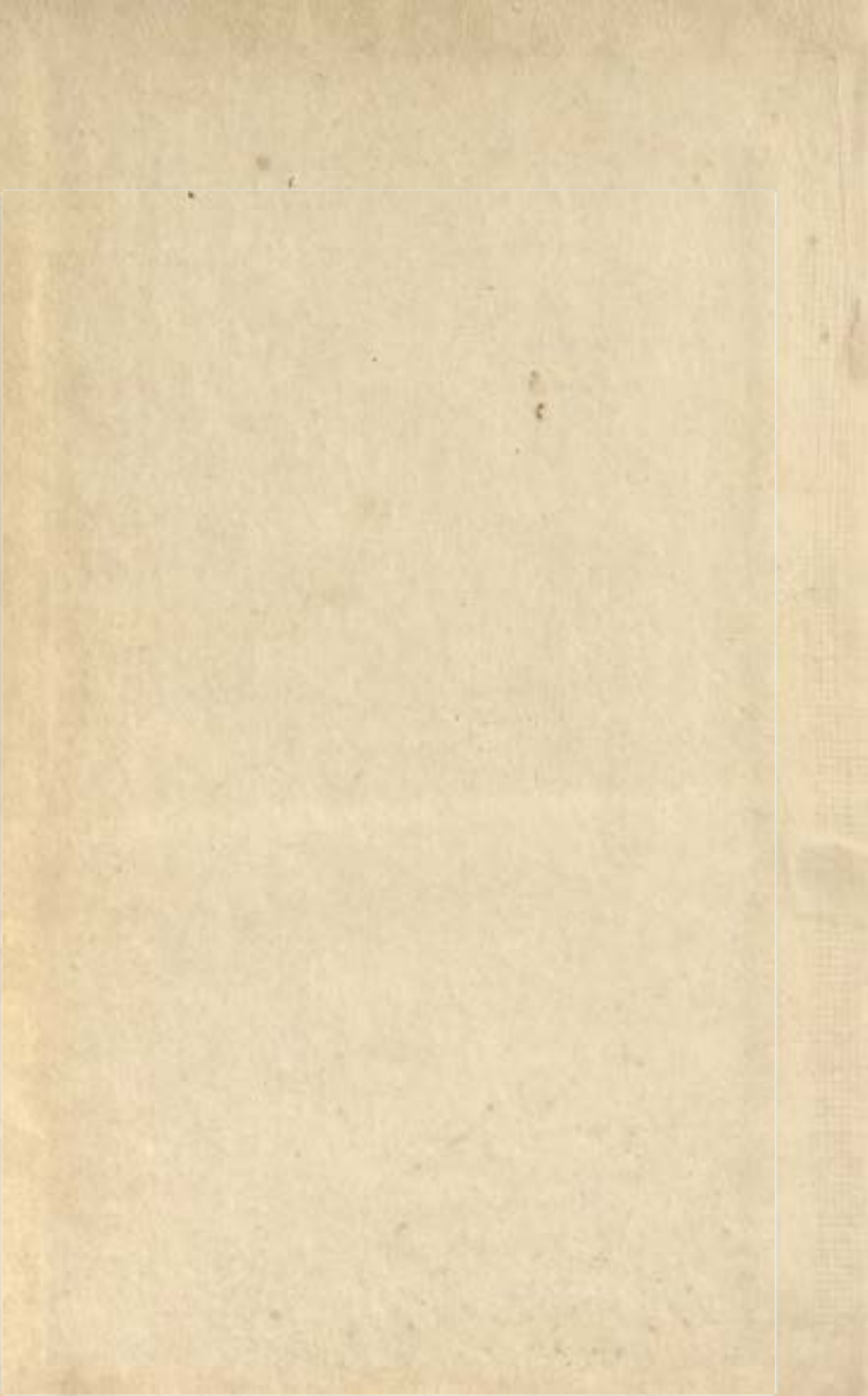


THE JUBILEE BOOK  
OF THE LAW SCHOOL  
OF THE  
UNIVERSITY OF SYDNEY  
1890-1940



ARCHIVES  
UNIVERSITY  
OF SYDNEY

*Presented By*  
H. Roy Booth  
1972



THE JUBILEE BOOK OF THE LAW SCHOOL







THE HON. SIR JOHN PEDEN, K.C.M.G., K.C., M.L.C.  
Challis Professor of Law and Dean 1910-1930.

THE JUBILEE BOOK  
OF THE  
LAW SCHOOL  
OF THE  
UNIVERSITY OF SYDNEY  
1890-1940

EDITED BY

THE HON. SIR THOMAS BAVIN, K.C.M.G.

SYDNEY  
1940

# ERRATA

- p. 17 *Sixth line—omit Mr. C. G. Davidson . . . readers, and insert Mr. E. F. McDonald, afterwards President of the Returned Soldiers and Sailors League. Mr. C. G. Davidson became lecturer in Divorce.*
- p. 64 *Sixth line from top—Olga instead of Olive.*
- p. 67 *"Afternoon Rain," seventh line—buds that away not away.*
- p. 75 *H. M. Green, M.A., LL.B. not B.A.*
- p. 98 *Second last line, first paragraph—Metcalf not Metcalf.*
- p. 136 *Law School Honour Roll:*  
*Allen, H. D., and Johnstone, J. R. L., to be added.*  
*Clancy, B. P., not M. B.*  
*Dickinson, A. W. M., omit.*  
*Simpson, E. T. de L., not E. T. de T.*  
*Studdert, H. J., not J. J.*  
*Telfer, B. F. F., not B. E. F.*  
*Hooke, E. J., not E. G.*
- p. 147 *At end of article—F. C. Hutley not Huntley.*
- p. 207 *Second last line, second paragraph—Duffryn not Duffry.*
- p. 234 *Lists of graduates:*  
*(1893) Taylor, J. M. (Hons. Class II) not Class III.*  
*(1898) Hammond, J. H. (Hons. Class II) not Class III.*
- p. 235 *(1911) Omit Macken, J. V.*
- p. 238 *(1924) Taylor, L. W. (Hons. Class I) not Class II.*
- p. 238 *(1925) Chambers, R. (Hons. Class I) not Class II.*
- p. 239 *(1927) Omit (Hons. Class I) after Isaacs, G.*  
*Insert (Hons. Class I) after Isaacs, S.*  
*(1928) Windeyer, A. C., not Wyndeyer.*
- p. 243 *(1936) Kerr, J. R., not J. C.*
- p. 244 *(1939) Webb, G. L. M., not G. M.*  
*Add following names:—Bowen, J. K.; Dickinson, G. A.;*  
*Hutchinson, W. B.; Johnston, R. S.; Masters, R. G.;*  
*Russell, A. M.; Shaw, H. M.*
- p. 245 *University Medal—Sugerman, B., not Sugermen.*
- p. 246 *District Court Judges—H. T. E. Holt, not T. E. Staff, 1939:*  
*Add B.A., LL.B. to F. C. Hutley.*  
*Seventh line should read—1925 not 1919.*



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## ACKNOWLEDGMENTS

*Our thanks are due to the following: His Honour Judge H. W. Moffitt for cartoons; Mrs. Colin Munro, B. Arch., Messrs. C. N. Bennett, B.A., LL.B., H. Roy Booth, LL.B., and C. W. N. Gilbert, B.A., LL.B., for decorative designs; Miss Joyce Cocks for assistance in compiling the Honour Roll; Mrs. McGechan for research work; and to members of the library and administrative staff of the Law School—Miss St. Clair, Miss Holt and Miss Beaver, for assistance in compiling records and clerical work.*

*Thanks are also due to the Law Book Company of Australasia Pty. Ltd. for assistance in advertising and distribution, and to the Peter Pan Studio for photographic work.*

*J. R. Bawn*

EDITOR.



## FOREWORD

By Dr. R. S. Wallace, M.A., LL.D., Vice Chancellor of the  
University

The purpose of this book is to commemorate the jubilee of the Law School of the University of Sydney, and to that end some account is given of its rise and growth; of its professors, lecturers, and graduates; and of its influence on the life and thought of the community. I think it will be generally agreed that the record is a worthy and a notable one.

The School was opened in 1890 in Wentworth Court, and in a room which was described at the time, doubtless with some pardonable undergraduate exaggeration, as a "garret"—a description, like that of the "contemptible little army," in which, in the light of what followed, we may find some cause for pride. From this "garret" it moved in 1896, after a short stay in 169 Phillip Street to Selbourne Chambers, to quarters which our undergraduate friend found to be nothing short of "luxurious," although he considered it worth while to record a year later that a telephone had just been installed. Still not content with its location the School migrated in 1912 to its present abode in University Chambers, where it carried on its work for 26 years in rooms which its ever-growing numbers were rendering more and more inadequate.

In 1938 it became evident that something had to be done to relieve the congestion and accordingly a scheme of building and reconstruction was put in hand, as the result of which the Law School now finds itself handsomely fitted out with a fine library, lecture rooms, and common rooms to which our undergraduate would find it hard not to apply the term "palatial."



From garret to palace is no mean journey in a short period of 50 years. And, as this book shows, the Law School has thoroughly earned all the good things which have come to it. Some day, shall we say 25 years hence, the portion of the Law School on the Phillip Street frontage will be brought into conformity with the new portion on the Elizabeth Street frontage; and, when that day comes, things will be as they ought to be and as we see them in our mind's eye—a wholly beautiful and capacious block of buildings worthy of the School and its achievements. The plans for this desirable development have already been prepared—in anticipation and in hope.

Buildings, however, are only a part, and much the smallest part, of a University department. It is persons who count. Throughout the 50 years of its existence the Law School has had the great good fortune to be in the guiding hands of two outstanding personalities—Professor Pitt Cobbett, and Professor Sir John Peden—aided and abetted by a long list of distinguished lecturers and, in the last 21 years by Professor A. H. Charteris, the first occupant of our Chair of International Law, whose range of knowledge is an inspiration and a delight to all who sit at his feet. What the zeal and ability of all these men have meant to the Law School and the University, the contributors to this commemorative volume endeavour to tell. There is no need for me to summarize their narratives, but I may be allowed in this brief foreword to single out Sir John Peden, and to put on record the great debt which the University owes to him. As Professor of Law, Dean of the Faculty, Chairman of the Professorial Board, and Member of the Senate, he has exercised, in his 30 years occupancy of his Chair, a profound and enduring influence on the whole University and its affairs. It will be a great loss to the University and the Law School when he retires from his teaching duties a year hence, although we are glad to know that, as a member of the Senate, his help and advice will still be at our service.

It will be evident from the articles in this volume that the influence of the Law School has permeated the whole life of

our community. In our Parliaments, Law Courts, Universities, Public Services and elsewhere its graduates have rendered, and are still rendering, distinguished service. It is sometimes said that not enough of them have entered Parliament—a complaint which is in itself a tribute to those who have, and to the training which the Law School gives. Of that training this is not the place to speak. When the law is in question, I am content to remember Burke's description of it—and there can be no higher witness—as "one of the first and noblest of human sciences." In the belief that our Law School has devoted itself to the study and teaching of this great science with success and distinction, I commend this record of 50 years of achievement.

R. S. WALLACE.





# Greetings

THE PRIME MINISTER OF AUSTRALIA

The Rt. Hon. R. G. Menzies, P.C.

The British peoples hold few things more dear than the rule of law. Upon it depend our freedom and our dignity; without it there can be neither peace nor security nor justice. We commemorate the Jubilee of the Law School of Sydney University at a time when our country is at war against a nation that has ceased to know the rule of law in its internal life and has recklessly broken it in its international relations. The regulation of the internal life of another State is not our affair, but the principles of international law must be observed if our nation is to be free to provide for the happy life of its own people.

A University Law School exists not only for the teaching of municipal law; it endeavours to lay a foundation upon which can be based a true conception of jurisprudence as a social force. It aims not merely to produce the practising lawyer, it aims to produce also the sound and just law-giver without whom democracy would deteriorate into mob rule.

The Sydney Law School has a fine record. Through it have passed many of the men who have been foremost in our national life. We owe them much and we owe much to those teachers of the law who trained them.

Speaking in Canberra last year, I said:

Technical training can produce a competent technician, but a great lawyer must be superior to his technique, if his technique is not to be superior to him. He must realize that while the law may have mundane but necessary obligations to him . . . he has obligations to the law. He must see himself as one of the creators or guardians of a developing juristic

system whose function in a growing and changing world is to minister constantly to the good and just life. To do this, he must not know merely the practical rules of the law, but must acquire legal scholarship and sensibility.

To the lawyers of the past who helped to lay the foundations of stability we give our thanks. To the lawyers of the present and the future we give our encouragement. In a changing and often turbulent world let them stand for the law!

*Ross McKinnis*

#### THE CHIEF JUSTICE OF THE HIGH COURT OF AUSTRALIA

The Rt. Hon. Sir John Latham, C.G.M.G.

The Law School of the University of Sydney is celebrating the fiftieth anniversary of its foundation. This Jubilee Book will show the reader how the School has shared in the great development which has marked every aspect of Australian life since 1890, when the Law School came into being. Legal education has become both more extensive and more intensive. The number of subjects in the course has increased, and study is more detailed in character than it was fifty years ago. The contest still proceeds between those who want to add further subjects to the course, and possibly to increase the length of the course, and those who are more impressed by the risk of overcrowding the developing mind and by the danger of attempting too much. The history of the Law School shows the compromise which obtains in practice between these two natural tendencies.

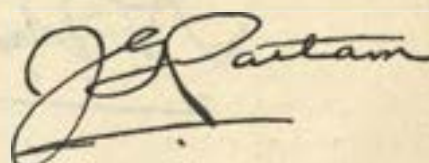
The professional achievement of the Law School can be measured in the general efficiency and standing of the lawyers of New South Wales and in the work of the courts, Federal and State, where graduates of the Law School have given and



are to-day giving such notable service. The Law School is to be congratulated upon its record.

But a Law School does not fully realize its opportunities or fully discharge its functions if it is content with supplying competent legal technicians. The varied contents of this memorial volume illustrate the natural connection between legal professional training and public life. Even the most determined critics of the profession—and there is room for criticism—do not deny that lawyers have rendered great service to the people in many capacities. The continuance and extension of such activities depend not only upon adequate technical training, but also upon cultural equipment and a sense of social responsibility. Professor Sir John Peden, who has for so many years guided and controlled the Law School, has in his own person provided an example for his students in this respect. I join with the contributors to this volume in expressing warm appreciation, not only of his academic work, but of those personal qualities which have been so valuable to his students and which have won for him so many admirers and friends.

An honourable and efficient legal profession is a most important element in securing justice in the community and fair dealing between men. The Law School serves the people in the highest sense in educating law students to discharge the functions of the profession in accordance with its best traditions, and in training them in the duties of citizenship. This volume is a record of the history of the School. But the significance of this tribute to the past is really to be found in hope, encouragement, and aspiration for the future of a School which has already attained such distinguished success.

A handwritten signature in dark ink, appearing to read "J. R. Rautam". The signature is fluid and cursive, with a large initial "J" and "R" that are connected. The name "Rautam" is written in a more standard cursive script. The signature is enclosed in a thin rectangular border.

THE ATTORNEY-GENERAL OF NEW SOUTH  
WALES.

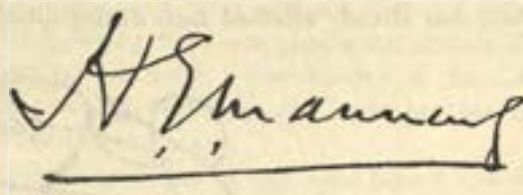
The Hon. Sir Henry Manning, K.B.E., K.C., M.L.C.

It is certainly true that the rights and liberties of individuals were defined by lawyers of the past; it is no less true that they are defended by the lawyers of the present.

The Law School, in its jubilee year, can be assured of full credit for creating and maintaining the high standards of legal efficiency which have enabled its graduates to give effective service to the community not only in the preservation of those rights and liberties but also in the improvement and development of the legislative and administrative functions of Government.

The occasion directs our thoughts chiefly to those two men who are mainly responsible for its achievements—Pitt Cobbett, who established the School on lines which facilitated its subsequent development and whose simplicity, strength of character and natural personal charm will live in the minds of all who were fortunate enough to be his pupils; and Sir John Peden, to whose inspiration and zeal the development of the Law School is attributable and whose public activities as President of the Legislative Council, Commissioner for Law Reform, and Royal Commissioner on the Commonwealth Constitution will always be remembered.

The profession offers to the Law School its greetings and congratulations.

A handwritten signature in dark ink, appearing to read 'H. Manning', is written over a horizontal line. The signature is fluid and cursive, with the first letter 'H' being particularly large and stylized.

## NEW SOUTH WALES BAR ASSOCIATION

R. C. Teece, Esquire, K.C., President.

As President of the Council of the New South Wales Bar Association I wish, on the occasion of the jubilee of the University Law School, to express on behalf of the Bar of New South Wales its appreciation of the services rendered to that Bar by the Law School. The great majority of the practising members of the Bar are graduates of the Law School, and the high reputation for learning, ability, and integrity which our Bar deservedly enjoys is, I believe, very largely due to the training which they received at the Law School, and to the personal influence of the teaching staff.

I believe that Professor Peden is retiring from his position as Dean of the Faculty. This is not the occasion on which to speak of his great public services. But as Dean of the Faculty he has worthily maintained the high standard set by the late Dr. Pitt Cobbett, the first Dean of the Faculty, of whom he was one of the most distinguished pupils. As on his retirement Professor Peden sees the large number of his former pupils who have acquired distinction in the practice of their profession, he may well say with Horace: *Exegi monumentum aere perennius.*

A handwritten signature in dark ink, appearing to read 'R. C. Teece', with a long, sweeping horizontal line underneath it.



THE INCORPORATED LAW INSTITUTE OF NEW  
SOUTH WALES

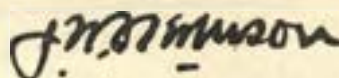
J. W. Stevenson, Esquire, President.

As President of the Incorporated Law Institute of New South Wales, I desire to extend congratulations to the Law School of the University of Sydney upon the attainment of its jubilee, and pay a tribute on behalf of the solicitors of this State to the Dean, Sir John Peden, who is to retire this year after thirty years of distinguished service in that office.

My Institute, charged as it is by virtue both of the traditions attached to a long history and of the duties and powers conferred upon it by the legislature, with great responsibilities in relation to the solicitors' profession, is grateful to the Law School for the work it has done in helping to maintain the high standards of that profession.

For those articled clerks who desire to take its degree, the Law School has always been generous in the facilities which it has afforded to enable this to be done concurrently with the service of articles. The influence of the Law School extends also to those who take the articled clerks' course through the presidency of the Professor of Law over the Solicitors Admission Board.

In the result the standard of professional competency of the solicitors of this State, a large proportion of whom are Law School graduates, is a very high one. For the achievement of this result, the sincere thanks of the profession are due to Sir John Peden and his distinguished predecessor in office, and to the past and present members of the staff of the Law School. The best wishes of all members of my profession will follow Sir John in his retirement.

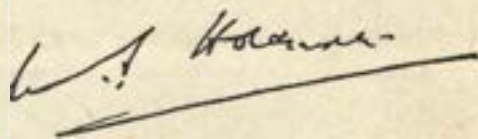


## OXFORD

Professor Sir William Holdsworth, K.C., D.C.L.,

Fellow of All Souls College, and Vinerian Professor of English Law.

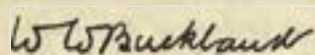
The Oxford Law School sends cordial greetings and congratulations to the Law School of the University of Sydney on the occasion of its Jubilee. During the last fifty years both Law Schools have seen a striking change in public and professional opinion as to the need for, and the utility of, the systematic training in the law which only a university can give. Blackstone, it is true, in 1758 foreshadowed in his inaugural lecture the need and the utility. But for more than a century his teaching fell on deaf ears; for in 1883 Pollock could say that the systematic study of English law was followed by few and scorned and depreciated by many. Your Law School, like ours and like many others in Great Britain and the Dominions, has proved the truth of Blackstone's opinion; for our Law Schools have helped to perpetuate throughout the world the great traditions of the common law, and the high standards of the legal profession who study it, apply it, and help to make it. Your Law School can boast of professors like Pitt Cobbett, whose reputation is world-wide. He is a link between your School and ours, for he came from Oxford; and there are other links. The Chancellor of your University, who is also one of your judges, another of your judges, your Minister of Justice, and others of your practising lawyers, studied law at Oxford. Our Law School has been a nursery of famous lawyers; and since yours is able, even in the days of its infancy and youth, to make the same boast, we may confidently expect that in long years of its maturity which lie ahead an ever increasing number of its students will add to its fame. *Floreat!*

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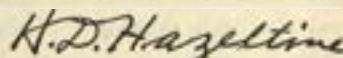
## CAMBRIDGE

## Senior members of the Faculty of Law.

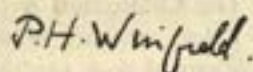
On behalf of the Faculty of Law in the University of Cambridge we offer to the Faculty of Law in the University of Sydney our hearty congratulations on its Jubilee. It comes at a time when what we hold most dear is threatened, when the whole fabric of civilization is in danger. We remember and remember with pride that the reign of law made civilization possible and we know that respect for law alone can keep it stable. We rejoice therefore with you, so far off in miles, so near in heart, at the great work you are doing. Our aims are the same. You and we are teaching the common law which we have received from our forefathers. You and we are doing what in us lies to adapt it to changing conditions. And we draw our inspiration from the same sources, new and old. We therefore send you our brotherly greetings and we wish for you an ever widening field of influence.



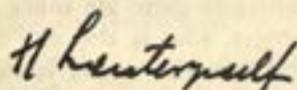
Regius Professor of Civil  
Law.



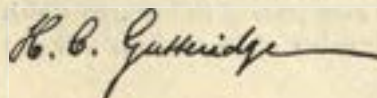
Downing Professor of the  
Laws of England.



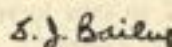
Rouse Ball Professor of  
English Law.



Whewell Professor of In-  
ternational Law.



