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The GEORGIAN GROUP was founded in 1937. Its aims are:

- (1) to awaken public interest in Georgian architecture and town planning;
- (2) to afford advice in regard to the preservation, repair and use to-day of Georgian buildings;
- (3) to save from destruction and disfigurement Georgian squares, terraces, streets and individual buildings of special merit;
- (4) to ensure, when an area is replanned, that Georgian buildings are not wantonly destroyed, and that the new buildings harmonise (though they may contrast) with the old.

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PROTECTION BY LAW OF NATIONAL MONUMENTS AND NATIONAL BUILDINGS

Introduction

THE law which protects monuments and buildings * of architectural or historic interest from destruction or damage is complex and is to be found in a number of statutes. The four principal enactments are :

(1) The Ancient Monuments Consolidation and Amendment Act, 1913 (hereafter referred to as AMAct, 1913), which consolidated and extended the scope of previous enactments dating from 1882 : this has been considerably amended by the next Act but, in accordance with English practice, continues to be printed as originally enacted;

(2) The Ancient Monuments Act, 1931 (hereafter referred to as AMAct, 1931), which amended and extended AMAct, 1913;

(3) The Town and Country Planning Act, 1932 (hereafter referred to as TCPAct, 1932), which dealt only incidentally with buildings of architectural or historic interest but introduced the important " Section 17 " procedure;

(4) The Town and Country Planning Act, 1944 (hereafter referred to as TCPAct, 1944), which again only dealt incidentally with buildings of architectural or historic interest but, none the less, considerably extended the scope of the previous statutes.

There are, in addition, relevant sections here and there in other general legislation. There are important provisions in Private Acts obtained by local authorities, *e.g.* section 156 of the London Government Act, 1939, which re-enacted a similar provision in section 60 of the London County Council (General Powers) Act, 1898, now repealed, empowers the LCC to purchase by agreement buildings of historic or architectural interest within the administrative county or to contribute to the cost of preserving or maintaining them, and section 24 of the Bath Corporation Act,

* As some of the Acts cited do not apply to Scotland, " monuments and buildings " should in strictness read as " monuments and buildings in England and Wales."

1937, empowers the Bath Corporation to make a schedule of buildings of historic interest or of architectural interest or beauty within the city limits, to control alterations to such buildings, and to make advances of money to assist occupiers to maintain, repair, restore or improve them. There are numerous Private Acts of the late 18th and 19th centuries which affect particular squares or terraces. And there are the National Trust Acts, 1907 to 1939, which confer on the National Trust for the Preservation of Places of Historic Interest or Natural Beauty (to give the National Trust its full title) extensive powers for the purpose *inter alia* of preserving national monuments and buildings. Lastly, a measure of legal protection is given by a divided legal estate: where a building is let on lease, neither landlord nor tenant alone is able to destroy or alter the building: but the protection thus afforded is precarious inasmuch as third parties may step in and buy out both landlord and tenant—and then do their worst!

In this short pamphlet all that can be done is to analyse the main provisions of the four principal enactments mentioned above and to note in passing the place of other statutes and measures in the general scheme.

Definitions

It may assist in unravelling the tangled skein of the law if we provide ourselves with two new categories of buildings, structures and works. By a “national monument” will be meant a building, structure or other work (not being a dwelling-house occupied by persons other than caretakers, or an ecclesiastical building for the time being used for ecclesiastical purposes) the preservation of which is a matter of public interest by reason of its historic, architectural, traditional, artistic or archæological interest; and by a “national building” will be meant a building (occupied or unoccupied, lay or ecclesiastical) which is of special architectural or historic interest. These categories overlap but each includes an important class of buildings excluded from the other—in one case, barrows and other works not properly to be described as “buildings”; in the other, occupied dwelling-houses and ecclesiastical buildings. The AMActs deal mainly (but not exclusively) with national monuments, and the TCPActs with

national buildings. It should be noted that in neither case is there any limitation as to date, as none is necessary. There is, of course, no such limitation in the TCPActs; but there is a widespread belief that the scope of the AMAActs is limited to monuments and buildings not later in date than 1714. A perusal of the Acts themselves will show that this belief has no foundation in law: the restriction has, in fact, been applied to something quite distinct, viz. the terms of reference of the Royal Commission on Historical Monuments in England—and even in case of these the limiting date is in course of being altered to 1850.

