyde* v. *Hyde* (1866) L.R., 1 P. & D. at 133.

the effect of every Privy Council judgment would clearly appear to be both in form and in substance a violation of the solemn agreement to which the Free State owes her legal existence as a Dominion, and it is also a breach of the unanimous agreement recorded in the Conference Report of 1926. The debate upon this question in the House of Lords provided the curious spectacle of a marked difference of opinion between Lord Parmoor and Lord Passfield, both members of the Government. Of the two voices that of Lord Passfield, who is the Minister directly responsible, must be taken as the authoritative view of the Government, and the House was entirely with him when he sharply censured the violent speech delivered in Dáil Eireann by Mr. Blythe, the Irish Minister of Finance. For the time being public opinion is satisfied with Lord Passfield's assurance that any deliberate infringement of the Treaty will not be allowed to pass unchallenged.

* * The Road Traffic Bill recently introduced in the House of Lords is a bulky and complicated measure dealing with matters of great importance to the whole community. Fortunately it does not raise any party issues, so we may hope that the questions involved will be debated upon their merits. The points of most general interest are the proposed abolition of the obsolete speed limit and the provision for compulsory insurance against third party risks. Each of these seems likely to give rise to vigorous discussion. Undoubtedly the whole problem is one of some urgency. Although the percentage of vehicles to the population is much lower in England than in Canada, the congestion is much more serious in this country, partly because of the density of the population, and partly because in England the country roads carry an immense volume of passenger and commercial traffic. Both legal and economic questions of the highest importance are consequently involved.

Goldsmith Building,
Temple, E.C.

H. A. SMITH.