Professor of Comparative  
Law.



Chairman Faculty of Law,  
University of Cambridge.



## HARVARD

Professor J. M. Landis, A.B., Princeton, LL.B. Harvard, S.J.D.,  
Dean of the Faculty of Law.

It is a great pleasure for me in behalf of the Faculty of the Harvard Law School to congratulate the Law School of the University of Sydney on the fiftieth anniversary of its foundation.

Not only is there the bond between us that derives from our common concern with the adjustment through law of the claims that civilized men seek to realize, but both our institutions have been characterized by the fact that we have each been, in turn, the repository of the older English conceptions of justice and the wellspring for the adaptation of that great tradition to the exigencies of a new community. In that task both of our civilizations have borrowed and must continue to borrow of each other. This realization that we can both teach and learn has always made the ocean that lies between us an avenue for intercourse rather than a dividing sea.

Your fiftieth anniversary gives us thus the opportunity to felicitate you upon your past. From the vantage point of its kindly shadow one can see a future secure because it will remain dedicated to our Anglo-American conceptions of justice through law.

A handwritten signature in dark ink, appearing to read "J. M. Landis". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent. The signature is enclosed within a thin rectangular border.

## NEW ZEALAND

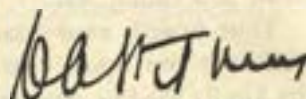
Otago, Dunedin.

Professor A. C. Stephens, LL.M.,  
Dean of the Faculty of Law.

I have no doubt that during its fifty years of existence the Law School of the University of Sydney has developed a standard of teaching and attainment, both theoretical and practical, which will bear comparison with that of any other institution of its kind.

It has set an example to other such institutions of the British Empire by adding to its syllabus a course of lectures on Legal Ethics and Etiquette. To my mind a law school fails fundamentally if it does not give its students such instruction and so endeavour to turn out men who are not only fitted to practise law efficiently, but are also forewarned of the malpractices into which an inexperienced man may so easily fall.

Heartiest congratulations to the Law School of the University of Sydney for doing this and on the attainment of fifty years of useful activity.

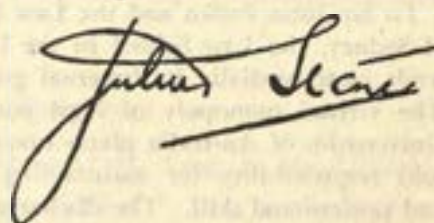


Auckland University College

Professor J. Stone, B.A., D.C.L. (Ox.), S.J.D., Harv., LL.M.,  
Dean of the Faculty of Law.

At a time when men are too often divided into those who would demolish all, and those who shrink from all repair, the law and the lawyers, and the law schools which give nurture to both, have a heavy responsibility. It was in the travail of industrialization a century and a half ago that the common law first consolidated its place among the University disciplines. It has been significantly in the aftermath of the

Great War, in the present period of testing of democratic principles, that attention has again been seriously turned in common-law countries to the role of the law school. On all hands, to-day, it is increasingly recognized that that role involves the study and teaching of law, not merely as a profession to be practised, however honourable, but in the light of the social needs of our times and of those that lie ahead. The modern law school must give the inspiration of an open, informed and inquiring approach to the problems of social control through law in modern democracy: so that all who enter it will depart with a large vision of the society in which they are to play their part, both as lawyers and as citizens. Conscious as I am of this our common task, I value the more deeply this opportunity of conveying to the Law School of the University of Sydney upon the celebration of its first fifty years of achievement, the greetings and congratulations of this younger Law School.

A handwritten signature in dark ink, appearing to read "Julius Stone". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Victoria University College, Wellington

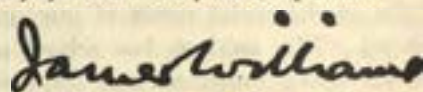
Professor James Williams, LL.M. (N.Z.), Ph.D. (Cantab.),  
Dean of the Faculty of Law.

To the Law School of the University of Sydney, on the notable occasion of its jubilee, and to Sir John Peden, who, as Dean, has contributed so much to the School's greatness, the Faculty of Law in Victoria University College sends its heartiest congratulations. The Sydney Law School, at all times during its history, has given to New South Wales and Australia eminent leaders in law and politics, and we in New Zealand have in no small measure been beneficiaries of the learning and leadership of these sons of the



School. The Faculty at Victoria University College has now become even more directly indebted to Sydney, for our new Professor of Jurisprudence comes to us from the Sydney Law School.

May the next fifty years of the School's work be even more fruitful than the fifty years already accomplished.



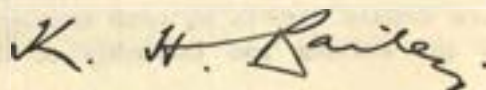
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#### AUSTRALIA

##### Melbourne

Professor K. H. Bailey, M.A., B.C.L. (Ox.), LL.M. (Public Law), Dean of the Faculty of Law.

To Sir John Peden and the Law School in the University of Sydney, the Law School in the University of Melbourne sends most cordially its fraternal greetings and felicitations. The virtual monopoly of legal education enjoyed by the Universities of Australia places upon them an exacting two-fold responsibility—for maintaining both legal scholarship and professional skill. The discharge of this task by the Law School in Sydney has won the admiration of all. The great reputation of the Bench and the profession in New South Wales speaks eloquently of the training that the School has given: and its teachers and graduates have added greatly to the literature of the law. To select a few names out of many is always invidious. But there can be no cavil at the mention of Pitt Cobbett, whose work is honoured wherever international law is studied in English and (among those still happily with us) of Mr. Justice Evatt, scholar and judge alike, and of the present Dean, in whose person the School has made a distinguished contribution to the public life not only of the State but of the Commonwealth.



## Tasmania

Professor K. O. Shatwell, B.A., B.C.L. (Oxon.), Dean of  
the Faculty of Law.

The Faculty of Law in the University of Tasmania sends greetings to the Sydney Law School upon the fiftieth anniversary of its foundation.

It is at a particularly auspicious time that our congratulations go out to you, for the University of Tasmania is a small contemporary of your great university and in 1940 celebrates its own fiftieth birthday.

Any tribute to your past would be otiose. May your future work have the same success!

K. O. Shatwell

## Queensland

Professor R. Yorke Hedges, LL.D., Dean of the Faculty of  
Law.

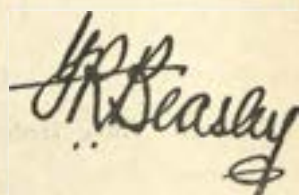
The T. C. Beirne School of Law in the University of Queensland sends greetings and congratulations to the Law School of Sydney University on the occasion of the celebration of the fiftieth anniversary of its foundation. Many gifted men of law and of letters have contributed to the success of the Sydney Law School in the first half century of its activities, and its record of service to the profession and to the community is one of which it may justly be proud. The Queensland Law School sends its warmest wishes for the future.

R. Yorke Hedges.

## Western Australia

Professor F. R. Beasley, B.A. (Oxon.), LL.B.,  
Dean of the Faculty of Law and Acting Vice Chancellor.

On behalf of one of the youngest Law Schools in Australia, I offer to Sydney Law School congratulations and good wishes on its fiftieth anniversary, and at the same time ask Sir John Peden, on the occasion of his retirement, to accept a personal expression of gratitude for his many acts of kindness and encouragement to a graduate of the School whose work he has so long and so wisely directed. We in Western Australia have very much pleasure in paying this tribute to the reputation which Sydney Law School has justly earned for its high standards of legal education and scholarship, and in acknowledging a leadership which we hope and believe it will long maintain.

A handwritten signature in dark ink, reading "F. R. Beasley". The signature is written in a cursive, flowing style. The first name "F. R." is written in a more compact, blocky cursive, while "Beasley" is written in a more elaborate, flowing cursive. The signature ends with a small, decorative flourish.



## EDITORIAL

March 1940 marks the jubilee of the Law School of the University of Sydney. This year also, will see the retirement of the present Dean of the Faculty of Law—Professor the Hon. Sir J. B. Peden, K.C.M.G., who has held that office, with great distinction, since 1910. These two events are the reason for the publication of this journal.

Fifty years of life provides a convenient eminence from which one can look back over the past, and make an estimate of the progress that has been made towards one's objectives. That is what we are trying to do in this book. We have articles which give a subjective account of that progress, but we hope that the book, which is the product, almost entirely, of graduates of the Law School, will in itself furnish an objective illustration of the progress that has been made in realizing the purposes for which the Law School was established. Those purposes included something beyond turning out efficient working lawyers. They looked to producing men who understood and were interested in the history of law, the principles underlying its working rules, and lines of its development, and also men who were capable of using their knowledge of law for public service. Although this book is not in any way intended as a treatise on the law, or as repository of legal learning, its contents will provide evidence that the Law School has not wholly failed in these purposes. The legal surveys cover a relatively small part of its contents; most of it is devoted to what, we hope, will not be considered an unimportant or trivial purpose, that of preserving the memory of the men, both teachers and students, who have built up the Law School.

Fortunately, we have been able to obtain the help, in this enterprise, of several who have been associated with the Law

School ever since it came into existence. We congratulate ourselves on this, and we also congratulate them on the fact that the strain imposed upon them in their earlier days by their obligations to the Law School, whether as teachers or students, was not so severe as to impair their health in their more mature years. Unfortunately one of those who was most intimately associated with the early days of the Law School, and has occupied a prominent position in the legal profession ever since, His Honour Judge Curlewis, has been prevented by ill health from giving us the contribution he had promised. We regret this, and still more the cause of it, very deeply, and all our readers who remember the delightful combination of literary skill with legal learning exhibited by the learned judge in the "Mirror of Justice" will share our regret, and our hope that Judge Curlewis may soon be restored to health.

The personal reminiscences which form so large a part of the contents of this book will serve, at any rate one purpose. They will show that the Law School has, especially in recent years, made a substantial contribution to the public life of the State and Commonwealth. From it have come men who have held high office in politics, in the judicial sphere, and in the work of public administration. If this had not been so, the Law School would certainly have failed in one of its aims, and we can only hope, as the years go on, that this aim will be more fully realized. The record of those who served in the Great War provides sufficient evidence that the law students have not shirked their duty to their country in other fields. But its principal contribution to the community has been the introduction into the legal profession from one end of the State to the other, of many hundreds of practising lawyers, whose possession of a law degree is in itself at least some evidence that they have reached a reasonable standard of professional efficiency, and also, unless they have failed miserably to imbibe the spirit of the institution in which they were trained, and of the men who have trained them, a high ethical standard in their relations with their clients. This, may be, is not the Law School's most spectacular contribution to the community life. But it is one of vital and perhaps in-



creasing importance, as the growing complexity of business relationships and the ever widening network of statute law make increasing reliance on the capacity and integrity of his expert legal adviser more and more of a necessity for the ordinary citizen.

At no time in our history, has there been a more pressing necessity for the re-assertion, in British communities, of the British tradition of the supremacy of law, of the impartial administration of justice, not only between subject and subject, but more especially between the government and its subjects. As the Prime Minister says in the greeting which, amid all his distractions, he has found time to send us, there are few things the British people hold more dear. In countries which include a considerable majority of the whole population of Europe, this tradition, even to the extent to which it had been adopted, is openly abandoned. In these countries courts exist to register the decrees of the party in power. The individual, whatever the written law may say, has no rights which he can assert against the supposed needs of the State. Justice is completely subordinated to political necessity. In some communities, hitherto regarded as civilized, we see this reversion to barbarism dressed up in the guise of a legal philosophy, which is being taught in the Universities, to rising generations of students. Even in British communities, at a time when every other consideration is inevitably subordinated to the necessities of military preparation, there are signs of a tendency to forget, or even to disregard the great fundamental principle upon which our whole system of jurisprudence has been built up. At such a time it is of vital importance that the influence of such an institution as the University Law School, which is year by year sending out into the community numbers of men whose whole legal education and outlook is based upon the principle of the supremacy of the law, should be maintained and extended.

We shall not, therefore, we hope, expose ourselves to the charge of empty boasting, if we claim that it is an event of some moment to the State and the Commonwealth, that an institution which has done much to maintain this great tradi-

tion, and to disseminate it throughout the community, should have attained its fiftieth year of vigorous existence.

It would be invidious to single out individual contributions to this book for special mention, although we must be allowed to express our obligations to the contributors, most of them very busy men, who have so readily acceded to our request for assistance. But it will not be out of place to say that we publish with special pleasure the greetings which form the introduction to this volume. Many of them come from very distinguished men who preside over similar institutions in other English speaking countries, and it is a source of pride to us that the Law School of Sydney University should take its place by the side of these world famous schools of law, and should endeavour, not wholly in vain, to maintain the same high standards of legal education. As Professor Landis of Harvard has said in his graceful message, "there is a bond between us that derives from our common concern with the adjustment through law of the claims that civilized men seek to realize," and from the fact that we have each been, "the repository of the older English conceptions of justice."

The University Law School has not just grown, with the passing of the years, into the stature which it now possesses. Its present position, and the reputation which it enjoys, are due to the positive efforts of the eminent men who have presided over its destinies, and to the successive generations of teachers who have directed its work, and created its traditions. So far as the teaching staff are concerned, a glance at the interesting and informative article by Sir John Peden, on the Law School, will give an idea of their calibre. The men who have been primarily responsible for the work of the School, have of course, been the Deans of the Faculty. Of these, there have been two only, since its establishment as a teaching institution in 1890, and the University Law School has been fortunate in both.

Of the first, the eminent Pitt Cobbett, it is not necessary to say more than has been said by Sir George Rich, in the article which appears in these pages. To the second, Sir John Peden, who is about to retire after thirty years of most distinguished



UNIVERSITY CHAMBERS FROM ELIZABETH STREET

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service, this volume is a tribute. We do not propose to add in this place to the story of his services both to the University and to the State, that appears later in this book. We need only say, that he has written his name on the history of the Sydney University Law School, and indeed on the history of the legal profession in this State, in letters that will not be erased. The frequency with which his name appears in the reminiscences and other articles throughout this volume are sufficient evidence of the all pervasive influence which he has exercised throughout the life of the University and the Law School. We can think of no more fitting way of perpetuating the memory of his work, than by the establishment of prizes bearing his name, in the subjects with which he has been most closely identified, and we trust that it will not be long before a fund is established for this purpose.

Fortunately, Sir John's retirement from the Law School does not mean a cessation of his public activities. We speak on behalf, not only of his old students, but for numberless friends and fellow citizens, when we express the hope that these will long continue, and that they will be encouraged by the knowledge that he carries with him, on his retirement from the Law School, the affectionate goodwill of us all.

We cannot conclude without a reference to the circumstances under which this volume is published. It is an unhappy thing that it should appear at a time when clouds loom so darkly over the world's future. The fifty years that have passed have been full of vicissitudes, and of the ups and downs that are a normal feature of human existence. But, on the whole, they have been years of progress in human enlightenment, and of movement towards higher standards of humanity and justice. Institutions like the University Law School have played their part, and so far as our community is concerned we hope that it has not been a negligible part, in furthering this progress, and helping this movement.

Today as we celebrate our fiftieth anniversary, all these things are faced with the gravest possible threat of eclipse, if not of destruction. In the world, and in this part of it, as it would be if our enemies triumphed, there would be no



longer any room for free institutions like those whose jubilee we are celebrating. We have only to look at the countries in which our foes have triumphed—at least temporarily—to realize this. All the moral and intellectual gains of the last fifty years, all the institutions which stand for freedom of thought and expression, all the traditions of liberty under the law—all that political and intellectual freedom which to-day is as much a matter of course to the average Australian, as the air he breathes, or the sunshine which he enjoys, would go down in ruins. It may be hard for us, in this favoured country, to realize all this. But it is nevertheless a fact. We are confident, of course, and reasonably confident, that this will not happen. But it is a lamentable thing, that at this time, all our national energies and resources, instead of being directed to the building up of our free institutions, and the furthering of our ideals, must of necessity be devoted to the task of preventing it from happening. We can only hope, that in the fifty years upon which we are now entering, the civilized peoples of the world will prove equal to the task of so organizing human affairs, as to remove for ever the possibility of such a menace, and that institutions such as ours will be enabled, with new vigour and security, to continue their beneficent task of spreading more and more widely the ideals of liberty, justice and peace.

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## BEFORE THE LAW SCHOOL

By the Honourable Sir David Ferguson, K.B.



It is not very easy, I think, for a student brought up in the helpful atmosphere of the Law School to realize fully the difficulties that beset the path of a person seeking to gain a knowledge of the laws of New South Wales before the School came into being. The elementary text-books accessible to him were all English, and related only to English law, and their value to him as a student was largely discounted by the well-meant labours of successive editors. With a view to bringing the books up to date for the benefit of the practising lawyer, they had so loaded them with references to later decided cases as to alter their character entirely, and to confuse instead of helping the student. It was not until I came across the slim volumes of the original editions of, I think, Williams' Real and Personal Property and Snell that I realized how much of their teaching value had been lost in the process of swelling them to their present bloated dimensions.

After acquiring some acquaintance with the outlines of English law, the enquirer's next task was to discover what changes had been introduced by a century of Colonial legislation. He turned hopefully to that admirable compilation, Oliver's Statutes, very useful if one only had a friendly guide to supply fingerposts through the wilderness of words. Here the idiosyncracies of the earlier law makers were much in evidence. For some reason they did not always think of repealing an enactment when they were done with it; they simply passed a new act altering its provisions, and let the two contradictory measures stand together on the statute

book. I remember my first attempt to learn something of the jury system. After working my way religiously through the first act dealing with the subject, I thought I knew that actions in the Supreme Court were tried by one or more judges with two magistrates as assessors. I am not sure that the discovery did not cause me some little surprise. However, I read on, and learnt that this was not the universal rule, as the court might direct the issues to be tried by a jury of twelve. It was only when I had waded through several acts that I came with some pardonable hesitation to the conclusion that the method of trial was actually by a jury of four. There was also a not uncommon practice of putting a useful new provision in any bill that happened to have room for it, without too much regard for its relevancy to the subject matter of the bill.

The rules regulating court procedure were in much the same state, except that the confusion was rather more marked. In "*Pilcher's Practice*" one found a collection of the rules that had been promulgated piecemeal from time to time throughout many years. Quite a number of them were inoperative, because they had been superseded by later rules, or because the procedure to which they related had become obsolete. Then there were new rules, promulgated since the publication of *Pilcher*, and these could be discovered by consulting someone who had taken the precaution of cutting them out of the newspapers as they appeared. Some of the rules, by the way, presented curiosities of draftsmanship. One framer of the earlier rules distinguished himself by the care he took to avoid the solecism of using the same words twice to express the same idea. For example, three successive rules began—"Where notice shall have been given of any motion—," "When notice of a motion shall have been given—," "In all cases where a motion is made in pursuance of any notice—."

To the working practitioner the confused state of the acts and rules was perhaps not always without some compensation. It sometimes happened that a diligent search in the lumber room of repealed and half-repealed provisions would



unearth a forgotten rule that could be used to the confusion of an opponent who had not been aware of it.

Later on much valuable work was done by a consolidating committee under the chairmanship of Mr. C. G. Heydon, afterwards Judge of the Industrial Court. For reasons into which it is not necessary to go now, the work of consolidation came to be regarded with disfavour by some of the judges, and it was carried on in a somewhat unfriendly atmosphere. One judge, wishing to refer to the section regulating costs in a Supreme Court action on a verdict for less than £30, expressed great dissatisfaction because it had not been left where he had been accustomed to find it, in the District Courts Act. A strongly hostile comment on the drafting of some of the provisions of the consolidating Evidence Act, followed by a difference of opinion on the bench, led eventually to the transfer of the offending provisions to the Crimes Act, and to the incongruous appearance in that act of the present section enabling parties in a civil action to give evidence on their own behalf. However, the work of consolidation went on, and was brought to a conclusion with advantage, I think, to the profession as well as to the public.

Looking over what I have written, I fear I may be thought to be trying to evoke an unmerited degree of sympathy for the student-at-law in the pre-Law School days. In reality the wind was mercifully tempered to the shorn lamb. His unfortunate plight was mitigated by the fact that, from the examination point of view, it did not matter to him what Colonial Acts had been passed, or how they were framed, seeing that he was not required to know anything about them. It is said that when the Charter of Justice first empowered the court to admit fit and proper persons to act as barristers, the judges did not think it essential that a candidate should have any knowledge of law. It was sufficient if he had the education of a gentleman, measured by his ability to construe an ode of Horace. One of an earlier generation of practitioners told me many years ago how a candidate to whom even this modest requirement constituted a hopeless stumbling block was helped through by an ingenious friend. Acting on his adviser's instructions he bought

a new copy of Horace, a small section of which his friend fastened up. The candidate was then to make a daily practice of assiduously turning over the open pages, until they showed marked traces of close study, while his tutor drilled him in a translation of only those odes contained in the closed pages. When the candidate knew these by heart, he presented himself to the examining judge with his well-thumbed book, trusting that the judge would assume that the clean pages were those that he had studied least, and would test him there. The plan worked; but I am not able to say whether or not the candidate was equally successful in his subsequent career at the Bar.

As time passed, it seemed to have become recognized that a little knowledge of law might reasonably be required from a candidate; but how little can be judged by reference to the list of subjects of examination annexed to the early rules regulating admission. The list is interesting chiefly by its revelation of the number of things he was not required to know. It was not till 1890, the year of the establishment of the Law School, that, except in the Constitutional paper, any New South Wales Act or rule first found a place in the list.

Having passed his final examination, the young barrister, if he was fortunate, was admitted as a pupil to the chambers of one of the leading juniors, and began there to study law.

D. G. FERGUSON.



## THE LAW SCHOOL

By The Hon. Sir John Peden, K.C.M.G., K.C., M.L.C.

**F**ROM the outset the Law School, established in 1890, has been a professional and a cultural school. It has aimed at training men, and in recent and more enlightened times men and women, for both branches of the legal profession. It has also striven to take its part in encouraging the pursuit of a regular and liberal course of education which the founders of the University put in the forefront of their objects. The problem has been and is to meet the challenge of Dr. Woolley's dictum at the formal and public inauguration of the University on the 11th October, 1852, that the soundest lawyers come from schools in which law is never taught, and to bring the work of a school in which law is taught into harmony with the truth that lies behind the dictum.

