## LEGAL AID FOR THE POOR.

This subject has two aspects, the criminal and the civil. Various methods have been adopted to replace the haphazard ones that have been in use in times gone by when help was merely a matter of occasional almsgiving.

The English Parliament has made a step forward by an Act which came in force on Jan. 1st, 1931, entitled Poor Prisoners' Defence Act, which repeals the Acts of 1903 and 1908. In indictable cases the committing justices or the trial judge may grant "a defence certificate" if the prisoner's means are insufficient to obtain services of solicitor and counsel. In murder cases such certificate *shall* be granted; in other cases, if "having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up) it is desirable in the interests of justice." Such aid is for not only the conduct, but for the preparation of the defence. It may be that by the use of the words "defence, *if any*" provision is made for aid even when the prisoner pleads guilty.

By a subsequent section provision is made for what is called a "legal aid certificate" entitling the prisoner to the services of a solicitor in courts of summary jurisdiction "by reason of the gravity of the charge or of exceptional circumstances."

The manner in which counsel and solicitors are to be assigned is dealt with by rules made by the Attorney-General. (Weekly Notes, Jan. 3, 1931).

In this important matter, therefore, the Mother Country is in advance of Canada, as it has so often been in law reform. It is sufficient to instance The Judicature Act, passed in England in 1875, not adopted in Ontario till 1881; the English Act of 1837 abolishing Dower, not yet adopted in Ontario; capital punishment was not abolished in Canada for minor offences till 1865, three years later than in England; Estates Tail, still possible in Ontario, were abolished in England in 1925; Lord Birkenhead's Act as to Transfer of Real Property came in force in 1926; no such remedial Act has yet been passed here; Criminal Appeals were allowed in England in 1908; in Canada in 1925; Canada has not yet adopted the English method known as "Borstal" in dealing with criminals between 16 and 21. The list might be elaborated by reference to Wills Acts, Old Age Pensions, Company Law, Probation, Railway Acts, Ille-

gitimacy and Adoption Acts, and many others. It will be sufficient to say that we have much to learn from the Mother of Parliaments in the matter of Law Reform, especially in matters of alleviation of the disabilities that people labour under who are less fortunate than many of their fellow-citizens.

Active agitation for the passing of remedial legislation in aid of poor persons charged with crime started in recent years in the Social Service Organization of the Anglican Church, and in The Social Service Council of Canada. In 1923 at Montreal the Canadian Bar Association took the matter into their consideration but it was not till 1929 that the Report of a special Committee consisting of Sir Hugh John Macdonald, Peter Bercovitz, K.C., Ernest Bertrand, K.C., William K. Murphy, K.C. (Secretary) and Magistrate James Edmund Jones (Chairman) was approved, and the following resolution passed:

1. That this Association is of opinion that the problem of Legal Aid for the Poor is a pressing one and demands the attention of agencies adapted to its administration according to the varying needs of communities.

2. That the Committee of this Association having this matter under consideration be requested to ascertain whether there are any Provincial Governments, municipal bodies, or groups of interested persons who are willing to initiate in Canada some permanent form of organization to give effective leadership to this important forward step.

3. That Provincial Governments be requested to investigate the subject with a view to passing enabling legislation so that in one or more suitable districts the feasibility and efficiency of the principle of the appointment of Public Defenders may be tested and applied to cases in which counsel are in charge of prosecutions.

Acting upon this resolution the Committee prepared a Petition to the Attorney-General of Ontario asking for the passing of an Act by the Legislature to enable the appointment of salaried Public Defenders, this petition being signed by over 500 members of the Ontario Bar. Only one of the persons to whom the petition was presented for signature refused to sign. The Ontario Government has not yet replied to the Petition, or expressed any opinion as to it.

The National Association of Legal Aid Organizations which includes representatives from a great many societies in various parts of the United States and Canada meets annually to consider the many problems which present themselves to the members. In 1931

the Association will meet at Buffalo in September, and may spend Saturday, September 19th, in Toronto to confer with any who may be interested in a round table discussion of the whole subject, which naturally is divided into two parts—matters (1) of criminal law (2) of civil law. If legal aid is given in criminal cases it must be decided whether the mode to be followed is to be similar to that provided for by the English Act, or by the system of specially trained and part or full-time public defenders.

In Canada counsel for the Crown are specially appointed for each Assize, but in the lower courts prosecutions are carried on by crown attorneys who are largely full-time government employees. Obviously it would be an expensive and unsatisfactory system if counsel for the Crown were chosen in rotation or otherwise from a list of counsel and solicitors willing to act as provided in the recent English Poor Prisoners' Defence Act. The judges and magistrates who wish immediate service would have a tremendous amount of unnecessary labour in communicating with solicitors who could have no idea beforehand whether they are called away from their business for a case which will take five minutes or a day or two. In a Court like the Toronto Police Court where there are thousands of indictable cases and thousands of summary cases of sufficient importance to justify the employment of crown attorneys, any system of employing public defenders which would involve the fixing of fees for counsel in each case would, it is submitted, produce a cumbersome, expensive and unworkable result.

