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EDITORIAL

A WELCOME TO NEW STUDENTS:

THE Law Society welcomes all the new students who intend to take up law as a career and we assure them that "their society" is always ready to help with their difficulties and to encourage that "earnestness and assiduity" which are the basis upon which the legal prestige and the social advancement of a country are based.

Very unfortunately indeed we are still at a loss as to what will finally be endorsed in, the now notorious Chapter XIII of the New Statute. All responsible opinion is agreed that the degree of Bachelor of Laws after a comprehensive and detailed study of the various branches of law extending over a period of five years, not to mention the two-year preparatory course belongs to-day to the realm of absurdities.

The position now stands thus. Ordinance No. XXXII of 1947 was a year later published as the New Statute of the Royal University of Malta. As soon as this Society learned of the new commitments our predecessors resorted to the polite way of sending a letter of protest and justifying their reasons. This was in 1948 other letters, protests and reminders were sent periodically and at last a sub-committee was appointed to study the question. We were never told who were the members of this sub-committee, when and how often did it meet, by whom was it appointed or whether a representative of the students was to be heard. Then some time ago it was rumoured that this sub-committee had reported to the Faculty Board but apparently the Faculty did not agree to the sub-committee's proposals whatever they might have been and a new sub-committee has been newly appointed. Again nothing substantial was communicated to the Law Society or to the students themselves although this matter does concern their interests. In November, 1951, the Society again wrote to the authorities asking for a statement on the position but so far no new developments have materialised.

Some of our fellow-students will look back we know, to th ty years ago, when a similar attempt was made and when t innovation which so relegates the position of the Faculty to su an inferior status was readily altered by the effective but ce surable means then adopted and they would be tempted perha to ask and favour a similar procedure. Our answer to that is the negative. It is true that the procedure so far followed this Society has had no very promising results but then must remember that the recently acquired University Autonor is still passing through one of those early and critical peric aptly likened by St Paul to the pangs of childbirth and cc sequently some patience and goodwill is required for in the ve near future we hope and pray that justice and reason will pr vail.

TWO AMENDMENTS TO THE CRIMINAL CODE:

Two amendments to the Criminal Code, one of which h been gone through because of a recent case have become t topic of conversation and debate. In the first case which dea with Section 661 of the Criminal Code, the Courts of Judic Police found A.B. guilty of having through negligence or no observance of regulations whilst driving a truck, caused t death of a child five years old. The Court sentenced accused imprisonment for six months. A.B. appealed but H.M. Cou in its Appellate Jurisdiction upheld the previous sentence. soon as this sentence was given Dr. A. Magri, Counsel for A pellant, filed a note invoking the provisions of Section 661 the Criminal Code which laid down that ".....every decisi shall be enforcible as soon as delivered provided that the judg ments of the Criminal Court shall be enforced two days aft their delivery....." Crown Counsel held that the interpretati of the clause was to be in the sense that sentences of the Crimin Court should be enforcible *not later than two days* after the delivery or that *they shall have been enforced* two days after d livery. The learned Judge however declared that in section 6(the wording of which was sufficiently clear, only one interpr tation was possible, moreover, there was no doubt that H.M Criminal Court in its Appellate Jurisdiction was a crimin court within the meaning of the section quoted. The Cou therefore upheld Defendant's plea and ordered that the senten just delivered should be enforced after two days. The amen

ment to this section which does away with this forty eight hours grace, the need for which is no longer felt, was introduced in the Legislative Assembly on Thursday, July 5, 1951.

It was pointed out that this provision existed in the draft Code of 1850, it was repeated in the project of 1844 and enshrined in the draft of 1854. But its existence is probably due to the fact that in these projects provision was made for an appeal from sentences given upon indictment to the superior court of penal justice on conditions that it be lodged within two days. Hence the necessity that the execution of such sentences should be stayed for two days in order to enable the person convicted to make such appeal if he desired. So much so that it was likewise provided that, if the person convicted declared, upon delivery of the sentence that he did not intend to appeal, the sentence then was executed on the same day. Had this been otherwise the consequence would be that persons sentenced to punishment restrictive of personal liberty by a sentence which is not subject to appeal would be set free for two days and would begin to undergo the sentence only thereafter. And even in the case of a person sentenced to death, he would be entitled to be at large pending the issue by the Governor of the necessary warrant for the execution of the sentence. When appeals from sentences of the criminal court were dropped, the provision for staying the execution of such sentences became meaningless and in fact since 1854 the principle recognised has always been the general one in the first part of section 661 viz that every decision apart from payment of pecuniary penalties is enforced as soon as delivered.