Law was one of the three faculties contemplated when the University was founded by the Act of 1850, the other two being Arts and Medicine. The Faculty of Law came into existence, technically, in 1855, but not into active operation until 1859, and from then until 1890 the main work was examining, not teaching. The LL.B. degree was open to a graduate in Arts, the examination subjects being civil and international law, the constitutional history and constitutional law of England, and the general law of England. For the LL.D degree a thesis in Latin was at first required. From 1859 to 1869 lectures on "English jurisprudence" were given for two terms each year by a barrister, who was styled "reader in general jurisprudence." In 1887, three barristers were appointed for one year to give evening lectures on

equity and real property, contracts, personal property and torts, and evidence and criminal law. It had been hoped that certificates of the University would be accepted in lieu of those issued under the rules of court for the admission of barristers and solicitors, but any such arrangement was deferred until a system of law lectures should be permanently established, and approved by the judges.

Three years later, with the great Challis benefaction, dreams of expanding the University came true. For law the Senate allotted £2000 a year, and the Law School came into being with a Challis chair of law and four Challis lectureships. The professor was to teach jurisprudence, Roman law, constitutional law, and international law, and, if required, to exercise a general supervision over the teaching in law. Applications were invited in the United Kingdom as well as in Australia. The English committee for receiving and considering the applications in the United Kingdom included Pollock, Holland, Westlake and Bowen.

It was the good fortune of the University to secure Pitt Cobbett, M.A., D.C.L. (Oxon.), an ideal man for the work to be done in establishing the school on a sound basis and building up its teaching and prestige. It is unnecessary to add here to what Sir George Rich has written except, perhaps, to say that at the time of his appointment and during the earlier part of his twenty years of eminent service Professor Pitt Cobbett retained the physical vigour that had helped him to win the amateur middle-weight boxing championship of Oxford in his undergraduate days, an achievement which had an irresistible appeal for his students as a jewel shedding lustre on an academic record of outstanding merit, and that throughout the whole of his term as Professor of Law, Dean of the Faculty, and Fellow of the Senate he lived up to his own high standards of industry and thoroughness in his efforts to provide for the systematic training of cultured lawyers with an outlook beyond the technicalities of their profession, and for the adequate equipment for their responsibilities of those who were to be concerned in public administration or in public life. He had



JPC ACOULAN, MALLB  
Challis Lecturer 1900-1911



The Hon. Sir  
WILLIAM GUYLEN, KCMG  
Chief Justice of New South Wales  
Challis Lecturer 1890-1893



The Rt Hon Sir GEORGE HODGE, PC, KCMG  
High Court of Australia  
Lecturer 1890-1911



F. LEVERIDGE, K.C., B.A., B.Sc.  
Challis Lecturer 1890-1892



The Hon. Sir DAVID FRASER, KCMG  
Challis Lecturer, late of President's Conference and Teaching  
Justice of the Supreme Court of NSW 1911-1912

# FIRST LECTURERS

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a vision, too, at least as early as 1909, of the time when Australia would send and receive ambassadors, and the Law School would have its part in the education required for a Commonwealth diplomatic service. At the close of the Great War the Commonwealth Government wrote to thank him for the help that it had derived from his *Leading Cases and Opinions on International Law*, and to say that his work had given more guidance than any other book dealing with the rights and obligations of belligerents, a tribute to his work which is not to be wondered at by those who know that his passion for thoroughness and precision made him devote, whenever he thought it necessary, a whole week to research in order that he might be able to write a single paragraph as it should in his judgment be written if it was to convey clear and accurate knowledge. The tribute was a source of deep satisfaction to him when he was fighting, with unshaken courage, against an incurable and fatal illness.

The first Challis lecturers were Dr. Cullen, Mr. G. E. Rich, Mr. Frank Leverrier and Dr. Coghlan. All of them were practising barristers who had given promise of achieving eminence in the profession, and all were graduates of the University with a distinguished academic record, two with the senior degree in Arts and Law, one with the senior degree in Arts, and one with the junior degree in both Arts and Science. Dr. Cullen's merits as a lawyer were not adequately recognized by the profession as a whole until the High Court of Australia was established in 1903, and it became known that its first Chief Justice, Sir Samuel Griffith, regarded him as being in the front rank of the barristers then practising before the High Court in any State of the Commonwealth. He became Sir William Cullen, Chief Justice and Lieutenant-Governor of New South Wales, and Chancellor of the University. Upon Mr. Rich the scholarship of Professor Badham cast a life-long spell. He was the founder of the University Boat Club and a co-founder of *Hermes*. He took an important part in the establishment of evening lectures in Arts and in the foundation of the Women's College. He became a judge of the Supreme Court

in 1912, and is now the Right Honourable Sir George Rich, a judge of the High Court since 1913, and a member of His Majesty's Privy Council since 1936. Mr Frank Leverrier retired from practice some years ago after gaining a foremost, and in one respect at least, a unique position at the Bar, as he was recognized throughout Australia as the authority on patent law, and if he had wished he might have had high judicial office. He held the record for the Senior Public Examination with an A in seventeen subjects, for him a simple and easy performance, but it made the University limit the number of subjects in which a candidate might present himself for examination to ten. Mathematician, scientist, linguist, musician, salt of the earth and most modest of men, he was a Fellow of the Senate from 1907 to 1939 and Vice-Chancellor, in the days of elected Vice-Chancellors, in 1914 and in 1921, and chairman of the Finance Committee from 1934 to 1939. It is probably not too much to say that the Senate has never had a wiser or a more useful member. Dr. Coghlan was the unselfish friend and wise counsellor of many young men who began their career in Wentworth Court, and had not yet found their feet at the Bar. A shyness bothered him in court, but it was from kindness of heart that he devoted so much of his life to helping others instead of seeking his own advancement in the profession.

Lectures began before Pitt Cobbett's arrival from England. They were given in Wentworth Court, which ran through from Phillip Street to Elizabeth Street on the site of the present "Sun" office, and housed a large number of barristers and some solicitors in rooms opening on to the bare boards of abnormally wide passage-ways. The quarters secured on the top floor, the second, for the Law School were not specially attractive, but they scarcely received justice from the student who described them in the Lent Term issue of *Hermès* as a garret with acoustic properties perfect in themselves but monopolized by passing trams, and floors devoid of covering and unscrubbed because the washerwoman was on leave of absence for a trip to England. After Pitt Cobbett's



arrival the Law School moved a few doors along Phillip Street to attractive quarters in what is now the Australian Pioneers Club.

In the previous year the Senate had adopted a recommendation of a committee, consisting of its legal members, that there should be a five year curriculum, with subjects of the course in Arts for three years, and then legal subjects for two. It had, too, been in communication with the Judges of the Supreme Court in regard to the admission to the Bar of graduates in Law, and the instruction of articled clerks, the latter being one of the reasons for making the home of the Law School in Phillip Street, so that future solicitors might attend lectures while serving under articles of clerkship, though probably another reason was in order to secure for the lectureships practising barristers who would be willing to lecture close to their own chambers shortly before or after the ordinary court hours, but would not be willing to spend time in travelling to and from the University.

The subjects assigned to the lectureships were real property and equity; obligations, personal property and contracts; wrongs, civil and criminal; and procedure, including evidence. The first two groups were to be studied in the first year in Law, along with Roman law and international law, and the other two groups in the second year, along with jurisprudence and constitutional law. After Pitt Cobbett arrived, the lectureships were rearranged, the order of study was altered and other changes were made in the curriculum. A degree in Arts was no longer required before a student could enter on the course in Law. Students were to complete two years in Arts and to present themselves at the end of one year in the Law School for an intermediate examination in the "theoretical" subjects—jurisprudence, Roman law, constitutional law and international law—and at the end of another two years for a final examination in the professional subjects, though a student who had graduated in Arts before entering on the LL.B course might complete the course in two years. Dr. Cullen was to lecture on real and personal property, Mr. Leverrier on contracts, torts and crimes,

Mr. Rich on equity and equity procedure, and Dr. Coghlan on procedure and evidence. Before the end of 1890 a graduate in Law was entitled to admission to the Bar without further examination, and it was hoped that some provision would soon be made for articled clerks, though the rule of court exempting an articled clerk who has graduated in Law from all except one section of the examinations conducted by the Solicitors Admission Board was not made until 1894.

When Dr. Cullen resigned his lectureship in 1894 the University, with the rest of the community, was still seriously affected by the financial crisis of 1893. With characteristic generosity and energy Professor Pitt Cobbett undertook to lecture on real and personal property in addition to the four subjects for which he was already responsible, continuing the task until he was relieved by the appointment of a "reader" in 1902, and creating a precedent, which has been followed from 1910, for the Professor of Law to take part in the teaching of professional subjects.

The Law School moved in 1896 across Phillip Street to the second floor of Selborne Chambers, where it stayed till the beginning of 1913, and then went for one year to an upper floor, cramped and noisy, but with a lift, in Martin Place, so that barristers who had become tenants of the University on its purchase of Wigram Chambers, facing Phillip Street, and the chambers at the back, Barristers Court, facing Elizabeth Street, might have rooms in Selborne Chambers while the newly purchased buildings were being converted into University Chambers for the Law School and for tenants.

Under revised by-laws which took effect in 1897 students might enter on the LL.B. course if they had passed the Senior Public Examination, or an equivalent examination, in Latin, in Greek, French or German, and in three mathematical subjects, the choice being between arithmetic, algebra, geometry and trigonometry. The wisdom of the change was open to question, and there are still those who hope, and, it may be, rightly hope, that the Law School will one day be a post-



graduate school, though they are willing to admit that the change has been useful in opening the doors more widely and inducing articled clerks and public servants to enter them. Students were still to be encouraged to take courses in Arts, by provisions which made the course in Law two years for a graduate in Arts, three years for a student who had completed two years in Arts, and five years for a student whose qualification for entrance was a pass in the Senior Public Examination or an equivalent examination. The subjects for the final examination were restated and additions made, the list becoming (1) the law of property and principles of conveyancing; (2) the law of status, civil obligations and crimes; (3) equity, probate, bankruptcy and company law, and procedure in those jurisdictions; and (4) procedure in civil and criminal cases before the Supreme Court in its common-law jurisdiction and before courts of inferior jurisdiction, together with evidence and pleading.

Apart from Dr. Cullen's resignation in 1894, and the appointment for two terms in 1898 of Jethro Brown, then of the University of Tasmania, as Acting-Professor during Pitt Cobbett's absence on leave in England, there were no changes in the staff till Dr. Coghlan resigned at the end of 1900. Mr. D. G. Ferguson, afterwards a Judge of the Supreme Court, and Acting Chief Justice, now Sir David Ferguson, was appointed in his place. Mr. T. R. Bavin, afterwards Premier of New South Wales, now Sir Thomas Bavin, one of the Judges of the Supreme Court, was appointed reader in property in 1902, but resigned during his first term in order to accept an Acting Professorship in the University of Tasmania, his place as reader being taken by a barrister, who became lecturer in the subject in 1903 and has occupied the chair of law from 1910.

In 1902 the curriculum was again revised. One reason was that the Commonwealth of Australia had been established, but the changes made were not limited to bringing the curriculum into line with the altered conditions. Students were no longer to take all the "theoretical" subjects in the first year, before beginning the study of pro-

fessional subjects. Contracts, mercantile law, torts, crimes, and domestic relations were to be taken with Roman law and constitutional law in the first year, the idea being not only that students might study some English law while they were studying Roman law, but that they should know something of both English and Roman law before beginning the study of jurisprudence in the second year. New subjects, legal history, political science, legal interpretation and private international law were inserted in the second year work, which also included property and conveyancing, public international law and jurisprudence. Normally the length of the course would be three years, but a graduate in Arts might take it in two, and a student who had not completed two years in Arts had to spread it over four. The examinations were still intermediate and final, but each might be taken in two sections, all the professional subjects being included in the final examination, which, as a rule, was taken in sections at the end of the third and fourth years, so that the study of professional subjects extended over the whole course, and in many cases all were studied before a student presented himself for examination in any of them.

From 1905 a student might enter the Law School if he had passed the matriculation examination, or had completed the first year in Arts, in accordance in either case with by-laws which required a pass in the matriculation examination in Latin at the higher standard. In 1908 private international law, which had become more important, was transferred to the third year.

No further changes were made in the curriculum before Pitt Cobbett's resignation of the chair at the end of 1909. During his leave of absence for the first two terms of 1905, Professor D. G. McDougall, of the University of Tasmania, was Acting Professor. Between 1900 and 1909 the only change in the staff of lecturers was the resignation of Mr. Frank Leverrier and the appointment in his place in June, 1907, of Mr. E. M. Mitchell, now the Hon. E. M. Mitchell, K.C., M.L.C.

Until the Chair of International Law and Jurisprudence



was established in 1921, the present occupant of the Chair of Law, appointed from March, 1910, after practising at the Bar from 1898, and lecturing from 1902 on property, and later on property, conveyancing and legal interpretation, was responsible for the "theoretical" subjects, with the exception of Roman law, and also for property, conveyancing, and private international law. On his appointment to the Chair, Roman law, and in the following year legal interpretation, were transferred to lectureships, the lecturer being Dr. G. W. Waddell, the first of Pitt Cobbett's students to obtain the doctorate, and now the University Solicitor.

During Mr. Rich's leave of absence for two terms in 1910, Mr. J. A. Browne, now the President of the Industrial Commission, and Mr. F. R. Jordan, now Sir Frederick Jordan, Chief Justice and Lieutenant-Governor of New South Wales, were acting lecturers in Mr. Rich's subjects. On his resignation, Mr. Jordan was appointed in his place in 1911. When in the same year Mr. Ferguson accepted an appointment as an Acting Judge of the Supreme Court, Mr. H. R. Curlewis, afterwards a Judge of the Arbitration Court, and later a District Court Judge, was appointed acting lecturer, and he succeeded Mr. Ferguson in 1912.

To relieve lecturers of part of their work and to supplement their lectures, three "readers" were appointed in 1913, Mr. C. G. Davidson, now a Judge of the Supreme Court, in the practice in equity, company law, probate and divorce, Mr. Victor Le Gay Brereton, afterwards Examiner of Titles, in conveyancing, and Mr. D. S. Edwards, afterwards a District Court Judge, in common-law practice and pleading. On Mr. Brereton's resignation in 1914, Mr. P. R. Watts became the reader in conveyancing, with full responsibility for the subject, and is still in office.

After a sojourn in Martin Place for a year without excess of comfort it was a joy to everyone concerned when at the beginning of 1914 the Law School at last entered a home of its very own in University Chambers, designed to meet what it was anticipated would be its needs for the next ten years, two rooms on the fifth floor of the Phillip Street portion for

lectures and one for hats, coats and letters, two on the sixth floor, one for lectures and one for the professor, and a library and a Law Society's room on the top floor of the Elizabeth Street building, to which the Phillip Street portion was joined by a bridge at the fifth floor. Two of those who treated with the Union for expenditure in return for a right for Union members to make reasonable use of the Law Society's room, and who gave time, thought and taste to its furnishing, were Adrian Consett Stephen and Colin Vernon McCulloch, soon to give their lives in the Great War. No one appears to have thought of a women's common room, though only five years were still to run before women might enter the profession under the Women's Legal Status Act, 1918, and beat a pathway out to wealth and fame, either as barristers or as solicitors, as wit or fortune should determine. When the Elizabeth Street floor was included in a lease to the Department of Labour and Industry the Law School was quite happy to get in exchange the fourth floor of the Phillip Street portion, with four rooms for a library, and three made into two and later into one for the Law Society.

The system of supplying students in advance with typed or printed notes of lectures was begun in 1914, several years before it was adopted in any University in England, or, as far as is known, in any Dominion. The aim was not to provide a synopsis, but to crystallize a lecture, so that while the lecturer devoted himself to explaining, expanding and illustrating, without need to dictate, the student might give his mind to what was being said and not to an effort to get a note of it. The Law School owes a debt of gratitude to former and present lecturers for the work done in preparing and revising notes, and it may be permissible to add that to none is the debt greater than to Sir Frederick Jordan, Sir David Ferguson, and Judge Curlewis, some indication of whose continued interest in the Law School is given in the prefaces to editions of printed notes issued after they became judges. In a number of subjects the notes are prescribed for the



examinations held by the Barristers Admission Board and the Solicitors Admission Board.

For many years a student who failed in any subject of the final examination had to take the whole examination again in the following year, and a similar rule applied to a section after the examination was divided into sections. Under an amended by-law, made in 1916 in the interests of students volunteering for active service in the Great War, a student may now be credited with a pass in any subject in which he shows sufficient merit.

During Mr. Mitchell's absence from 1916 to 1918 on active military service his work was carried on, at first by Mr. D. S. Edwards, and later, when Mr. Curlewis resigned in 1917 to become a Judge of the Arbitration Court and Mr. Edwards was appointed to the lectureship in procedure, pleading and evidence, by Mr. Edwards in criminal law and by Mr. J. H. Hammond, afterwards an Acting Judge of the Supreme Court, in contracts, mercantile law and torts.

Two Rhodes scholars, each of whom had taken the B.C.L. degree at Oxford, were appointed in 1919 in place of Dr. Waddell, who had become Parliamentary Draftsman, Mr. M. L. MacCallum, afterwards eminent in journalism, to lecture on Roman Law, and Mr. P. Halse Rogers, now Sir Percival Halse Rogers, a Judge of the Supreme Court, and Chancellor of the University, to lecture on legal interpretation.

By his will, Pitt Cobbett, who died in 1919, bequeathed £2000, subject to a life interest which has recently come to an end, for the foundation of scholarships for the study of law, to be awarded to students who are able to declare that they are in need of such assistance. Another of his legacies was to Sidney John Hanks, who gave loyal service to the Law School from its establishment until his death in 1924, first as attendant and afterwards as librarian, and whose development was an illustration of Pitt Cobbett's influence on those who had the privilege of working with him. For many years before and after his retirement Pitt Cobbett had devoted himself to writing a book on the government of

Australia, and at the time of his death he had completed the greater part of his task. It was his wish that some one else might complete the work, but as this did not seem to be practicable, partly because in the year following his death the High Court had departed in the *Engineers' Case* from the view which had previously prevailed as to the way in which the Commonwealth Constitution should be interpreted, his trustees decided to present to the University the whole of his notes, together with a beautiful cabinet of Tasmanian oak specially made to house both the manuscript and typed copies, as a memorial of a great jurist and in the interests of legal education in Australia.

With the close of the Great War, and the changes that had come in the concern of Australia with international affairs, the Senate determined on the recommendation of the Dean that his Chair should in effect be divided by the creation of a second Chair with public international law as its main subject, though the new professor would also be responsible for jurisprudence and political science. It was hoped that he would be appointed in time to enter upon his duties in June, 1920, but at first no candidate fully met the requirements of the Senate, and it was then decided to offer a higher salary, to give a limited right of practice, and to invite applications for 1921. Professor A. H. Charteris, who is still in office, and who had been for sixteen years the lecturer on international law in the University of Glasgow, and had, in the Trade Division of the Admiralty and afterwards in the War Trade Intelligence Department, gained extensive practical experience of the working of the blockade of the Central Powers during the war, was appointed on the recommendation of a committee, which included Professor A. Pearce Higgins, Sir Paul Vinogradoff and Sir H. Earle Richards.

Lectureships were divided as opportunity offered. When Mr. Mitchell resigned in 1920, his lectureship was divided between Mr. Hammond and Mr. Edwards, Mr. Hammond becoming lecturer in contracts, mercantile law, and torts, and Mr. Edwards becoming lecturer in crimes, though he was



Dr G.W. WADDELL, M.A., LL.D.  
Challis Lecturer 1910-1919



The Hon. SIR FREDERICK JORDAN K.C., M.L.C.  
Chief Justice of New South Wales  
Challis Lecturer 1910-1911



The Hon. F.M. MITCHELL K.C., M.L.C.  
Challis Lecturer 1907-1920



JUDGE H.R. CURLEW,  
Challis Lecturer 1907-1918



JUDGE D.S. EDWARDS B.A., LL.B.  
Challis Lecturer 1918-1924



THE HON. MR JUSTICE DAVIDSON  
The Supreme Court of N.S.W.  
Lecturer 1915-1923

#### EARLY LECTURERS

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still to retain his lectureship in procedure, pleading and evidence. In 1921 on Mr. Jordan's resignation two of his subjects, equity and company law, went to Mr. J. R. Hooton, the third Rhodes scholar to be appointed to a lectureship in the Law School, and the other two subjects, bankruptcy and probate, to Mr. E. F. McDonald, afterwards President of the Returned Soldiers and Sailors League. Mr. C. G. Davidson became lecturer in divorce. Mr. K. W. Street, now a Judge of the Supreme Court, succeeded Mr. Halse Rogers in legal interpretation, and two years later Mr. Hammond in contracts, mercantile law, and torts, Mr. Street's place in legal interpretation being then taken by Mr. H. V. Evatt, afterwards a member of the State Parliament, now a Judge of the High Court. Mr. W. K. S. Mackenzie, D.S.O., in command of the 19th Battalion in the War, succeeded Mr. Davidson in divorce in 1923. Mr. N. de H. Rowland, afterwards Assistant Parliamentary Draftsman, Crown prosecutor, and Acting District Court Judge, became lecturer in procedure, pleading and evidence on the appointment of Mr. Edwards as a District Court Judge in 1924, and at the same time the lectureship in criminal law went to Mr. B. V. Stacy, C.M.G., D.S.O., in command of the 1st Battalion in the War, afterwards Crown prosecutor, now a District Court Judge. On Mr. Stacy's resignation in the following year the fourth of the Rhodes scholars to be appointed, Mr. V. H. Treatt, who won the military medal in the war, then and afterwards Crown prosecutor, now a member of the State Parliament and Minister of Justice, was appointed lecturer in criminal law.