National Buildings and Town Planning

The legislature has shown its concern for the preservation of national buildings as an essential part of the English scene by the inclusion in Town and Country Planning and other Acts of directions to local authorities in this respect. Section 1 of TCP Act, 1932, provides that schemes may be made with the general object *inter alia* of “preserving existing buildings or other objects of architectural, historic or artistic interest” in the area. Section 1 of the Housing Act, 1936, which re-enacted section 38 of the Housing Act, 1930, provides that a local authority in preparing proposals for the provision of houses shall have regard to “the desirability of preserving existing works of architectural, historic or artistic interest, and shall comply with such directions, if any, in that behalf as may be given to them” by the Minister of Health. And by section 19 (8) of TCPAct, 1944, local planning authorities in dealing with land held by them for the purposes of the Act are required to have regard to “the desirability of preserving features of special architectural or historic interest.” The force of these provisions is strengthened by the fact that the schemes or proposals of local authorities or local planning authorities require the approval of the appropriate Minister and that this may in proper cases be refused or at least suspended. Thus, under section 19 (8) of TCPAct, 1944, the Minister of Town and Country Planning is required before giving his consent to any disposition or appropriation under that section of land which contains national buildings to satisfy himself *either* that such buildings will be effectively preserved *or* that there is good reason

for not doing this. Preservation is defined as preserving the building in its existing state subject only to such alterations or extensions as can be carried out without serious detriment to its character.

Public Acquisition of National Monuments and Buildings

The danger to national monuments and buildings does not, however, usually spring from the planning or housing activities of local authorities, but from the fact that most of them are in unrestricted private ownership. In many cases, there is no one more solicitous for the preservation of the monument or building from destruction or damaging alteration than its private owner; but such owners die or may be forced by financial stringency to part with their property and it may well get into the hands of persons of a different sort. It is fair to say that the greatest threat to the preservation of national buildings usually occurs at the death of its owner. The executors in most cases not only have no personal interest in the building but are under a legal duty to realise it at the best price for the benefit of the estate—and the best price is offered by a Development Company! The owner, before his death, was in a different position and frequently would have been willing to provide for the preservation of a house or other building of which he was justly proud, if he was given the opportunity. It is for this reason that the law provides the means for enabling an owner to ensure the continued preservation of a national monument or building after it has left his hands. By sections 1 and 2 of AMAct, 1913, the Minister of Works or the appropriate local authority is empowered to purchase by agreement with the owner or to acquire by deed of gift or devise any national monument or building (other than an ecclesiastical building for the time being used for ecclesiastical purposes). So, too, by its Private Acts of 1898 and 1939, the LCC was and is empowered to purchase by agreement national buildings in the Administrative County. In point of fact, however, the Minister of Works has only made *one* single purchase and has acquired no more than *twenty or thirty* national monuments or buildings by gift or bequest. The number acquired by local authorities under AMAct, 1913, is not available, but is believed to be small; and the

LCC has only made *two* purchases under its Private Acts.

If there has been little recourse to any of these statutory provisions, it is principally because public-spirited owners have preferred to sell or give their properties to, or make covenants over them with, the National Trust which has in this respect powers analogous to, but even more extensive than, those possessed by the Minister of Works or local authorities. By section 4 (2) of the National Trust Act, 1907, the Trust may "acquire by purchase, gift or otherwise" lands and buildings of beauty or historic interest. To meet the case of owners who, though anxious to ensure preservation, are not prepared to part with ownership, section 8 of the National Trust Act, 1937, enables the Trust to enter into restrictive covenants with the owners of national monuments or buildings—covenants which are enforceable by the Trust although it is not possessed of adjacent land. The National Trust Act, 1939, goes still further. By sections 3-11 the tenant-for-life of a settled estate is enabled, after obtaining certain consents or an Order of the Court, to convey to the Trust the freehold of the "principal mansion house" and grounds in exchange for a lease of the properties conveyed. A similar power is conferred on trustees for sale. The lease may be at a nominal rent but must include a covenant permitting the public to view parts of the house at agreed times, and such restrictive covenants as the National Trust may reasonably require for ensuring that the house shall not be used otherwise than as a private dwelling-house and for preserving its amenities. The power is only exercisable where the Minister of Works has certified that the principal mansion house is "a building of national interest or architectural, historic or artistic interest"—in short, a national building. Since not a few national buildings are likely to be subject to settlements, this procedure for overcoming the difficulties which have previously attended attempts to vest settled properties in the National Trust is an important new development. The number of buildings acquired by the National Trust under the 1907 Act, or protected by covenant under the 1937 Act, is considerable, but exact figures are not available. No building has yet been acquired under the rather complicated procedure laid down by the 1939 Act: the first two cases are still under consideration by the Court.

