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EDITORIAL

A NEW EPOCH

"IF it is really the case", writes the Editor of "Britain Today" in the July, 1945 number, "that wars are turning points between epochs, then we are standing on the threshold of a new epoch whose character we have yet to discover or, better still, create," and, indeed our little island forms no exception. Postwar reconstruction plans, proposed changes, indicative of that health spirit which characterizes nations conscious of their role in the great drama of international upheaval—all point out to the fact that we who have lived through some of the worst pages of the last war, feel quite prepared to shoulder the task that we who have lived through some of the worst pages of the last war, feel quite prepared to shoulder the task of participating in the general re-birth and desire for the New. This intellectual epidemic has left no field unexplored.

We are witnessing the formation of a catholic Institute which we are justified in hoping, will be a monument *aere perennius* to its founder—our present Archbishop. We have studied with pleasure the plans put forward by Mr. Austen St. B. Harrison and Mr. R. Pearce S. Hubbord concerning our University and our Law Courts in their report accompanying the Outline Plan for the Region of Valletta and the Three cities. Family life, social welfare, the theatre, agricultural prospects—all matters, ranging from the drafting of a new Constitution down to the development of the local wine-trade—have come within the sway of this social phenomenon. The constant contact with death which we have experienced in the recent past has deeply rooted within us a craving after life—a life in which the old is to be discarded as a failure and the new to be avidly sought after. Even in the masses this craving after the new is clearly evident. Luxuries which most people did without in pre-war days, when they could easily and cheaply be got, are today freely indulged in even by the "poorer" classes. People have realized that life is short and beset by snares on all sides. This pagan philosophy of *carpe diem* is indeed to be deplored but, if mingled with a righteous spirit, some good will come out of it all, when life has gone back to normal and society, intellectual and political revolutions. The Past has shown that an inexplicable sense of sobriety pervades the universe and it is consoling to think that however turbulent the waters of Genesareth there is always a Christ ready to quell them.

THESES FOR DOCTORATES

Nor, amid this curious conglomeration of the serious with the ludicrous, has the academic constitution of our university been spared. Most of our readers will probably have followed the recent correspondence in the local Press concerning the system of granting Degrees.

We do not intend to enter into the merits of this correspondence. Much good will and a sincere desire to benefit our Alma Mater has been shown on all sides. But we cannot help admitting that the introduction of the thesis system in the case of candidates for a doctor's degree would be a very welcome innovation; although it can freely be said that Doctors of our University, in whatever Faculty, can hold their own with honour both here and abroad.

Nor do we hesitate in showing our disagreement with those who would exclude the teaching of Maltese Language and Literature from the University curriculum. A promising group of Maltese writers whose calm "kindly light" is Monsignor Psaila on whom the Degree of Doctor of Literature (*honoris causa*) has lately been conferred, are doing their best to build for Malta a new literary tradition which posterity will consider as one of the most precious gems of our national heritage.

CHANGES IN UNIVERSITY STATUTE

Lately, some changes were made in the University Statute and Regulations and we feel it our duty to disapprove on of these changes for practical, if not for sentimental reasons. In our Editorial of the May, 1945 number, we expressed the opinion that Italian ought to be compulsory for students intending to join the Faculty of Laws for the reason that all Government published jurisprudence so far has been published in Italian (with the exception of the last volume) and also because of the fact that all acts of civil life in Malta were drawn up in Italian down to 1935; and the "Times of Malta" in its issue of the 22nd March, 1945, whilst disagreeing with our views regarding compulsion, declared Italian, if optional, to be a "choice of all those students who desire to become *more proficient lawyers*." (The italics are ours).

In May, 1945 Matriculation candidates could, if they wished choose Italian as one of their Matriculation subjects. The picture has now been changed by reason of an amendment in the University Statute which appeared in the Government Gazette of the 21st August, 1945 (Govt. Notice No. 400) . In virtue of this amendment, the Stature now in force lays down that Latin is compulsory for those intending to join the Faculty of Literature (a Faculty that includes the Preparatory Course of Laws); but, as only *one* subject may be chosen from Group B, Italian which comes under this group has to be left out.

