HALDANE SOCIETY

(The organisation of Socialist Lawyers, affiliated to the Labour Party)

THE LAW and RECONSTRUCTION

Being the First Report of the Legal Reconstruction Sub-committee of the Haldane Society, containing recommendations as to Law Reform capable of being carried into effect during the war.

4d.

THE LAW AND RECONSTRUCTION

Being the First Report of the Legal Reconstruction Sub-committee of the Haldane Society, containing recommendations as to law reform capable of being carried into effect during the war.

INTRODUCTION

THE sub-committee has before it only one main task, which is in substance the same as the whole object of the Society, but more specific, namely, to consider how to further the cause of socialism by means of law reform. The sub-committee was primarily set up with a view to surveying the possibilities of reconstruction after the war in the field of the law and administration of justice, in consonance with the Labour Party's investigations as to the possibilities of general social and economic reconstruction.

The sub-committee has come to the conclusion that though there is a vast and important field for recommendations in respect of post-war improvements in the law and its administration, there is an urgent need for immediate improvements.

In the present war situation, so long as the law continues to function at all (and it is, perhaps, open to question whether, if the country is to be put on a " total war " basis, ordinary civil litigation should be allowed to continue on the present scale) it is highly desirable that it should function with the greatest possible smoothness, simplicity and efficiency in all ways, ranging from proper dispensation of justice to saving paper. Further, it is undesirable, if workers in industry are to put forward their best efforts, that they should labour under a sense of injustice in any dispute they may have, civil or criminal, by feeling that the law is biassed against them, or that they cannot enforce their rights because legal advice and representation are not attainable except at exorbitant expense. So, too, it is undesirable that men in the Forces should be worried by doubts as to whether their wives at home are able to be properly protected against predatory landlords and other agents of oppression.

No one can avoid the feeling that much civil litigation has a somewhat ridiculous flavour in times of extreme gravity, and bears no relation to the serious events taking place at the moment in other parts of the world. During the time of heavy air-raids on London and other British cities, this feeling was quite apparent among those who were engaged in cases of utter triviality, to the trial of which they had to pick their way through ruins. Simplification and expedition of procedure would do much to remove this aspect of litigation. To stop all private litigation, except in actual circumstances of invasion, would inevitably entail a denial of justice involving,

in many cases, unjustifiable hardship. To let it go on in its present form, on the other hand, is not in accordance with the principles of total war. The sub-committee, therefore, puts forward the following recommendations as being calculated to preserve, and indeed increase, the facilities available to the citizen for the obtaining of justice, while at the same time removing the many objections as to the uneven balance of the scales of justice between rich and poor, waste of time and paper, and so on, which obtain to-day. Any proposals for immediate reforms in any branch of the law to be carried out in wartime must be governed by expediency to a somewhat frightening degree. Unless they are very powerfully supported, they should not cut across established vested interests; they should be capable of acceptance by the Government; they should be calculated to assist, or at any rate not impede, the nation's war effort; they should be simple, and if possible, capable of being effected by Order in Council without the necessity for legislation. These conditions are obvious; if they are not complied with, no matter how desirable the proposals for reforms may be, they will be born dead in present circumstances.

There is also another obvious essential condition: the proposals made should not cut across or run counter to any long-term proposals for reform.

The reforms we recommend are not purely war-time measures. They are reforms which, in our view, are desirable in any event, which are steps forward bringing general improvement in the legal system, and which, when carried into effect, will establish conditions which might be expected to be found in a socialist system of justice, in so far as the matters concerned would obtain at all in a socialist system. Further, our recommendations are, we submit, such that they may be expected to receive mass support, and therefore suitable for recommendation by the Party in Parliament.

1—Extension of Legal Aid to Poor Persons.

The only existing help given to persons who are unable, owing to lack of means, either to ascertain or to enforce their legal rights, takes two forms.

At local centres there are "Poor Men's Lawyers" and "Citizens' Advice Bureaux" which give free legal advice. In London and the Provinces there are "Poor Persons' Committees" set up and controlled by the London and Provincial Law Societies (the professional organisations of Solicitors—in a sense, the Solicitors' Trade Unions), which arrange for free legal assistance in litigation by Counsel and Solicitors. Such assistance may only be granted to persons "not worth" over £50 or, in exceptional circumstances, £100 and whose income does not exceed £2 per week or, in exceptional cases, £4 per week.

The deficiencies of the existing system are:—

(1) The "Poor Men's Lawyers" and Advice Bureaux are voluntary bodies and are usually appendages to religious or political organisations. Their existence is not always known. Those giving their services are usually young and comparatively inexperienced barristers and solicitors. Their services are usually strictly limited to the giving of advice.

(2) The Poor Persons' Committees consist of Solicitors. If they decide not to take up an Applicant's case, there is no appeal from their decision. Each Committee is autonomous, so that the view of a case taken by one Committee say, in Birmingham, is not necessarily that which would be taken of it by another, say, in London.