Another section which needs amendment is section 95 which deals with the punishments awarded for attacking or resisting with violence or active force a person charged with a public duty (96). The text says that "if any of the offenders..... shall use a regular weapon in the act of attacking or resisting, or shall have previously provided himself with such a weapon with the design of aiding such attack or resistance **or** shall be apprehended with the same in his possession, he shall be punished....." We are not here concerned with the anomalous departures from the general rules as to the communicability of material circumstances laid down in section 46 of our Criminal Code. It must be noted that in the case in which the offender is taken with the weapon (as distinct from

the case in which he actually made use thereof) he is an able for the aggravated form of the crime only if it is to appear that he had previously provided himself with weapon with the design of aiding the attack or resistance Art. 179 of the Neapolitan Code, on which the provision o Code was framed it was sufficient if the offender "nel stesso dell'attacco o della resistenza fosse preso con un' propria anche nascosta". It appeared to Jameson that phraseology might lead to injustice. The fact that the offe is taken on the spot and weapons found on him might in instances be altogether accidental, and if no bad use were of the weapons being so accidentally in the possession of offender this would be a circumstance of extenuation rather aggravation. Such a provision is both arbitrary in character contrary to, the just principles of a penal code which ougl reject all arbitrary presumptions of guilt or aggravation an low every circumstance of suspicion to be sifted at the tria cording to the evidence. It ought to appear that the wea were provided beforehand with the intent to make such a tempt or resistance (Report viii).

Jameson therefore recommended that the Article of draft should be amended, which it was. However in the te Section 96 of our Code, there is an *or* instead of an *and* and *or* it must be submitted must have crept in by mistake instea an *and*, if the idea was, as it was, to give effect to Jameson's commendation. That *or* instead of removing the defect anir verted on by Jameson, adds another defect to the section, f makes a separate case of aggravation of the condition whicl suggested should be fulfilled in order that the mere possessio the offender on the spot of the crime should constitute an ag vation. In other words if one were to accept that *or* instead o *and*, not only the mere accidental possession of the weapo the time of the attack or resistance would be an aggravatio spite of the objection pointed out by Jameson—but there w also be the aggravation if the offender had *previously* to the tack or resistance provided himself with the weapon to aid attack or resistance, although he may have subsequently thou better and dispossessed himself of such weapon *before* the ac attack or resistance. *

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* Cfr. "Notes on Criminal Law" by Prof. A. Mamo, pp. 41 to 46.

THE RE-INTRODUCTION OF ITALIAN AS A COMPULSORY SUBJECT IN THE CURRICULUM OF THE PREPARATORY COURSE OF LAWS

This is indeed a crucial subject which demands the most urgent attention. For some we know, it may seem an attempt to revive a question of political character and in the excess of their misdirected zeal, they may smell a rat in our attitude. We do not refer to these people, though it would be interesting to see their, re-action when we refer to the fact, that decisions of our tribunals up to the last two decades or so have been published in Italian, not to mention that for the last five or six centuries all acts of civil life were drawn up in the same language. Surely not even these good people do consider that our notarial Archives and our Case Law are but the trappings of a lawyer's profession; that in other words a lawyer may well proceed without understanding anything about his own country's past legal records.

As the position now stands such exactly is the situation. Students in the 1948-55 Course of Laws were expressly debarred from taking up Italian in their Matriculation by having Latin held at one and the same time as Italian (Latin, quite justly, being compulsory). It is true that the new students who have joined the Course were less harshly dealt with but then Italian being optional there is a minority who have never done the language in their lives and so through sheer force of circumstances they were obliged to take up another modern language; these same people to whom the whole of Maltese Jurisprudence is a closed book are now expected to write a thesis. Here it may not be out of place to quote two short passages from the impartial enquiry of the Royal Commission of 1931. On page 128 we have it laid down that "a reason for maintaining Italian in the secondary schools and the university..... is that it is required in the profession of the Law. With few exceptions, the existing records, deeds, wills etc. from the time Latin gradually merged into Italian are in the latter language. "And on page 15 "Maltese Laws particularly civil and commercial, are based almost entirely on Italian legislative types and Maltese Jurisprudence is wholly founded on Italian or, more widely, Latin precedent". These quotations are as true to-day as they were then.

It is because of these reasons that we whole-heartedly concur with what was stated in an appendix on the LL.B. question

sent by the Students' Representative Council to the Governm
The "Times of Malta" commenting on a similar Editorial
Volume I No. 2 of the Law Journal, while not concurring v
our views that Italian should be compulsory admitted in
issue of the 22nd March, 1945 that it should be the "choic
all those students who desire *to become more proficient lawy*
Conscious of this desire that animates the whole student bo
sentiment of the good will, the liberal education and backgro
of the Senatorial Body and especially of the Faculty Bo
percipient of our obligation to promote and advance
interests of the members of this Society independently of pa
politics and partisanship we make our plea cognizant that wl
it shall be weighed objectively and conscientiously a ratio
and sensible basis will not be found wanting.

CARLYLE ON AN "ADVOCATE'S TRADE"

Strange trade that of advocacy. Your intellect, your highest hea
ly gift, hung up in the shop window like a loaded pistol for sale,
either blow out a pestilent scoundrel's brains, or the scoundrel's salut
sheriff's officer's (in a sense) as you please to choose, for your guir

CUSTOM.

Mudar costumbre a par de muerte. — To change a custom is nex
death. — SP. PROVERE

Consuetudo est secunda Natura.—ST. AUGUSTINE.
Nil consuetudine majus.—OVID.

Man yields to Custom as he bows to fate
In all things ruled—mind, body and estate;
In pain, in sickness, we for cure apply,
To them we know not, and we know not why.

— CRABBE

Security has only one law and that is Custom.—HAMMERTON.

The way of the world is to make laws but to follow Customs.
— MONTAIGNE