

9th March 1944.

My dear Lord Wright,

The Lord Chancellor has asked me to tell you that he has been asked to write a note or a short article for the Law Quarterly Review about the late Sir William Holdsworth. He, of course, saw your appreciation which appeared in the "Times" on the 5th January, but he wonders whether you also propose to write something for the L.Q.R., and, if so, whether you would be so kind as to let him see what you propose to send? In any case, he would greatly value anything you care to send to him.

The Editor of the L.Q.R. has asked the Lord Chancellor to send in his contribution not later than March 14th.

Yours sincerely,

The Right Hon.
Lord Wright.

you wish, one of your young men could boil down the
essential facts into four or five sentences, but it
must involve the definite assertion that there is no
ground for suggesting that America was proposing or
was dreaming of using force in the Manchurian affair or
that H.H.G. was in any way backward in co-operation.
On the contrary, we took Stimson's proposal and ourselves
carried it through at Geneva with warm American approval.
If resolutions at Geneva would stop aggression then this
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The Right Hon. Anthony Eden, M.C., M.P.

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The Right Hon. Anthony Eden, M.C., M.P.



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S
Foreign Office,
S.W.1.

25th May, 1944.

My dear John

Many thanks for your letter of May 24th. It was in fact Bowles who interrupted Petherick and the latter dealt with him faithfully. Nobody else referred to the matter at all. In the circumstances I felt it would be a mistake to say anything, as this would merely have drawn attention to the incident, and I hope you agree.

Yours

Anthony Eden

The Right Honourable
Viscount Simon, G.C.S.I.,
G.C.V.O., O.B.E.

ANTHONY EDEN

97

2nd June 1944.

My dear Anthony.

I have read with much interest your Memorandum for the War Cabinet on the Dufour Case. The following observations occur to me about it, and I venture to send them along to you.

1. I entirely agree with the attitude taken up by the Foreign Office. Indeed, I think you might have gone further. General de Gaulle feels that His Majesty's Government should "stop" the case. He might, I think, be told quite bluntly that in this country the Executive has no power to interfere in the least degree with judicial proceedings. Our courts exist for the purpose of trying and deciding cases in which a plaintiff alleges that he has suffered wrong and the judges would not for a moment tolerate any attempt by Ministers to interfere with the ordinary course of justice. Stavisky's escape from being tried could not happen here.

2. Your Paragraph 3 says that the General has been advised that his attitude was the worst he could adopt in the interests of the defendants, ~~since~~ the court was not only likely to find in favour of Dufour, but also take the view that the defendants were treating the court with scant courtesy. I see what is meant, but this language might be misunderstood. The court would certainly not decide in favour of Dufour because of de Gaulle's attitude; it would decide the case on the evidence before it and nothing else. Neither do I think that a good judge would be affected by the view that the court was being treated with scant courtesy. A defendant is perfectly entitled to keep away and leave the plaintiff's evidence unchallenged if he likes.

3. I am interested to know a little more about the procedure. Was a writ served personally on de Gaulle? I

suppose so, for no effort has been made to set it aside on the ground that de Gaulle was in the position of a foreign sovereign or a Head of a State - he is not, I apprehend, in that position at all. A Defence was put in, and, I gather, has not been withdrawn. Or does the statement in Paragraph 2 of your paper mean that it has been withdrawn?

4. The whole thing is most unfortunate and unsavoury. If both sides were represented by good counsel, I should not despair of a settlement being reached, perhaps with the assistance of the judge, at the last moment for the story can only do the General harm.

5. Perhaps you would tell someone in your legal department to let me have an answer to my queries? No doubt you will consider, if your paper comes before the War Cabinet, whether you would like me to attend.

2nd June 1944.

ANTHONY EDEN

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Foreign Office,
S.W.1.

3rd June, 1944.

My dear John

Thank you very much for your letter of the 26th May about the Manchurian point. I am glad that you agree.

If you remember Hitler's reply about Locarno, it must, as you say, have been early in 1935, which makes it all the worse. I am sorry I got the date wrong.'

Yours

Anthony

The Right Honourable
The Viscount Simon, G.C.S.I.,
G.C.V.O., O.B.E.

S

Lord Chancellor

Dufour

I do not understand this case or Mr. Eden's memorandum.