(3) Some of the Poor Men's lawyers have solicitors associated with them who occasionally give their services free in a case recommended by the Poor Men's lawyers, but so far as the help from the Poor Persons' Committees is concerned, an Applicant either has his case conducted for him free of charge (except for a few pounds towards out-of-pocket expenses), or he has no assistance at all. It is a "hit or miss" system. If two men have a good prima facie case, the one with an income of £4 per week may have his litigation free of charge, the other with £4 1s. 6d. per week can only enforce his legal rights solely at his own expense throughout.

(4) The limit of £4 per week was fixed shortly before 1914 and, in spite of the rise in the cost of living during both wars, has never been increased.

(5) The procedure applies only to proceedings in the High Court, and no assistance whatever is provided for poor litigants in the County Court.

To remedy these deficiencies, we propose :—

(i) That a body corporate be created to be called the Public Legal Service Department (hereinafter referred to as "the P.L.S.D."), managed by a committee of 11—3 to be appointed by the Bar Council, 3 by the Law Society and 5 (none of whom shall be lawyers) by other public bodies.

(ii) That the P.L.S.D. establish and maintain Legal Advice Bureaux in the offices of every Local Authority, the Local Authority to provide the accommodation, but the P.L.S.D. to be otherwise responsible for the conduct of the bureaux.

(iii) That such bureaux shall give for a charge not exceeding 5s. 0d. legal advice to any person asking for it.

(iv) That the P.L.S.D. shall be entitled to engage local solicitors to give their services at such bureaux and to take Counsel's opinion where necessary, in each case upon a scale of charges to be prescribed.

(v) That upon such bureaux certifying that the Applicant has a *prima facie* case which he has been unable to enforce without litigation, the P.L.S.D., whether the case be one for the High Court or for the County Court, shall consider the Applicant's assets and means and, unless satisfied that the Applicant is in a position to litigate the case from his own resources, shall employ solicitors and counsel to conduct the case upon the said scale of charges, requiring from the Applicant such contribution towards the costs as they think in all the circumstances just.

(vi) Solicitors and counsel selected by the P.L.S.D. shall be under a statutory obligation to undertake work given to them, unless in any given case they can show good reason for not doing so.

(vii) Before commencing litigation the P.L.S.D. shall inform the opposing party that in their view the Applicant has a good *prima facie* case, and if litigation nevertheless becomes necessary and the Applicant is successful, the P.L.S.D. shall be entitled to recover their costs from the opposing party, including the Crown, and shall refund to the litigant such contribution as they may have received from him.

(viii) The funds of the P.L.S.D. shall be derived partly from fees taken at the Local Advice Bureaux, partly from contributions from the Applicants, partly from costs recovered and in so far as necessary, from the Treasury.

These proposals are intended to ensure that no person shall be denied the opportunity of ascertaining and enforcing his legal rights by lack of means. On the other hand, they recognise the principle that there is no reason why people should not pay towards the cost of litigation such reasonable sum as they can afford, and, while it is intended that the prescribed scale of

charges for solicitors and counsel will be lower than the normal scale, solicitors and counsel would not be bound to provide their services free of charge, as is now the case.

2—Workmen's Compensation.

It is somewhat difficult to put forward immediately practicable proposals for the reform of the Workmen's Compensation Acts. This is so, not merely because of the existence of conditions mentioned in the Introduction, but because there is a greater body of vested interests for each section of the Acts than is the case with almost any other Statute. Whatever may have been the original intention of the legislature, there is nothing simple about the Acts, and the only possible long-term policy is the complete abolition of the Acts in anything like their present form.

The proposals set out here fall into two parts; the first deals with the more glaring injustices and inhumanities in the Acts, and suggestions as to reforms which would be likely to win so considerable a backing from the Labour Movement as to make their introduction a practicable possibility even in wartime. The second deals with those reforms which, although immediately practicable, are calculated to assist in the development of a sensible long-term programme at a later stage.

In the first category come the following:—

1. Increase in Rates of Compensation.—With the increase in wages and the cost of living, the rates of compensation, even taking into account supplementary allowances, are manifestly unjust. For a man who gets a wage of £3 per week, 35s. is small enough, but it is ridiculously out of proportion for a man whose expenditure is adjusted to a pre-accident income of, say, £6-£7 per week. In addition to the pain and worry of the accident itself and the expense arising from it, he is suddenly faced with a fall of 75 per cent. in his income. With his rent, hire-purchase payments and other fixed items, he falls into debt, and this is not calculated to assist his recovery. As a matter of war-winning expediency, if not for humanity's sake, compensation payments should be increased to at least one-half of the pre-accident wage, plus supplementary allowances for children.

2. Inelasticity of Compensation.—Section 11 (3) of the Act, which deals with reviews of weekly payments in certain cases of fluctuations in rates of remuneration, is a frequent cause of grave injustice and should be revised. Hard cases arise in two ways:—

(i) In total incapacity: e.g., a man had an accident in 1936, when his rate was 1s. 6d. per hour, and because of slackness in trade, he was only working a 30-hour week, making a pre-accident wage of 45s. per week, and a rate of compensation of 23s. 9d. per week, plus supplementary allowances. The rate for the job to-day is 1s. 9d. per hour—not a 20 per cent. increase—and because of overtime and this increased rate the man would, but for his accident, be earning, say, £5. But his compensation does not increase because the condition of s.11 (3), which demands an increase in rate of remuneration by more than 20 per cent., is not fulfilled.

