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MORE ABOUT THE LAW'S MAJESTY

ONE good thing that The Army has done — which was not within the direct vision of the Founder - has been to establish a body of legal opinion that has become a powerful instrument for protecting and maintaining liberty's fair work in this and other lands. Not only in the British Empire, but in countries as different as Germany and Switzerland and the United States, we have on record a set of judgments that have not only helped us (and continue to help us) in adjusting our trust position and our work generally to the legal requirements of the various countries which The Army has entered, but have also been of great assistance to other bodies working for liberty and righteousness.

Our experience of legal affairs in various countries makes it possible for me to attempt some comparisons which may be of interest. I cannot, however, make it too clear that in this connexion I am speaking of things as we happened to find them, and as they have impressed themselves upon my own mind. There may be a good deal to be said by others who look at these things from different view-points or who have had different experiences.

I should say that by far the slowest, most cumbersome, and most costly legal proceedings in the world are those of the United Kingdom. This may be the result — or partly the result of the slow, peculiar, and individual growth of the various bodies of statutory enactment, Case law and Custom, which have come to constitute English Law as we know it to-day. However this may be, the fact, I think, is what I have stated. The most direct, expeditious, and incomparably most economical proceedings of a corresponding nature are those of Germany. In the courts of first instance in Germany, answering to the Police and County Courts here, I have obtained judgments in a week or ten days, and at a cost of fifty shillings, which here would have taken six weeks or perhaps three months, and cost anything up to £20 or £30 or more. In the larger questions which come before the courts, those of Germany can do the business in perhaps a quarter of the time occupied over here, and at one-fifth of the expense and do it quite as well.

In the United States — which is, of course, a newer country, and has had the English experience to build upon — the legal system is also immensely in advance of that of this country, particularly in expedition, though something has to be taken off that advantage because of the large and easy facilities for appeals and the means available to litigants for prolonging the proceedings between the hearing of appeals. Once in court, however, everything makes for thoroughness, for the practical application of agreed legal principles (which are much the same everywhere, and, of course, largely correspond with the British), and for quickness. Some of the most important judgments which we have obtained in connexion with freedom of action in our methods and the settlement of our property have been obtained in the United States in the course of a few months, while corresponding actions in the old country would have dragged on for a couple of years.

In Canada and Australia the position is not quite so good in some respects. The judiciary in those countries, however, is extremely careful. The courts of appeal have at their head men not only of commanding ability, but of the most scrupulous rectitude and principle.

Speaking generally, I entertain the highest opinion of the judicial systems of all the Western nations so far as I know them, and indeed my experience is that all over the world our Western justice is recognized as the very criterion of what justice should be. If I were asked to suggest changes, I would inquire whether in England and Scotland the judges could not be given their positions much earlier in life, and be far better paid. In France, I think, the present preliminary examinations in criminal cases might be abolished, and the judges of the Supreme Court — the Cour de Cassation — made irremovable. In Germany I would give the people in some way a share in the selection of the magistrates, and I would pay the Judges on altogether a higher scale, both in the Lower and in the Supreme courts. In Scandinavian countries, generally, I would both appoint and retire the judges at an earlier age than is the case at present, and the pensions should be much more liberal. In Italy, I think that much of the legal procedure could be simplified, the courts made more easily open for the poorer people, and the judges more highly paid and chosen from a wider circle. In the United States I should like to see the present system of election greatly modified, and I think the Judges of the High Courts in every State should all be better

paid. This latter remark applies also to the judges of the Supreme Court, who should be appointed on the understanding that they do not afterwards take up politics. In Australia and Canada the present system leaves little room for improvement in its suitability to the country concerned, though here, also, I am sure, it would be wise to pay larger salaries and especially to provide liberal pensions.