The Diplomatic Privileges (Extension) Act, 1941, by s. 1, provides that where any person is recognised by His Majesty to be a member of any national committee or other foreign authority for the time being established in the United Kingdom and recognised by His Majesty as competent to maintain Armed Forces for service in association with His Majesty's forces, then he is to be treated for the purpose of any enactment, rule of law or custom relating to the immunities and privileges of an envoy of a foreign power accredited to His Majesty, and of the retinue of such an envoy, as if he were such an envoy, and his official staff are to be treated as if they were his retinue.

It therefore would have appeared to me *prima facie* that General de Gaulle and Colonel Passy, and probably the other persons to whom allusion is made in para. 1 of Mr. Eden's minute, (subject as regards those persons to the proviso to s. 1) were entitled to diplomatic privilege.

One would, therefore, have expected that, upon the writ being served at least upon General de Gaulle and Colonel Passy, an application would have been made to the court to strike out the writ.

Para. 2 of Mr. Eden's minute makes it clear that, as a defence was put in, appearance must have been entered; and the entry of appearance amounts to a waiver of the privilege (See *Dickinson v. Del Solar* [1930] 1 K.B. 376).

The plea of diplomatic privilege is, therefore, no longer open to the defendants. It seems very odd that the French National Committee (and for the matter of that the Foreign Office and Home Office who seem to have known

of this matter from the beginning) were not alive to the situation. It seems even odder that Mr. Eden makes no mention of the law on the subject in his memorandum.

5. 6. 44.

Extract from Conclusions of a Meeting of the War Cabinet 71(44) 1st June, 1944.

THE DUFOUR
CASE.

5. The War Cabinet had before them a Memorandum by the Secretary of State for Foreign Affairs (W.P.(44) 286) about the Dufour case. M. Dufour, a French national, had instituted civil proceedings against General de Gaulle, Colonel Passy and six others, alleging inter alia mal-treatment and claiming damages. If the case came on in the courts the allegations would certainly be given considerable prominence. A written defence had been put in in the usual form denying the charges, but no further action had been taken by the defendants. It seemed that General de Gaulle considered it beneath his dignity to defend himself against the charges and felt that it was the responsibility of His Majesty's Government to prevent the case being brought. He adhered to this attitude, notwithstanding the fact that it had been made clear to both sides that His Majesty's Government had neither the power nor the wish to interfere with the course of justice.

In the course of discussion, the position of General de Gaulle as regards diplomatic immunity was mentioned. It was not altogether clear whether this point had been explored. It seemed probable that His Majesty's Government could confer diplomatic immunity on General de Gaulle, and if he was prepared to plead it the result would be that the case would proceed against the subordinates who, presumably, were really responsible for the alleged mal-treatment.

In that event, judgment against the defendants would not involve General de Gaulle, with all the unfortunate consequences which would follow therefrom. It was agreed that this aspect of the matter should be further examined, and that it should also be considered whether any action could properly be taken to postpone the hearing of this case.

The War Cabinet -

Invited the Secretary of State for Foreign Affairs, the Chancellor of the Exchequer, the Attorney General, and a representative of the Home Office to examine the matter further on the lines indicated in discussion.



Foreign Office,
S.W.1.

8th June, 1944.

My dear John

Thank you very much for your letter of the 2nd June about the Dufour case, which unfortunately did not reach me until after the question had been discussed in the Cabinet, and for your kind offer of assistance.

After discussion in the Cabinet it was arranged that Dufour should discontinue his action and the record be withdrawn on terms which are satisfactory to him and the solicitors representing him. It was felt that we could properly take the line that in present circumstances this was not a case which we could allow to come before the courts if any way was open by which a settlement could be reached, and, after some difficulty with both sides, I am glad to say that this way has now been found. I hope that no more will now be heard of this sordid business, which, as you say, could only do damage to General de Gaulle and our relations with the French.

In these circumstances I need only deal very shortly with the questions raised in your letter. I agree with the first and second points you make. As regards the third point, no writ, as I understand, was ever actually served on General de Gaulle personally, but solicitors accepted service on his behalf. In due course a defence was put in taking the more damaging allegations in the statement of claim, and this defence was never withdrawn. The defendants, however, subsequently withdrew their authority from the solicitors instructed on their behalf and the proceedings have been for some time virtually undefended.

Yours ever

The Right Honourable
Viscount Simon,
G.C.S.I., G.C.V.O., O.B.E.