This must be due to an oversight; and it is with the confidence of people who know that right is right and that culture in the liberal sense of the word is to be kept distinct from party politics that we propose a return to the old statute. We cannot believe that it was the will of the people responsible for the amendment in question to make Italian optional for students entering the Faculty of Medicine or Engineering, but barred for students intending to become lawyers and priests!

A CHAIR OF PALEOGRAPHY

In connexion with the importance of Italian, side by side with Latin in the Matriculation for Law students and in the Preparatory Course of Laws, we think it not out of place to remind our readers of the thousands and thousands of unexplored documents, contracts and wills of the times preceding the advent of the Order of St. John. Such documents, written in Latin or

Italian, are to be found not only in Government Archives but also in private family archives as well as in the old registers of certain parishes, as there was a time in the history of our Islands when wills and contracts could be drawn up by priests.

It is to be regretted that such documents which could throw much light on the civil life on the civil life of our ancestors in the periods running from the coming of count Roger, the Norman, to the donation of Malta to the Knights of St. John of Jerusalem by Charles V, should be left a prey to worms and the ravages of Time. A Chair of Paleography in our University, which it will be optional for students to choose, will help much in bringing to light one of the most obscure and least known pages of our history.

CONSTITUTION OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL IN MALTESE CASES

From comments which are of a pure domestic character we now pass over to discuss a point of more general interest — a point concerning appeals from our Law courts to the Judicial Committee of His Majesty's Privy Council.

His Majesty the king, as the "Fons justitiae" by Prerogative can receive petitions of his courts in the Empire, and, these petitions are referred to the Judicial Committee of the Privy Council in order to tender its advice; in fact, technically the Judicial committee is not a Court of Justice, but on the other hand, it has emancipated itself from the position of a mere counselor. In our case, civil causes may go before the King in Council from the Court of Appeal and from the Court of Magistrates for the Islands of Gozo and Comino in secondary instance when the subject matter is over £500 and when the question for adjudication is of great social interest. An appeal from the judgements of the Criminal Court is also possible.

In Maltese cases the Judicial committee has to interpret and apply Maltese Law and the principles sanctioned in Maltese Jurisprudence. There is no doubt that the Judicial Committee is composed of jurists who have risen to great heights in the legal sphere and who have all-through made themselves prominent for their erudition, penetration of mind and their good sense in dealing with questions of fact. Even a glance at the names of the members of the Judicial Committee will unmistakably bring home the most satisfying idea that some of the best legal brains will consider the intricate problems that go up for adjudication. But Maltese Law and case-Law have to be applied and these are by no means similar to English Legislation, for they have had a development that is fundamentally diverse. Would it therefore not be helpful to the eminent English Judges to have the assistance of one or two Maltese jurists, who have likewise attained eminence in the legal field? It is obviously very difficult for a Judge who has been constantly in touch with a particular legal system to detach himself from that system and apply a completely different body of laws according to the interpretation traditionally given to it in local judgments, couched in languages which he probably does not understand. The degree of difficulty will decidedly not remain identical, if two jurist bred-up in the orbit of operation of the special local laws and customs are appointed Privy Councillors and invited to take part when Maltese cases come up for adjudication.

We note that in a speech delivered at the Jubilee Luncheon of the Society of Comparative Legislation, the Right Honourable Lord Macmillan pronounced the following words: "People have sometimes said to me, 'How on earth do you manage in the Judicial Committee of the Privy Council to administer Hindu law one day, Mahommedan Law the next day, then French Law, and then again Roman-Dutch Law, and so on through the whole gamut of Jurisprudence?' At first it seems an impossible task; but after a good many years there this great truth has been borne in upon me—and I have realized it more and more from year to year—that after all, Justice is one; and that the methods, technique and the forms which it assumes in different countries are only its trappings." However, once the Judicial Committee has to decide *according to the law* and is not a mere equitable arbiter, the argument in itself may not entirely surmount all possible objections. Incidentally, at the same Luncheon the Right Honourable viscount Bennett who, it appears, belongs to the Canadian Bar, remarked that it was "a matter of some satisfaction to know that the society of Comparative Legislation exists. We in some of the far-off Dominions think there is good reason for it, at least, when arguing before the Privy Council!"