I would have women magistrates, and, by and by, women judges, as well as women jurors, everywhere. I would also modify the legal procedure of all countries, including the United Kingdom, so that the County Court judges here and the judges who answer to them in other countries, should be empowered to deal with all matters (except certain reserved questions) where both parties agree that they should be so dealt with. A great deal of litigation is brought to the High Courts, with consequent expenditure of time and money, when it could be settled in the Lower. While I would not deprive a man of his right to go to the Higher Court, if he desires, I would give every encouragement to the parties to agree between themselves to accept the decision of a Lower.

My experience of arbitrations is perhaps unfortunate — at any rate, in England. While the expense, as a rule, is (contrary to popular belief) as great or greater than in ordinary actions, the result is often equally unsatisfactory to both parties. As sure as ever there is a fairly fought-out arbitration, both sides will go away saying, 'I wish I had had an action. No doubt this is much to be regretted, but there it is.

With regard to the costliness of law proceedings I may not be competent to speak. The Army is in a singular position. We have been almost uniformly successful in our law cases, and therefore, generally, we have obtained our costs. Having regard to the hundreds of actions, small and great, which have been fought in different parts of the world, it has always seemed to me a matter for congratulation that success has so largely attended us — congratulation, I mean, not only to ourselves, but to our legal advisers in the different countries, and particularly to our London solicitors. Even when we have failed there have been compensations, as, for example, in one English Shelter case, when Lord Russell, to whom I have made some personal reference, decided

against us. The Lord Chief spoke very warmly of our work on that occasion; in fact, he gave us a kind of testimonial of which we were able to make use.

His decision, however, was not in our favour. We contended that our Shelters and Homes for homeless men and women were not 'common lodging-houses,' one reason being that we did not wish to bring them under the common lodging-house regulations, because, for one thing, this rendered them liable to police inspection. In theory, the inspection was of the places only, but in practice it often included the inmates. We felt that these poor people, our clients, were as much entitled to the seclusion of the simple accommodation they could pay for as the aristocrat was entitled to the seclusion of the Hotel Metropole. "Common lodging-houses' also were open to the visits of detectives looking for criminals. It is quite proper that detectives should look for criminals whenever they want them, but when they come to a private house to search for a criminal they must bring a warrant, whereas they need not bring one into a common lodging-house. There were other considerations, but we lost the case.

Another famous Judge of the nineteenth century who was very good to us, and appreciated our work, was Mr. Justice Hawkins. He has a bad name, and yet he was a great man, who really took an interest in the reform of criminals. While I cannot join in all that has been said about Hawkins's severity, I believe, nevertheless, that he did give on occasion what would now be called vindictive sentences. Sir Edward Clarke complains of his unfairness, and speaks of his career of public disservice.' On the other hand, I have thought that Hawkins's long sentences were in the nature of a rebound — hardly, perhaps, admitted to himself — from the absurd method of a long-continued course of short sentences. Our experience in dealing with criminals, which has been of some range, both in this and other countries, goes to show that nothing can be more ruinous and destructive of every hope of reform than the giving of a succession of short sentences. Some of those long and seemingly harsh sentences which Hawkins gave were in opposition to that principle. It had been proved, say, in the case of a particular man that a series of short sentences was unavailing. Very well, then,' said the judge, 'give him a long sentence, and keep him out of society. So far as Hawkins's intellectual power and insight were concerned, I regarded him as a prince among the judges of his day, though no doubt he was a hard man.