Anthony Eden

Please revise and return to :
PROFESSOR A. L. GOODHART,
University College, Oxford.

You are requested to make as few alterations as possible, the charges for corrections made in proof being now very heavy.

L.Q.R.—William Holdsworth — — — — — I

WILLIAM HOLDSWORTH.

/s
HOLDSWORTH was *laetus sorte sua*. After hard reading and First Classes in the Oxford School of History and Law (though he was beaten by F. E. Smith, the future Lord Chancellor, in competing for the Vinerian Scholarship) he quickly made up his mind to be an academic teacher, and set himself the task, which was his life work, of writing a many-volumed *History of English Law*. For this laborious undertaking, the discharge of which was spread over more than forty years, Holdsworth was admirably equipped with every essential quality—immense industry and persistence of effort, a vast and ever-increasing knowledge of his subject and of everything which went to throw light on it, and a patience in investigation and a balance in judgment which give the reader a satisfying sense of finality and impartiality.

One may attempt a contrast between Holdsworth's *magnum opus* and some other wide surveys of English law which have become classical and to which every serious student must often resort. Pollock and Maitland's *History of English Law in the Early Middle Ages* is a work of unparalleled erudition and original research, as Holdsworth would have been the first to admit. But that issue of the marriage of the most brilliant and scholarly minds that Oxford and Cambridge have ever combined in legal studies only takes us down to the reign of Edward I. It is a study of origins out of which later law and practice have developed. Again, Blackstone's *Commentaries* were not so much a history as a comprehensive statement of the English law of the eighteenth century, written in a noble English style and delivered primarily as an orderly and systematic course of academic instruction. I like to look at the original advertisement of this course of lectures, as it hangs in the Anson Reading Room in All Souls' Library, where it is stated that 'This Course is calculated not only for the Use of such Gentlemen of the University as are more immediately designed for the Profession of the Common Law; but of such others also, as are desirous to be in some Degree acquainted with the Constitution and Polity of their own Country'. But while in the advertisement there is a claim that the lectures on the laws of England will 'deduce their history', and the concluding chapter deals with the rise, progress, and gradual improvement of the laws of England, Blackstone was not primarily concerned with tracing historical development so much as in describing things as they were in his time.

Holdsworth's great work is designed for a different and a wider purpose than either of those just referred to. His scheme was to trace the whole course of the history of our law through the centuries from its origin onwards, and thus to write a book which, literally, could have no end. The span of an individual's life does not permit him to foresee the future development of the institution which he describes. It is affecting to read the concluding words of Holdsworth's 12th volume, itself a completion of the author's study of English law in the eighteenth century, ending with the promise that the development of our law to meet the needs of the predominantly industrial and increasingly democratic society of the nineteenth century will be 'the subject of the next volume of this history'. Yet, the truncated work will live as a noble example of an ideal courageously pursued to the end, and as the sustained effort of a man of profound learning to embody the results of his scholarship for the service of the science which he loved.

Of 'Holdsworth, the man', I may add a few words, for I have shared with him membership of the same college ever since he became All Souls' Reader in English law thirty-four years ago. He was far from being engrossed in his own studies, and indeed I think his most engaging characteristic was his genuine interest in what other people were doing and in what was going on in the world outside the university. It was the same generous quality which made him take so intense and practical an interest in the athletics of St. John's College, where he was first elected a Fellow. Just three years ago there fell upon him and his wife a most grievous blow of fate, when their only son—who had rowed three times for Oxford against Cambridge and had gladdened his father's heart by winning the Stowell Civil Law Fellowship at University College, was killed when on active service flying with the R.A.F. Those who knew Holdsworth will not forget the dignity with which he bore his loss. He went on with the work of his life, though threatened with the malady which ultimately killed him. It was a just recognition of his work and fame that before the end His Majesty made him a member of the Order of Merit.

