

# LAW JOURNAL

VOL. I.

NO.1

## EDITORIAL

### A RADICAL CHANGE

The present Academical Course of law has had a chequered career. It has had in particular a long innings of upheaval and innovation, admittedly justified by attending circumstances. The urgent need for a sweeping and transformation in university life, University culture, and, above all, University outlook brooked no question. The greatest and most difficult transition of which the history of the University bears record had to be effected. In addition the conservative attitude and the deep lethargy of proportion of the undergraduate community had to be overcome.

Progress towards this goal has been, it is true, jerky and halting at times; but a certain amount of progress has been made and we are now definitely paddling in smoother waters. The undergraduates are becoming more and more liberal in their views and a spirit of rebirth is pervading the walls of the Alma Mater. This is not only evidenced by the frequent excursions in realms of dancing and amateur dramatics, but even more clearly by a rapid increase in the number of undergraduate societies.

### THE LAW SOCIETY

A new addition to this host of student bodies is the University Students' law Society. The declared aims of the Society are :

- (i) To promote the study of law in general and of Maltese Law in particular;
- (ii) To facilitate intercourse between the Society and similar bodies;
- (iii) To protect and advance the interest of its members.

In furtherance of this policy the committee has decided to undertake the publication of this periodical. And here the thanks of the committee go to Government and to the rector for unstinting support.

It is a sign which augurs well for the future that the Society started off with a flood of activities – monthly lectures, reading of papers, debates, and moots.

*Lectures.* The lecture-series was initiated by a lecture on the "Re-establishment of self-government" given by the chief Justice H. H. Sir George Borg, Kt., M.B.E., LL.D., which we are printing in this issue of the journal. Other lectures, also in this issue, are "The importance of the legal profession", by the Hon, Mr. Justice E. Ganado. LL.D., and "The duties of lawyers" by the Hon, Mr. Justice W. Harding, B.Litt., LL.D.

*Debates.* The most interesting subject that came up for discussion was contained in the motion : "that entail should be abolished" which was defeated by one vote.

*Papers.* These covered a wide variety of topics ranging over all branches of law. One or two appear in this number.

*Moots.* Moots or debates on supposed cases in a mock court, familiar to students preparing themselves for the legal profession in the Inns of Court in London, are something new to our

University. Two cases have so far been argued, Prof. V. Caruana B.Litt., LL.D., kindly consenting to hear the first case and Sir Philip Pullicino, Kt., B.Litt., LL.D., the second.

A noticeable feature of these moots has been the thorough manner in which the disputants in either side analyzed the cases, a fact borne out particularly by the lavishness of pertinent quotations from prominent legal writers bearing in the disputed points. The *judges*, as could be expected, disentangled the relevant trades and drew the inevitable conclusions with all the sureness that marks out learned and experienced lawyers.

## LAW IN LIFE

After reading the foregoing paragraphs the man strap-hanging on the 7:30 'bus will undoubtedly feel himself entitled to an apology for the publication of those Journal. And small wonder, for to him the mention of the law conjures up a blurred picture of priggish Judges, sleek-tongued lawyers whose tactics are worthy of Fabius himself, wily experts ready to swear to any-thing, pertinacious wranglers juggling with Latin tags, and lastly, juries nonchalantly chewing gum. A man is accordingly considered lucky if he can escape the meshed of the law.

These conceptions or misconceptions of the law are partly due to the influence of indignant litigants (usually very communicative) still under the smart of disappointment, but chiefly to the present state (some people prefer the word 'system') of education –

A word capable of extensive interpretation. The remedy that suggests itself here is the inclusion in the curriculum of our secondary schools of some kind of instruction in the general principle of law under which he lives, for law is the keystone of our social existence and the true and constant basis upon which the superstructure of our civilization rests.

Law is really a very human affair; it covers the whole complex tissue of daily life. It deals with the everyday concerns and relationships of ordinary people, their struggles and their emotions, their ambitions, their jealousies and their rivalries. It is intimately bound up with each one of us from the moment of birth to the moment of death.

At birth we are recognized as *personae* and as such the subjects of rights and duties: the birth must be registered; as infants we are subject to paternal authority or to tutorship till we reach our majority; if we marry the law fixes the formalities and procedure; if we have a motor-car it must be registered and a license obtained; when we drive on the roads we must obey police regulations; if we die through a car-crash or in any other way the law requires that our death shall be registered; and even after death the law is still there, for if we have made a will the law provides that our property shall be distributed according to that will, and if we have made no will the law is ready with the rules of succession *ab intestato*.

These and a milliard other cases. We have become so accustomed to this ubiquity of law and, in most of our daily contacts, it works out so smoothly that we take it for granted. Thus it will be seen that law is but a self-contained system of rules and concepts, but a function of life whereby all incidents of the citizen's relations with his fellow-beings are regulated.

## TRIAL BY JURY

A liberal and open administration of justice is the inner core of a freedom-loving community and the restitution of Trial by Jury has no doubt been a judicious measure. But as the correspondence columns of the local Press have for months clamoured for its restitution and for months have pictured it as an unmixed blessing it is easy for many people to pass over

the weaknesses and shortcomings of the institution. Most of the correspondents were laymen and it is the habit of laymen to be effusive in one direction and to ignore the opposite viewpoint.