We have been very fortunate in the lawyers who have pleaded for us. I have made it my purpose to get the very best men I could find, and although they have often been matched against men of equal ability and weight on the other side, I have seldom had to admit that from the point of view of moral influence and stamina, the other side were better off than ours. In the United Kingdom especially the lawyers have fought for us with a skill and industry and courage which no fees could repay. The same or almost the same thing can be said of other countries — notably the United States and Australia, India and Germany. Among others I would name here Sir Henry Matthews (Lord Llandaff); Mr. R. Sutherst, one of our most valiant champions, who went up and down the land on our behalf, and worked for the most paltry fees; Mr. Richardson, a solicitor and Common Councillor of the City of London ; Mr. Justice Duke, the President of the Probate, Divorce, and Admiralty Division; Mr. Vaughan Williams, later on a Judge of the High Court; Mr. Hughes, an eminent and respected K.C. on the Chancery side ; Mr. Sargant, now a Lord Justice of Appeal, and many other well-known men. Our solicitors, Ranger, Burton & Frost, have also done splendid work. We have employed counsel of every shade of creed. Jessel, son of a late Master of the Rolls, was a Jew; so is the late Lord Chief Justice (Lord Reading), who has worked for us. Russell was a Roman Catholic; so was Horne Payne. Sir Edward Clarke, Gully (later the Speaker), Jelf, and Greenwood, were strict Churchmen. Waddy was a Methodist, Cozens-Hardy a Congregationalist, Rigby and Willis were Baptists.

In many of our cases of appeal on the common law side, especially in matters connected with our Open-Air work and meetings and questions of finance, and so forth, we often employed William Willis. He was a remarkable man, of a fervid temperament, and deeply and sincerely religious. We used to have prayer in his delightful chambers. He occasionally came to our Meetings, and always greatly rejoiced in the conflicts through which we passed, reckoning it one of the surest signs of the Divine Spirit working among our people that we were persecuted and hated. Without doubt he was one of the brightest' counsel who ever came into a court in my time. His mere advent seemed to make the lamps go up. The judges looked more expectant. A smile creased the most parchment-like faces of counsel. Even the solicitors began to enjoy themselves. Is this too bright a picture? Well, certainly Willis's great features were his sincerity, generosity, and an intense humanity. It is said that he lived in lodgings on circuit, instead of

going to the swell hotels, and has been seen stopping on the way to the Law Courts to take hungry boys into a 'tuck' shop; and then run, so as not to be late for his case.

The only other man I remember who had at all a similar way with him was Danckwerts, one of the ablest members of the Bar. You never knew how Danckwerts was going to spring. He was most dangerous when he was most gentle. In my experience I never knew any man who could do so well with a bad case, a case which everybody knew was a bad case, and a case which — most wonderful of all — he himself knew was a bad case. I remember one occasion when Danckwerts appeared for the Crown against us. We had quashed a conviction by certain magistrates, but the question of costs remained over to be argued. Danckwerts made a speech in which he said that the Crown had no funds: how was it to pay the costs of the defeated magistrates? Lord Chief Justice Coleridge was on the bench. He had a habit of appearing to sleep during the hearing of a case, his eyes closing and his head leaning forward. But when Danckwerts uttered the startling proposition that the Crown had no money, Coleridge instantly woke up from his apparent slumber. "That is one of the most serious statements that could possibly be made,' he said, 'by a gentleman representing the Crown. If the Crown has no money, what is to happen to me?' Coleridge's 'me' echoed through the court, and remained for some years afterwards a classic allusion with us. Danckwerts simply replied, 'As your lordship pleases' (which caused more merriment) and then sat down. We got our costs.

Another counsel whom I remember being nonplussed was E. H. Pember, of the Parliamentary Bar. Pember, whose conduct of our case, by the way, was perfect, was winding up a case before a Committee of the House of Lords with a most cogent appeal, but mumbling in the usual way. Once, during his hee-ing and haw-ing, he made a mistake, and one of his own juniors, sitting behind him, as they do in Parliamentary committees, corrected him. Pember seemed nettled. He stopped. 'I do hate,' he said testily, 'being corrected from behind.' Whereupon somebody remarked in a stage whisper (which had the peculiar property of being heard everywhere), 'He is thinking of his boyhood days!'

Our Eastbourne Bill, on behalf of which he appeared, was one for the amending of a previous Act regulating the government of the town—a great centre of disturbance in the middle eighties.