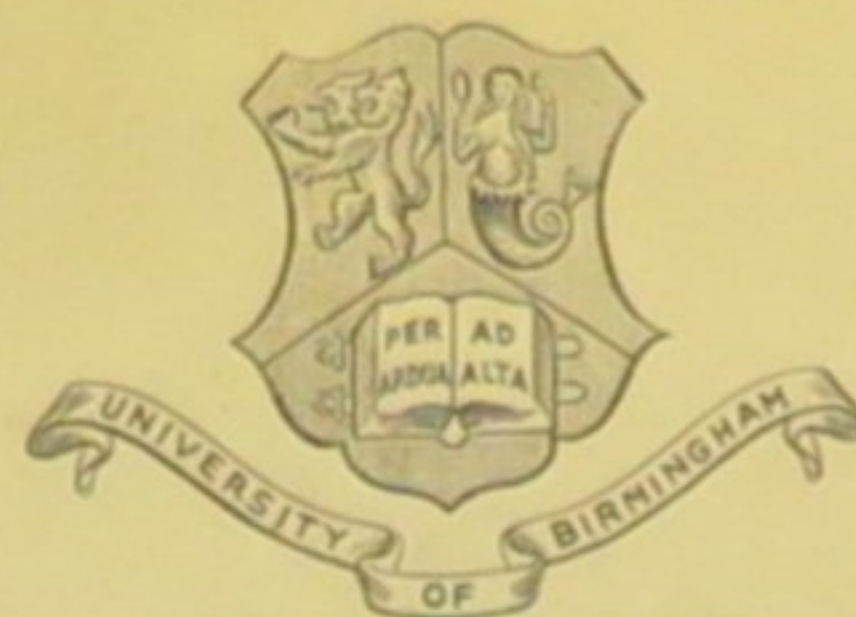
Simon

cap. D

/ing

His zeal to coach budding lawyers as he saw it was his fault: it is fifty years ago that he was first elected to the 'Holdsworth Club' of Birmingham University, to which he gave unfailing encouragement.

Telephone No
Central 8541-4



FROM
PROFESSOR C. E. SMALLEY-BAKER,
DEAN OF THE FACULTY OF LAW,
& DIRECTOR OF LEGAL STUDIES.

THE UNIVERSITY,
EDMUND STREET,
BIRMINGHAM, 3.

May 11th, 1944.

Dear Lord Chancellor -

I was most interested to read your very graceful tribute to Holdsworth in the Law Quarterly Review, touching as it did succinctly on so many facets of his work and life, and I was pleased to note your incidental mention of the Holdsworth Club, which will always perpetuate his name as its eponymous patron.

I paid my short tribute to his memory in an article in the Birmingham Post, but I also indulged in a personal reminiscence in the circular letter which I send two or three times a year to all my former students, particularly the 214 Holdsworthians who are serving in the Forces all over the world. I wonder if you - would care to take time in your very busy life to read through it.

I am immensely proud of the record in the war of the members of our Club. I also enclose a copy of a sample sheet of the - "Personalia", which I always send with the letter to each of the members.

With my warmest regards I beg to say the pleasure
of receiving a copy of your Departmental Circular.

Again, as ever, with our grateful thanks
for your distinguished and generous
Presidency

Yours sincerely
C. L. Smalley - Butler

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With my next circular letter I hope to have the happiness
of enclosing a copy of your Presidential Address.

*Again, as ever, with our grateful thanks
for your distinguished and gracious
Presidency*

Yours sincerely

C.E. Smalley-Baker.

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THE HOLDSWORTH CLUB,
THE UNIVERSITY OF BIRMINGHAM.

January, 1944.

Dear Holdsworthian,

I must start this letter on a very sad note. Our beloved Patron, Sir William Holdsworth, O.M., passed away on Sunday, January 2. As I said in a short tribute which I paid to his memory in the Birmingham Post —

"There has passed from among us the greatest scholar of English Law in our time, a clear thinking constitutionalist and a very loveable person, whose memory will ever remain in the hearts of all those who knew him".

and I am sure that I did not overstate either his public achievements or the deep personal affection that we all felt for him.

I first met Holdsworth in March, 1918 — over a quarter of a century ago — Eheu fugaces! I had been invalided back to England from France in 1917 and, after two months in hospital, a succession of medical boards marked me "Permanently Medically Unfit". But I wanted to keep on doing what I could and pestered the authorities for some kind of "Light Duty" job. They sent me to organise and be head of the Law Department of the Canadian Army Education Scheme — somewhat grandiloquently called the "Khaki University of Canada" in London. After I got the thing organised as regards provision of books, teaching, précis notes, etc., I wanted to get together a board of examiners.