In reality, as the law now stands, the Crown can appoint one or more Judges of certain specifically named colonies and dominions to be members of the Privy Council. No extension of this Act has been made, as far as is known, in regard to Malta which is consequently in a position inferior to that of other parts of the King's dominions. "Provision is made for two paid members, being Judges or ex-judges of Indian High Courts, or barristers, advocates or vakils of fourteen years' standing, who hold office during good behaviour, retiring at age 72, by the Appellate Jurisdiction Act, 1929" (Ridges-Constitutional Law). All this makes one unable to understand the cause of the differentiation which is being made in relation to Malta, although perhaps it may be explained away by the fact that there has never been any attempt to procure a remedy in this direction. Privy Council has now dawned upon us and we have made the suggestion in all humility and respect, convinced that we have not spoken in vain.

NON-RETRACTIVITY OF THE LAW

We wish to make reference to Govt. Notice No.468 published on the 29th September, 1945 not on its merits, because we have already declared our opinion in the 1st issue of the Law Journal but on account of its having been applied immediately by the University Authorities contrary to all principles of Transitory Law. A law is enacted for the future and not for the past; so that, saving an express contrary provision of law, vested rights arising before the promulgation of the law will not be affected in any way, and in an analogous sense it may be said that the legislator should derogate to this rule only if exceptional circumstances justify such a derogation, on condition that certain inviolable rights of the individual suffer no prejudice.

When students start a university Course, they should continue to be regulated by the Statute obtaining on the beginning of the course; and nothing less than an abuse of sovereign power can subvert the position. A student who undertook to complete a particular Course should not find himself presented with any new condition, for the completion of that Course; in fact, any alteration would be intrinsically unjust, and indeed govt. Notice. No. 468 has not been given retroactive force by an express provision which is a condition *sin qua non*.

In general no distinction between private and public law is to be made apart from the difficulty in ascertaining what is really "public" and what is not. As far as we can see, Government Notice No.468 is not a matter necessitated by public policy or by notions of public order or that it involves questions of procedure. It would be totally unjustifiable to say that a law of a public nature (whatever that may mean) needs no specific provision to give it retroactive force : the very notion makes one shudder, when one thinks that criminal law is a branch of public law.

After all, this is not a matter of pure theorizing on our part. It is upheld by many judgments of our Courts of Justice, among which we find one which interests us closely, dealing as it does with the application of the University Statute. His Majesty's court of Appeal in Flynn vs. Zammit nominee (1926) declared one of the contentions of the defendant inadmissible because he "la disume dalla disposizione dell'art. 40 dello Statuto Universitario vigente, quello cioe, del 1921 mentre tale Statuto non puo evidentemente applicarsi alla fattispecie presente, sorto sotto l'impero dello Statuto universitario del 1915 e da disciplinarsi pertanto coilo disposizioni di tale Statuto". The 1921 Statute had been enacted when the plaintiff had started his Course. The Court thus declared that no modification in the Statute was operative in his regard.

CIVIL LAW NOTES

In the first issue of the *Law Journal* we expressed our desire to have the Civil and Commercial Law Notes translated from Italian into English. We are glad that steps were taken immediately by the Government; in fact a translator was appointed with the charge of preparing a translation of Professor Caruana's Civil Notes. It is rather disappointing that only a very small part of the Notes are now ready. The University Authorities have now been approached with the purpose of hastening the translation and the stenciling of the Notes so that the junior Law Students may have the opportunity of utilizing them. We have the assurance of the Honourable the Rector of our University in the sense that no stone will be left unturned to have the Notes translated, typed out and distributed in good time. We are glad to say that the typing has now been taken in hand; but we take this occasion to point out that the matter should continue to receive serious attention and all measures should be adopted to ascertain that the Notes be given to the present junior Law Students *at least* concurrently with the lectures or, better still, ahead of them.

