## MARGINAL NOTES

LAW'S PATRON SAINT.—The American Bar has presented a memorial window to the Cathedral at Tréguier, in Brittany, in honour of St. Ives (or Yves) the patron saint of lawyers. The window will be dedicated on May 18th next, the vigil of the feast day of the saint. Representatives of the Bar of France and that of the United States will attend the ceremony in the Cathedral, and Mr. Pendleton Beckley, a member of the American Bar Association and chairman of the American committee of donors, will present the greetings of the American Bar Association. St. Ives, according to tradition, was himself a lawyer and used his learning freely for the defence of the poor and oppressed. In Brittany he is hymned—with a certain allusiveness to the prevailing ethos of his profession—as the Poor Man's Advocate:—

"Advocatus, sed non latro,
Res miranda populo!"

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PSYCHOLOGY AND CRIME.—I read of a curious case in an English newspaper the other day. A recidivist was arraigned before a magistrate for a fresh breach of the peace. Evidence was given by the Crown that while serving a term of punishment for a previous offence the man had received mental treatment by the prison psychologist "but without effect." Thereupon the magistrate sentenced him to three years' penal servitude. The fate of the recidivist gives us pause in view of the cryptic statement of the psychologist that his treatment "was without effect". Effect to what end? Was it an experiment of hypnosis upon psychosis? It is conceivable that this particular treatment was inefficient, and that under the observation of a competent psychiatrist the prisoner might have exhibited reliable indicia of mental derangement. It is well known that the percentages of mental disease found in the psychiatric study of prisoners vary with the respective degrees of skill possessed by those who engage in the study. Under English law when the sanity of a prisoner undergoing sentence is brought in question he is required to be examined by two medical practitioners. But apart from that requirement, to accept the opinion of a single expert on the mental state of

an offender is to say the least a hazardous approach to judgment on the question of responsibility for crime.

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LEGAL SERVICES TO INDIGENT PERSONS.—In an interim report of a joint committee of The Law Society of Manitoba and The Manitoba Bar Association it is recommended that, for an experimental year, a "Poor Man's Lawyer Centre" be set up in the City of Winnipeg on a voluntary basis. The Centre would be attended at regular intervals by solicitors chosen from a roster of volunteers whose advice in proper cases would be available to poor persons, the procedure to be subject to the supervision of a Committee of the Law Society of Manitoba. The report recommends that the continuance of the Centre in Winnipeg beyond the experimental year, and the extension of the scheme to other parts of the Province, should be determined by the Law Society in view of the experience gained during the period prescribed.

In an interesting address before The Canadian Bar Association in 1934, in which he advocated the establishment of legal aid to the poor throughout Canada, Mr. Cuthbert Scott, of the Ottawa Bar, stated that so far as he had been able to ascertain the Province of Alberta and the cities of Windsor and Saskatoon were the only places in Canada at that time where organized legal aid of the kind was available. Mr. Scott's address will be found in Volume 19 of the Proceedings of the Canadian Bar Association (1934).

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FICTION AND FACT.—In a letter recently published in *The Times* (London) some thirty-four well-known men and women, addicted to producing "credible pictures of contemporary life" in the form of fiction, pleaded for reform in the existing law of libel which would protect them from actions at the suit of ill-disposed and designing persons who claim to see themselves deliberately portrayed to the life, and defamed, by literary artists wholly unaware of their existence. Amongst other remedies this group of writers asks that the burden of showing an intention on the part of a writer to defame him should be thrust upon the plaintiff. As the law now stands the intention of the writer is immaterial, and the fact that the defendant did not know that

such a person as the plaintiff existed does not constitute a defence to the action. The question in issue is not what the defendant meant, but what reasonable people understood him to mean by the language used. In *Hulton* v. *Jones,* [1910] A.C. 20, Lord Shaw quoted with approval the following statement of principle from the judgment of Alverstone, C.J. when the case was before the Court of Appeal:

> "The question, if it be disputed whether the article is a libel upon the plaintiff, is a question of fact for the Jury; and in my judgment this question of fact involves not only whether the language used of a person in its fair and ordinary meaning is libellous or defamatory, but whether the person referred to in the libel would be understood by persons who knew him to refer to the plaintiff."