Preservation Orders and "Section 17" Orders

Unfortunately, some owners are not, and others cannot afford to be, public-spirited enough to be willing to take measures to secure the preservation of national monuments or buildings if this will result in financial loss to themselves. And many of these are consequently under threat of destruction or damaging alteration. The AMActs and TCPActs, however, both contain provisions to deal with this situation. Under sections 6 and 7 of AMAct, 1913, and section 4 of AMAct, 1931, where a national monument is in danger of destruction or removal or of damage from neglect or injudicious treatment, the Minister of Works may make it subject to a Preservation Order; and so long as this is in force, the monument may not be demolished or removed, nor may any additions or alterations be made to it, without the consent of the Minister. It must, however, be noted that, if within three months after publication of the Order in the Gazette, objection is made to it by anyone having an interest in the monument, the Order ceases to have effect after a term of twenty-one months from the date of its making unless it is confirmed by Parliament. The number of Preservation Orders presently in force is *four*. Similarly, under section 17 of TCPAct, 1932, as amended by section 43 of TCPAct, 1944, local authorities with the approval of the Minister of Town and Country Planning, after consultation with the Minister of Works, may make Orders in respect of national buildings (not being ecclesiastical buildings for the time being used for ecclesiastical purposes nor "listed" national monuments) in their areas directing that without their consent the buildings may not be demolished or altered or extended in such a way as seriously to affect their character. It is, however, provided by sections 18-20 of TCPAct, 1932, that any owner affected by such an Order may claim compensation for any diminution in the value of his property by reason of the Order. Few local authorities have hitherto been found willing to incur expense in protecting intangible values; and it is perhaps scarcely surprising that not many "Section 17" Orders have been made—the total number to date is *twenty-four*; of these fifteen cover single buildings, the remainder two or more buildings.

"Listing" of National Monuments and Buildings—and its Effect

It is plain that only an infinitesimal proportion of national monuments and buildings are as yet covered by "Section 17" Orders or Preservation Orders. The remainder are not, however, without a measure of protection. Not the least important sections of the AMActs and TCPActs are those which provide for the listing of national monuments and buildings. Under section 12 of AMAct, 1913, the Minister of Works is required from time to time to prepare lists of national monuments, including any recommended for preservation by the Ancient Monuments Board: similarly, under section 42 of TCPAct, 1944, it is the duty of the Minister of Town and Country Planning to compile lists of national buildings, after consulting with such persons or bodies of persons as appear to him appropriate as having special knowledge of or interest in such buildings. These lists are valuable in themselves since it is a matter of importance that the nation should have a record of its archæological and architectural wealth. But they also give a measure of protection to the monuments and buildings contained in them since, by section 6 of AMAct, 1931, no person served with a notice of its listing may execute or permit to be executed, except in case of urgent necessity, any work for the purpose of demolishing, removing or repairing a monument or of making any alterations or additions to it until *three* months after notice in writing of such intention has been given to the Minister of Works; and, by section 43 (5) of TCPAct, 1944, no person may execute or cause to be executed, except in case of urgent necessity, any work for the purpose of demolishing a listed building (not being a listed monument or an ecclesiastical building for the time being used for ecclesiastical purposes) or for the purpose of altering or extending it in such a manner as seriously to affect its character until *two* months after notice of such intention has been given to the local planning authority, which is required to forward a copy of the notice to the Minister of Town and Country Planning, and also to such persons or bodies of persons as may be specified by that Minister. These provisions do not, of course, give any final protection to national monuments or buildings, but they do secure that when a monument or building is threatened, before anything irrevocable

is done there shall be time to consider the merits of the case and to intervene, if necessary, to prevent the loss of a national asset. The list of monuments published by the Ministry of Works in 1939 contains some 5,500 items (including nearly 2,000 in Scotland): no list of national buildings has yet been published in pursuance of section 42 of TCPAct, 1944.