Juries are egregiously vacillating; and there have been glaring instances in which they have acquitted the guilty and with, juries may be inclined (though this fact has been stretched to absurd lengths by the American film industry) to regard with a favourable eye young women whose physical charms are their best counsel for defence. Again, juries may be influenced by class distinctions and political prejudices. Then, finally, there are the experts. Juries look on the expert with high-sounding qualifications as an oracle. In this connection it is harder for a Judge to be led astray; he has often heard experts flatly contradict each other in civil cases.

## **MALTESE LEGAL TERMINOLOGY**

That vexed question – Maltese legal Terminology – has been in the limelight again following the introduction by the Attorney-General of a Bill to amend the Laws of Organisation and Civil Procedure. The purpose of the Bill is to add, to the other qualifications required of lawyers, a certificate to the effect that they have attended a course of lectures on Legal Maltese Terminology and passed the requisite examination. In regard to the present law students the bill limits itself to demanding a certificate to the effect that they have attended lectures on the subject “with diligence and profit” –

A sufficiently vague criterion. Equally vague is the expression “a course of lectures” as the length of time of this course is not specified.

A brisk correspondence ensued in the local newspapers and several students of the Academical Course of Law took the field against what they considered “a sheer waste of time”.

The chief argument of the students was that there was no need to follow any course of lectures in order to learn the terminology of the law since it did not appear that there could be any theories underlying the law’s terminology which required explanation. The students further contended that even if, for the sake of argument, the lectures were to be considered of any utility they would still be confronted by the discrepancy known to exist between the Legal Maltese terminology taught at the University and the Maltese Terminology (still unpublished) drawn up by the Statute law Revision commission—The only *legal* terminology.

We consider it impolite to put down in writing our feelings on the suggestion made by the legal Secretary in the Council of Government that, as the revised edition of the laws would be published in a year’s time, it would leave the present law students ample time to bring their terminology into line with that of the Commission.

## **ITALIAN TEXT-NOTES**

We now come to an enigma. The reference is of course to the hybrid system of law-study. The text of the Notes on Civil and Commercial Notes is in Italian, and there is no English translation of these Italian text-Notes. All colourable explanations have been given for these deficiencies which have succeeded in convincing certain quarters that required no convincing in the first place. Other people may have other ideas but why the text-book on a subject should be in Italian while the lectures and examinations are held in English we do not pretend to understand. The system is a cramp to the minds of law students.

This deplorable state of affairs can easily be rectified. The plan we advocate is this: the appointment of a translator who can give a *good* English rendering of the Italian Notes and then the printing in book-form of the English version. And something of this nature is apparently being contemplated for it has come to our knowledge that a sum of money has already been voted for the appointment of a translator. If this is so, it is a good step forward; the difficult part is the appointment of a translator who has both the *time* and the *ability* of the task.

## THE COMMERCIAL CODE

Laws to-day are by no means the laws of the Medes and the Persians. It is of the essence of law that it should continue to be ever-changing and that it should adapt itself to current ideas and conditions. Every law should indeed be a progressive and adaptable thing to be steadily perfected by constant touch with human experience, human needs, and human research.

It is a refreshing thought that our Commercial Code is being compiled anew. The bulk of our Commercial Law is at present contained in Ordinance XIII of 1857 and Act XXX of 1927. Ordinance XIII of 1857 is in many matters hopelessly inadequate and out of date, while the 1927 Act is only a modicum of the vast subject. The need for a new Commercial Code is therefore prominent.

It is to be hoped that the Commission will adhere to the lucid and concise sentence-structure of Ordinance VII of 1868 and Ordinance I of 1873. Careful consideration should be given to those Articles which purport to embody definitions and to other Articles which at present make neither smooth nor convincing English.

## OUR POLICY

We wish to make it abundantly clear at the very outset that our aim is not political. Nor do we intend to express opinions bearing political meaning. At the same time we cannot be held responsible for what clever people may read (or imagine they read) between the lines. Surely it would be a saner community if people were to confine their attention to the lines, the whole lines, and nothing but the lines. That is a lesson which has been invariably disregarded in the past and which has been invariably disregarded in the past and which it would be the nadir of impetuous folly to disregard in the future.

## OBITUARY—FR. NOLAN

We regret that we have to record the death of the Very Rev. Father L. Nolan, B.A., S.Th.M., O.P., whose name will be remembered by law and students for his orthodox lecture on "International law and war" recently delivered to the Law Society. Father Nolan was a forceful personality. Of venerable appearance which left its print on the minds of those with whom he came in contact, he was a profound scholar, a remarkable disciplinarian, and an inflexible Catholic. He passed full of years and of humor.

## ACKNOWLEDGEMENTS

We wish to acknowledge the receipt of a Memorandum relative to Maltese Legal Translations by the Ghaqda tal- Kittieba tal-Malti.