(ii) Partial incapacity: e.g., a man had an accident in 1939, when he got 1s. 6d. per hour for a 40-hour week, namely, 60s. per week. He returned to light work at 1s. per hour, but, because of unusual conditions, worked 60 hours. He gets no compensation, although he is earning far less than his fellows doing his old job.

This sort of injustice should be remedied by modifying section 11 (3) and making as the basis of compensation the earnings which the workman would have got but for the accident, a figure arrived at by ascertaining the wages actually being earned by men in the same class of employment and not the pre-accident wage.

There can be a further reform under this general heading. Where an adult gets an increase in wages, even though it can be proved to be of a permanent nature, and this increase occurs prior to his accident, his pre-accident wage is nevertheless based on his 12 months' earnings previous to the accident which may include the period before the increase, although the wage he is " capable of earning " is the increased wage, and this is so, unless he can also prove a change of grade. This proviso seems utterly unnecessary, and the basis should be the man's increased rate.

3. Supplementary Allowances for Women.—The Workmen's Compensation (Supplementary Allowances) Act, 1940, provides supplementary allowances for married men in respect of their children, but not in the case of women. With the large numbers of women in war work, particularly wives of serving men with children dependent on them, it is a scandal that women should thus be penalised.

4. Removal of Election Clause.—Section 29 of the Act provides that once a man has elected to receive or has, in fact, received compensation, any claim for damages is barred. This has opened the way for insurance companies to escape common law claims by making suspiciously rapid payments of compensation. Nevertheless, case-law has gone a long way to removing the mischief of this section, which should, however, be repealed, if only to protect workmen who do not happen to be well versed in recent legal decisions. It would be equitable to allow a workman a period, say a month, or perhaps longer, to make up his mind as to whether he will claim compensation or common law damages, any payments he receives during the period not to prejudice any other rights, and to allow the Courts a discretion to hear claims for damages made even after the expiration of this period if the Courts think it just to do so.

5. Industrial Disease.—At present a man has to be certified by the certifying surgeon for the district in which the workman is employed as suffering from an industrial disease before compensation in respect thereof can be obtained. Apart from the difficulty that arises where a man has moved, there is a further unsatisfactory feature of this rule, in that in certain places where new townships have arisen round new factories, the certifying surgeon for the district is often the factory doctor. The remedy is to provide that the certificate of any certifying surgeon shall be sufficient to provide the basis of a claim.

The above are all eminently desirable reforms. They are urgent. There is powerful backing for them in the Labour Movement, and there is no doubt that if pressed, they could be carried into immediate execution.

Before leaving this first part of our recommendations, we feel it desirable to observe that it has been suggested to us that an important and desirable reform in this branch of law would be to institute compulsory Workmen's Compensation Insurance. We reject this suggestion because (i) very few employers fail to insure against their Workmen's Compensation liability, and (ii) such a scheme would serve to strengthen the stranglehold of the insurance companies on this important field of social legislation.

The second category of our recommendations, namely, what should be done now to further any long-term programme for reform, presupposes that it is known what this long-term programme is. This is not the place to

elaborate in detail such a programme, but certain features must be beyond dispute.

It is clear that the Workmen's Compensation Acts in their present form must be abolished. The foolish existing distinction between the treatment of victims of accidents at work, of victims of other accidents, of those who suffer from ordinary sickness, of the unemployed, of the unemployable, and of the aged and infirm, will have to go (but in saying this, we are not unmindful of the fact that in due course, under proper social conditions, the unemployed and unemployable will cease to be a considerable class). So will the present conflict of a multitude of authorities have to go—the insurance companies interested in workmen's compensation, the insurance companies interested in street accidents, the Approved Societies, the P.A.C., the U.A.B., and the Ministry of Pensions, all of whom are intent on passing off the onus of liability from one to the other. All are so occupied with this futile and sterile sport that no one is left to worry at all about the welfare of the ill or injured men and women who, during this passing of the buck, are left to get along as best they may on their own resources. It is clear that there must be one authority to deal with all these cases, with a standard rate of benefit and a standard method of rehabilitation. And clearly such an authority must not be a private vested interest.

With this sort of end in view, it must be considered what immediate steps can be taken along this road, as it is clearly impossible to hope that any such far-reaching scheme of reform is achievable in toto at the present moment. It is suggested that the only practicable step is to press for a vast extension of rehabilitative treatment for injured men. At present no one cares a jot about the man's recovery, about getting him back into industry as a useful, satisfied, productive member of society. The workman's doctor and solicitors try to keep him away from work as long as possible in order to manœuvre for the maximum settlement. The insurance company and its doctors, concerned as they are with the avoidance of liability, tend to bully the poor man back into some futile job as quickly as possible, without regard to his physical condition. It is scarcely surprising that with all this going on, with grossly inadequate compensation, with perpetual nagging and examinations by doctors, solicitors and judges, that the workman does not get well. It is safe to say that a man under the Workmen's Compensation Acts, through no fault of his own, takes twice as long to recover as a man with the same injury from a street accident. From the point of view of the man and of society, this is a stupid waste.