Protection of the Amenities of National Monuments and Buildings

No building is independent of its surroundings, and to preserve the building itself but to disregard its surroundings would be short-sighted. This point is dealt with by provisions in both the AMActs and the TCPActs. By section 1 of AMAct, 1931, in order to preserve the amenities of any national monument, the Minister of Works may prepare a Preservation Scheme for any area comprising or adjacent to the site of the monument: such a Scheme may restrict building, or regulate the position, height and external appearance of buildings, prohibit or restrict tree-felling or quarrying, or otherwise restrict the user of the land within the controlled area, subject to the payment of compensation to persons injuriously affected by the Scheme. The TCPActs are less specific, but in addition to the general provision of section 1 of TCPAct, 1932, that schemes may be made by local authorities with the object of preserving existing buildings or objects of architectural, historic or artistic interest "and generally of preserving existing amenities," section 12 of the Act gives them power to include in their planning schemes provisions prohibiting building operations or strictly regulating them. By a little known section (section 18) of AMAct, 1913, where "the erection of buildings of a style of architecture in harmony with other buildings of artistic merit existing in the locality is impeded" by building by-laws, the local authority may, with the consent of the Minister of Health, relax the by-laws so far as may be necessary to allow the erection of such buildings. Lastly, by section 43 (9) of TCPAct, 1944, a local authority may, with the consent of the Minister of Town and Country Planning, acquire by agreement not only any building which is subject to a "Section 17" Order, but also any contiguous land which is required for the maintenance of its amenities.

Repair of National Monuments and Buildings

Deliberate demolition is not, however, the only danger which threatens the survival of national monuments and buildings. Though the process of decay may be slower, failure properly to repair and maintain monuments and buildings is equally effective in spelling their doom. This point has not escaped the attention of the legislature. In the case of national monuments, by sections 3 and 4 of AMAct, 1913, with the consent of the Minister of Works (or the local authority), the owner of a monument may constitute the Minister (or the local authority) the "guardian of the monument," in which event the legal title of the owner remains unaffected, but the Minister of Works (or the local authority) becomes henceforth responsible for the repair of the monument. The Minister has become responsible under Deeds of Guardianship for upwards of *one hundred and sixty* national monuments. So, too, by section 13 (3) of AMAct, 1931, and section 11 of AMAct, 1913, though not constituted the guardian of the monument, the Minister of Works (or the local authority) may with the consent of the owner undertake or contribute to the cost of the repair of a national monument. If the monument is subject to a Preservation Order, the Minister of Works is required, upon request, to give free advice as to its treatment and to superintend any repairs undertaken; and, if owing to neglect the monument is falling into decay, the Minister may, with the consent of the Treasury, make an Order constituting himself the guardian of the monument—in which case he automatically becomes responsible for repairs.

The position of national buildings is less satisfactory. It is true that by section 42 (9) (b) of TCPAct, 1944, a local authority may, with the consent of the Minister of Town and Country Planning, purchase compulsorily any building which is subject to a "Section 17" Order when this is the only way of ensuring that it will be kept in a proper state of repair. And by section 17 of AMAct, 1913, the Minister of Works may, if he thinks fit, give upon request free advice as to the treatment of a national building (not being an ecclesiastical building for the time being used for ecclesiastical purposes) and undertake the supervision of any repairs to it: such advice and supervision is free except that a

charge may be made for out-of-pocket expenses. But in regard to the repair of national buildings generally the law is silent and there is no provision to secure that they shall not be lost to the Nation as the result of neglect. It is to be hoped that this matter will not be overlooked the next time the future of our building heritage is under consideration by Parliament.

Conclusion

Such, then, is the present state of the law in regard to the preservation of national monuments and buildings. In the case of the former, though in need of simplification and consolidation, the law is not inadequate: and within its limits it has been admirably administered by the Ministry of Works. In the case of national buildings, the position has till lately been far from satisfactory; and apart from section 17 of TCPAct, 1932 (which has been all but inoperative) the law has confined itself to pious exhortation and somewhat vague permissive powers. In particular, the need for making due provision to cover the repair of national buildings has been almost entirely overlooked. It is too soon to say what will be the effect of the provisions of the 1944 Act: the listing of national buildings should invest them with a certain prestige, make owners more concerned to keep them in good order and deter building speculators from acquiring them only to destroy them. The amendments to section 17 of TCPAct, 1932, are, too, to be welcomed; but the warmth of the welcome must be tempered by the thought of the little use which has been made of the section itself. Of more general value is the provision which requires notice to be given before a national building is subjected to demolition or damaging alteration. But it has to be seen whether the notices are going to be followed by carefully considered action or by careless acquiescence. It is best perhaps to regard the law relating to the protection of national buildings as still in course of development and due for further additions before it is to be treated as a completed code. Meantime, the Nation is in danger of losing its buildings.

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This Pamphlet has been written for the Georgian
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