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Administration of Justice in Switzerland

(By Dr Alfred Roetheli)

At the meeting of the London Group of the Nouvelle Societe Helvetique on 25th February, Dr A. Roetheli, President of the District Court (Amtsgericht), Olten, gave this survey. We are obliged to Dr. H. Egli for the fairly full summary of the lecture which was given in German.

According to the decentralised Federal Constitution of Switzerland, leaving the Cantons many of the attributes of sovereignty, the administration of justice, too, is divided up between the Federation and the Cantons. Although both the civil and penal legislation have had to be unified on a federal basis in the famous Civil Code (Zivilgesetzbuch) of 1907, the "Obligationenrecht" of 1911 and the Penal Code (Strafgesetzbuch) of 1942, the actual jurisdiction in both fields was left to the Cantons in conformity with the Federal Constitution. In order, however, to assure the proper application of the Federal Codes in the whole of Switzerland, a Federal Court was established at Lausanne, to which complaints and appeals can be made whenever the intentions of the legislature seem to have been misinterpreted by any cantonal or local court. The Federal Court is thus the last Appeal Court both in civil and criminal proceedings, while it is also the sole Court in cases where the Federation is directly concerned. Disputes between the Federation and the Cantons or between Cantons themselves are settled by the Federal Court. Cases of high treason, rebellion or acts of violence directed at federal authorities and crimes in international law are dealt with by the Federal Court as well as certain criminal cases under the National Criminal Code. The Cantons are obliged to grant the Federation and each other assistance in the maintenance of the rules of law.

Apart from the Federal Court the administration of justice in the Cantons is regulated by the Cantons themselves. Thus there are fewer than twenty-five different codes of procedure both for civil and for criminal cases in force in Switzerland. In cases of appeals to the Federal Court the latter has to accept the facts as established by the last cantonal court and can only pass judgment on the application of the federal laws. Only if federal codes of law including the guarantees of the rights of individuals under the Federal Constitution have been disregarded or wrongly interpreted, can the Federal Court dissent from the last cantonal judgment. It declines dealing with questions of cantonal or foreign laws. The Federal Court deals both with appeals in civil cases concerning a value of at least eight thousand francs or concerning divorce, paternity, etc., and with "nullity complaints" where it is alleged that federal law has not been applied. For proceedings by or against the federal or cantonal

governments the Federal Court alone is competent. Crimes against the Federation or international law are dealt with by the Criminal Division of the Federal Court augmented by the inclusion of twelve jurors, the so-called Federal Assizes. As in England, the jury's task is only to answer the question of guilt while the punishment is apportioned by the judges. Where no jurors are required, five judges function as the Federal Criminal Court. Prison sentences are absolved in cantonal prisons at federal expense. Reprieves and amnesties can be granted only by the Federal Parliament in joint session of the two Chambers. This applies also to death sentences by Military Courts.

While the administration of justice in general lies with the Cantons, they have to respect certain constitutional guarantees and principles of justice. Thus debtors can be sued only at the place of their residence. Only their property and income can be attached and no longer their personal freedom. Civil judgments are enforceable throughout the country. The Cantons have to help each other in criminal cases. Religious authorities can only judge in church law cases of their own community with no temporal effect in civil life. No one may be denied his rightful judge, and the establishment of any special courts for the purpose of circumventing normal jurisdiction for political or other reasons is expressly forbidden. The principle of the absolute equality of rights of every Swiss citizen is firmly anchored in the Constitution. This applies in the Cantons as well as the Federation, in public life as well as in the private sphere, although, of course, some differences are made in the legislation having regard to age, sex, mental capacity and other factual inequalities. A mechanically equal treatment of unequals by nature would lead to actual inequalities which in themselves would contradict the principle. Any citizen can appeal to the Federal Court against any disregard of his equal rights by cantonal legislation or jurisdiction. All corporeal punishment is forbidden including the death sentence, except in times of war in cases of high treason.