Certain employers are concentrating more and more on the rehabilitation of the injured workman, because they find it pays (although they are regarded with some suspicion by the workers, perhaps not unreasonably). There are already rehabilitation centres for Civil Defence workers, where injured men are given proper rest and treatment with full pay, with the object of securing their recovery as quickly as possible and getting them back to work. Such centres should be extended at once and made available to all injured and sick people, whether injured at work or not, on the authority of their own or their employers' doctor and with their consent. As part of the treatment they should get full pay whilst at the centre, to relieve them of financial worry —perhaps the biggest single cause of continued incapacity under the Workmen's Compensation Acts. These rehabilitative centres should be run by the Government with independent doctors. The money for them should be provided by a levy on insurance companies and approved societies, since these will be among the first to benefit in the long run. They should continue to pay compensation or benefit as at present while the treatment is continuing, and the Government should make up the balance of the wages. The Government would likewise benefit in decreased payments for sickness and

unemployment; and even if the State did not benefit financially in this way, it would reap the advantage of men returning quickly to work, and having fit, happy citizens instead of physical and nervous wrecks worn out with illness, bitterness and worry. In any event, the financial aspect is unimportant in considering social reforms of this kind, particularly at the present time, and it will be remembered that the Unemployment Insurance Fund has shown a profit last year for the first time since its institution, and these profits could not be better invested than in a scheme of the kind outlined above.

It is essential for the success of this scheme that not only should the men be cured and able to go back to work with the utmost speed, but that when they return they should be happy and anxious to do so. The payment of full wages during treatment will help in this, but it is felt that a lump sum payment on the injured man's return to work, to enable him to clear up his debts and as some compensation for his pain and suffering is also necessary. He should get this as of right, and should not be a party to undignified bargaining, as at present. The lump sum payment should be assessed according to a fixed scale, as in the case of pensions under the Royal Warrants or the Personal Injuries Scheme, or by assessment by a County Court judge or other tribunal after discussion with the man—not with lawyers on both sides—on the basis of a report from the doctor who has been treating him at the rehabilitation centre.

It is felt that the reform above suggested should be pressed for with the utmost vigour as a measure of immediate urgency. In its essentials it is a simple scheme. Much of it, if not all, could be put into operation by Orders in Council without Parliamentary sanction. It would have the immediate effect of getting men rapidly back into vital productive work. And, taking the long-term view, it would make the first breach in the monopoly held by a welter of private interests over a great section of our social legislation. It is the first step in the dissecting process which will have to be completed if any proper reform is to be carried out in the future. And it could be effected without the insurance companies fully realising what was going on and adopting the blocking tactics at which they are so efficient.

3—Magistrates.

Whenever two or three are gathered together to discuss reforms in the administration of criminal law, the talk soon turns to criticism of courts of summary jurisdiction and stories discrediting lay magistrates. There are some 940 courts of summary jurisdiction in England and Wales, in which nearly 90 per cent. (a) of all indictable offences (b) are dealt with, and, therefore, an even greater proportion of all criminal charges. These courts cover almost the whole scope of a working man's life, including his family life and sexual life (c). Not only are these courts of enormous social

---

(a) These figures are taken from the Report of the Conference of the Howard League for Penal Reform, on "The Reform of Courts of Summary Jurisdiction," April, 1935.

(b) Indictable offences are, as opposed to "summary" or non-indictable offences, the more serious ones. Most of them are triable, with the accused's consent, at Petty Sessions, if the accused desires to be tried by a jury, or if the magistrates consider the matter too serious to be dealt with by them, they hold a preliminary enquiry to see if there is a prima facie case, and if they find there is, the case is sent to Quarter Sessions or Assizes.

(c) Courts of summary jurisdiction have certain non-criminal jurisdiction, including matrimonial matters, certain landlord and tenant matters, and claims for wages.

importance, therefore, by reason of the amount of work they deal with, and of the fact that it touches so many aspects of life, but they are of very great importance, too, because it is in such a court that the delinquent starts his career. It lies largely with magistrates whether a first offender brought before them remains a first offender, or embarks on a life of crime. It is generally agreed, therefore, by all who have ever considered these matters, that it is of the greatest possible social importance that these courts should be administered with the greatest social consciousness, regard for proper legal procedure, and general propriety.

Of all courts of summary jurisdiction in the country, only a very few are presided over by trained lawyers. At a few of them, namely, in London and some other large towns, stipendiary magistrates sit (alone). A stipendiary magistrate must be a barrister of not less than 15 years' standing, and receives a salary. Otherwise these courts are presided over by a bench of lay magistrates, who have no legal training (unless by chance a lawyer is among them), and who have to rely on the clerk of the court for advice as to matters of law. Lay magistrates receive no salary, and their appointment is usually political. The Vice-President of this Society has said (d) that it is difficult to understand why it should be said to a man, "I will reward you for your devotion to the party by making you a Justice of the Peace," but still more difficult to understand when it is realised that this really means, "Because you have been a zealous partisan, I will now lay upon you the duty of deciding which of your fellow-citizens shall be shut up in a very small room for a long time."