When, in 1926, Mr. Street resigned the lectureship in contracts, mercantile law and torts, he accepted an invitation of the Senate to become the first lecturer in legal ethics, the idea with which the lectureship was established being to discuss, without thought of any examination in the subject, the principles and rules that should guide the lawyer in the practice of law as a profession. The lectureship, founded in memory of William Wentworth Perry by a benefactor who wished to remain anonymous, was afterwards held by Mr.

J. H. Hammond, K.C., and by Mr. E. A. Barton, now an Acting Judge of the Supreme Court, and it has been held since 1935 by Mr. W. J. V. Windeyer, the appointment in each case being made on the invitation of the Senate. To fill the lectureship previously held by Mr. Street, Mr. B. Sugerman, who still holds the office, was appointed lecturer in contracts, mercantile law and torts, and to fill the lectureship which had become vacant by Mr. Evatt's resignation, Mr. Rex Chambers, now the lecturer in industrial law, was appointed lecturer in legal interpretation. Mr. Chambers served till 1935, when the present lecturer, Mr. A. R. Taylor, was appointed.

Important changes were made in 1927 for the award of the LL.D. degree, and in the curriculum for the LL.B. degree. From 1890 till 1923 the doctorate was conferred on an examination, which might be taken at first two and later three years after the LL.B. degree, in legal history, Roman law, international law, public and private, and a subject to be chosen from a list which included common law, equity, property, and constitutional law. From 1924 it was conferred on a thesis, though a candidate who had not obtained the junior degree with honours, had also to pass an examination in one or more of the branches of knowledge that came within the curriculum for the LL.B. degree. The Senate approved in 1925 a proposal of the Professorial Board that the doctorate in any Faculty should be granted for an original contribution of distinguished merit adding to the knowledge or understanding of a subject with which the Faculty was directly concerned, with provision for a qualifying examination for a candidate who had not obtained a junior degree with honours. The necessary amendments in the by-laws of the Faculty of Law took effect at the beginning of 1927.

For the LL.B. degree the course was to be four years for graduates in Arts as well as for those entering the Law School on one of the other qualifications, with an examination each year in all the subjects studied during the year. In each year there was to be at least one of the "theoretical" subjects. Legal history was to be treated much more fully. Jurisprudence and private international law were transferred to the fourth year. The value of legal history and



jurisprudence has been more adequately recognized by the profession from the importance now attached to them by the Supreme Court and the High Court, and the fear once expressed that students would be impatient at having to study jurisprudence in the final year, when they were in sight of a professional career and might be supposed to be exclusively interested in professional subjects, has proved to be groundless. The course in legal ethics, which had begun in the previous year, received its first mention in the by-laws, retaining its place in the last term of the final year. A student who failed in one subject in the first or third year might carry it in the following year, but a student who failed in the second year had to complete the year before proceeding further with the normal course, though the necessary permission was given in most cases for him to attend lectures in one or two subjects of the third year. Experience had shown the need for such a provision for the second year, and when it was suspended by temporary by-laws from time to time during the financial depression, the position was again so unsatisfactory that the suspension was not renewed after 1936.

Except for a provision which entitles a graduate in any Faculty to enter the Law School, and a provision which requires students to attend short courses of lectures, though not to pass examinations, in industrial law, admiralty and lunacy, the by-laws of 1927 are still in force. A serious difficulty which under the present system faces the large number of students who wish to take the course for the LL.B. degree while serving under articles of clerkship is that, in most cases, they are not allowed by the master solicitors to have a reasonable portion of each day for study. Apparently the only way in which the difficulty can be met is by a revision of the rules relating to articles, a matter which does not lie with the University. If the Law School continues to provide, as no doubt it will for many years to come, not only for students who wish to become barristers and can afford to devote their whole time to study, but also for students serving under articles of clerkship in order to become solicitors,

and for students who have to earn their living during their course, the inevitable expansion of the curriculum will probably make it necessary to extend the course to five years.

A separate lectureship in legal history began during the leave of absence of Professor Charteris in 1927, though it was not formerly established till 1928. Mr. W. J. V. Windeyer, who had acted in 1927 was appointed to the lectureship and held it till 1937, when he was succeeded by Dr. C. H. Currey, who is still in office. In equity and company law Mr. Hooton resigned in 1928 and his place was taken by Mr. E. D. Roper, now the Judge of the Land and Valuation Court; on Mr. Roper's resignation in 1937 the present lecturer in equity, Mr. Windeyer, was appointed. Two other lectureships became vacant in 1928 by the resignation of Mr. Street and Mr. MacCallum. Mr. Hammond, who gave his salary to the University Appeal Fund, accepted the lectureship in legal ethics for a year, to be followed until 1933 by Mr. Barton and then by Mr. Windeyer. The lectureship in Roman law was filled until 1930 by the Hon. E. A. McTiernan, who had been a member of the State Parliament and State Attorney-General and was afterwards a member of the Commonwealth Parliament, and is now a Judge of the High Court; from 1930 until the appointment of the present lecturer, Mr. T. P. Flattery, it was held by Mr. J. R. Nield, now a District Court Judge. For bankruptcy and probate one lecturer was responsible from 1929 to 1939, Mr. F. W. Kitto to 1933, and then Mr. W. S. Sheldon to 1939, when the lectureship was divided at his request, Mr. B. P. Macfarlan being appointed in probate, while Mr. Sheldon still retains bankruptcy, together with the lectureship in company law to which he was appointed in 1936, when the Companies Act, 1936, came into force, and company law was separated from the lectureship in equity. On Mr. Rowland's death in 1931, Mr. W. McMinn, who is still in office, was appointed to the lectureship in procedure, pleading and evidence.

A lectureship in industrial law was established in 1933 to commemorate the bravery of a student, Geoffrey Wellesley Hyman, who gave his life in a gallant effort to save a girl



from drowning at Tamarama Beach in January, 1930. The lectureship was filled from 1933 to 1936 by Mr. J. A. Ferguson, now a Judge of the Industrial Commission of New South Wales, and from 1936 to 1938 by Mr. T. O'Mara, now a Judge of the Commonwealth Court of Conciliation and Arbitration; it is now held by Mr. Rex Chambers. Lectureships in lunacy and admiralty were established in 1938. Mr. F. E. Barraclough, formerly the Deputy Master in Lunacy, was appointed in lunacy, and Mr. G. Lytton Wright in admiralty, both of whom are still in office.

In 1936 a piece of vacant land, which was the residue of what had once been the site of the Elizabeth Street portion of University Chambers before that portion was resumed for the widening of Elizabeth Street, was purchased by the Senate for the erection of a building which would not only house many members of the Bar but would also, with alterations and added accommodation in the Phillip Street building, provide adequately for the needs of the Law School. The School now has a library, a browsing room, and a Law Society's room which are a joy to see and use, and the best room of the old library, facing the morning sun, has been converted into a delightful common room for the women students, for all of which enduring gratitude is due to the Vice-Chancellor. Many books have been added to the tiers of steel shelves that surround three sides of the floor and the galleries of the library. A thing of beauty in the centre is a cabinet, the gift of Sir Archibald Howie, to hold a collection of deeds and documents which the library owes, through the good offices of Mr. H. H. Mason, K.C., to the generosity of an English solicitor, Mr. Herbert W. Knocker, of the Temple, London, and Westerham, Kent.

The library was formally entrusted by the Vice-Chancellor in July, 1939, to the keeping of the Dean, and at the same time a portrait gallery, with likenesses of the past and present members of the teaching staff, came into being from the inspiration and through the persistent effort over many months of Miss Dalrymple Hay, the Clerk to the Faculty and Librarian of the Law School, to whose idea this book is

also due. Shortly afterwards a tutor in law was appointed for class exercises, helping students in their studies generally, and taking charge of the library on several evenings each week, the office being intended for a graduate who after completing his course might be willing to devote himself to the work for a year, or possibly two years, before being called to the Bar. The first tutor, Mr. W. R. D. Stevenson, was succeeded at the beginning of 1939 by the present tutor, Mr. F. G. Hutley.

The Law School has always been so fortunate as to have the confidence of the Judges of the Supreme Court, in whose hands the admission of barristers and solicitors has lain ever since the Charter of Justice, and also of the boards established by the rules of court to supervise or conduct examinations for each branch of the profession. The Barristers Admission Board appoints each year members of the teaching staff of the Law School, together with a practising barrister, not a member of the staff, to examine candidates for the Bar who have not obtained the LL.B. degree. Under a rule of court the Professor of Law is the president of the Solicitors Admission Board, the members of which are themselves examiners.

Members of the Bench and of the Bar have shown their practical interest and have given invaluable help by presiding at moots.

The Law School began with ten students taking the regular course, four other students, and a teaching staff of five, four being part-time lecturers. In 1939 there were 288 students taking the regular course, fifteen being women, and a teaching staff of seventeen—two professors, thirteen part-time lecturers, a part-time reader, and a tutor. Except in legal history and lunacy the part-time lecturers are practising barristers; the reader in conveyancing is a practising solicitor.

Eleven hundred students have qualified for the LL.B. degree; five for the LL.D. degree. The names of many of them are to be found in the records of the public life and the public service of the State and Commonwealth and in the naval and military history of the Commonwealth. The re-



cords include a Premier of New South Wales, and Ministers of the Crown who have held or hold office as Attorney-General, Solicitor-General, Colonial Treasurer, Colonial Secretary, Secretary for Lands, Minister for Public Works, Minister for Public Instruction, Minister for Labour and Industry, Minister of Justice, Vice-President of the Executive Council, in the State, and in the Commonwealth, Treasurer and Vice-President of the Executive Council; members of the State and Commonwealth Parliaments, a President of the Legislative Council, a Speaker of the Legislative Assembly, Parliamentary draftsmen and officers of the Parliamentary library; an Auditor-General and a Chairman of the Public Service Board; under-secretaries and officers of State and Commonwealth Government departments; officers of statutory boards; officers of the Crown Solicitor, Clerk of the Peace, Registrar-General and Public Trustee; and officers of the courts.

Graduates and students gave their lives, and won high distinction, including a Victoria Cross, in the Great War, and have enlisted in the naval, military and air forces for active service in the present war.

Graduates and lecturers have become Judges of the High Court, Chief Justices of New South Wales, Judges of the Supreme Court, the Land and Valuation Court, the Industrial Commission, the Commonwealth Court of Conciliation and Arbitration, the Workers' Compensation Commission, and the Supreme Court of Queensland; Prothonotary, Master in Equity and in Lunacy, Deputy-Master in Lunacy, Registrar in Divorce and in Admiralty; and chairmen or members of State and Commonwealth Royal Commissions. Graduates have been appointed to Chairs of Law in other Universities, one in Western Australia, one in New Zealand, and one in the United States. Two-thirds of the practising barristers of New South Wales, one-third of the solicitors practising in Sydney, and one-seventh of the solicitors practising in the country are graduates. Graduates are practising in Queensland, and are discharging official duties or practising in Papua and the Mandated Territory.

It is not for any one speaking for the Law School to assess the value of its work. It may, however, be allowable to say that from the days of Pitt Cobbett those who have been responsible for the work have not swerved from the conviction that a democracy is vitally interested in the quality and character of its lawyers, and that graduates, knowing the facts of their own time, believe that throughout its fifty years the School has tried to serve the community, not without some measure of success.

J. B. PEDEN.



• ROW BORTH



## PITT COBBETT

By The Right Hon. Sir George Rich, P.C.



O man could hold converse with the first Challis Professor of Law without feeling that he had met a man of distinction. To say this of a man means that we feel that he possesses some special property of mind and character which distinguishes him from his fellow men. It was generally believed among his students that Pitt Cobbett was of the same blood as the wayward and restless reformer William Cobbett, whose personality drew men's attention upon him both in the new and the old world amid even the turbulence of the last decades of the eighteenth, and the first of the nineteenth centuries. But I have been unable to obtain any reliable support for this belief.

Pitt Cobbett himself was born near Adelaide where his father spent ten years or more of his life before he returned to England to become the vicar of a parish in Hampshire.

The quality of distinction finds expression in various forms and different applications, and in Pitt Cobbett it was manifested in the stuff of the mind; intellectual energy, individuality of thought and utterance and intensity in the pursuit and dissemination of knowledge.

He was born in 1853. He left South Australia at an early age and spent his youth in England. His school was Dulwich College and his University was Oxford. He found a home in University College, the College of Lord Eldon and Lord Stowell. He was called by Gray's Inn in November 1875.

From the beginning, Public Law claimed Pitt Cobbett's special attention. His work in International Law gave him a wide reputation. Indeed his decision, at the age of thirty-

seven, to accept the newly founded chair at the University of Sydney may be considered surprising. For it must have cost him the sacrifice of much that he had won already, and more that lay within his reach. But the choice of lawyers bearing famous names fell upon him. The committee who selected him for the Chair included Lord Bowen, Sir Frederick Pollock, Thomas Erskine Holland and John Westlake.

For twenty years he remained Challis Professor of Law. He came to us in 1890 and left us in 1910. In such a span the head of the faculty of law in an Australian University can almost make or mar the legal standards of the State. Many influences, it is true, contribute to the condition of legal thought and information in a place at any period. The discipline of a strong and erudite judicial mind may do much for the Bar practising before a given court. Of this we have a conspicuous example in the influence of Sir John Harvey upon the Equity Bar of New South Wales. The accidents of what may be called the general intellectual climate may be responsible for more than teaching or example can do or undo. But the greatest factor in forming the standards of legal knowledge and thought must be the teaching of law. For the teacher makes the furrows which thought follows and implants ideas upon virgin soil. Those who come afterwards can do little more than stimulate the growth, pruning and checking, perhaps, but never eradicating. As a teacher Pitt Cobbett's influence was immense. His gifts included that of holding the minds of his students. His personality made him the centre of their interest. He combined clear thought and vivid expression with individuality of behaviour. At lectures he frequently adopted a crouching attitude, with his left foot on a chair and his head thrust forward. He would wave his spectacles to emphasize a point and would peer sideways through one glass, like a bird looking down a bottle. His delivery was rapid, his speech staccato, with abbreviations and explanations interpolated in a lower tone, but, in spite of his sudden bursts of extraordinary speed, he never slurred a syllable. His candour in stating his opinion on class-examination results invariably induced a mood of inspissated gloom.



PROFESSOR PITT COBBETT, M.A., D.C.L. (Oxon.)  
The first Dean 1890-1910.

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Leaders, who secured over 80 per cent, might be allowed to hope vaguely for salvation. After conceding so much, he would then pass to the others: "Mr A." (he would say), "65 per cent, not good enough for a final; Mr B., 55 per cent, too much of this tired feeling." (An allusion to a pictured advertisement for a tonic.) "Mr C., 50 per cent, Pooh! Mr C., scandalous! Mr D.—incredible! Mr E., disgraceful! Mr F., the remarks applied to the last three students apply to you." Then he would look round the class and grin at his own vehemence.

He credited first year students with no knowledge of law and of not much else and began at the beginning. In this indisputably he was right; no doubt, too, he was wise. His Roman Law lectures abounded in comparisons with English Law. His purpose was to make some of the terminology of the latter familiar to his class by the end of the first term. In his first lectures in Constitutional Law it was his custom to conclude with a long list of cases covering many periods and a diversity of subjects. He gave abbreviated references. He wished the student to find the sources for himself. The subsequent proceedings in class left no doubt that you could not fob him off with headnotes.

In dress he was remarkable for his immaculate neatness. But his dignity needed not the support of starch, either in his raiment or his bearing. In an age when stiff white shirts still survived as the almost universal badge of suffering gentility, he joined the innovators and adopted the coloured shirt, which, like the voluminous trousers of to-day, was then designated "Oxford," so designated, no doubt, in order to prove that all causes having that home are not lost.

In the memory of those who worked with him or studied under him, he lives though twenty years have passed since he died, lives as only those can who in life were distinguished.

To the European world his name and fame were established by his *Cases and Opinions in International Law*, a work still indispensable to every student of international relations. He did not regard the rules of the science upon which he worked as "laws wise as nature and as fixed as fate." But he did

think of them as "the gladsome light of jurisprudence" brought to illumine the way to international order and justice. The return to chaos, of which we have now become the horrified witnesses, would have meant to him a catastrophe destructive of three centuries of development. But his work in Public Law included much besides International Law. It covered Constitutional Law, a subject upon which he published several papers of marked ability. In the first volume of the Commonwealth Law Review there will be found a long study on the Crown as Representing the State which will still repay careful examination, in spite of all that has been said and unsaid since upon the subject.

When, in 1910, he resigned his Chair, he went to Hobart, where he lived until 1919. For many years before his death he worked at the preparation of a book upon the Constitution of the Commonwealth and States of Australia. It was indeed a great misfortune that his work was not sufficiently advanced to allow of its posthumous publication. Under a direction in Pitt Cobbett's will, his executors consulted Professor Jethro Brown, who examined the material which had been collected. His opinion was that it would be a mistake to entrust the completion of the work to someone else. The high standard set by Pitt Cobbett's other work could hardly be reached and his reputation would suffer. The manuscript was, however, presented to the Law School of the Sydney University and here it awaits a hand valiant and strong enough to resume a labour of which the need is greater than ever. For no one can deny the need of a complete and coherent juridical study of our constitutional system by a strong and well-equipped mind. But the time is not opportune. Before such things can be done, we must be able once more to say with Lord Coke—*Lex est tutissima cassis*.

G. E. RICH.





### SIR JOHN PEDEN

By The Hon. Sir Thomas Bavin, K.C.M.G.

It is not easy to write a formal appreciation of a man with whom one has been intimately associated, in various relationships, especially the relationship of a close personal friendship, for nearly forty years. That however is the task that has been allotted to me, and I set about it with very mixed feelings. With the keenest pleasure—because I am very glad to be allowed to use the specially appropriate opportunity offered by the publication of this journal to pay a tribute to a man who has not only given thirty years of distinguished service to the Law School and the University, but has been and is one of the State's best citizens. With keen regret, because the publication of this volume marks not only the jubilee of the University Law School, but the retirement from its control of a man who has maintained at their highest the already high traditions created by his predecessor, and has earned the affectionate admiration of generations of law students.

J. B. Peden has had a full and varied career, and although this article is intended to give an estimate of the man, and of his place in the community, rather than a biographical sketch, it would not be complete without some historical details. He is a native of this State, and owes his early education to the Sydney Grammar School. After a very successful school career, he began his association with the University by obtaining a scholarship for general proficiency

at his matriculation in 1889. This was the beginning of a brilliant undergraduate career, which ended in 1898 with the University Medal at the LL.B. examination. During his University life, he filled all the positions that naturally fall to undergrads of outstanding capacity with a gift for leadership. As Vice-Warden of St. Paul's College, Secretary and President of the Undergraduates' Association, President of the Union, Editor of *Hermes*, he was, in the life and politics of the University, what he afterwards became in the life of the State—the man to whom everybody turned if there was a difficult problem to be solved, the man from whom everybody—even his strongest opponents—could expect a perfectly fair deal. He managed to achieve his outstanding position, strangely enough, without any special distinction in the athletic world, though I believe he did win a five mile road race in 1891.

From the University he went to the Bar, reading with the late Mr. Justice Sly, whose chambers were in the building which now houses the Law School. He rapidly acquired a good junior practice. Solicitors do not generally take long in finding out a man of his quality. If he had any handicap in the race for professional success, it was his thoroughness. He could never be satisfied with doing a thing as well as it could be done under the circumstances. It had to be done as well as it was possible to do it. The junior barrister's life, to a man with a prejudice of this kind, is a very exacting one, and I think Peden found it so. He practised, with ever increasing reputation and success, until 1910, when Professor Pitt Cobbett's retirement left the Professorship of Law vacant.

After a good deal of hesitation, and not without reluctance, I believe, he applied for the position. He was appointed in 1910.

In this connection it will do no harm to give a bit of secret history, which affords a good index to the character of the man. He could have been appointed on the recommendation of Professor Pitt Cobbett. He refused, however, to take the position on these terms, and insisted that it must be advertised, and that he took his chance among all applicants. This course was followed and committees appointed in England



and Australia to judge the qualifications of applicants. Sir John Peden was chosen.

I do not know, nor I suppose does he, whether, from the point of view of his own material success, he made a wise choice. I am as sure, however, as one can be, that his attainments and his character would have brought him ultimately to the judicial Bench, and that the State has lost in that department, the services of one who, by every test, seems pre-eminently qualified for judicial office. However that may be, what is certain is that the University of Sydney, and the University Law School in particular, has the strongest of reasons for congratulating itself on the choice he made. For that choice has given it thirty years of devoted service from a man who has never failed it. Under him, the University Law School has gained steadily in reputation and usefulness. The standards of legal education have been steadily raised, and from one end of New South Wales to the other, there are many hundreds of practising lawyers who are better lawyers, and in many cases better men, through the influence exerted by J. B. Peden on the Law School collectively, and on its students individually.

One advantage of Sir John Peden's choice of an academic, rather than a purely legal career, is that he has not been debarred from political activity. His politics have never been of the pure party brand, and it is something to the credit of our political life here that a man like Sir John Peden, who would have been a rank failure as a mere political partisan, has yet made for himself a most important and influential place in our politics. Although he was never a member of the Labour Party, and certainly never concealed the general direction of his political sympathies, he was appointed to the Legislative Council by a Labour Premier in 1917. Since then, his political position has been, so far as I know, almost unique. A perfectly loyal and, when occasion demanded, a vigorous member of one party, he has always been trusted, respected, and not infrequently consulted, by members of all parties, and I do not think that his strongest political opponent could or would say that any confidence reposed in him had ever been



misplaced. This is not the place, and I am not the person, to recount his political activities in any detail. But I speak not without some knowledge of the political history of the last twenty-five years, when I say that Peden brought an invaluable quality into political life—a quality without which it would have been much poorer than it has been. It was not only his wide and precise knowledge, not only the care and accuracy which he applied to the consideration of all legislative business, not only the scrupulous fairness and candour which distinguished everything he said—but a sort of natural instinct which made him prefer and follow, without any priggishness, what was decent, and honourable and right, and made him assume too that others would naturally prefer and follow it.

