LAW JOURNAL

VOL. I. NO. 6

EDITORIAL

IN taking over the management of this periodical we sincerely trust, indeed, we are certain, that the promise of our predecessors to keep in touch with the Law Society will be maintained. At the same time, we wish the new Doctors of Laws every success in the noble career chosen by them. It is true that every beginning is difficult but we are sure that the several Court appointments distributed among the new lawyers will help them to shake off that feeling of doubt and uncertainty which marks every beginning.

PREMISES OF LAW COURTS

After a series of adventurous peregrinations in consequence of enemy bombing the Superior Courts are at present housed in part of the premises of the Auberge d'Italie and the Inferior Courts are occupying the remnants of the old site of the Courts of Law — the Auberge d'Auvergne. It seems, however, that these peregrinations have not came to an end for, if the project of the Town Planning Experts be implemented, both the Superior and the Inferior Law Courts will be moved at a later date to a new and appropriate building outside Kingsgate. Everything, however, is still unsettled and in abeyance, and it seems pertinent to ask whether it would not be more expedient and expeditious to take over the whole of the Auberge d'Italie, which at present is undergoing the repairs, and house in it also the Inferior Law Courts as well as all those Government Departments which are in some way or other connected with the Law Courts, such as the Public Registry, the Notarial Archives, etc. It should not be difficult for Government to find suitable premises far the Museum rather than continue the present medley of Court-cum-Museum arrangement. The carrying out of our suggestion would not only be more convenient to the legal profession and to the public alike, who are at present forced to travel from one place to another like the eternal wandering Jew, but would immediately pave the way to a gradual improvement of the decorum of the Temple of Themis.

It is as well to remember that the administration of justice continued uninterruptedly throughout the war in spite of the continuous bombing—sittings being even held at times in shelters—and it would therefore be legitimate to expect that the question of proper and decorous premises for the Superior and Inferior Courts alike be definitely settled. Otherwise, matters will remain in a state of flux which is tantamount to saying that the accommodation will remain makeshift and unsatisfactory.

SEPARATION OF INDICTMENT

In terms of S. 588 (Cap. 12), the Court may, upon the demand of the Attorney General, order a separate trial for each accused, when two or more are joined in the same indictment and it is not expedient that the causes of all the accused be tried together. This power, as the law

now stands, may be exercised by the Court only when and if a demand to that effect is made by the Attorney General. The Court cannot act an its own initiative. It would appear that this provision makes the separation of the indictment depend excessively on the discretion of the Attorney General and it would seem to be more in conformity with the liberal spirit pervading our Criminal Code if the provision in question were to be recast in such a way as to extend to the Defence the right to make a similar demand and to authorise the Court to act *motu proprio.*

REPETITION OF OATH

Section 576(3) (Cap. 15) lays down that "witnesses shall be sworn previously to their examination, and the oath shall, unless the law provides otherwise, be administered to them by the Registrar". It is suggested that an amendment be made to this section in the sense that the witness shall repeat the words of the oath after the Registrar in order that he may be impressed with its gravity and thus give his evidence with greater care and veracity. This would bring our law in line with the Oaths Act 1909 (9 Edw. 7, c. 39) which lays down that "the person taking the oath....., shall *say* or *repeat* after the officer administering the oath the words 'I swear by Almighty God that...' followed by the words of the oath prescribed by law".

Lord Macmillan in his book "Law and other Things" considers the oath as one of the traces of "the ancient identity between law and religion" and that the witness who swears to tell the truth, the whole truth and nothing but the truth "invokes one of the most ancient of all religious sanctions". The sanctity of the oath is therefore something to be aimed at and perhaps nothing is more conducive to this end than the amendment in the sense aforesaid which would increase the solemnity of the occasion and inspire the witness with awe.

REORGANISATION OF THE PUBLIC REGISTRY

It has been rather a long time since Notary V. Gatt, LL.D., the then Director of the Public Registry, in a report (1) presented to Government proposed the revision of the law relating to the introduction of the Cadastre or Land Register and the abolition of special hypothecs; but, although Government cannot be blamed for its inaction during the war-torn years, there can no longer be any justification for its inactivity: the commercial activities of the Island have re-acquired momentum and it is undeniable that transactions on immovable property affect a very large proportion of the Maltese people. So that the rearrangement of a defective system of Registration of the rights of security over immovables would no doubt in its turn achieve greater security and stability in building enterprises.