The desirability of legal training for those who are to occupy a judicial position in these courts does not lie so much in the obvious need for them to know some law, as in the absolute necessity, if justice is to be done, of their having a judicial attitude of mind—of being taught that they must not pay attention to inadmissible evidence, and that the basic rule of criminal law that every man is to be presumed to be innocent until proved guilty, means that it is not to be assumed that an accused person must have done something wrong to be in court at all. These desiderata are not always attained with stipendiary magistrates by any means, but it is generally acknowledged that on the whole, and particularly in London, the working of the courts in which stipendiaries sit is good (e). It is therefore commonly suggested by legal practitioners that it would be an improvement to abolish the lay magistracy altogether. Such abolition would, no doubt, reduce the number of occasions on which there are almost unbelievable exhibitions of judicial misconduct in courts of summary jurisdiction, and grotesque miscarriages of justice, but it is a course which we do not recommend, partly for the reasons set out in the Introduction to this Report, but principally because we take the view that with our suggestions which follow being put into effect, a court of lay magistrates could become a thoroughly satisfactory tribunal for the class of work it has to deal with, with far greater democratic safeguards for the public than can be had before a single professional magistrate.

The considerations which we have set out above are mostly the kind of considerations which occur to lawyers. But there is a feature of the whole system of these courts and their administration which often escapes the notice of lawyers, but which is of great social significance: namely, that these courts are regarded with hatred and terror by the ordinary working man. This complicates the problem, because this terror and hatred are

(d) At a Conference of the Howard League for Penal Reform at the Middle Temple Hall on the 3rd April, 1935.

(e) Political cases in London Police Courts have, in the last few years, on many occasions provided an exception to this observation, e.g., in the days of the Fascist invasion of the East End of London, and of the Spanish War.

founded not in any feeling that magistrates do not know the law properly, but in a feeling (usually a correct one) that a working man who gets into court is right in the grip of the oppressive machinery of the ruling class, where not only is there every likelihood that the bench will have little desire, and probably no ability, to understand a worker's position and outlook, but the worker himself will be so embarrassed at his strange surroundings, with all their formalities, and the presence of police, that he is unlikely to be able to present his case properly, and may even be entirely unable to express himself at all. This unsatisfactory condition is often found to be less conspicuous when there are working-class magistrates on the bench, and there is no doubt that some magistrates feel their responsibilities so deeply, that they succeed to a great extent in putting a simple and uneducated person who is before them quite at his ease. On the other hand, it is to be observed that some Labour magistrates fall a prey to that unfortunate but not uncommon human failing which induces those who are invested with a little authority to show the world that they have got authority, and are overcome with the grandeur of rubbing shoulders with members of the ruling class on the bench, so forgetting that they have themselves sprung from the working class, and are in their position because at some time their fellow-workers trusted them and relied on them.

It is unfortunate, too, to observe that some of the most fantastic performances of judicial misconduct are performed by magistrates who have a very deep and honest sense of their public duty, and who would be the last people in the world knowingly to do anything unjust or improper. Many magistrates are people with a highly developed social conscience who have taken on their job, unpaid, not for any social distinction or grandeur which may be thought by some to invest the job, but because they genuinely desire to perform a valuable social function. We take the view that with training of the kind hereinafter suggested, a bench of such persons would form something approaching the ideal court of summary jurisdiction ; and the fact of there being a number of magistrates on the bench provides a safeguard against caprice or political prejudice which is absent in a court presided over by a single stipendiary magistrate.

We must not omit to mention the unsatisfactory conditions resulting from persons who are physically unfit to perform their duties sitting on the bench. Those who practise in country petty sessional courts have often had the experience of appearing before a bench of magistrates, of whom one or even more is incapable of performing his judicial functions properly or at all on account of extreme age and/or deafness.

Finally, the position and functions of the clerk of the court must be considered. Except in about 50 of all the courts of summary jurisdiction in England and Wales, the clerk is a part-time official who is in private practice as a solicitor, or has some other way of making a living. The fact that the Magistrates' Clerk is in private practice means that both his magistrates and the people who come before the court are actually or potentially his clients. This does not mean that clerks will favour their clients—few, if any, of them are not strictly upright men—but it does mean that the public will have the impression that impropriety is to be expected. It is not unheard of that where an accused person has been a client of the Magistrates' Clerk, he has expected preferential treatment. That such thoughts should occur to the public, with however little foundation in fact, is alone enough basis for saying that the position is unsatisfactory.

As observed above, the magistrates generally know no law, and their clerk therefore has to advise them. This necessary practice often degenerates into the clerk making the magistrates' decision for them, not only on questions of law, but on questions of fact also. A clerk who does this is commonly

found to be a thoroughly objectionable and truculent jack-in-office, and the position and functions of these clerks should, therefore, be clarified so as to prevent such persons doing harm.

It has sometimes been suggested that Magistrates' Clerks should not merely advise, but rule, in matters of law. In view of our recommendation as to training for magistrates, and in view of the fact that the High Court has power to make magistrates pay costs of misconducted proceedings and of appeals out of their own pockets, we do not share this view. Although very many Magistrates' Clerks are men on whom their magistrates may and do rely for advice not only as to law, but also as to decisions of fact and sentences with justified confidence—men with judicial mentality and admirable human qualities—we feel that as a general rule it is undesirable, and not in accordance with democratic principle, to put the clerk in a position in which the magistrates are to all intents and purposes encouraged to put themselves under his influence.