It is not, fortunately, a matter for surprise that such a man was chosen as President of the Legislative Council in 1929, and has held that high office ever since. His interests and activities have not, however, been limited entirely to State politics. In 1927 he was appointed Chairman of a Royal Commission to inquire into the working of the Federal Constitution. This Report is a constitutional document of the highest value—a most useful repository of some of the most important aspects of our constitutional history. This was not Sir John's only venture as a Royal Commissioner. In 1913 he was a member of a Royal Commission on the project for the establishment of a Greater Sydney, and afterwards was one of a committee which drafted the Greater Sydney Bill. This was a monumental document of more than eight hundred clauses, and it never got beyond the stage of a second reading speech. But its preparation had involved the most penetrating examination of the whole question of local government, and our present local government system owes much to it. Again, in 1921, he was given a Royal Commission "to make a diligent and full enquiry into and report upon the reform of the law in force in New South Wales," with a view to improving and modernizing the law. This Commission continued in force until 1931, and resulted in some valuable proposals for law reform. If all of these are not embodied in the law to-day, that is not the fault of Sir John Peden.

I have said enough, I think, to show that Sir John has been a very successful man. Unlike some successful men, his success owes literally nothing whatever to the practice of any of the arts of self advertisement, which are not wholly unknown, even in politics. In fact, I have sometimes thought that his modesty almost reaches the proportions of a vice. No one ever bothered more about doing a job well. No one ever bothered less about who got the credit for it. And yet, I have never known any one more ready to pay a tribute to the real achievements of others, or less ready to judge or condemn. The only exception to this in my own experience, is the case where he is satisfied beyond a reasonable doubt—because he always demands this standard of proof—that somebody has been guilty of meanness or dishonesty or injustice. Then, I am bound to say, I have heard him describe the offender in terms that were anything but academic.

I am perfectly well aware that when he reads this, he will probably use some unacademic language about me. But what is one to do? I can only describe the man as I know him—and, I think, as all his friends know him, a man who has never failed a friend, never shirked a duty, never grabbed at any of the prizes of life, never tried to push his own interests at the expense of other people—whose position and reputation in this community—one that any one might covet—has been won solely by the compulsion of his own qualities. The University of Sydney has had many distinguished sons. It has not, nor is it likely to have, any with a higher or more modestly won record of service, both to the State and the University, than John Beverley Peden.

T. R. BAVIN.

## PROFESSOR PEDEN AS A TEACHER OF CONSTITUTIONAL LAW

By The Hon. Mr. Justice H. V. Evatt.



At a very early stage during Professor Peden's lectures on Constitutional Law, the student was brought to recognize the lecturer's essentially professional approach to the topic. Gone for ever was the stately and somewhat leisurely tempo at which many subjects in the Faculty of Arts had been taught.

In some schools of law, even in Australia, more abstract methods of teaching have been favoured. In Peden's hands, however, constitutional law was taught in a practical and business-like method. Thus the leading cases were not mere props on which to hang some interesting generalization, but fierce forensic battles. *Quan Yick* was not a mere name, but a bland gentleman whose business of selling tickets in pak-ah-pu lotteries extended almost as far as the lecture room, and whose perseverance and persistence were rewarded with ultimate victory (*Quan Yick v. Hinds* 2 C.L.R. 345), so that 9 George IV c. 83 acquired something more than a name, it acquired a local habitation. Similarly with the great constitutional case of *R. v. Sutton* (5 C.L.R. 789). The eager student became aware that the well-known firm of Sydney carriers was but a nominal party, and that the real protagonist of "State rights" was Sir Joseph Carruthers, who is said to have won the general election of 1907 by ordering the seizure of the famous wire netting.

Behind Professor Peden seemed always to lurk the shadow of Dicey. It is impossible to forget the excitement of a first reading of Dicey with Peden as expounder and spur. In recent



times it has become almost fashionable to write down Dicey's truths as platitudes, and to pick to pieces certain overstatements in his treatment of the Rule of Law and the Conventions of the Constitution. These recent criticisms and comments were foreshadowed in Peden's expositions of the master; indeed, Professor Peden's very practical acquaintance with the everyday working of legislative and constitutional forms and processes was of enormous advantage. As a result, his students were able to appreciate the limited application of some of Dicey's principles in those self-governing Dominions which had rigid constitutions, where the development of administrative law had been very rapid, and where there had been many curious instances where representatives of the King had exercised or refused to exercise a real personal discretion as to the dissolution of representative assemblies. Indeed Peden not only expounded many necessary qualifications of Dicey's principles, in not a few instances he had taken a prominent part in the local constitutional controversies.

In his Constitutional Law lectures, Professor Peden also succeeded in introducing the student to the practical working of the State Courts, to their methods of organization. He continually emphasized the importance of procedure. "You must examine," he used to say, "how that particular case got into court." He never discouraged research, but, over and over again, he insisted that Constitutional Law also was a "bread and butter" subject, that "every single scrap of legal knowledge" might turn out to be of importance to some client of the future.

He was in deadly earnest, and used the light touch very sparingly. His only hesitations were due to fear that some important analogy or illustration which occurred to his mind in lecturing might be overlooked. "Have I told you," he would ask, "how the compromise as to the Federal Capital was reached?" (No answer.) "Well, I will say a word about that now. Perhaps I had better postpone it until later. No, it's better to say a word about it now." Then would follow some interesting revelation, based upon the lecturer's encyclo-

paedie knowledge of Australian constitutional history, which would clothe the bare bones of a somewhat dull dispute.

It was impossible for such a lecturer to continue the early Law School practice of dictating rather slowly the lecture notes. He liberated the student from this ordeal of transcription, and thus made genuine lectures possible.

His emphasis upon the decided case led to his exposition of the Federal constitution by way of commentary upon its successive clauses and cases decided thereon rather than by way of assertion of general principle. He insisted that matters of time, place and circumstance were always of great importance in the particular controversy before the court. His very important work as the main author of the Report of the Royal Commission on the Constitution also illustrates his very practical methods of approach to problems of statesmanship.

He insisted that in determining questions arising under a rigid constitution the courts should insist upon realities, and ignore all sham and pretence. On one occasion, he criticized the granting of a temporary injunction to restrain the enforcement of a motor-licensing provision against an Adelaide bus proprietor whose business was to carry passengers from that city to one of its outlying suburbs. Possessed of great faith and too subtle a legal adviser, the bus proprietor gave each passenger a ticket purporting to confer a right to be carried from Adelaide to Melbourne. Yet everybody concerned knew that no such destination was contemplated. The argument was that as the contract *entitled* the passenger to an interstate journey, sec. 92 of the Constitution entitled the bus proprietor to snap his fingers at the South Australian licensing regulation. Peden disposed of such humbug with refreshing directness: "The whole thing was a sham. Sec. 92 had nothing to do with it." The temporary injunction was never continued.

Peden's insistence upon realities explains why he was a great admirer of Sir Samuel Griffith, to whom legislative shams were equally obnoxious, and who greatly influenced the Bar, especially in New South Wales. While Professor Peden expounded the various methods of approach to constitutional questions adopted by the judges he usually favoured Griffith's

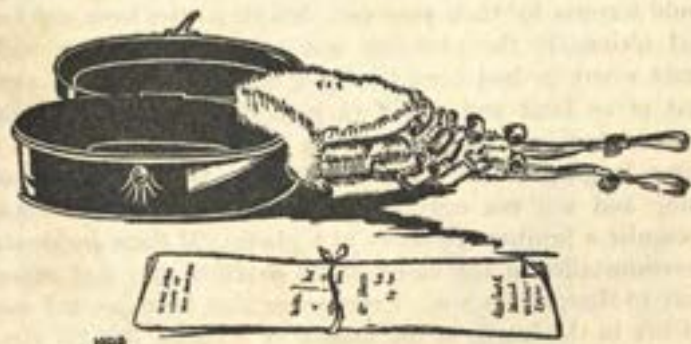
endeavour to temper a philosophical approach with common sense.

Outside the lecture room, if I may put it that way, Professor Peden suffered fools neither gladly nor at all. Inside the lecture room, however, he was a model of patience and seldom showed irritation even at the most fatuous reply. Owing to the comparative infrequency of the cases, it is given to only a few students to become "specialists" in Constitutional Law. Those who did would not go very far wrong if, turning the old couplet, they asserted that it was to him

they owe

All that they are in *Law*, all that they know.

H. V. EVATT.





## PROFESSOR CHARTERIS

By W. S. Sheldon, B.A., LL.B.



HE debate was on the Washington Conference which (God help us) was the burning question of the day. The new Professor of International Law had agreed to adjudicate, but it looked as if he had forgotten his appointment. As the minutes ticked by the delay caused increasing restlessness in the School, which had been conscripted to provide an audience, and accentuated the presence of a sprinkling of proud parents, whose sheepish appearance betrayed their consciousness that this was a function at which only proud parentage could account for their presence. Search parties were sent out and ultimately the professor was yanked from some backwater where he had been fortifying himself against the prospect of an hour and a half of juvenile eloquence with the conversation and hospitality of a Jesuit who spoke half a dozen languages, had spent the War in an Austrian prison camp and was not only deeply versed in wines but could recognize a brother craftsman at a glance. If these incidental potations affected the value of his decision they had served only to sharpen his wit. I remember that he expressed confidence in the future of the League of Nations, but his views were hedged by some canny reservations.

This was in 1922. About a year before Caledonia had gained in sternness what it lost in wildness by the emigration of its only child with a sense of humour and a lack of interest in the proprieties. These were the salad days of a rejuvenated world before which stretched the vision splendid of international love and kisses. At Geneva the lusty infant crying in the night gave no indication that it would reach maturity



PROFESSOR CHARTERIS

"When I am forgotten—say I taught thee."

—Shakespeare. *HEN. VIII*

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with still no language but a cry. Australia's distance from the vital parts only lent enchantment to the view. The most assiduous salesmen of the stuff that dreams are made on were to be found in the Universities. Chairs of International Law sprang up like mushrooms. The still unacademic stream of world affairs became the playground of those strange fishermen who essay all kinds of troubled waters in mortar boards. In the same way, the depression years gave one crowded hour of glorious life to economists languishing in the attics of Universities, to which they have since been returned, for if the occasion always finds the man, it also sometimes finds him out.

The selection of A. H. Charteris for the Chair of International Law at our University was singularly happy. In his background there was a combination of practice with theory which preserved him from the prosy pabula which breed so rapidly without the sanction of responsibility. This was in addition to a constitutional incapacity for smugness. Thus he has never, like some more popular discourses on important things, regaled the gaping mouths of the jejune by conveying the impression that if only God (in an anthropomorphic sense) were in his heaven all would be right with the world. In addition to teaching experience at Glasgow University, Professor Charteris held important wartime jobs at the Admiralty and in the Intelligence Department. He thus had a ringside view of the rules of International Law broadening from precedent to precedent to meet the new conditions created by a new sort of war. If the precedents broadened (in the good old bull-dog way) mainly in our favour, we could admit only to coincidence. There was no more delicate job in those days than preserving the balance between effectively blockading the enemy and lacerating the feelings of the only neutral which mattered by deviating a paragraph from the text-books. The problem was partly solved by writing new text-books. But the trump card was always the enemy, who could be guaranteed to get us out of any diplomatic mess by creating a worse one for themselves; for at this time Captain von Papen was on the threshold of his distinguished

career of ambassadorial reverses which has left him the undisputed doyen of the German diplomatic corps. He is said to have driven his chief, von Bernstorff, to drink, and he certainly helped to drive his American hosts off it and into the war. Professor Charteris was in the thick of our sleight of hand work and these years of experience are part of the secret of his delightful lecturing. The rules of visit and search have almost an entertainment value when the lecturer is able to show how their application helped to rope in von Rintelen. Being a heaven sent raconteur, Professor Charteris takes full advantage of his inside knowledge to adorn the tale.

His enthusiasm for his subject has proved contagious to nearly a generation of students. His success has been almost unbelievable, for the law student with his morbid sense of the relevant is inclined to resent his attention being diverted from the parish pump to the Pierian spring. *Prima facie* how can the distant (and alas! now somewhat faded) charms of article 18 of the Covenant hope to compete against the mercenary blandishments of section 43 of the Real Property Act? International Law is a digression resented by those who in the springtime of their lives have hearts already centred on the implacable pursuit of the legendary six and eightpence. Professor Charteris has never believed that an obligation to attend lectures carries an obligation to listen, and he has scorned to use the weak man's sanction of the pale spectre of the February to come. His irrepressible sense of fun has captured all but the earthiest minds and even those unable to spare the time for a serious study of his subject have been improved by the influence of his broad and cultured outlook. Most good partnerships depend on contrast; and in the Law School the most potent grave and reverend seignior who rules its destinies is perfectly complemented by the incorrigible elfishness of his associate.

Professor Charteris has not immured himself in the University Law School. His most important work has been giving the public a taste for international affairs. Broadcasting may be referred to, but only as an illustration, because long before the Lord delivered us to the commentators he was forming



or actively participating in groups and societies to this end, and even fixing with a glittering eye comparative strangers in the street and holding them lunchless and defenceless against the most delightful monologues they were ever likely to hear. Broadcasting gave him an opportunity to widen his range. He is far and away the best broadcaster in this country. He has a natural faculty for communicating to his listeners his culture, wit, and kindness by means of a Glasgow burr which strikes the ear more pleasantly than most symphony concerts. For some reason these talks are less frequent. The air is now preserved for latter day intellectuals who too often are laboriously well informed, congenitally uninteresting, and cacophonous through their obstinate refusal to recognize that in broadcasting they are practising an art, which calls for close study from those without natural gifts. Could they but hear themselves as others hear them, they might realize that speaking into a microphone is more analagous to the lascivious playing of a lute than the thumping of the bass drum in a small-town band. Their faculty for having their predictions on international matters consistently disproved by the event they share in common with high governmental circles. The methods of Professor Charteris are living proof of the wisdom of never being certain about matters which do not lend themselves to certainty.

The last twenty years have been prolific of conferences in many parts of the world devoted to the study of international affairs. Sphere-shaking resolutions have been passed, specifics prescribed, and even sanctions imposed. In retrospect these conferences may look like an amiable excuse for globe-trotting, but their harvest may well be expected after the war. Professor Charteris many times has been Australia's representative and no native product could have done the job half as well. His colleagues have returned with funds of travellers' tales, in most of which he is the central figure. He is evidently unable to be dull even round a conference table and it is even said that he once made the Japanese delegate chuckle; but this is unverified. One cannot think of these gatherings without visualizing Viscount Cecil, the parish priest (using



the term in its highest Anglican significance) of all well meaning post-war talk, who was never far distant when the faithful gathered. He is said to have been a little shocked at Professor Charteris's refusal to make a sufficiently circumspect genuflexion at mention of the League, but he could not withhold his blessing after school was out. In Canada, where the Statute of Westminster has been read as literally as the Dog and Goat Act, Professor Charteris once made things hum by telling an interviewer that this insistence on the new independence was like one belatedly wed waving her marriage lines to convince the neighbour next door that she was an honest woman.

Professor Charteris has made more than one heroic attempt to introduce us to a little civilization of the continental type. For instance, who will forget the "X" Club? His idea was that Sydney could stand one small Sunday evening group meeting over the evening meal for discussion under the intellectual stimulus of an aroma of garlic. But he did not know Sunday or Sydney. Giants like Brennan, Lambert and Radcliffe Browne were to be found there and intoxicated by the Olympian atmosphere others would venture a few carefully prepared off-hand remarks. James Joyce would be unsmilingly dissected. It was that kind of club. But a few rare spirits were unable to withstand the tradition that on Sunday evenings the midday joint should coldly furnish forth the supper table and that any subsequent time before going to bed should be devoted to wrestling with indigestion not only in its physical post-cucumber form but with the spiritual concomitant which organ music on the wireless so successfully supplies. The club died from gradual internal erosion, and in the end the giants were left with only themselves to talk to, which they found very boring. But the idea was a good one. Professor Charteris still refuses to believe that we have no capacity for culture and he is bound to try again soon. If you see that fraternal gleam in his eye and you care for none of these things flight is your only chance for otherwise he will try to manufacture a silk purse out of your ear.

Professor Charteris is the best-dressed man seen by Sydney

since Chidley. But, unlike that great artist he achieves his results intuitively. Long before they acquired political significance he had tested the prismatic values of the single coloured shirt, with which he can produce a more memorable effect than was obtained by the galaxy of colour which dazzled the eyes of those who beat up Joseph. Good dressing of a sober steadfast and demure kind needs only a long pocket and an unimaginative tailor; but only one designer in a century could appreciate that a bowler hat is made for nautical occasions or that a properly chosen tie floats as serenely over the backbone as the chest or that sandshoes add a touch of integrity to formal evening wear. The fact that Professor Charteris has not the faintest interest in dress makes his achievements only more notable. What a combination and a form indeed! By his style of dressing he has without taking thought added to his girth many cubits, and the attractive result should persuade stout men to cast aside their belly-bands and flaunt the aesthetic superiority which the circle has always possessed over angles and straight lines. When we realize that in our midst there is a sartorial Epstein, the happy day will dawn when men will be able to emulate their sisters and whisper into the ears of our modest social gossip writers what they propose to wear at the next dance to which they have not yet been asked.

Keeping abreast with current events is the duty of a professor of International Law. With Professor Charteris it has reached the proportions of a vice. It is an almost universal weakness of educated people to pretend that they are better read than they are and by practice a certain facility is acquired in discussing unread books in sufficiently nebulous terms to get through a conversation without the disgraceful truth becoming apparent. A man like Professor Charteris is a menace—not only has he read everything but he often innocently exposes the deceitful by putting point blank questions the answer to which depends on some tiresome matter of detail. Like most booklovers he is a dangerous man to let loose in a library; but where others are prepared to beg, borrow or steal the book of their desires, it is his practice to do all three to the same book. I would like to remind him



semi-publicly that the time elapsing between his borrowing my *Boston* and its return at the pistol point corresponded almost exactly with that between the sentencing of its heroes and their execution. The book deals with the Saccho and Vanzetti case.

The Law School jubilee will be unlike all others if there is not a little cashing in to celebrate the occasion. Why should not one of our tycoons modestly endow some tame Boswell to attach himself to Professor Charteris and collect the unconsidered trifles that are daily being lost? For here is a personality which would be as rich as Johnson's if it were not hampered by good manners. But on second thoughts, the idea is a silly one, for embarrassment at the thought of the recording angel would probably turn him overnight into

A common place type  
With a stick and a pipe  
And a well bred black and tan.

He might even to prove his unimpeachable ordinariness pay his first visit to the Sydney Cricket Ground or go to live at Neutral Bay.

No, let the tycoon put away his money towards his reception into everlasting dwellings and leave us our Professor unendowed—one of the few witty men who is never unpleasant—and almost the only lovable one who is not a bore.

W. S. SHELDON.



## "BOB OF THE LAW SCHOOL"

By A Law Reporter

**I**N these pages will be found the names of many distinguished graduates who have won eminence in their profession. At first sight, it may seem strange to find included in this company one who has gained no such distinctions, whose walk in life has been dignified not by academic or material successes, but only by the qualities of character he brought to it, and whose association with the Law School was limited to that of faithful service. But if a University must necessarily emphasize academic qualifications and distinctions, it is well sometimes to show that though these must be its primary aim, it can recognize also and pay a tribute to simple integrity.

Robert Wilson, better known as "Bob of the Law School," has been a well-known figure to many generations of students. He was employed as a liftman and subsequently caretaker at the Law School from 1919 to 1938. He served in the Great War and came through it lamed but with a fine record. Though 54 years of age, war had the mysterious effect of reducing his years, with the result he was able to enlist in the 4th Battalion in April 1915. He served in Gallipoli, where he received the injury to his leg which later resulted in lameness. He was present at the evacuation from the Peninsula, and was afterwards transferred to the Somme.

At Pozieres, Bob acted as emergency runner from the General Staff to the front line. He carried rum and milk up to the wounded and distinguished himself in bringing in casualties and going out with burying parties. For these services he was awarded the Military Medal. Although offered

a transfer to a soft job behind the lines he refused to leave his "mates" and stayed with his regiment until he was invalided home in 1917. After his discharge he went back to his old work—mining at Cobar, but this proved too strenuous after the war years, and he came to Sydney to seek a lighter job and entered the employment of the University Law School in February 1919.

There he identified himself very fully with the well-being and activities of the students. The place of a favoured student in a result list could cause him grave perturbation or deep pride. This was particularly so in the case of the women students, in whose careers he took a keen interest, and to whom he constituted himself a willing slave and general adviser. In this way, although a bachelor without kith or kin, Bob, like Mr. Chips, may be said to have had quite a large family.

When Bob retired in 1938 past and present students contributed to a fund which was handed to him at a gathering to which came graduates and undergraduates, the staff, the cleaners, the Dean of the Faculty, and a Supreme Court Judge. Bob was too overwhelmed and moved to make a speech, and it was left to his little dog, an interested observer of the events, to respond in a series of shrill barks, as it pushed forward a ball in invitation to the company to play. This dog was for many years Bob's dearest companion. After his retirement he moved to a room in the street which still held all his interests, and the daily peregrination of the two friends along Phillip Street was a familiar sight. "Possum" seemed to understand every word her master spoke, and would stand patiently looking up as he leant on his stick talking to a crony. About a year ago the little dog disappeared. Only those who have loved a dog and been dependent on it for companionship can realize what that loss was to a lonely old man.

About the stick there is a pleasant story. It was given him by a New South Wales Premier who noticed his growing lameness. Brought to him by "the Premier's own messenger in uniform, buttons and all" it was one of his greatest treasures. Then one day this stick was lost. The Premier, who had be-



"BOB OF THE LAW SCHOOL"

[To face p. 44]





come a judge, heard of Bob's distress at the loss of what he "wouldn't have lost for the world," and one day his tipstaff knocked at Bob's door with another stick which is now his constant prop.