There is apparent substance in the grievance advanced on this head by writers of fiction. But it may be objected that at present they are afforded a measure of protection against the abuse of legal process by the blackmailer in the requirement that the application of alleged defamatory matter to the plaintiff must be established by the evidence of reasonable and fair-minded persons. Then, again, a witness called to say that he understood the words complained of in a libellous sense must be shown by proof that he is a "reasonable" man, if his opinion is to have any weight with the Court (*Frost* v. *London Joint Stock Bank* (1906), 22 T.L.R. 760 at p. 762.).

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THE AMBULANCE CHASER.—That pestiferous member of the zoological order *rodentia* known as the 'Ambulance Chaser' is not to be found only in the purlieus of the law on this side of the Atlantic. That he finds a habitat in England is established by the remarks of Lord Morris in the debate on the Solicitors' Bill which took place at Westminster last month. Lord Morris was severely critical of the Bill and moved its rejection by the Lords. His remarks are thus summarized by *The Solicitors' Journal* of March 21st:

> "In moving the rejection Lord Morris described the Bill as trumpery in character, loose in draftsmanship, and mischievous in intent. He deprecated the intervention of The Law Society at this stage to render it necessary for solicitors to obtain leave in writing before taking an articled clerk, and suggested that it would be better employed in doing something to stop the objectionable activities of the type of solicitor known colloquially as an 'ambulance chaser' who, Lord Morris said, was a curse to his profession and a menace to society."

LAW AND JUSTICE.—In a late number of the *Law Institute Journal* (Melbourne) it is stated that the Goulburn branch of the United Australia Party is urging that all laws and legal documents should be expressed in language "that a man of average intelligence could understand." This is a consummation that has long been devoutly wished. The lawyer has ever been in search of what Kipling called "the magic of the necessary words," but such is the imperfection of human speech that his quest has proved a hopeless one. "Nay, gentlemen, do not quarrel about words," said Wright, L.C.J. in the *Trial of the Seven Bishops* (12 How. St. Tr. 208); and a hundred years afterwards Lord Mansfield said in *Morgan* v. *Jones* (Lofft. 176): "Most of the disputes in the world arise from words."

But our antipodean friends ask more than the simplification of legal phraseology, they propose that "an Act of Parliament should provide that when the law conflicts with justice, justice should prevail." Concerning this latter demand the *Law Institute Journal* says: "This is an admirable sentiment, but perhaps a little difficult to apply," and goes on to suggest that if the present were a "formative" period of the law, the Judges would have striven to shape the rules of law more in conformity with the current ideas of justice.

The constant development of law by the Bench is a necessity of our political system, but the nineteenth century was a period when English Judges as a body were disposed to look upon the common law as having reached its maturity, and to think that its inflexibility was more to be regarded than its fluidity. Such a period fosters judicial conservatism of the most sterile kind. But upon occasion the voice of a Judge was heard in criticism of the view that the law might remain stationary while other social activities were on the march. For instance Lord Bowen, on the occasion of Queen Victoria's Jubilee in 1887, contrasted the development of the industrial and commercial life of England at the beginning of the century with the lack of improvement in the forensic administration of justice. He said: "The Common Law Courts of the country seemed constantly occupied in the discussion of the merest legal conundrums, which bore no relation to the merits of any controversies except those of pedants, and in the direction of a machinery that belonged already to the past." Even in the latter part of the nineteenth century Dean Pound ("Law and Morals") finds that equitable doctrines "acquire legal shells," and judicial methods prevail which "ignore results and seek

abstract uniformity, formal predictability and outward appearance of certainty, at any cost." All this obstructs the infiltration of concepts of natural justice into judicial decisions. In his instructive book on "Civilisation and the Growth of Law," published last year, Dr. Robson says: "On the whole, English legal thought since Bentham has run in narrow grooves, remaining crabbed and 'practical' in the worst sense of the word, unimaginative and devoid of any philosophic, ethical or sociological background. . . . . This unfortunate state of affairs is largely due to the fact that when in the 17th century the Law of Nature passed from the realm of the jurists and the political philosophers to the domain of the men of science, its former guardians lost all interest in the concept of Nature."