Our recommendations, therefore, are as follows :—

1. That every magistrate shall retire upon reaching the age of 65.
2. That no person shall sit (f) as a magistrate who has not passed an examination in Criminal Law and Procedure set by the Bar Council (g) and the Home Office jointly, and an examination in the penal system, probation work and sociology set by the Home Office (h). Further, every magistrate should attend at least two Courts of Quarter Sessions or Assize each year, as a spectator, unless he be on the bench at Quarter Sessions, in which case he should attend Assizes at least twice a year.
3. Magistrates to have whole-time paid clerks, who shall advise them, but not rule, in matters of law, and who shall not partake in the magistrates' decisions.

4—Criminal Law and Procedure.

We have no suggestions as to presently possible reforms in substantive criminal law, and only two in matters of procedure. We consider that the criminal law of this country, though, of course, not perfect, is very much better than might be expected in our present economic and political framework of society. The injustices which occur from time to time are due in only a negligible degree to matters of substantive law, and almost entirely due to faults in administration with their roots in the class structure of society. Even so, many of our rules and customs of and concerning criminal procedure provide certain safeguards against injustice arising from class and political prejudice. Thus, for example, a jury is a considerable safeguard against the effect of a capricious bench, and the strictly-enforced rule that no evidence of bad character or previous convictions (j) may be given during the trial of an accused person is an important safeguard for accused persons of all types, and particularly in political cases, against prejudicial attacks by the police.

(f) There are many magisterial functions other than sitting in Court, such as witnessing statutory declarations, and signing summonses and warrants.
(g) The governing body of the Bar.
(h) It may be noted here that Probation Officers undergo a course of training in social matters ; we have in mind a somewhat similar course for magistrates.
(j) Unless the accused puts in evidence of good character, and in certain other entirely technical circumstances, no evidence at all of this sort is allowed until the accused has been found, or has pleaded, guilty. Then evidence of character is given to assist the Court in deciding on the sentence.

Criticism is commonly levied against the Poor Prisoners' Defence Act, 1930, on the ground that many poor prisoners who ought to be provided with free defence are not so provided. This kind of criticism appears to us to be more properly directed against the manner in which the provisions of the Act are administered than against the Act itself. The solution to this difficulty, as to most of the other aspects of our system of criminal justice which call for criticism, is a social and political one, not legal. When the working class of this country eventually comes to the conclusion that it can manage its own affairs without the assistance of landlords and factory-owners, difficulties of the kind mentioned may be expected automatically to disappear with very little change in substantive law—indeed, in so far as rules of evidence and procedure in criminal cases are strict and calculated to safeguard the accused, it will be desirable to preserve rather than alter or relax them until the new class of persons who will be found in judicial positions are socially and politically educated to an extent which makes relaxation safe (k).

RECOMMENDATIONS

1. The most substantial recommendation we have to put forward concerns depositions (l). Anyone who has ever been in a court when depositions are being taken will have been struck by the appalling amount of time taken by this tedious process. In wartime this waste of time is particularly intolerable, involving, as it does, the hanging about of numerous people who could be more usefully employed elsewhere.

The objection to the taking of depositions in shorthand is that the reading over and signing by a witness for the prosecution of his evidence, is frequently of great assistance to the defence at the trial. A very small alteration in evidence is often of very great importance, and juries very properly regard with suspicion any alteration when the present deposition practice has been complied with. With the proposed scheme of a shorthand note, either all the persons concerned would have to attend at a later date for the witnesses to authenticate the transcript of the evidence, or any alterations in such evidence at the trial would be accounted for by the mistake of the shorthand writer.

We suggest that in every case which is going for trial before a jury in a higher court, either of necessity or in the exercise of the magistrate's discretion, the accused, at the outset, should be furnished with a copy of the charges and with signed statements of the evidence of the witnesses for the prosecution. The court would then (i) dclete statements in conflict with the rules of evidence and (ii) satisfy itself that the statements disclosed a *prima facie* case. The accused would have the right to cross-examine the witnesses upon their statements, to argue that no *prima facie* case had in fact been disclosed, and to give evidence or to call witnesses as at present provided for. Such statements as amended by the court or amplified by cross-examination together with any evidence by the accused or his witnesses, would constitute the depositions in the event of the case being committed for trial. In the

---

(k) In making these observations we have in mind circumstances of a normal peaceful nature. In circumstances of extreme danger, e.g., if a new workers' government were being attacked by counter-revolutionary forces, expediency would often require the relaxation of these safeguards and other democratic rights.

(l) Longhand notes of the evidence of witnesses taken at the preliminary hearing of a charge of an indictable offence before magistrates. The note is read over to and signed by the witness.

vast majority of cases the proceedings in open court would then become a short and formal matter (i.e., the calling upon the accused, the informing him of his rights, and the actual committal). The rights of the accused would be as full, if not fuller than at present, the prosecution would be in no way prejudiced since they have now ultimately either in the form of depositions, or under the notice of additional evidence, to furnish the defence with the signed statements of their witnesses to the extent that they propose to rely upon them.