If a public defender is to give effective service he must be ready and qualified to act immediately upon the arrest of the prisoner and must be in a position to advise him promptly as to whether to plead guilty or not guilty without the unnecessary delay which would be occasioned if the prisoner must wait till trial or till he appears before the Court, before he can obtain counsel. It would likely be difficult to get the best type of public defender if the Court must secure the consent of the appointee to act in each case, and men of the calibre of the opposing Crown Attorney would likely be too much engrossed in private practice to leave their offices for occasional cases only. The duty of defending poor prisoners might therefore, in time, devolve for the most part, upon the less able and less successful members of the Bar, whereas for the complete success of the system poor prisoners must be made to feel that they are represented by lawyers as capable as those employed by the Crown.

The office of Public Defender is usually attached to some organization which assists in the preparation and presentation of the evidence for the defence, for any scheme that does not secure the interviewing and summoning of witnesses must necessarily be incomplete. The accused, especially if in custody, cannot secure testimony without assistance both professional and financial. Moreover in carrying out any scheme of providing defence, it must ever be borne in mind, that it is fair to the prisoner to give him wise counsel and advice whether he is guilty or not. A capable defender will strive in all honest ways to reduce the charge or ameliorate the punishment. It is not, therefore, only in contested cases that a defender is necessary.

The matter has now advanced in the opinion of the public and the profession to a point where it is no longer necessary to debate the wisdom and fairness of providing means of defence for poor persons. This is virtually conceded by all fair-minded citizens. The only point that seems to disturb some lawyers is that persons well able to pay for their defence might unduly take advantage of the statute. But after all it is difficult to provide any machinery or rules other than the discretion of the court and of the defender. Obviously it is just as fair, if not fairer, to provide counsel for a struggling workman who has secured a small equity in a home as for a useless vagrant who may be an incubus upon the community.

There are of course many offences, like murder, riot, etc., that are offences against the community, but there are others that for the most part, involve disputes between individuals, such as assault. Often it happens that the party in the wrong reaches the magistrate first and lays his complaint. In the result he has the services of the Crown Attorney free, while the party who is in the right and secures the dismissal of the charge, must pay his own costs without recourse.

The important consideration in the whole matter is to impress the community with the fairness of the courts, so that it may not be said that "there is one law for the rich and another for the poor," or, as Lord Darling humourously put it, "the law is open to all, like the Ritz-Carlton." In these times also, it is specially important that the self-respect of persons accused should not be injured by any suggestion of pauperism, as it was in the old days when in civil cases the applicant for relief had to swear that he was not "possessed of any property worth £5 over and above the clothing on his back."

Wherever the system of Public Defender has been introduced, it

has never been abandoned, but always extended. For many years now, the State of Connecticut has gone so far as to provide that no lawyer shall receive a fee who may take the place of the salaried Public Defender. It is of course open to question whether this is going too far, but it must not be forgotten that, to a large extent, complainants must have their cases conducted by the salaried Crown Attorney and may not inject their private counsel into the conduct of the case in court, and there may be no reason for not following a similar course as to the service of Public Defenders. All successful systems of law must necessarily make progress, and progress can only be secured by change. It might be fatal to the system of Public Defenders to introduce it on a large scale at first. By way of illustration, probation, in England, was at first only partial, but was gradually so extended that now it is in effect in every district in England with its successful, modern probation bureau and officers.

What the Canadian Bar Association have asked by their resolution is that the principle be tried out in one or more suitable districts. It is not suggested that it be applied to cases in which the Crown is not represented by counsel. Thus a large proportion of the 90,000 cases on the police court calendar of Toronto during 1930 would not require the services of either Crown Attorney or Defender, but as to the remainder there would be so many that in the opinion of the writer it would be impracticable and unduly expensive, to employ a large number of solicitors to do work which would be better done by full-time salaried defenders.

As to legal aid in civil cases.

There must be throughout Canada many instances every day of what occurs constantly in Toronto, namely, the application for advice to the Magistrates, Crown Attorneys, Police Clerks, and assisting Justices, for advice in matters which uneducated people cannot be expected to regard as involving civil rather than criminal law. Seizures by bailiffs, retention of goods by landlords, and many other disputes which may seem petty to persons of substance, are very real problems for the poor, and it is not fair to expect that they should be able to pay a lawyer's fee for advice. Nor is it reasonable to expect that busy lawyers can find time to do more than a small amount of "charity work," which is always liable to be done in a hasty and perfunctory manner.

There are three ways mainly which have been found of providing reasonable help to those in need of aid in civil matters:

1. A system like that of New York where a highly endowed

association with offices in various parts of the city employ skilled solicitors.

2. A system whereby the municipality through the office of its city solicitor or otherwise is at the expense of maintaining legal aid organizations.

3. A system whereby the "community chest" contributes part of its annual funds for the purpose.

In some universities and law schools very good work is accomplished by "legal aid clinics," where students learn to apply their legal knowledge and at the same time have practice in interviewing clients.

The whole subject is too wide for presentation in a single article. Many books have been written since the first great effort "Justice and the Poor" by Mr. R. Heber Smith of Boston. No doubt each community can best decide how to handle the subject. Recently the city of Windsor, Ontario, has directed the City Solicitor and his staff to deal with certain specified subjects. It is hoped that this is a beginning to greater effort and larger results. The Canadian Bar will do well to take the lead in all matters pertaining to Law Reform, especially in the subject above dealt with.

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