Within the frame of these legal and juridical principles the Cantons are free to establish and conduct their juridical system, both civil and criminal, as they please and as their Constitutions prescribe. The Cantons make actual use of this freedom to the fullest extent which results in extreme differences of contrast from Canton to Canton. Nevertheless there are some common features to which the Cantons adhere principally on democratic grounds. Thus there are no judges appointed for life time as for example in England. All Swiss judges on whatever level have to be re-appointed from time to time. The members of the highest cantonal courts are as a rule appointed by the Cantonal Parliaments or by the "Landsgemeinden." The members of the lower courts by contrast are

usually elected by popular vote especially in the Cantons of German-speaking Switzerland. The candidates are proposed by the political parties and elected by majorities for certain periods, a system which works perfectly satisfactorily as good judges are invariably re-elected on their proved merits without regard to their party allegiance. There is no constitutional requirement of juridical qualification of judges and in the smaller Cantons practically all judges are lay-judges. This is necessary, mainly for reasons of economy, but it also ensures the advantage of judgments given by men deeply rooted amongst the people with the fullest understanding of their problems. For this reason also lay-men are elected on the lower level of courts in most of the bigger Cantons. Often only the presiding judge and the clerk of the court are trained lawyers while the assistant judges are lay-men. Both local, cantonal and federal courts usually act as full courts in all cases of importance by reason of the values involved or the seriousness of the crime. But the presiding judges of cantonal and local courts often deal individually with less important cases in order to speed up the jurisdiction and to keep the costs of litigation as low as possible. In the bigger Cantons the preliminary proceedings to establish the facts to be judged are the task of special "Untersuchungsrichter" who then pass on the case to the court of judgment. In smaller Cantons the presiding judge fulfils both tasks: the preliminary proceeding and the presiding at the main proceedings. This is often criticised on principle, but has never led to any complaints about the result. The cantonal and local judges are paid modest fees as lay-men who continue in their own profession and act only part-time as judges. The full-time judges are paid salaries with pension rights. They may not follow other occupations nor in most cases accept directorships.

The Federal Court is composed of twenty-six full members and eleven complementary persons who are called in only to replace full members when they cannot attend. The judges are elected by the Federal Assembly for six years and usually re-elected. All three languages as well as all parties in Parliament are traditionally represented in the Federal Court according to some sort of proportional concept. While any Swiss citizen could be elected to the Federal Court, in fact only trained lawyers are chosen for practical reasons. They receive fixed salary, may not exercise another profession nor belong either to Parliament or any Government. They may on no account, of course, accept any presents or honours from foreign countries. The President of the Federal Court is nominated by Parliament for two years. The court functions are usually divided in several chambers in order to cope expeditiously with the work in hand. The Criminal Chamber of three judges is reinforced by twelve jurors in cases of high treason, as mentioned before, when the court is called the Federal Assizes.

No doubt, the practice of jurisdiction in Switzerland with a multiplicity of cantonal differences could usefully be improved in many ways, about which much public discussion is taking place in Parliament, in the press and in legal circles. Thus the possibility of unifying the rules of civil procedure to enable lawyers to appear in all cantonal courts is being studied by the Association of Jurists. For minor traffic offences the introduction of a ticket system is aimed at. The protection of citizens against arbitrary administrative measures is to be extended and the establishment of a Federal Constitutional Court to deal with complaints about federal laws impinging on the constitutional rights of citizens is called for ever more urgently. The modernisation of Assize Courts, the election of women as judges, etc., are among the questions discussed. Improvements, no doubt, will be made and are being made. They are slow in maturing in democratic countries, but they will be lasting improvements, when made, that correspond with the need and the will of the people whom they have to serve.

—The Swiss Observer

NEWS OF THE COLONY ★ ★ ★ ★

Auckland Swiss Club

HALF-MILLION CELEBRATION IN AUCKLAND

Approached by the Public Relation Office to participate in the 500,000 celebration parade, our President, Louis Mueller in turn approached some of our members and surprisingly there was quite a lot of interest to have a float and willing volunteers turned up, when Louis Mueller suggested to have a "Matterhorn and a Chalet." Mrs Mueller made the arrangements with her firm, L. W. Peake Ltd, who kindly let us have one of their large trucks and also offered the premises and material to build the Matterhorn and the little Chalet.

Erich Flueck and W. Hirzel sen. were the experts in creating the Matterhorn, covered in ice and snow, Hans Iten in building the Chalet with the help of Tony Kaeppli, Peter Bucheler and the sons of Willy Hirzel. The signwriting was done by Peter Bucheler.

The float turned out really original, the Chalet decorated with copper kitchenware, the windows with geraniums and checked curtains, alongside the truck were the flags of the 24 Kantons and the Swiss Flag fluttering gaily on the roof. The great fun started when the members arrived for the parade, Mr Gaemperle with the Alphorn and his little son, dressed in the "Unterwaldnertracht," Charly Rickenbacher and Alf Meier in the "Sennetracht," Mrs Sylvia Enzler in the "Appenzellertracht and her 3 little boys in "Hirteblusli," Hans