In Malta, when a hypothec is registered, in the index mention is made only of the debtor's name with the result that an investigation into the hypothecs burdening a particular immovable involves a scrutiny in the financial state of the prospective vendor and very often of previous owners as well. In several other countries the law dispenses with such lengthy, laborious and useless investigations by providing that the rights of preference are to be registered with reference to the immovable and not with referenceto the debtor's name; in this manner, the

(1) Only very few copies of this Report are in existence and an official reprint would be of the greatest assistance since the Report is a very elaborate treatise on the need of reform and on the remedies which may be applied.—*Editor.*

rights, burdening a particular immovable may be found out without difficulty.

The adoption of the latter system would not necessarily entail the discontinuation of registration also in accordance with the debtor's name; in fact, the retention and the continuation of the present indices are necessary, once general hypothecs are still recognised by law. Such a system of double registration will only help to facilitate transactions on immovable property and to augment the protection of the interest of third parties.

The present juncture is most opportune. The Land Valuation Office has a complete list of the owners of urban property and the Department of Agriculture has been furnished with all the necessary details anent agricultural land. Transfers of immovable property are being regularly annotated in the Land Valuation Registers and it is strange that no such procedure is Valuation upon the registration of hypothecs or privileges.

We feel that Government should, as early as possible, by specific legislation direct that the Public Registry Office should send in the reference numbers of all hypothecs and privileges to the Land Valuation Office and to the Department of Agriculture far registration. The year 1947 or 1948 will thus mark a new stage in the history of the Public Registry which may lead the way to further reforms.

We do not mean to suggest that the Registers of the Land Valuation Office and Agricultural Department do not require certain modifications before our proposal can be set to work ; but we think that it would be most advantageous were the Registers of these two Government Departments to be used also in this regard, as the heavy expenditure necessary for the formation of completely new books governed by a new system of Registration would be thus partly avoided.

PLEA OF INSANITY

S. 621 (Cap. 12) lays dawn that when the Attorney General does not contest the allegation of the insanity of the accused, then the Court shall proceed as if the truth of the allegation had been proved i.e. it shall order the accused to be kept in the Hospital for Mental Diseases.

It has been held that this section, properly speaking, refers to the case in which the plea of insanity is set up by the *Defence* . However, in Rex vs. Carmelo Farrugia, 21st July 1938, the section aforementioned was also applied in a case in which the issue of insanity was set up by the *Court* and both the Defence and the Prosecution had accepted the findings of the psychiatrists to the effect that accused was insane. But the same section was held to be inapplicable in a case in which the plea of insanity was set up by the *Prosecution,* even though the conclusion of the medical experts, stating the accused to be insane, was acquiesced in by both Prosecution and Defence, and a jury was empanelled to hear the evidence and to try the issue of insanity.

It would appear to be desirable to amend the law in such a way as to make the aforequoted provision applicable in all cases in which the medical experts come to the conclusion that the accused is insane and both the Prosecution and the Defence accept this conclusion, irrespectively of whether the issue of insanity is set up by the Prosecution or the Defence or the Court itself. It should, however, be always left to the discretion of the Court to order that the normal procedure of the empanelling of a jury be followed if it considers that, notwithstanding the acquiescence of both the Prosecution and the Defence,, the matter should be further investigated.

LAW REPORTS

The subject matter of the publication of the Law Reports has been frequently mooted in these columns : so far, unfortunately with little success. A considerable period of time has elapsed and there is hardly any sign of life. Matters seem to be at a complete standstill. This may have been understandable during the emergency period but now that we have practically returned to normalcy, there seems to be no longer any justification for this continued apathy.

The importance of case-law is paramount. In fact, its timely publication enables law students and practitioners alike to keep themselves *au courant* with the most important decisions of our Courts. Legal opinions are consequently given by barristers in accordance with judicial precedents thus avoiding unnecessary or unsuccessful litigation. H.M.'s Judges are also enabled to refer to previous decisions without having to go through entire volumes in the Court Registry. It is therefore highly desirable that all the necessary steps be taken to continue uninterruptedly the rapid publication of the law reports which has so long been unnecessarily delayed.