PROFESSOR E.C. VASSALLO, M.A., LL.D.

Malta has had the misfortune of losing a great luminary of legal science in the person of Professor E.C.Vassallo, whose death occurred on the 20th September, 1945.

Born in October, 1874, he had already attained his degree of Master of Arts at the age of twenty-one after having obtained the first prize in the Matriculation Exam. In 1898 he graduated in Law obtaining the 1st traveling Scholarship, which gave him the opportunity to continue his legal studies in London for one year.

For the community in general professor Vassallo will ever be remembered as a refined gentleman and a barrister of extensive practice in the civil and commercial lines; for the University he will live as a painstaking and efficient Professor of Constitutional and

International Law; for these entrusted with the administration of the Island his name will revoke a personality worthy to be called to the posts of Assistant Crown Advocate, Crown advocate and chief Justice—posts' which his innate modesty prompted him to refuse; for the legal profession, he will always be mourned as an excellent Vice-President, President and lastly Hon. President of the Chamber of Advocates. In fact now, on his final departure, the memory of Professor Vassallo was highly eulogized by His Honour the Chief Justice, sir George Borg, Kt., M.B.E., LL.D., and Professor V. Caruana, B.Litt., LL.D., in speeches delivered at the Law Courts.

An eminent barrister, professor and citizen, Professor Vassallo has vanished from amongst us. The man is gone but his name has become a symbol of all that is best and noblest in our race.

MAJOR ADRIAN DINGLI O.B.E., M.A., LL.D

Since the appearance in our last number of the short biography of His honour Sir Adrian Dingli, C.B., G.C.M.G., LL.D., for which the authors 'Mr. Joseph Ganado, B.A., President of the university Students' Law Society, and Mr. Joseph Micallef were deeply indebted to Sir Adrian's son, Major Adrian Dingli for the biographical Notes and comments tendered, we have been very sad to hear the news of the death of the latter.

Born to Sir Adrian from his second wife, Amy Mildred Mary, daughter of W.H. Charlton of Hesleyside, Northumberland, he took his M.A. degree in Malta a few months before his father's death and then proceeded to Italy where he succeeded in obtaining the degree of Doctor of Laws, a degree followed after the lapse of about three years by the LL.D. of our University.

In England, after the necessary preparation he was called to the Bar, and as a lawyer he excelled in Private International Law, especially in its relation to the status of Italian subjects, their property, family law and laws of succession, in such a way in the British Army he took part in the fighting in France. In him the lawyer, the citizen, the man were all the direct outcome of a person whose leading light was the principle that "it is not the purely material things that matter most in life but it is the peace that comes from the consciousness of having striven to the best of our natural abilities after knowledge", as he himself wrote to Mr. Ganado.

His greatest ideal in life, as he states in the above-quoted letter, was to follow the path traced by his father. "on the other hand," he continues, "fortune and inclination have cast me into the maelstrom of a wider and more modern world in which judgments are harsh and the waters are troubled. Yet values are the same and eternal : 'plus ca change et plus c'est la meme chose'; and, in an analogous sense remember that 'tutto il mondo e paese' and that intellectual citizenship of the world is a high achievement".

As a son of our Alma Mater, a true Maltese and a member of the Empire he is at the same time, in the words of the late Lord Strickland, "a representative of all that is best in England."

To his glorious name, the honour of a grateful nation. To his soul, the peace which his integrity so well deserves. In our hearts he will be entombed with all that veneration due to the worthy son of Sir Adrian Dingli, the father of our present laws the link between the past and the present.