The police and authorities there had taken up a pronounced position against our work. One of the debates in the House of Commons was characterized by a rattling speech for us by Sir Henry James, afterwards Lord James of Hereford, who was standing legal adviser to the Devonshire family—the town was then largely Cavendish property.

In criminal cases, cases that is in which we have been concerned for accused persons whom we have thought it right to have defended, I have come across most generous helpers. Among those should be mentioned the late Forrest Fulton, who became Recorder of the City of London, and Sir Charles Gill, who though receiving infinitesimal fees, have gone to immense labour for their unhappy clients, greatly to their clients' advantage. Such circumstances have again and again showed me a kind of passion for justice working in the minds of men who to the outsider have often appeared in the garb of the partisan.

Sometimes such Counsel have been young and at that time almost unknown men, but that has proved an advantage rather than otherwise. Judges often show consideration to a hitherto unknown man who is struggling with a difficult case simply from their desire to find and encourage ability. Thus the novice will get a sympathetic attention for points which a more seasoned man would hardly be expected to notice.

We have not seldom known the best results follow an interview between the accused and the judge — with Counsel attending. The prisoner is often completely distracted when in the witness box, but makes an excellent impression when given an opportunity to explain himself in a quiet room.

The difficulties in which we were involved at Eastbourne and Torquay introduced us to several notable men, among them Mr. Duke and Mr. Asquith. Both these men put their hearts into the different proceedings, and did us good service, although it was perfectly well known that the cases would not be decided in our favour. Mr. Asquitha was then one of the men who go 'special'; that is, only appear in other courts than their own for a special' extra fee of fifty guineas. Later he and Mr. Haldane (now Lord Haldane) and Mr. (now Lord Justice) Sargant advised us in the settlement of a deed of trust which was adopted at our International Council of 1904. This

supplemented our deed of origin. Its main purpose was to provide machinery for removing a General who, on account of any one of certain definite causes, had forfeited his claim to the position, and for appointing a new General in a certain contingency. Mr. Asquith, Mr. Haldane, and Mr. Sargant took a deep personal interest in this matter. We had conference after conference, and I am afraid their fees were infinitesimal in comparison with the amount of work they put in.

I liked Mr. Asquith. His directness and his alert mind were in delightful contrast with some lawyers I knew. He won my confidence quite early, partly because he really mastered his papers so that conferences became actual conferrings. In court he was a little too detached to please me, but on the other hand he could fight to the last; and, in fact, he did sometimes win in the very last ditch.

On one point, with regard to counsel's fees, I have taken a very definite stand. It has always seemed to me that when counsel are unable to appear, and have to leave the case to somebody else, they should return their fees, or at least a reasonable portion of them. The only counsel from whom I have succeeded in obtaining the return of fees under such circumstances have been Mr. Finlay (afterwards Lord Chancellor), Sir Edward Clarke, and Mr. Clarke Hall, now a Metropolitan magistrate. I was sometimes told that it was contrary to the practice of the Bar. Nevertheless, I had a special satisfaction in the return of these fees. But, after all, the failure of counsel to appear has happened rarely in our affairs.

I do not subscribe to the common jests at the expense of lawyers. I own to a partiality for the members of the legal profession. I generally understand them, and, even when we disagree, we do not fall out. Theirs is a fighting life, and so is mine. Their profession, no doubt, helps them to appreciate and recognize and acknowledge the rights of others. I dare say that we have afforded to the counsel whose clients we have been an almost inexhaustible reservoir of fun! Yet I think that they have liked us because of our frank, go-straight and go-ahead attitude.

Lawyers have their emotions like other men. Once in a provincial city I had on my platform one of the present Lord Justices. After my lecture was over we had a quiet talk, and he told me that

when he was a young man and briefs were few and far between, he occasionally went to hear my father and mother in the old Exeter Hall. Then he looked up at the ceiling and said, 'You know, the impression of those Meetings has never left me, and it has been reawakened this afternoon. If I had given myself to the impulse of those days perhaps my life might have accomplished more for God and my generation.'