Three of the obvious persons to approach I knew personally but I decided to have four, and thought of Dr. W. S. Holdsworth (as he then was) a Fellow and Tutor of St. John's College, Oxford, and holding the University appointment of All Souls Reader in English Law, who had already acquired an international reputation through his History of English Law, in 3 volumes. I made an appointment and went to see him at the G.P.O. where he was doing voluntary part-time war work on cable censorship under Military Intelligence. He agreed to be one of my examiners at a fee of nothing a year for the duration of the war.

From that first meeting there sprung up a friendship — complete, lasting and never failing, now only closed by his death.

It was he who instigated my applying, after the Armistice, for leave from the army and a scholarship from the Rhodes Trustees to go up to Oxford and read with him for the B.C.L. It was he who persuaded me in 1924, when there was a Professorship of Law founded in the University of Birmingham, to leave my 4½ years old, and very hopeful practice at the Bar, and come here to organise and create a Department of Law — four years later to become a Faculty. It was then that I founded a faculty society and suggested that it should be called the "HOLDSWORTH CLUB".

I trust that I am not yet in my dotage, but you may think from this letter that I am in my "anecdote". But it may not be uninteresting to speculate what might have happened if I had in a momentary decision in March, 1918, made my Board of Examiners three rather than four. I would probably never have met Holdsworth, I certainly would not have come to the University of Birmingham as Professor of Law. One of the candidates who put in for the appointment to the Chair in 1924 would have been appointed. He might or might not have founded a society in the faculty. He might possibly have interested Lady Barber in it. But certainly it would not have been the "Holdsworth Club" and certainly it would not have enjoyed the generosity of Baron Profumo whose benefaction has meant much to so many of you.

To turn to other subjects. I have written to many of you since October 15th. But there may be others "To Whom These Presents May Come" that I have not told that this year we were able to revive the "Annual Dinner" of the Holdsworth Club in the form of a Luncheon at the Queens Hotel. The Lord Chancellor, Viscount Simon, came and presided and delivered a most interesting Presidential Address. He was most gracious and charming and after the Luncheon stood about in the Reception Room for twenty-five minutes chatting to any of the members who cared to come up and talk to him. At the Luncheon we had the Holdsworth Club silver on the table and

the Loving Cup Ceremony and managed in considerable measure to recapture the old Holdsworth Club atmosphere.

The Lord Chancellor seemed to be very pleased with his visit to the Club, and on his return to London wrote me a charming letter.

He took the manuscript of his Address with him to add a few points to what he had written. I have made arrangements with the printers and they have now got the paper for printing it. When it is published I shall, of course, send you a copy.

As I have written to most of you, the Faculty is now very small indeed — a mere "shadow faculty". The Third Year consists only of "two asthmas and an eczema". But we are keeping on as a "going concern" and ready to go into "full production" to help you when you return after demobilization to complete your studies or for refresher courses.

The University is getting out plans for the move of Arts, Education and Law to the Edgbaston site. This will, of course, present considerable difficulties as regards our Faculty.

Again my most grateful thanks to the very large number of you who spared time, many of you from heavy duties on active service, to think of me and send me Christmas cards, and even Christmas letters, and also my sincere gratitude to the great number of you who write to me from time to time throughout the year and tell me your news. I try to answer all your letters at once, as well as sending you this circular letter occasionally. When I write to others of your Year I pass on to them the news of you and they all seem to appreciate having it. The Holdsworth Club has always been a very "happy family party" and the friendships which you have all made with each other there will, I think, be a pleasant recollection throughout your whole life.

Holdsworthians are continually meeting each other in the most unexpected places. Two of them met the other day in the water in a swimming pool in a club in India. About a month ago a battalion of infantry in North Africa had a tank display staged for them by the R.A.C. One of the Captains of the infantry battalion clambered onto one of the tanks to look in and there saw, as Troop Commander, a fellow Holdsworthian who was in the Third Year in the Faculty when the former was a Fresher.

The Club is achieving reflected glory through many of you. We have a D.S.O., a M.C., and a D.F.C. and three "Mentions" already. But, alas, we have lost nine on active service, with two ominously "Missing" and ten prisoners of war.

As usual, I am not mentioning the names of units, for "security" reasons. But in the sheets of the Personalalia relative to your Year I am giving the address in full of prisoners of war and the bank "accommodation" address of those who are in India. I am sure that they would be delighted to hear from you. As regards any other members of the Club with whom you would like to communicate I shall be glad to continue to act as a "postal forwarding unit".