But with democracy now in a state of malaise and our parliaments concerned with other things than reforms in jurisprudence we are not without hope that the Bench will resume its creative function in the development of law, and that in consequence of such renascence the law will be made to conform more and more to the ideas of justice of "a man of average intelligence". A retrospect of the history of the two great systems of law which maintain liberty and order in the western world will reveal that periods of satisfaction with the stability and technical perfection of juristic science invariably give way to periods of aspiration for a remoulding of the substance of the law to relate it to changes in the external structure of society, and for a quickening of its spirit to conform to the demands of new and loftier moral standards among men.

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MR. PICKWICK BECOMES A CENTENARIAN.—On the 31st of March, 1836, Mr. Samuel Pickwick, one of the representative Englishmen of the nineteenth century, was brought into the world full-grown by Charles Dickens. Because he is to be found only in the pages of fiction his existence is nevertheless real. He is real because his creator moulded him with an inspired knowledge of human nature second only in affluence to that of Shakespeare. He has reached the hundredth anniversary of his advent upon the stage of English literature in fine form, having survived without scath the inept criticism of those defamers of Victorian letters who vexed our peace not long since. To know how faithfully Mr. Pickwick embodies the manners of his time one has only to read what Thackeray, who was a contemporary

of Dickens, has to say of him: "I am sure that a man who, a hundred years hence, should sit down to write the history of our time, would do wrong to put that great contemporary history of *Pickwick* aside as a frivolous work."

All lawyers who are discerning readers love Pickwick although he was the means of producing oodles of merriment at their expense. Who can forget the tricks and the manners of Messrs. Dodson & Fogg and the artfulness of Sergeant Buzfuz? Before the wiles of Dodson & Fogg, the chicanery of Samuel Warren's Quirk, Gammon & Snap loses its pre-eminence. And where does the Bench blink in a more poignant satiric light than when Mr. Justice Stareleigh presides in the leading case of *Bardell* v. *Pickwick*?

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HON. JAMES M. BECK.—The Honourable James Montgomery Beck died suddenly at his home in Washington, D.C. on the 12th instant in the 75th year of his age. He was one of the most distinguished lawyers in the whole history of the American Bar. He abounded in honours accorded him at home and abroad. They came to him in recognition of his rare intellectual gifts and of the lofty principles that constantly moulded his actions. He laboured zealously for the right, both in his profession and in public life, and largely achieved what he set out to do. Admitted to the Bar of Philadelphia in 1884, he held successively the important legal offices of Assistant District Attorney (1888-92); United States District Attorney for Pennsylvania (1896-1900); Assistant Attorney-General of the United States (1900-1903), and Solicitor-General of the United States (1921-1925). For seventeen years he practised his profession in Philadelphia, where he was born in 1861, and in 1900 joined one of the leading law firms in New York and successfully practised in that city for a further period of seventeen years.

Mr. Beck was profoundly stirred by sympathy for the Allied Powers at the outbreak of the Great War. In October, 1914, at the request of the *New York Times* he wrote a masterly analysis of the diplomatic papers of the several nations engaged in the conflict in order to determine on which of them rested the moral responsibility for the war. It was translated into many languages and thousands of copies were circulated throughout the world. Subsequently it was expanded into a book under the title of "The Evidence in the Case." In 1916 he went to England and France and delivered addresses in both countries,

seeking to interpret to his audiences the sympathy of the American people with the cause of the Allies. This undertaking won for him in England the great distinction of being the first foreigner to be elected an Honorary Bencher of Gray's Inn. It also led to him being created an Officer of the Legion of Honour (France), Commander of the Order of the Crown (Belgium) and Commander of the Order of Poland Restored. Mr. Beck was further honoured in England, while he held the office of Solicitor-General for the United States, by being permitted to appear before the Judicial Committee of the Privy Council to argue an appeal on behalf of the United States in a land case instituted by the government of that country in a Canadian court which dismissed the action. The appeal was successful.

Mr. Beck was a guest speaker at the first annual meeting of the Canadian Bar Association, held in Montreal in the year 1915. At the conclusion of his address he was elected an honorary member of the Association amidst the applause of all present.

CHARLES MORSE.

Ottawa.

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