In the same way, in cases where there is a right to trial by jury, but where the prosecution and the court are prepared to have the case tried summarily, the accused should be furnished with the same statements before being called upon to elect. This would be a great advance. It is absurd that when a case is tried upon indictment, the defence should be entitled to know the whole case that they have to meet, and that they should have no such right when the same case is tried summarily.

Finally, in cases where there is no right to trial by jury, the accused should be entitled, if he desires to contest the case, to have the same statements. There should be a corresponding right in the court to order the accused to pay the costs of such statements where he obviously had and knew that he had no defence.

2. Poor Prisoners' Defence Act.—We recommend that the Home Office take steps to impress on magistrates the provisions of this Act, and instruct them that whether it appears desirable to grant legal aid or not, they should in simple language enquire of accused persons whether they desire to apply for legal aid.

3. Bail.—As a rule of law it may be said that bail should be granted to a person who is remanded, or who is awaiting trial, unless it appears that the accused is not likely to attend his trial. This is commonly ignored by magistrates, who remand persons in custody sometimes out of spite, as it seems, and often as a supplementary punishment, even in cases not punishable by imprisonment. We therefore recommend that no person be allowed to be remanded in custody, unless the offence with which he is charged is punishable by imprisonment.

5—Divorce.

Proposals for the reform of substantive divorce law do not fulfill the conditions necessary for reforms which can be regarded as reasonable or proper at the present time (referred to in the introduction). But we are particularly impressed by the inordinate expense, delay, complexity and waste of time involved in divorce proceedings, and we make the following recommendations :—

1. That County Courts be given jurisdiction to try all undefended divorce causes.

2. That in all causes in which a decree nisi is granted, the decree shall be made absolute 30 days thereafter, unless the King's Proctor intervenes.

3. That judges of assize and district registrars should exercise the same jurisdiction as judges of the divorce division and the divorce registrars. If necessary, the divorce judges could go circuit. At present only undefended causes in which the discretion of the court is not asked, and poor persons' causes can be heard on circuit. The costs of a defended case in London to provincial couples of moderate means is prohibitive. Further, district

registrars have a very limited jurisdiction in interlocutory proceedings, which means that even if a cause is destined to be heard on circuit, interlocutory proceedings in it commonly have to be removed to London, which is anomalous.

6—Costs of Appeals.

It is anomalous that a party should have to pay for a successful appeal, and we recommend that the State should pay for the mistakes of inferior courts in both civil and criminal proceedings by paying the costs of successful appeals from them.

The State should also pay the costs of unsuccessful appeals where the trial judge certifies that it is a proper case for appeal, or where leave to appeal is granted.

7—Miscellaneous Reforms.

It would be easy to compile a very long list of miscellaneous law reforms which would be generally regarded as desirable. We confine ourselves, however, to the following, as being practicable suggestions at the present time :—

1. Abolition of the Rule of Common Employment.—By this rule, which is a rule of common law, a workman who is injured by the negligence of a fellow-workman employed by the same employer, cannot recover damages for negligence against his employer (who is normally, of course, liable for injuries caused by the negligence of his servants). The reason for this extraordinary and unjust doctrine is that it is held in law that in the contract of employment between the employer and the workman there is an implied term that the worker takes the risk of being injured by the negligence of his workmates. The rule has been much reduced in its scope by recent decisions (a), and it is generally regarded with disfavour as being inequitable and unjustifiable, and the present position is, briefly, that for the employer to set up this defence successfully, he must show that the man whose negligence caused the plaintiff's injury was not merely in common employment with the plaintiff, but employed on the same kind of work, or in such a way that the plaintiff would normally be exposed to the risk of suffering from his negligent acts.

2. Application of the Admiralty rule of division of loss to cases of motor-car accidents and the like, and the use of Preliminary Acts in such cases.

By section 1 (1) of the Maritime Conventions Act, 1911, parties pay damages in proportion to their degree of blame in a collision at sea. Thus, a party to a collision who has suffered damage to his ship amounting, say, to £1,000, and who is held to be free from blame, will recover his whole £1,000. If he is held to be one-quarter to blame, and the other party three-quarters to blame, he will recover £750.

(a) See, for example, Radcliffe v. Ribble Motor Services, (1939) A.C. 215 ; 55 Times Law Reports, 459 (House of Lords) ; Metcalfe v. London Passenger Transport Board, 55 Times Law Reports, 700 (Court of Appeal).

In collisions on land, however, a plaintiff who is guilty of any negligence contributing to the accident fails entirely in his claim, which frequently results in injustice.

Preliminary Acts are a kind of pleading (b), in a set form, in which each party to a collision case has to set out material particulars, such as the place of the collision, the course of his vessel, her speed, the position of the other vessel when first seen, signals exchanged, manœuvres, the wind, weather and state of the tide, and so on, before he knows what story the other party is going to tell. The story told in the Preliminary Act must almost invariably be strictly adhered to in the subsequent proceedings, and it is considered that this system does much to prevent false stories being concocted to meet an adversary's case. We consider that it would be advantageous in the same way to apply this method to cases concerning road accidents.