I am still continuing my military duties as a Captain in the S.T.C. There is, of course, no chance of getting my majority as there is no establishment for a second Major. However, I do not mind that any more than I minded relinquishing that rank when I had to give up my Home Guard work. There is no fun in being a Major in this war — you do not get a horse — and the pay is the same, nothing a year for the duration of the war.

I am very proud indeed of the record of our Faculty in the extraordinarily high percentage of you who have shown yourselves possessed of such personality and fitness to take responsibility and to lead men as to obtain your commissions in such comparatively short times. Our Faculty is certainly far and away above any other in that respect and I like to think that the "educ" ation in the Holdsworth Club may have had some influence in it.

As always my wife unites with me in sending you our warmest remembrances and our very best wishes,

Yours ever,

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CLASS OF 1935-38.

C. S. AMOS.
Dvr. R.A.S.C. Killed in accident in England, 1940.

H. L. J. AITCHISON, LL.B.
Flt. Lt. R.A.F. Killed in action. July, 1943.

EDWARD ASHLEY.
Fl. Off. R.A.F. England.

S. H. BATE, LL.B.
Rejected medically unfit. In practice. Tamworth.

J. R. R. BENTON, B.A., LL.B.
Lieut. R.A. Home Forces.

V. S. BRAMLEY, LL.B.
Lieut. R.N.V.R., Senior Pilot, F.A.A. Killed on active service.
May, 1943.

C. W. CLARK, LL.B.
Lieut. R.I.A.S.C. India. (c/o Messrs Grindley & Co. Bankers, Bombay)

M. E. H. COOKE, LL.B.
Staff Capt. Infantry. India.

J. D. DANIELL, LL.B.
Lieut. R.A. Home Forces.

A. A. DARBEY, LL.B.
Lieut. R.A. Overseas.

A. M. DUNN, LL.B.
Lieut. R.T.R. M.E.F.

R. H. EVANS, LL.B.
Lieut. Inns of Court Regiment. Prisoner of War. Germany.
Address: Prisoner of War Number 1587. Oflag VIII F. Germany.

D. W. GRANT, LL.B.
Pte. R.A.O.C. England.

D. E. GREENFIELD, LL.B.
Capt. R.A.O.C. India. (c/o Messrs Grindley & Co. Bankers. New Delhi)

N. A. HILL, LL.B.
Capt. Infantry. England.

K. G. JONES, LL.B.
Flt. Lt. R.A.F. India.

RENE LEDESERT.
French Exchange Student. Master. Eton College.

W. D. PARTRIDGE, LL.B.
O/Cadet. R.A. O.C.T.U. England.

J. F. PLANT, LL.B.
Was in R.A.F. Now Assistant Collector I.C.S. India.

F. W. SHARPE, LL.M.
Lieut. R.A. Home Forces. Has returned from West Africa.

A. G. SHEPHERD, LL.B.
Flt. Lt. R.A.F. England.

J. J. TEARE.
Fl. Off. R.A.F. Canada.

B. W. H. WARNER.
Died. 1938.

ANTHONY WILLIAMS, LL.B.
Capt. R.A. C.M.F.

91
24th May 1944.

My former Private Secretary in the House of Commons, (Crowder) tells me that in the foreign policy debate this afternoon Bowles, the Labour M.P. for Nuneston, was pleased to revive the ancient yarn that Stimson in 1932 proposed strong action to check Japanese aggression in Manchuria and that the British Government refused. Petherick, I believe, interrupted to correct him, but I do not know more than that.

If you are replying to the debate at the end tomorrow (or if Dick Law is doing so), I wish you would consider whether this preposterous fable could not be effectively squelched once more. I enclose the pamphlet that was prepared about it and refer particularly to page 12.

In fact, the refutation of the story has now gone further than the pamphlet says, for when Lothian was here on his last visit, he told me that he had himself had the matter out with Stimson, who admitted that he had not stated the facts correctly in his book. But, of course, that cannot be quoted.

I think, too, that it is on record that Stimson has told the Foreign Committee of the Senate that he had no complaints to make against the British Government in this regard and that he had been misunderstood.

While we all put the promotion of good Anglo-American relations before every other object in diplomacy, I do not myself think that we gain by letting Americans believe the crimes we did not commit. It only gives the thing a bigger circulation and makes them more confident that they may safely blame Britain. There are two letters of Sir John Pratt in the pamphlet, and if