Like many simple natures he has a natural good taste which discards the meretricious. He has a warm love for Gilbert and Sullivan and as warm a hatred of "jazz." He is an omnivorous reader of the favourites of the past, or, as he expresses it, he likes best "books written before the days of the motor-car." It must be admitted, however, that his literary tastes were not always viewed with sympathy by the barristers of University Chambers in the days when he had jurisdiction over the lift and became absorbed in a chapter.

Children, dogs and the down and out know they have in him a friend who will never let them down, for the key-note of his character is the soft heart which can never hear a tale of woe unmoved, and which makes him a mark for every wastrel with a plausible appeal. His savings are continually depleted, and built up to be depleted again. Discovering that he has been deceived, he sternly makes up his mind to be deceived no more, and once more is, because "this time the hard luck story might be true."

L.R.

• • • • •

### HORUS OVER EGYPT

By the long palms of Heliopolis  
The river moves unseen  
Through the soft stillness of the rushes;  
And all that has been  
Possesses the vastness of the desert  
Clouding, covering  
All that is, so that there is no present, only  
The past, hovering  
Striking at the mind, not as the hawk strikes swiftly.

But gently cruel  
Draining the life of one's mind, giving no pain,  
An unresisting fuel  
For the dead fires of the past, that lives upon the present  
It is there, in the reeds  
Where the stately ibis ponders over his lost divinity  
And never heeds  
The urgent paddles of the small white steamers, I shall build  
My temple, dedicated  
To all the gods that were, the old ones, who will come again  
From the dim places, fated  
To be their ultimate home, since the last prayers were said  
to them,  
And rest awhile  
In my little white temple I shall make for them  
Of onyx and alabaster,  
Cool and pleasant, so that the ibis may come there, and be  
again  
Tahuti the Master.  
Nothing shall touch my little temple in the reeds, only the  
sweeping shadow  
Of a great aeroplane  
Darkening the statues and pylons for an instant, and passing,  
Like swift rain  
Outward toward Ctesiphon where the dark sons of Chosroes  
No longer reign.

A. G. CRAWFORD.



## AN ARTICLE ON A LEGAL TOPIC

By the Hon. Sir Frederick Jordan, K.C.M.G.

My temples throb, my pulses boil,  
I'm sick of Song, and Ode, and Ballad—  
So Thyrsis, take the midnight oil,  
And pour it on a lobster salad.

My brain is dull, my sight is foul,  
I cannot write a verse, or read—  
Then Pallas, take away thine Owl,  
And let us have a Lark instead.

THOMAS HOOD. *To Minerva.*  
(From the Greek).



I have been asked by my friend and colleague Sir Thomas Bavin to write an article for the Jubilee Journal of the Law School of the University of Sydney. Upon inquiry as to the subject of the article, Sir Thomas declined to commit himself to any more definite specification than that it should be on a legal topic, and should be 3,000 words in length. Such freedom of choice is somewhat embarrassing to one whose pen is not facile, and has indeed been hitherto directed to such set tasks as the drafting of pleadings and legal documents and the writing of opinions and judgments, upon subjects which have always been predetermined and have left little scope for the imagination, except, of course, in the case of the class first mentioned. Now, without subscribing unreservedly to Dr. Johnson's proposition that "No man but a blockhead ever wrote, except for money," it must be said that it is a source of considerable solace to a writer to be provided with something definite to work on. As regards form, the idea has been well expressed by Gautier:

Point de contraintes fausses,  
Mais que, pour marcher droit,  
Tu chausses  
Muse, un cothurne étroit.

As to subject, the point was perhaps best taken by a small child in a modern school, in the remark: "Please teacher, must I do exactly as I please?" The difficulty is the more disconcerting in relation to a field of knowledge which combines a fondness for precise statement elsewhere found only in the exact sciences, with a yearning for authority in support of all propositions which equals if it does not surpass that of dogmatic theology. In a branch of learning in which it has been authoritatively decided that an oyster is a wild animal (*Ex p. Emerson* (15 W.N. 101))—a ruling which was extended to winkles by a bench of Kentish Justices (13 W.N. Covers 21)—that a lion is not a domestic animal (*Harper v. Marcks* (1894) 2 Q.B. 319), and that a well exceeding 30 feet in depth is not a building exceeding 30 feet in height (48 Sol. J. 486), it is not without trepidation that one endeavours to discover a topic upon which everything has not yet been not only said, but authoritatively determined. A further and more serious difficulty is occasioned by the fact that so many attractive topics have recently been dealt with by Lord Macmillan in "Law and Other Things." No one who has had the pleasure of reading the essays on Law and Politics, Law and Order, Law and Ethics, Law and Religion, Law and History, Law and Letters, Law and Language, and Law and The Citizen, which are contained in that volume is likely to be so venturesome as to write anything that might provoke comparison. And yet, when these are eliminated, what remains? I can think only of Law and Humour; and since it fortunately appears from the terms of my charter that precision in quantity is a more important desideratum than excellence in quality, I am emboldened to address myself to the task.

Here, too, one has been forestalled; for the topic has been dealt with by Quintilian, Book VI. Chapter 3, de Risu. That learned writer is, however, chiefly concerned with humour in the field of advocacy; and he tends to neglect judicial humour. Indeed, he regards a judge as a somewhat unaccountable factor in litigation, whose susceptibilities are to be treated with



caution and whose foibles are to be indulged and utilized. "*Sunt etiam iudices quidam tristiores quam ut risum libenter patiantur.*" On the other hand, in countries which have inherited the English common law, the practice of reporting judgments, the permanence of the written word, and the evanescence of the spoken, have combined to give judicial humour a prominence which its quality does not always deserve. If, however, the subject of legal humour be divided into judicial and non-judicial, then, "like Sinclair's well-known division of sleeping into two sorts, namely sleeping with or sleeping without a nightcap, it would seem to exhaust the subject" (*Repton v. Hodgson*) 3 H.L.C. 72 at 79-80).

Some of the observations of Quintilian, though directed to advocates, are worthy of attention by all who may be tempted to indulge in legal humour. "*Ne dicet quidem salse, quotiens poterit, et dictum potius aliquando perdet quam minuet auctoritatem . . . vitandum etiam, ne petulans, ne superbum, ne loco ne tempore alienum ne prae paratum et domo adlatum videatur quod dicimus . . . adversus miseros inhumanus est focus.*" Not to all is it given to possess a sense of humour, or to exercise it with due restraint. "*Plerique Demostheni facultatem defuisse huic rei credunt, Ciceroni modum.*" That which has been laboriously striven after is in general least successful. Few have been endowed with the gift, perhaps most eminently possessed by Lord Macnaghten, of illuminating a subject by humorously ironical turns of phrase, which are the natural and unforced expression of the mind of the utterer. There have been few Macnaghtens. The judge who is on the alert to say good things—as was the habit of mind of the late Lord Darling—seldom meets with the acceptance which his assiduity might be supposed to deserve. On the contrary, he is apt to find himself in the predicament attributed by Whistler to Oscar Wilde, of having no enemies but of being cordially disliked by all his friends.

Now, there are few things connected with the law that are in all respects insusceptible of humour. Even a bill of costs has been described as "an extremely unattractive document



to him who receives it, but to those who are not called upon to pay it, a document full of human interest:" (*More v. Weaver* (1928) 2 K.B. 520 at 523). Sometimes, the humour is unconscious. The author of the marginal note to the Private Act 35 Geo. III c. 100: "Rector exempted from keeping a Boar, on payment of an Annual sum to the Organist" may be presumed to have been as free from malice as was Lewin in the composition of his headnotes: "Possession in Scotland evidence of stealing in England" (1 Lew. 113), or, "A party is bound to retreat by a back door to avoid a conflict" (1 Lew. 116). The benefit of the doubt may also be extended to a judge who, upon an expression of opinion being tendered from an expert witness upon a matter of common experience wholly unconnected with any scientific knowledge which he might possess, rejected the contention of counsel that it was only common sense, on the ground that "You can't get common sense from an expert witness." It may be doubted, however, whether those concerned in the trial and in the reporting of some of the slander actions to which our forefathers in the seventeenth century seem to have been specially addicted were free from all guile. It is reported, for example, in *Foster v. Browning* (Cro. Jac. 688) that, a verdict having been returned for the plaintiff in an action in the Court of Common Pleas for the words: "Thou art as arrant a thief as any is in England," a motion in arrest of judgment was successful on the ground that the plaintiff had omitted to aver that there was any thief in England. In *Baker v. Morfue* (1 Sid. 327) the plaintiff, who was an attorney, sued for that the defendant had said of him: "He hath no more law than Master Cheyny's bull." It was moved in arrest of judgment that there was no averment that Master Cheyny had a bull. The court, however, by a majority, relying upon a dictum that to say, he hath no more law than a goose, was actionable, held that the scandal was the greater if Master Cheyny had no bull (presumably because this would suggest that the plaintiff's knowledge was the more exiguous). The question whether it would have been actionable if the words had been: "He hath no

more than the Man in the Moon" was expressly left open. It appears from the report in 2 Keble 202 that Keeling C. J. dissented, in reliance on Fenner's case. His Lordship's selection of that authority, the slander alleged in which I forbear to repeat, and the general tone of the reports, suggest that all parties concerned were thoroughly enjoying themselves.

In general, those who have given utterance to legal humour that is in any way memorable have not been wholly unconscious of the fact. The authorship is of the widest range. At one end of the scale comes the attorney's clerk who, observing a picture of Moses breaking the Tables of the Law, remarked that he supposed that after that they had to get on with an office copy. At the other is Pope Innocent III, of whom it is related that on an appeal coming on from England before the Papal Court in the year 1205—in days when it was scandalously if delicately suggested that it was imprudent to present an accusative unless it was accompanied by a dative—the matter was heard before the Pope himself. Upon Robert of Clipstone urging against Thomas of Marlborough that "We have learned in the schools and it is the better opinion that prescription does not run against episcopal rights," His Holiness replied, "When you and your lawyers learned this you must have drunk a good deal of your English beer" (Cohen, *History of the English Bar to 1450*, p. 78). Between these extremes the range is infinite. But just as wine can be assessed at its true worth only by the connoisseur, it is only by a lawyer that the full and true flavour of legal humour can be extracted and enjoyed, whether it be one of the *grands crus* as purveyed by the masters, or a *petit vin du pays*, which can be properly appreciated only *in situ*.

In the nineteenth century, the judges most remembered for their humour are Lord Justice Knight Bruce and Lord Macnaghten, the latter extending into the early years of the twentieth. It was the Lord Justice who in *Stone v. Godfrey* (5 De G.M. & G. 76 at 88-9) remarked: "Mr. Stone alleges, and probably with truth, that Mrs. Godfrey's marriage was without his consent, against his wish, and clandestine. But she



had been ten years marriageable; he had not acted on the venerable precept, which says, 'Marry thy daughter, and so shalt thou have performed a weighty matter.' And I suppose that in an artisan's family, not less than in others, a maiden of five-and-twenty may not unreasonably consider that she has been single long enough." It was he too who in *Barrow v. Barrow* (5 De G.M. & G. 782 at 789), a wife's suit for a settlement, said in the course of his reasons: "Her present husband and opponent, when he accepted or was accepted by her, and when they married, was a practising solicitor, possessing, as it seems, little, if any, private fortune, but a bachelor; yet, though a bachelor, versed somewhat in the ways of women, as having, at least, eight living children by three living mothers, a combination of circumstances, which, known to Mrs. Combes, when she resolved to marry him, was not viewed by her as unrecommendatory of the proposed connection. Seldom on the whole can a couple before marriage have laboured so diligently to secure an unpeaceable life, while, after it, we find them fresh from church handselling the wedding-day by a testamentary controversy." In *Walker v. Armstrong* (8 De G.M. & G. 531 at 538), his Lordship began his judgment in a suit for rectification with the following paragraph: "This litigation owes its origin to the manner in which a series of professional gentlemen in the north of England permitted themselves to transact, or in more accurate phrase to entangle and perplex, some legal business intrusted to their care. These licensed pilots undertook to steer a post-captain through certain not very narrow straits of the law, and with abundance of sea room ran him aground on every shoal they could make. First in 1824, then in 1825, and again some years afterwards, was the gallant officer encumbered with help of a description for which he could perhaps supply a better term than I can."

Lord Macnaghten's strictures in *Gluckstein v. Barnes* ((1900) A.C. 240) are too well known to warrant repetition; and the remaining field is so rich as to make choice difficult. In *Great Western Railway Co. v. Bunch* (13 A.C. 31 at 59), one of his earliest cases, his Lordship said, in the course of



his speech: "It was said that if everybody acted as Mrs. Bunch acted in this case, railway companies would require an army of porters, and that it would be almost impossible for them to carry on their business. I quite agree; but I am not much impressed by that observation. I apprehend that if all travellers acted precisely alike, if everybody arrived at a station for a particular journey at precisely the same moment, though the time of arrival were the fittest that could be imagined, there would be no little confusion, and perhaps some consternation, among the railway officials. Whatever may be the result of your Lordship's judgment, there is no fear that it will have the effect of making everybody act alike. Some passengers will still give more trouble at the stations than others, but no one will give any more trouble for it. Things will go on just as usual. The fidgety and the nervous will still come too soon; the unready and the unpunctual will still put off their chance of arrival till the last moment; and the prudent may have their calculations upset by the many incidents and hindrances that may be met with on the way to the station. And it is just because of the irregularity of individuals that the stream of traffic is regular and easily managed." It was in *Montgomery v. Thompson* ((1891) A.C. 217) that his Lordship said that: "It is not the first time in these cases that water has got an honest man into trouble, and then failed him in a pinch," and that, "Thirsty folk want beer, not explanations." In *Schofield v. Earl of Londesborough* ((1896) A.C. 51 at 544), his Lordship said of *Young v. Grote*: "It has given rise to various explanations not altogether uniform or consistent. That circumstance of itself is regarded by some Judges as a badge of merit and a passport to the confidence of the profession. But when you are in search of a principle, the effect is rather embarrassing." In *A.G. v. Richmond* ((1909) A.C. 466 at 473-4) he said: "Your Lordships were warned by the learned counsel for the appellant of the appalling consequences of the decision under appeal. 'Here,' they said, 'is a tremendous hole in the Finance Act discovered by the ingenuity of a Scotch solicitor. The great fishes which the Commissioners look upon as their own

will swim through the gap one by one. The duller-witted Southron will follow the lead. And what will become of the revenue of the country.' My Lords, I do not think the prospect so gloomy." In *Cooke v. Midland Great Western Railway* ((1909) A.C. 229 at 235) the *locus in quo* was described by him as having been a bit of ground "devoted or abandoned to the sustenance of the railway inspector's goat and the diversion of the youth of Navan." In *Clover v. Hughes* ((1910) A.C. 242 at 250) His Lordship made a dichotomy which would have rejoiced the heart of the once-celebrated Sinclair. "All accidents," he said, "I suppose, may be divided into two classes, those which are due to one's own fault, and those which are not. Accidents due to a man's own fault are for the most part the result of inadvertence or miscalculation. If a man miscalculates his powers and so fails in what he attempts to do and, it may be, injures himself, he has probably plenty of friends who will tell him (at any rate after the event) that they knew exactly what would happen. But still, as it seems to me, the untoward occurrence would popularly be called an accident." In *Tackey v. McBain* ((1912) A.C. 186 at 192) he remarked that: "All the other brokers examined on behalf of the plaintiff were shocked to think that the manager of a company could tell an untruth to a broker, but there was not one of them who seemed to have thought that there was any harm in a broker trying to worm out secrets from the confidential manager of a company;" and in *Gorea v. Appuhamy* ((1912) A.C. 230 at 236) he said of a defendant to a partition suit that: "He was not without his faults. He is described by the learned Judge who decided in his favour, as 'a convicted forger and thief,' and 'expert not only in crime and incarceration but also in perjury.' But it is perhaps going too far to hold that he was so fond of crooked ways and so bent on doing wrong that he may have scorned to take advantage of a good legal title and may have preferred to masquerade as a robber or a bandit and to drive away the officers of the Court in that character."

With these modern illustrations of the topic which I have been so hardy as to discuss, I bring my article to a close.

F. R. JORDAN.



## REMINISCENCES

By Sir Robert Garran, G.C.M.G.



THE University when I first knew it, in 1885—five years before the birth of the Law School whose jubilee is reached this year—was a smaller affair compared with what it is now. There were less than two hundred undergraduates, most of them in Arts. The Medical School had begun two or three years before, with one Professor and a handful of students; there was an infant Faculty of Science, and evening lectures were just being introduced. Apart from the Medical School, there were five professorial chairs: Classics, Mathematics and Natural Philosophy, Physics, Chemistry and Natural History (in which last-named subject we were not examined, and only needed a certificate of "intelligent attention to lectures." Most of us got it).

But the University already had fine traditions. The foundations had been well laid by Dr. Woolley (classics) and Professor Pell (mathematics). Then came "Badham of Wadham," not only the first classical scholar of his day, but a brilliant orator and an inspiring teacher. He had just died in harness in 1884, but I remember as a boy hearing and seeing him at a Commemoration, declaiming and looking as Demosthenes must have declaimed and looked. My mental picture of Demosthenes has always had the face and voice and stature of Dr. Badham. He was a fine old conservative, with a withering scorn for the divers "stinks" that were beginning to invade the groves of Academe, and spoke contemptuously of professors of "the art of making artificial manures." But they did not include his good friend and colleague, the eminent chemist Professor Liversidge, who is also one of the great names of the University.



Soon after 1885 the great expansion of the University began, as income from the accumulated Challis Bequest came rolling in and professors, lecturers and students multiplied exceedingly. Women students too were admitted for the first time under the University Extension Act 1884, and came up first as single spies, but soon in battalions.

The University had been conferring degrees in law long before the Law School came. There was even a titular lecturer in law, but I do not think his duties were heavy. My father was one of the early Doctors of Law of the University. When he came to Sydney, an M.A. of London, he wished to join up with the young University, and his diaries disclose that in 1859 he read Stephen's Commentaries, and attended a course of six lectures in Jurisprudence. But his editorial duties intervened, and it was not till 1868 (after a few more lectures, I think) that he presented himself for his LL.B., and in 1870 he graduated Doctor with a thesis on Justinian's definition of Jurisprudence.

When the School started in 1890, I and others of my year had finished with Arts, and were two years gone in study of the law. We asked to be allowed to submit ourselves, without attendance at lectures, for the LL.B. examination, after the manner of our fathers; but this was denied us by the hard-hearted Faculty. So I had no part or lot in the Law School—except as perpetrator of an Inaugural Ode sung at that year's Commemoration:—

Ye students all, both great and small,  
Cast off that look forlorn;  
Your prayers—'tis true—no longer do  
The Conscript Fathers scorn.  
Now Medicine may starve and pine,  
But we don't care a straw;  
Hip! hip! hurrah! we shortly are  
To have a School of Law.

With crime and tort of every sort  
We'll soon familiar be,  
And learn by heart the secret art  
Of wilful burglary;  
We'll be acquent with fraudulent  
Device of every sort,  
And reach in time the height sublime  
Of gross contempt of court.

We don't know much of things that touch  
Forensical transactions,  
Though practised well, as you may tell,  
In many civil actions;  
Refreshers too, we swear to you,  
As taken at the Bar—  
Although the word we've often heard,  
We don't know what they are.

On legal feast, this year at least,  
The students ought to thrive:  
Lecturers four, one Pro-fess-or,  
Amount to teachers five.  
Perhaps they'll teach two students each—  
Perhaps a fraction over;  
And you'll agree, I think, with me,  
They'll find themselves in clover.

The School was very fortunate in beginning under the auspices of Professor Pitt Cobbett, who set a high standard and tradition. Not having been among his pupils, I did not fully realize his greatness till much later. Many years after, when the last war came upon us, I had to try to turn to practical use, a hitherto theoretical acquaintance with International Law; and in dealing with the actual problems that arose from day to day, I found more practical help from Pitt Cobbett's Cases in International Law than from all the other text-books put together. In a branch of law that, in the hands of professors and publicists, is specially liable to become somewhat academic, he seemed to have a genius for reality, and a faculty for throwing light on practical applications.

A major event of 1886 was the birth of *Hermes*, in whose pages are enshrined many reminiscences of the early days of the Law School. It appears that accommodation and equipment compared unfavourably with the splendid appointments of to-day. There was in those days, sprawling from Phillip Street to Elizabeth Street, an old ramshackle dust-grimed rabbit-warren, where barristers burrowed and swarmed, called Wentworth Court; and there the Law School dug in. Thus *Hermes*, in May 1890:—

THE LAW SCHOOL.—For our sole use and benefit a garret has been obtained at Wentworth Court. Carpets we despise, but are prevented from standing on them to show it. Moreover the regular washerwoman has been granted six months' leave of absence for a trip to England. We have no hat-pegs, and we therefore wear our hats to keep off

draughts, and the seats are of choicest ironbark, so we always remain awake. After the confinement of the garret a little exercise is deemed imperative. So our next lecture comes off at the University. . . If it be found expedient to give three lectures a day, the extra one will be delivered at Bourke, Albany, and Cape York, on alternate weeks.

That the students in their work rose superior to these disadvantages may be judged from the accuracy of the following exposition of a nice point of law, over the signature of H. R. Curlewis (*Hermes*, May 1890):—

#### THE RULE IN SHELLEY'S CASE

In Shelley's case suppose that D  
Should have convey'd to him by E  
Estate in freehold—whether by  
A gift or otherwise (what I  
Should like to have convey'd to me)!

If mediate or immediately  
It limited to th' heirs should be  
Of D, to show the rule I'll try  
In Shelley's case.

Whether 'tis heirs in tail or fee,  
"Heirs" is a word, as all agree,  
That limitation will imply  
(If on Coke's word we may rely),  
Not purchase. That's the rule, you see,  
In Shelley's case.

