FROM AN ENGLISH OFFICE WINDOW

Privy Council Appeal

The Judicial Committee of the Privy Council have only one case to hear from Canada during the present sittings. That is the Appeal from the decision of the Supreme Court upon reference by the Governor-General dealing with the validity of the Alberta Debt Adjustment Act. Enemy action has dislodged the Judicial Committee from their usual place of meeting and the Board assembled for hearing of this appeal in one of the Committee rooms of the House of Lords. Under present conditions the building is a notable example of the effect of the blackout and it is not an easy matter to find one's way along the darkened corridors. However it was good to see that several members of the Canadian Bar in khaki had succeeded in doing so as a relaxation from their military duties. Another war-time feature was the waitress taking notes of the requirements of counsel for lunch in order to meet the difficulties of food rationing. The feeding arrangements in the House of Lords are under the supervision of a member of the House of Commons with a committee. He is a hotel owner who is familiar with the difficulties and is facetiously known as 'Minister of the Interior'. All the windows of the room in which the Board sit have glass and although the morning was foggy over the river it was not difficult to see without artificial light. The room was cleared before the noble lords made their entrance and counsel stood outside.

Lord Macmillan, Lord Romer, Lord Clauson and Lord Russell constituted the Committee—as one Council observed, "quite a strong Court". Lord Macmillan has a keen interest in constitutional problems besides some knowledge of the problem which has developed between Alberta and the Dominion.

According to the procedure of the Judicial Committee one member is usually responsible for preparing the advice which is tendered to the King in the hope that his judgment will be acceptable to the remainder. It was noticeable that one member of the board suggested the course to be taken by counsel in presenting the case. First there was the economic background which had given rise a series of enactments passed by the Alberta legislatures during the past twenty years. Then there was the Debt Adjustment Act, 1937, with its amendments to be explained from the office consolidation of which the practical utility was appreciated by the Board.

It is very easy to criticize the position and work of the Judicial Committee but no one can fail to be impressed with the care and thoroughness devoted by the members of the tribunal to the full appreciation of the points submitted to them.

Liability of a Hospital

It is necessary for me to revert to *Gold* v. *Essex County Council* (*supra* pp. 335 and 635) as the Essex County Council have decided that they will not appeal to the House of Lords. Accordingly the judgment of the Court of Appeal ([1942] 2 K.B. 293) stands and changes the whole position of the liability of hospitals, as it has existed since *Hillyer* v. *St. Bartholomew's Hospital* ([1909] 2 K.B. 820) and has been accepted in Canada and other Dominions. If the governing body of a hospital took due care in making an appointment then no liability rests upon them for any action done by a member of the staff in the exercise of his professional skill, though they might be liable for administrative acts. The Court of Appeal were at pains to examine Hillyer's case and to distinguish it in framing a fresh *ratio decidendi* for this class of action. They dealt with nurses as typical members of the staff and found, in the words of the Master of the Rolls, "that the true ground on which the hospital escapes liability for the act of a nurse who, whether in the operating theatre or elsewhere, is acting under the instructions of the surgeon is not that *pro hac vice* she ceases to be the servant of the hospital, but that she is not guilty of negligence if she carries out the orders of the surgeon or doctor, however negligent those orders may be". It is by no means an easy matter as the Supreme Court of Canada (See *Nyberg* v. *Provost Municipal Hospital Board*, [1927] S.C.R. 226) have found, to determine whether a member of the hospital staff was or was not acting under a doctor's orders. The Court also dismissed any idea of a distinction being drawn, as in the United States, between a hospital which is a charitable undertaking and one supported by a local authority. Briefly the effect of the decision is to establish that hospitals as employers possess the ordinary master and servant relationship towards their lay staffs with a consequent liability for the acts of their servants.

Liability for Road Accidents

Goddard L.J. in a recent case in the Court of Appeal expressed the view, in which Scott L.J. concurred, that the law of negligence as applied to road accidents is unjust. Goddard

L.J. was a member of the Lord Chancellor's Law Revision Committee which dealt with the subject in a comprehensive report ((Cmd. 6032, 1939.) concluding with the recommendation "that in cases where damage has been caused by the fault of two or more persons the tribunal trying the case (whether that tribunal be a judge or jury) shall apportion the liability in the degree in which each party is found to be in fault". The Committee supported the recommendation by pointing out that the effect of the change would be not only to bring the common law rule into line with that of the Admiralty Courts in England but to assimilate English law to that of many European countries and some of the Canadian Provinces and North American States. In answer to the objection that the result of apportioning the damages might be to cause an increase in litigation they cited the experience of Ontario where such a rule has been in existence since 1924 and the total amount of damages recovered by plaintiffs, so they understood, has not increased to any marked extent. The increase in the number of cases in which damages were obtained was said to have been offset to a large extent by the decrease in the amount of damages awarded in those cases where the plaintiff's negligence has contributed to the result. The Committee regarded this contention as having been supported by the fact that the Canadian insurance rates have not increased in recent years. The Committee also cited Canadian experience to show that a jury is capable of making the required apportionment.

It may be that conditions arising from the war have added to the desirability of modifying the law. There is some evidence to suggest that pedestrians and, even more, perhaps, cyclists contribute to the accidents for which motorists are held to be liable. It may be that their minds tend to be distracted or at least that they do not concentrate to the same extent as the motorist. Whether this be so or not, the case for an amendment of the law seems to be made out and their Lordships had good cause to draw attention to the need for it.

MIDDLE TEMPLAR.