(b) A pleading is a written statement of a party's case, delivered to the other party after the issue of the writ and before the trial, so that the latter may know what case he has to meet. Pleadings generally consist of a Statement of Claim and a Defence, and sometimes a Reply.

HALDANE SOCIETY

President :
The Rt. Hon. SIR STAFFORD CRIPPS, K.C., M.P.
Vice-President :
D. N. PRITT, K.C., M.P.

Chairman :
JOHN PLATTS-MILLS.
Hon. Secretary :
STEPHEN MURRAY.
4, PAPER BUILDINGS,
TEMPLE, E.C.4

The Haldane Society is the organisation of socialist lawyers, and is affiliated to the Labour Party. It exists for the purpose of promoting the principles of socialism in the legal world, and for assisting the Labour Movement in legal matters.

ACTIVITIES of the Society and its members :

1. The Society holds meetings for lectures and for discussion among members, and sometimes holds open meetings, to which non-members are invited.

2. The Society from time to time sets up sub-committees for investigating and reporting on special matters of interest to Socialist lawyers. In the past, the Society has had reports from sub-committees on, *inter alia*, such subjects as Parliamentary Reform, Colonial Constitutions, Workmen's Compensation and Factory Acts.

3. The Society has on many occasions assisted the Labour Party by drafting Bills and Amendments. For example, the Society prepared the first draft of the Hire Purchase Bill, and several of the subsequent amendments thereto.

4. The Society and members thereof have frequently assisted the Labour Movement generally by giving legal advice and other assistance (such as getting members to act and appear in Court) to Trade Unions, Tenants' Associations and other working-class organisations. Members of the Society drafted amendments to the last Landlord and Tenant Bill, which were adopted almost *in toto* by Parliament. Similar assistance is regularly given to the National Council for Civil Liberties.

5. Before the war members went under the Society's auspices on numerous occasions to Fascist countries, including Germany, Finland, Hungary and Roumania, to watch trials in which working-class leaders or other democratic persons were involved, and to lodge protests at the conduct of the Fascist authorities in connection with such trials, and with the imprisonment of various persons without trial. Many of these journeys of protest and investigation had highly satisfactory results. Since the war, members went on two occasions to France in connection with the trial of the French Deputies.

6. The Society has on many occasions both before and since the war made deputations to the leaders of the Parliamentary Labour Party and other Parliamentary personages in connection with matters of legal importance. In particular, since the commencement of the war, the Society has played a part in securing amendments to some of the Defence Regulations, and in the early part of 1942 it issued a memorandum on the application of Regulation 18B, in which, while recognising the necessity of such a Regulation in time of war, it recommended certain checks and safeguards in the application thereof (at the time of going to press it is too early to make any statements as to the result of the issue of this Memorandum, or on the steps being taken to follow it up).

7. The Society from time to time publishes matter of interest to its members and others. Its publications include pamphlets on the Jury System, a Ministry of Justice, and the Soviet Bar.* There are now in the

* All out of print. A new edition of the last will be published soon.

press two books written by members under the Society's auspices, on Army and Air Force law* respectively.

The Society has to-day a useful function to fulfil, perhaps in some ways a more important one than before, in that in these days every auxiliary to the engine of democracy should be functioning; and it wants to extend its activities and play the fullest possible part in the defeat of Fascism and in building up the post-war world.

Recent and present events have aroused a great desire among many people to know more of the principles and practice of Socialism. Some have a conviction that great changes will be necessary in the post-war world, and a desire to contribute to such changes. To members of the legal professions whose thoughts are turning in this direction, we say that there is advantage in associating with others with similar hopes and ideals, and that there is more power in an organisation which gives opportunities for discussion and concerted action than there is in the isolated talk and actions of many separate individuals.

Membership is open to persons of the classes set out in the form of application for membership hereinafter set out. Student Members and Associate Members are entitled to all the rights of full members such as attending meetings, receiving publications, and so on, except voting on resolutions.

June, 1942.

---

* "The Soldier's Guide" and "The Airman's Guide," published by Frederick Muller, Ltd., 1/6.

APPLICATION FORM.

If you desire to join the Haldane Society, please fill this form in appropriately, striking out the words which do not apply, and send the completed form to the Honorary Secretary (Stephen Murray, 4 Paper Buildings, Temple, London, E.C.4).

The annual subscription is 10s. 6d. for Members and Associate Members in the London District, and 5s. for Student Members and for Members and Associate Members who reside outside the London District.

I am a barrister, solicitor, teacher of law, bar student, articled clerk, and am a member of the Labour Party or an organisation affiliated to the Labour Party, namely .....
and am not a member of any organisation deemed ineligible for affiliation to the Labour Party, and I hereby apply for membership of the Haldane Society.

Name .....

Address .....

I am a barrister, solicitor, teacher of law, bar student, articled clerk, an alien who formerly practised as a lawyer in a country now subject to Fascist rule and now resides in the United Kingdom, and am in sympathy with the Haldane Society and its objects, and I hereby apply for Associate Membership of the Haldane Society.

Name .....

Address .....

Printed by
St. Clements Press (1940) Ltd.,
Portugal St., Kingsway,
London, W.C.2.