The law and the stage have always been good friends—perhaps because the forensic and histrionic arts have something in common. So it was only to be expected that the annals of S.U.D.S. (the homely initials of the Sydney University Dramatic Society) should abound with legal memories. The S.U.D.S., by the way, had a troubled infancy. In 1890 the Senate granted the use of the Great Hall to the Society for its first major performance, and came in state for the occasion (robed, if I remember rightly) headed by the Chancellor. The Governor and Lady Carrington occupied seats of honour. The play was "Blow for Blow," a rollicking and not too refined comedy by H. J. Byron, with which senators apparently had no previous familiarity. As the play unwound its vulgarities, they sat aghast. The story went (I do not vouch for it) that the name of "Byron" had got the play past the censor, and that something in the style of "Manfred" had been expected. Be that as it may, the Great Hall was forthwith banned to



S.U.D.S. for all time, and the Society was left with a debt of £200 on a portable stage for which it had no further use. The ban proved a blessing, because S.U.D.S. was driven to tread the boards of a real theatre—the old “Royal Standard.” Its dramatic standard too was raised: it produced next “Friar Bacon and Friar Bungay,” and then (regrettably, but in those days unavoidably expurgated) Congreve’s “Love for Love.” Most of the male actors in these plays became, in after years, familiar figures in the purlieus of the law. Among them were such names as Mack, Rolin, Coyle, Pickburn, Kelynack, Garran, Waldron, Creagh.

Memories crowd upon me as I write. Memories of the Union—then little more than a debating society, that met in a weatherboard kennel dignified by the name of the common room; memories of work, and talk, and play; of professors—“T.P.A.” Stuart, Theodore Gurney, Walter Scott, “Dicky” Threlfall, “Tommy” Butler—all gone now; of fellow-students, young men then, many of whom have since made history—old men now, those that are left. These reminiscences might well run on for ever. But the editor—

R. R. GARRAN.





## SISTERS — IN LAW

BY

TWO OF THEM

Everyone knows that Ada Evans was the first sister-in-law in New South Wales, that she graduated in 1902 but could not be admitted to the Bar until 1921, that is, until she had completed her term as a student-at-law after the passing of the Women's Legal Status Act in 1918.

But the story that lies behind that bald statement of fact shows a pluck and determination for which Ada Evans's only reward is the knowledge that later sister-in-laws have reaped the benefit.

Instead of the encouraging hand held out by Sir John Peden to all later women law undergraduates, she was met with Professor Pitt Cobbett's contemptuous enquiry of Mr. Hanks, the librarian, "Who is this woman?"

When he summoned her before him he did his utmost to make her depart from the Law School. She had not the physique; she had better do medicine, he said—with that lack of logic just as common in the male as female mind and not absent from the minds of even eminent lawyers.

Professor Jethro Brown was her only encouragement. He wrote: "If I were in your place I would work on in spite of discouragement. If you cannot reap all the rewards of your toil, the greater glory will be yours of sowing that others may reap—the glory of the pioneer."

He was right. Ada Evans graduated. She struggled for years to have the law amended to permit of her admission as a barrister. It was not until 1918 that she succeeded, and by then she knew she had been too long out of the legal world

to practise her profession with credit. She refused the proffered briefs. Others have reaped her reward.

The second batch of women law undergraduates put in appearance soon after the passing of the Womens Legal Status Act. Occasionally they had companions in classes, but generally it was a case of one woman alone in a class of men, a class rendered very exuberant by reason of a large number of returned soldiers. Mr. David Edwards, later Judge Edwards, was asked if he minded the presence of Miss — in his lectures on crimes. He replied with his characteristic lisp: "Well, she does wather cwamp my style."

She may have cramped the style of the lecturer, but she did not cramp the style of his hearers, and every possible point which could have a reference to the little girl in the middle front seat was greeted with loud stamping. Mr. Justice Byles, who too frequently wandered from his legitimate field of "Bills" to the realm of crimes, was the source of very frequent embarrassment to his namesake.

Two of this batch graduated in 1924. Sybil Morrison being subsequently called to the Bar and Marie Byles admitted as a solicitor; Blanche Kirkpatrick followed in 1925. It is curious that of all the seventeen women law graduates the only two now practising as solicitors are from this group, Marie Byles in Sydney and Blanche Kirkpatrick in Edinburgh.

The third lot of women undergraduates were not as embarrassed as their predecessors. The men by now were used to women, and anyhow there were four to keep each other company. Apparently they were rather tame years. The only exciting incident they could call to mind was the hold-up of the lift which stuck between two floors so that they all had to jump down.

Of this batch one only, Sheila Clark (*née* McLeod), is back within the legal fold as guardian of the Bar Association's library. Elaine Shorter is a director of John Shorter Limited. Madge Donaghue manages a dress salon, and Molly Frazer Thompson is secretary of the Macquarie Club. Muriel Hudson, who showed great promise, did not follow the example of Mrs. Rosanove in Victoria, who has found it possible



to be both a brilliant lawyer and a successful wife and mother. When Muriel Hudson married she deserted law.

Of the nine graduates of the twenties three managed to attain the honours standard required to take the Rose Scott Prize for women students founded in 1920. But the thirties produced far more distinguished scholars. In 1934 Olga Sangwell graduated with second-class honours and now occupies the position of librarian at the Parliamentary Library at Canberra. Nerida Cohen graduated in 1935 and settled down seriously at the Bar. Then in 1938 Jean Malor was crowned with first-class honours and the George and Matilda Harris Scholarship No. 2. She accepted an editorial position with the Law Book Company. Stella Rothschild, another graduate of this period, has married Mr. Shatin, a law graduate of Victoria, and has herself been admitted as a solicitor in Victoria with a view to practising there in partnership with her husband. Hilda Maddocks, a 1939 graduate, is now in the Legal Branch of the Transport Department. Of the other two graduates, one is married in Vancouver and the other two are teaching.

The women undergrads of to-day number 15. The men students no longer take any notice of them—unless they are particularly good-looking! But the lecturers are still a little conscious of the female element in their classes. Some, it is true, call the roll alphabetically without sex discrimination. But some call the women's names first (rather hard on the late comers!), some call them last (this is better!); and some do not call them at all! Then there is the form of addressing the class. "Ladies and Gentlemen" is of course commonest and occasionally "Lady and gentlemen" when there is only one "lady." Now and again there is a lecturer who evades the difficulty by not calling the class anything or who still sticks conservatively to "gentlemen." But Sir John takes the palm for delicacy. "Miss — and gentlemen," he says, except when there is cause for censure, when it is "Gentlemen!" Unlike the earlier days, women are seldom singled out for any form of comment. Colonel Mackenzie is the exception, though why divorce matters should be of especial interest to women

it is hard to say. Anyhow, whenever he reaches a point where the law is advantageous to the husband or the wife, he prefaces his remarks by "Take special notice of this point, Miss —."

In the social life of the Law School the women now take a certain part. They do not attend the Law School's annual dinner, but both graduates and undergraduates help with the organization of the annual ball. Occasionally, too, they take part in moots and in the discussion groups which have recently been formed.

The growth of the women's common room is another sign of the times. In Ada Evans's day *Hermes* reported that a name on a certain door had been changed from "Visitors' and Lecturers' Room" to "Visitors' and Ladies' Room." Apparently the poor lecturers then went without any room until the Law School was rebuilt. So, too, for that matter did the women law students in the early twenties, for they were not provided with even a peg to hang their hats, let alone space to powder their noses. However, that was rectified before they graduated, and the women undergrads now have a palatial room with all modern conveniences and a gas stove which does not go "plonk" as it did in Ada Evans's day, making it necessary for her to throw matches at it to make it light!

Of the fifteen women undergrads to-day ten are articulated, and the present-day applicant for articles little knows the difficulties of the girls in the early twenties seeking for solicitors to article them. In those days the attitude of the master solicitor was typified by the one who, when asked to article the girl who later became the first woman solicitor, put his hand to his brow and said: "Thank God I shall soon be out of it!" To-day the shortage of articulated clerks is such that a girl is snapped up nearly as eagerly as a boy.

In taking account of the opportunities of women in the legal profession one remembers first of course that they are an innovation. As far as relationship with their fellow lawyers are concerned there is no room for any complaint, and this in spite of the fact that New South Wales is notoriously the most conservative of states (*vide* its failure to adopt the



Judicature Act) and lawyers the most conservative of beings. Now that men and women are working side by side, whatever prejudices there were must tend to be completely dispelled. As regards clients there is probably a certain amount of prejudice, and one occasionally hears rumours of people being asked why they did not consult a "real lawyer." But if some clients keep away because of prejudice, there remain plenty who do not, and all the women solicitors who are practising are reasonably successful, their clients being about half men and half women, and hardly any coming to them because a woman is preferred but simply (as in the case of all solicitors) because the client in question thinks his work will be best carried out by the solicitor in question.

The second matter to be taken into account in considering the opportunities for women in law is the separation of the legal profession into two branches. For the woman (as indeed for the man also) who wants to be a solicitor, this is an advantage. For the woman who aspires to the Bar it is not. Success at the Bar is only reached after years of hard grind. By that time a woman would probably be accounted a failure. A woman in a new profession cannot afford to be only as good as the average man; she has to be a very great deal better. One woman has been eminently successful at the Bar in South Australia, but there she had the advantage of combining a barrister's work with that of a solicitor.

To sum up and include the women who are not graduates of Sydney Law School, we find that of the qualified women practising in Sydney, one is at the Bar, three are practising as solicitors on their own or in partnership with junior partners, two are doing editorial work with firms which publish legal works, one is in a legal department of the Public Service, one looks after the Bar library, and about six are managing clerks.

Finally, an article on sisters-in-law would not be complete without a reference to Margaret Hay, who although not a qualified lawyer is the librarian and presiding genius of the Law School, and an ever present help to graduates as well as undergraduates.

It is not suggested that women, as women, will make any



notable contribution to any particular section of legal work—unless maybe the Children's Courts in which none up to date have specialized—but society is obviously best served if every member of it is able to exercise those talents that nature has given and if men and women are working together in co-operation, so that the opportunity now open to women to practise law can only be of benefit to social life as a whole.

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#### AFTERNOON RAIN

There is an anger in the rain to-day,  
Venting itself upon the red tiled roofs,  
The staring windows  
And orchis buds that sway,  
the soft grey rain, that seeks for melilote  
for deep green pools  
And orchis buds that sway,  
heavy with perfumed water,  
that seeks blue thrift and lazy flowers afloat  
on soft brown stems, along the bluegum boughs,  
and finds the flatness of the asphalt paths  
the greyness of the houses  
And the faces.

J. M. K. PHILLIPS.



1892-4

By G. E. Flannery, K.C., B.A., LL.B.

When the third batch of hopeful students began at the Law School in 1892 they little knew the test to which their optimism was to be put. Why should they? They did not recognize in the dock strike a prelude to the bank crashes and to the years of depression which were to end the century. Here was the way to a profession, the School was already in good report and the venue "in Town"!

The beginnings at least were up to expectation. The then building (afterwards the Broughton later the Pioneers' Club) was convenient enough for our numbers, and just outside was the life of a Sydney, still small but showing signs of the coming change from a provincial town to a metropolis. And Phillip Street was thronged with lawyers and theatrical people, and even law students could pick out the "eminent Q.C." and the "charming member of the chorus" as easily as a newspaper-man. The lawyers' "street" and the nearby courts gave a definite reality as to careers we were setting out to attempt. The situation of the School and the active practical experience of the lecturers was and is now an incentive to budding lawyers.

We were average undergraduates. Before us there had been two University lecturers, but apart from one international footballer (Lou Veech) and from O'Connor, Uther and Thomson, who respectively played cricket, football and rowed for the University, we were just ordinary. One did

not and could not recognize judges in O'Reilly, Armstrong, Thomson and Pickburn or the politician in B. B. O'Connor or in L. O. Martin and D. Levy who immediately followed us.

But if the students were not distinctive to the eyes of each other the faculty stood out. Professor Pitt Cobbet came to us with a high reputation. He deserved it and enhanced it. He was a lawyer's lawyer—with the gifts of imparting knowledge, stimulating enthusiasm and of organizing. A clear staccato style was at once arresting and effective. A devotion to systematic work and for detail and a veritable passion for compression began a tradition in the School which with able backing and following up has lasted to this day, with an effect, I myself think, that has generally distinguished the advocates of the Sydney School from those of other schools, Australian or overseas, and to the advantage of the Sydney men, again in general.

But I am afraid few of us really seconded his desire that we should work incessantly, and it was with mixed feelings that we heard his terse diagnosis of our individual chances in the profession. Each was served with a large dose of brimstone and a minimum of treacle—the field, he thought, was at least ten to one. The contrast between his early Victorian primness and a rugged pugnacious face, active figure and quick gait (all these last suggestive of a retired light-weight) earned Pitt Cobbett inevitably a nickname. "The Pet" he was by universal consent and was very popular—despite his strange belief that it was work and not Maule's "stressed" miracle that was needed at the Bar.

The lecturers were very efficient. They were all graduates of Sydney University and noted at that. One became Chief Justice of New South Wales, one became and still is the Senior Puisne Justice of the High Court and a Judicial Member of the Privy Council, and one (Frank Leverrier) is a retired silk. Sir George Rich is the sole member of the faculty now active in the law. Pitt Cobbett, Cullen C.J., and Dr. Coghlan are dead. They did manful work, very necessary indeed at a time when men from overseas had only begun to lose a monopoly of the law in New South Wales and the locals



needed a good lead. And they were individually respected and liked.

The courts attracted us and of course the common-law side. We were encouraged to look for "models." In jury and appeal work I picked Pilcher, Barton and Wise Q.C.'s. There were two very successful but inimitable men: Salomans Q.C. and Jim Gannon. All these, it is to be remarked, had a political background or future. Characters abounded — David Buchanan, Colonna Close *et alii.*, Darley C.J., and Windeyer and Innes JJ. were diversely prominent on the Bench. Attending court was colourful even though advised from above.

Half of those who graduated with me in 1894 survive, though only two, A. R. J. Watt, K.C., and A. Halloran, are now practising. Happy memories remain to me of those with whom I went through Arts and Law. Professor Peden and Master Parker were in my year in Arts but did not at once enter the Law School. Their temporary abstention reduced our year's average capacity but no doubt helped to crystallize in them the qualities which have contributed to their careers.

G. E. FLANNERY.

1894-1900

By the Hon. Mr. Justice F. S. Boyce

Our habitat was very different from the comparatively palatial accommodation of the Law School to-day. We foregathered at the building now occupied by the Pioneers Club—the property of St. James Church. We were not many and it was sufficient.

We had one Professor—Pitt Cobbett—an active alert man with very quick speech in slightly chopped-off words. He was devoted to his Law School and did not confine his interest to our studies but had regard also in our futures. But Pitt Cobbett, brilliant lawyer as he was in his own sphere, was not in my view a judge of men. His idea was, I think, that the man likely to be successful as a lawyer was the one who

passed his class examinations and the like with credit. He did not realize that there were other gifts and qualities which were probably equally essential. I know of four whom he greatly discouraged with his advice but each one of those four most certainly succeeded. He meant well even if he was not always right.

Our lecturers were W. P. Cullen, afterwards Sir William, and Chief Justice—but whom we knew as Lucy; G. E. Rich—now Sir George of the High Court, and still a friend to all his old students; F. Leverrier, now K.C., a most eminent barrister with great scientific knowledge; Dr. Coghlan, whom no one could rightly describe as an interesting lecturer, but who was the guide, counsellor and friend of a whole generation of young barristers. My own personal debt to Dr. Coghlan is great, and one I have always freely and gladly acknowledged. Further, if his lectures were dull, where is the man who could make lectures on procedure and evidence much more than a recital of rules and sections? Who performs this duty now I do not know but can only trust that my general criticism of such a subject from a lecturer's point of view is wrong.

And of ourselves.—When one looks through the catalogue of graduates names well known to the public at once appear. In 1894 there were ten. G. E. Flannery, K.C., heads the list. A great lawyer and a leader of the Bar. He was, and is, I am glad to say, for he is still with us, a man of most acute mentality who has certainly made his mark as a King's Counsel. He resisted all endeavours to lift him to a more serene atmosphere than the hurly burly of the Bar. Of the others, three became judges—Alec Thomson, J. P. Pickburn, both of the District Court, and H. de B. O'Reilly of the Condominium Court. B. B. O'Connor became a Cabinet Minister—Minister of Education—and is still a member of the Legislative Council. William Tighe practised for some years at the Bar, but failing health caused an early retirement. Aubrey Halloran still keeps his city solicitor's office, and in his leisure became Grand Master of the Masonic Order and was identified with many public movements, chiefly of a literary character. The other



two—H. Meares and E. W. Gerber—passed out of my ken years ago.

The 1895 graduates have also made a very distinct mark in the life of the community. There was Sir Daniel Levy, who was Speaker of the Legislative Assembly for many years. A man of great learning, his frail body, I always thought, was unsuited for the rough and tumble of the Bar. He practised in both branches, at different times of course, and died as a barrister. L. O. Martin—a very close friend of mine—is a Cabinet Minister—for some years Minister of Justice and now Minister for Works; him I have always regarded as a most able man with an insatiable appetite for work. T. W. K. Waldron served in the Boer War, where he sustained an injury which always came against him. He was the City Solicitor of Sydney, retaining that office till his death.

J. B. Holme became Industrial Registrar. Of the others, W. J. E. Davies still practises at the Bar, but I think that P. R. Higgins, after a very successful legal career, now devotes most of his time to business interests. Alfred Gill—a charming man—died far too soon. His son at the Bar keeps his name alive.

In 1896 amongst the seven graduates were Harrie Wood, our late Prothonotary, for whom everyone had a good word. He had a wonderfully kind and gentle manner, so much so that unless you knew it you would never suspect that he was an international Rugby footballer. F. L. V. Coffey practised at the Bar of the Land Court. S. J. St. C. Butler—next whom I sat during most of my University career—"Boo" and "Bu" are alphabetically adjacent—was the head of a firm of solicitors at Inverell until his recent death. E. S. Scarvell, after practising for a time at the Bar, during which period he showed great aptitude as a cartoonist, retired to the land. J. C. Kershaw was senior in a city firm of solicitors till his death some few years ago. And I was another graduate of that year.

In 1897 there were eight graduates, chief of whom was Sir Thomas Bavin K.C.M.G., now a Puisne Judge. Everybody knows Sir Thomas—he is President of the University Law



Society at the present moment. I have seen a great deal of him. He was a member of three administrations and I was in two of them: when he became Prime Minister I was his Attorney-General. Further, we took silk on the same day. He is one of the brightest products of the Law School. In his year were J. A. Cullinane, J. N. Brierley and G. J. J. O'Sullivan, of all of whom I have lost track, but of the others W. J. Creagh, Percy Mills and A. B. Davies practised as solicitors in Sydney for many years, whilst P. D. O'Brien is still hale and hearty in the business world.

1898 was a year of brilliance for the Law School. Amongst the seven graduates were Sir John Peden—present Dean of the Faculty, W. A. Parker the Master in Equity, and the late J. H. Hammond K.C.—who acted as a Supreme Court Judge for a period—these are the best known of the seven. Sir John was not always a professor—he had to earn his living like the rest of us at the Bar, and I well remember the envy of us juniors when someone gave Sir John a brief marked with a very large fee to defend an alleged criminal, and he was only an alleged criminal—because Sir John well earned his fee by getting his man off. I don't propose to speak of Sir John's work at the Law School—others will doubtless do that—but I think it right to say that he is one of the most respected men in the community—the trusted friend and adviser of many in high places, and in the Legislative Council, of which he is President, the honoured occupant of the chair. The University should be proud of Sir John Peden—quite apart from his services in the Faculty of Law.

W. A. Parker before he became Master had a most extensive practice in equity, I believe chiefly in conveyancing. I often told him that I wouldn't have his practice for worlds. All the hard and difficult points which had puzzled expert conveyancers were hurried off to Parker. I don't think he ever had an easy opinion. No wonder his eyesight began to suffer—no wonder also he had such a large practice, as he was as conscientious in it as he is to-day as Master. The two Mere-wether brothers, W. D. M. and H. H., were the life and soul of the Law School when they were there: both practised at

the Bar. W.D.M. now devotes himself to business I understand, whilst H.H. died many years ago. In that year also was P. J. Clines who whilst at the compositor's bench earning his daily bread there, still found time to attend lectures for his Arts degree and the Law School for his LL.B. Curiously enough, although his tenacity and industry was so great, his success at the Bar was not such as to encourage him to continue, and he died whilst in practice as a solicitor. The last graduate of that year is J. C. Elphinstone, who is still in practice as a solicitor.

Among the graduates of 1899 was E. R. Abigail, "little Ernie" he called himself, and he was of a type not necessarily admired by Professor Pitt Cobbett. He attained his degree after some delays—but when he embarked on his profession as a solicitor in the Police and Criminal Courts his success was rapid and complete. A barrister going to court was asked: "Who's against you?" The answer was: "Only little Ernie." The mistake lay in the "only." Some advocates speak over the heads of the jury—little Ernie never did that. His addresses were little more than above ground level—but guileful, shrewd, simple. He went into the kindergarten class with the jury and his success was amazing. Of the others D. S. Edwards became a District-Court Judge, F. E. Wallace practised in the New Hebrides, F. E. Barraclough became Deputy Master in Lunacy, whilst Dr. G. W. Waddell became an outstanding success in all his undertakings. He was a barrister rapidly accumulating a large practice when he was induced to become Parliamentary Draftsman—this position he was in turn persuaded to leave to become a partner in a leading city firm of solicitors, where he still is. D. Scouler attained a high position in the teaching profession, and W. J. Bloomfield after becoming the very efficient General Secretary of the Mutual Life and Citizens Assurance Company, died at a comparatively early age a few years ago.

1900 gave the profession some brilliant men amongst its seven graduates—W. G. Forsyth, President of the Law Institute as I write, W. W. Monahan K.C., with whom I have been for many years an intimate friend. He is one of the



leaders of the Bar to-day. What inducements have been held out to him and that other graduate of that year, E. M. Mitchell K.C. to leave the Bar for higher office may not be told. No one is ever offered a judgeship—no one is put in the position of refusing the King's Commission, but a man is asked whether in the event of it being offered would he be likely to accept it. My lips are sealed on this head. E. M., a warm personal friend of my own, is a shining light in the Legislative Council as well as the almost necessary counsel in certain classes of cases. Success has not spoiled either Monahan or Mitchell. They still remain the modest unassuming men they always were and the friend of the struggler. Of the others, E. W. Warren, son of Professor Warren, is a Sydney solicitor—and so was R. Sullivan when last I heard of him. I haven't seen "Charlie" Craig for years, whilst C. N. D. Richardson did not I think seriously practise save as an expert in beautiful flowers, which he grew to perfection.

This is the tale of ten years. Looking through that complete list one is at once struck with the fact that the Law School most certainly has done its part in training not only lawyers but citizens. Cabinet Ministers—judges—a President—a Speaker—and great business men figure amongst its products. For myself I think of them all as the lads I used to know. I mostly forget the high dignity to which so many of them have come. I remember them as the carefree happy fellow students of those days, getting so far away now, when we were all friends together in the old Law School.

F. S. BOYCE.

1902-1905

By H. M. Green, M.A., LL.B.

There were only about forty students at the Law School in my time, and, besides the professor, only three lecturers. Though there seemed to us to be plenty of lectures. The Law School Society had just been founded, and had settled down in its two rooms, and according to a learned and con-



temporaneous publication to which I shall have occasion to refer here and there,\* the principal problem that faced the committee was whether to subscribe to *Hermes* or the *New York Police Gazette*, the difficulty being that while the latter affords the most interesting treatment of matrimonial causes, its somewhat kindred contemporary and aspiring rival contains an inexhaustible fund of possible libel actions.

The life of a law student wasn't so bad, in spite of its restrictions, in those days of peace and horse 'buses, when home-made music took the place of wireless, when everybody knew that man would never fly, and when the scandalous sight of a girl in shorts would have set a crowd of men running in two directions. But we found things to grumble at. *Précis*, for instance. The Professor loved them as much as we loathed them. We had to *précis* all our most important textbooks, and those of us who fell behind were informed that we were "weaker vessels" and had no hope whatever of a degree. On the other hand, there were students who took to them like a duck to water, and, according to the learned authority referred to,† a future justice, after committing to memory the Statutes of New South Wales, had constructed a *précis* of Austin which was considerably larger than the original. Most of us objected also to another habit of the Professor's, a habit of launching questions at us in lectures, together with prophecies of the fate of those who couldn't answer them; he prophesied obliteration in this way for a man who came third in his final year. There was no *Black-acre*, and we shed our literary aspirations into *Hermes*; our legal aspirations had to work themselves out by way of argument, conducted for preference about the "Silence" notice in the Reading Room. And at Moot of course; Union debates were reserved for non-legal subjects. But for us law students and a few literary enthusiasts, I think those debates, about a

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\* *Law School Notes*, in *Hermes*, Vol. VIII, No. 4, new issue, pp. 8 *et seq.*, and subsequent articles. The authorship of these notes is ascribed to "Gemini," but the most important judgments were the work of Wilson, C. J.—I mean G. H.—who has also helped me with these pages.

† *Op. cit.*, No. 6, p. 6.



A CORNER OF THE LAW SCHOOL LIBRARY

[To face p. 74]





greasy table, by a small and smoking fire in a freezing tin-roofed shed, would have lapsed in winter. Yet it was wonderful what fun we contrived to get out of them.

Our other diversions, sometimes rather somnolent, included the law courts; if a case happens to be popular and crowded, do you still endeavour to slip, inconspicuously but with dignity, into the seats reserved for K.C.'s? And sport. I remember a football match in which we were captained by H. D. MacLaurin, of whom something later; Sandy Jacques, who afterwards lost a leg at the war and declined into parliament, was a wing-three-quarter. And there were rowing and athletics; I remember that at some aquatic celebration a Law School four, dressed effectively as skeletons and coxed by a devil, attracted flattering attention. I remember also a walking race from Manly to Narrabeen and back, which was won by an extraordinarily long-legged student named Hodge, who chewed raisins throughout. We finished up at a little shop just outside Manly with an enormous meal of poached eggs and bacon. That was all there was to eat, and when it suddenly occurred to me that one of us was a Jew, I turned round and discovered him tearing into hard boiled eggs for all he was worth.

"Them was the days," if I may venture to quote from the classics, and there were giants in them. And first of all the "Prof.", to use a term proscribed by the Professors' Union. "Implacable Pitt" the song called him, and he certainly had "some curious ways with him." With his spare hard features, his strong bony framework, his broad stooping shoulders, he looked like a retired prize-fighter become an intellectual, if such a thing were conceivable. He was said to have been the best law coach in London, and his methods certainly were those of a coach for he pumped facts into us at high pressure. His lectures were models of summarization: he reduced his material to a minutely articulated skeleton, with the parts all numbered, Arabic under Roman numerals, small a's under large A's, and so on into the Greek alphabet. He lived for the law; he even called his house Greenacre. And as he loved detailed and logical analysis, so he loved subtlety; it is said

that his will had to be interpreted by the court. At first he was not popular, but we grew to appreciate his underlying humanity, and by the end of the course I think most of us had got to regard him with something like affection.

But the lecturers were also outstanding. There was D. G. Ferguson, afterwards a Judge of the Supreme Court, who could make pleading and procedure as interesting as a novel. There was F. Leverrier, the well-known K.C., whose intellectual powers were obvious even to an irreverent law student. And there was Rich, afterwards a Judge of the High Court, whose lectures on equity were as clear as water, and more interesting, seeing that they were delivered with spirit. As for Mr. J. B. Peden, as he then was, it is hardly necessary to tell you about him.

The personality that springs into my mind immediately after the Professors and lecturers is that of Hanks. A large, rather portly, drooping figure with a walrus moustache and an expression at once serious, humorous and a trifle sly, Hanks looked not unlike a retired police sergeant turned private detective and run to seed. He was attendant, secretary and factotum, and, according to some of the unregenerate, intelligence officer, to the Professor; he typed lecture notes and interleaved and bound our statutes and so on—for a consideration. He was also librarian, if one could call it that; but the list of books he kept, in a disreputable old copybook, was certainly not a catalogue.

As for the students: to begin with there was W. A. Holman; although we did not regard him as a future Premier, who ought, his friends said, to have been Prime Minister, his personality, brains and charm were unescapable. And there were his friends, David Hall, afterwards State Attorney-General, and J. A. Browne, now a Judge of the Industrial Commission. Next comes to mind a group of four who are no longer with us. By far the most popular man in my time was H. N. Macclaurin. Mac. was as Scotch as Scotch, and to hear him make a joke at the Union was delightful. He would lead gradually up to his point, carefully postponing it as long as possible, with his shoulders shaking so that he could hardly



contain himself; and we also could hardly contain ourselves, because of course we had seen what was coming long, long before. And then at last the climax and the universal explosion of laughter, which Mac. took as a well-deserved tribute to himself, as indeed it was, though not quite in the way he imagined. Mac. went out to Gallipoli as a Brigadier, and was killed at the Landing. Norman de Horne Rowland, who on the occasion of the walking race I have mentioned took the trouble, though a senior, to bring a bicycle over to Manly and pace us all the way, was a very able man, who during the war held a judicial office in German New Guinea. The third of the group was Jimmy Young, a large personable person with a fine voice, whose forte was rhetoric—"the Sword of Freedom" we called him at the Union—and who afterwards practised on the criminal side. And the fourth was Swanwick, afterwards lecturer in English at the University of Queensland, whom my learned authority terms *The Petrified Philosopher*, and to whom it gives half a page of description, of which part herewith:

During most of this time (he) had been engaged in deciding that he wanted to look up a case. He turned to Teece and said: "What's the reference for . . ." and then relapsed into petrification again. Some moments after, realising that he was not cremated yet, he pulled himself together again, and added, "*Cohen v. Slade*?" On getting the required information he thought hard for some time, gathered his legs beneath him, and with a mighty effort stood up. This feat accomplished, he sighed, cast a wearied glance at the Artesian Bore, his C.U. friend and the thirteen busied heads, and commenced his journey to the book-case. Mr. F., the Fledgeling, and the other eleven looked up and watched him admiringly, and each made an inward and fervent resolve that one day as Chief Justice he too would look like that.\*

One of the ablest of our men was the Teece above referred to: R. C. Teece, who even as a student possessed a fund of information which he was always ready to convey to the rest of us. Then there was Harry Manning, now Attorney-General of New South Wales, and J. A. Ferguson, the leading student of my year, who became a Judge of the Industrial Commission, and incidentally one of our principal collectors of Australianiana. A year or two later was R. S. Bonney, who

\* *Op. cit.* No. 6, p. 6.



used to pack his speeches at the Union with erudite classical quotations, and contributed humorous verse to *Hermes*. He despised textbooks, and insisted on drawing the whole of his legal knowledge from the original sources; he gravitated naturally into equity. About the same time was W. J. Curtis, whose confidence, energy and gift of address have brought him a fine practice at the Bar, and A. G. M. Pitt, who has been an Acting Judge. And there was Dave Wilson, who specialises in the interpretation of wills and is said to have acquired in absolute perfection the bored equity manner, though I think something of that gift was his by nature. Literature was his speciality in my time, and editing *Hermes*; my ruling authority, somewhat libellously, declares that:

he has been elected honorary secretary of the Law Society, owing, it is alleged, to the fact that freshers mistook him for some prosperous solicitor, and had a keen eye for future briefs; it is rumoured that Shelley, *The Dead Bird*\* and the *Bulletin* are to be added to the Society's library.†

And one must not forget N. G. MacWilliam, the blind barrister, who was noted even then for the pertinacity that has enabled him to make his way at the Bar in spite of his disability.

But so many come to mind: Billy Artlett, with the ferocious little black moustache, who could put up a ferocious attack at the Union on Friday nights, and is now something important in the Commonwealth railways; B. F. Fahey and E. R. Larcombe, who are practising in Queensland; Alroy Cohen, who took part in the walking race before mentioned, and who is now in practice at the Sydney Bar; Billy Hinton, known to my learned authority as "The Gentleman from Randwick," who was always interested in speed and horses, and is now, I believe, a squatter somewhere in New England. And lots of others; but I have taken too much space already.

H. M. GREEN.

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\* A scandalous newspaper of that day.

† Op. cit., vol. ix, No. 1, p. 7.

1909-1913

By W. McMinn, B.A., LL.B.

These rambling notes are written in an endeavour to portray some of the features of the Law School, as it was in the years preceding 1913. If some interest or amusement be created thereby to those who attended to its teachings at a later period, or if memories be revived amongst those who were fortunate enough to be its students during the time under review my labours will not have been in vain. *Haec olim meminisse iuvabit.*

From its foundation up to 1909 the institution was under the control of the late Professor Pitt Cobbett. From 1909 its destinies have been in the capable hands of our revered Dean, Sir John Peden, who, to the regret of all, is about to leave a post that has been honoured by his presence for over thirty years.

Of Professor Pitt Cobbett, one of his students has written: "I begin by offering my sincere sympathies to all those who were not privileged to work under him. It was an honour to cross swords with him, as some did, and to get it properly in the neck, which invariably happened." He possessed a magnetic personality that forced attention from all who sat under him. There was no slackness in his classes—the students had no time. No man could be more caustic in his comments on his students' many failings—yet no man was more beloved. Those who were present at the dinner given in his honour on his retirement will never forget the reception he was given by the large gathering assembled when he rose to respond to the toast of his health.

The students attending the Law School in his time had the very great advantage of small classes. There were not more than fifty or sixty in the whole school. This developed a very close contact between teacher and pupil—an intimacy not possible nowadays in view of the large number of students attending lectures.

The Law School has been fortunate during its fifty years of



existence both in its two Deans and in the long roll of lecturers. In my day Professor Pitt Cobbett lectured on Constitutional Law, Roman Law, Public International Law, and the Elements of Politics. Sir John Peden prior to becoming Professor lectured in Real and Personal Property. Sir George Rich covered the immense field of Equity, Company, Bankruptcy and Probate. Procedure, Pleading and Evidence were taught by Sir David Ferguson, whilst Mr. E. M. Mitchell K.C., afterwards my master in the law, dealt with Contracts, Torts, Crimes, Mercantile Law and Divorce. In such hands the school was bound to have a profound influence for the good of the legal profession. Those of us who were their pupils are duly sensible to their efficiency, their high sense of duty, and their unfailing courtesy and kindness. I, for my part, feel that I can never repay the University, and especially the Law School, for its bounteous favours and the appreciation grows the stronger as the years pass by.

At this time the Law School was housed on the second floor of Selborne Chambers. The premises were not very commodious, but were well lighted and sufficiently large for the requirements. The present elaborate accommodation is in marked contrast with what had to suffice formerly. The permanent staff consisted of Professor Pitt Cobbett and one S. J. Hanks, the latter being the librarian and general factotum. Hanks was associated with the Law School for many years as a kindly and conscientious servant. He had the unique attainment of being able to decipher Professor Pitt Cobbett's handwriting, which to use Professor Charteris' phrase was "almost incoherent." Often during lectures, Hanks would be called in to decipher the notes from which the Professor was lecturing! Many were the pranks attempted on the unsuspecting Hanks. He used to superintend the class examinations, and one student went through the motions as if he were cribbing. When Hanks, who was a man of huge tonnage, rushed to the scene, he found the alleged malefactor playing with two paper fasteners. At any rate it was worth while seeing the sprint.



Students do not seem to change with the passing years and even in those days writings on the notice board were liable to be altered or covered with scurrilous remarks. Such activities were anathema to Hanks. He had to rewrite them (the notices).

I suppose it is the humorous side of University life that has most permanence in one's memory. Thank heavens we have always had people with a sense of humour to dictate the destinies of the Law School. Perhaps mention may be made of one or two instances.

On one occasion a Chinaman, a vendor of feather dusters arrived at the Law School when happily Hanks was absent, but the Professor very much present and lecturing on Constitutional Law. One of the senior students, seeing the visitor, suggested to him that he should go into the lecture room and vend his wares with the Professor. The Chinaman was pushed into the lecture room to the intense merriment of the class, and went up to the lecture table, and with suitable comments gave a demonstration of the peculiar efficacy of his goods. Meanwhile the Professor loudly called for Hanks without avail, but at length ejected the trespasser, remarking: "I wonder who was responsible for that."

At another time, the Professor, having explained some topic at length, asked if everybody fully understood the matter. The answer being unanimously in the affirmative, he asked a student a question on the subject under discussion, and to his astonishment received the unexpected answer: "That is just the question I was going to ask you, Sir. . . ."

Professor Pitt Cobbett was very emphatic on the value of moots and of speaking at the debates at the Union. He came into the library one afternoon and there the following conversation took place. "I have not seen you attending any moots lately, Mr. X," to which Mr. X replied: "No, Sir." He then asked if he had been speaking at the Union lately, to which the reply was also in the negative. He then said: "You know if you wish to succeed at the Bar you must learn to speak in public and unless you avail yourself of all oppor-

tunities of so doing it is useless your contemplating any success at the Bar." "But, Sir," replied the student, "last week I was speaking at a quasi-legal matter in the Great Hall before a large audience." "A quasi-legal matter," said the Professor, "it is strange that I did not hear of this—what was the nature of this quasi-legal matter." "A mock trial," was the unexpected reply. The professor then went to his room, violently slamming the door, but immediately afterwards we heard peals of laughter. He could take a joke.

Of his wit perhaps a few samples would not be amiss. On one occasion he was reviewing class-examination results. He announced the name of the student who had obtained top marks, and to the restrained applause of the class he remarked: "Nothing to be proud of gentlemen—a wretched paper." You can imagine his caustic comments on those who had not done so well. At length he arrived at the name of the unfortunate who captured the last place with three marks out of 300! Might I observe that the results of class examinations do not show much improvement even in these advanced times. This gentleman he addressed as follows: "You know Mr. X it is useless you continuing this course. You suffer from invincible idleness. Don't you think you might go in for commercial pursuits or undertake one of the mechanical professions such as medicine or dentistry!"

To a student who had just passed his final examination he remarked: "The examiners have passed you Mr. X, but you have no knowledge of the law, you have been carefully coached."

He was a bachelor and once remarked that when he was a young man he was too poor to marry, when he was middle-aged he was too busy, and that now he had a little money and leisure he was too old for the game.

He lived on the north side of the harbour in a residence aptly named "Greenacre." The lecturers and some of the brilliant students on occasions were asked to lunch, and at one of such functions he asked an astonished student if he thought a fat woman could inspire a lasting passion!



Once he asked a student in class a question and at the same time broke his spectacles. He retired to his study to get another pair and was absent for a few minutes and on his return said: "Now, Mr. X answer my question." This student replied that he did not know. "What sir, you have had the text-book open on the desk in front of you, and I have been absent for some minutes and you do not know. If you cannot take advantage of opportunities like that you will never succeed at the Bar, Sir."

I am indebted to my friend, Mr. L. B. Dibbs for the following: "An otherwise excellent student had an Achilles heel in that he could not be persuaded to pay his Law Society subscription. Certain fellow students to compel payment tried hiding his books. After suffering for a while he went to old Pitt and asked for his advice. What could he do to prevent the students hiding his books. The answer came promptly: "Try paying your subscription to the Law Society."

Of the students of the period under review there have been few failures. Some of my contemporaries adorn the Bench and others hold responsible positions in the Public Service, and the remainder of these now living are well established in either branch of the profession. All of us value the friendships formed among the small coterie at Selborne Chambers and revere the memory of those who have passed to the great beyond.

Lastly may I pay my tribute to the retiring Dean. I possess the valued privilege of having sat under him as a student and of being associated with him as a teacher for many years. Truly may it be said that he has worthily upheld the traditions formulated by his predecessor and adapted the requirements of the teaching of law to the changing conditions of succeeding years. His reward will be the continued affection of several generations of students and the satisfaction of the success of his labours in providing the State with the services of competent and honourable professional men.

WILFRED McMINN.



1920-1922

By the Hon. P. C. Spender, K.C., M.H.R.

It is pleasant sometimes to look back. It is pleasant always to seek to recapture some of the comradeship and enthusiasm and, I am glad to say, the recklessness of University days. It does not seem very long ago since one sat at the feet of lecturers whom one subsequently came to know as one's friends. It hardly seems twenty years ago when young men whom we all remember returning from the war fought hard to discipline themselves to the needs of civil and scholastic life. They were good days indeed, those boisterous few years after the war. When one sees some of the staid gentlemen in whom these high spirits seem now to have been stilled, one would wish that the stress of modern life was not so exacting.

The law as a profession attracted an increasing number in the years immediately after the war. In 1919 there were but 8 graduates, in 1922—the year in which I graduated—there were 31, in 1924 there were 53. The Law, I remember having heard somewhere, is a fickle jade, and she has not treated all her suitors alike, nor indeed, in accordance with their merit. There is another jade called Chance, and she is a difficult lass to woo.

Looking back over the graduates of those years one comes across more than one name of those who have passed into the Valley. Few of us will forget E. A. S. Jerdan, who died in unfortunate circumstances in London some years ago. I have had the privilege of knowing intimately men like Johnny Hunter and others, who were brilliant sons of the University. I have always thought that Jerdan, although he only obtained second class honours on graduation, had mental attainments above any I knew. He was not, however, strong enough for life.

They were a goodly crew—the men of those post-war years. The rollicking days of Commemoration, when we so frequently earned the displeasure of the good citizens of Sydney, are no more, but none of us would care to forget them.

Sometimes when one appears before certain judges (whose names of course shall not be mentioned here) one finds difficulty in believing that a time there was when, besmeared and bloody, they fought for some Faculty banner, or translated their ability on the cricket field into catching objectionable objects hurtling through the air. I like to believe that this segment of their life was at least not an insignificant part of their personal training and equipment.

In my own particular experience there is one incident more than any other which showed the comradeship which existed then, and I have no doubt still exists between University men. Jack Benecke and I were friendly rivals for first class honours and the University medal. In so far as we poor students could determine, it was between him and me. The last week before the examination I stayed at his home, and we studied together. You cannot have it better than that.

It would be idle to run through all the names—one could say something, indeed, a great deal, about most of them. I may be forgiven if, however, I refer to a few. There is my friend Bill Bradley, one of His Majesty's Counsel, generous to a fault, who has now entered the list of Sydney aldermen; Jack Cassidy, to whom success at the Bar came early and has continued; Johnny Shand, who is known to us all. The judiciary is represented by R. J. Perdriau, Albert De Baun, Johnny Nield, Percy Storkey, Arthur Hill, Bernie Holt, Tommy O'Mara, Hilary Studdert, whilst Tommy Wells deals out justice in the Northern Territory to black and white, I have no doubt without respect to colour or person, and I know without respect to Governments. Percy Storkey, V.C., I saw more of probably than any other counsel until I left the southern and south-western circuit. We had good days together—he and I. I remember in particular a jury retiring just before dinner, and he and I and a certain judge who was, and still is, loved by all of us, partook of a very good dinner. We returned somewhere after 8 o'clock, and received the verdict. I doubt whether any of us are too certain to this day what it was. I learnt from this, very early, that eating too well and working hardly go hand in hand.



And so I bid farewell to memories of those past days—at least for a while. They were pleasant times we had together: they were a splendid crowd. I am glad to have been one of them.

P. C. SPENDER.

1922-1925

Dr. F. Louat, LL.D.

Memory plays strange tricks with us. Some day, perhaps, when the still infant science of psychology has attained greater stature, our own hall of learning will be able to explain to us fully how it is that we continually forget things that we want to and ought to remember, while unconsidered trifles we could afford to forget stand out in retrospect with startling clarity. As I turn a sort of mental searchlight on those years of 1921 and 1925 at the Law School there seem to be many dark voids which the ray fails to reach, yet here and there quite unimportant happenings are outlined in light.

The best fruits of one's effort of recollection fall into the pattern of a series of moving pictures. Thus, I can recall the face of each lecturer, at times placid in the outflowing of some quiet stream of comment, at others contorted with emphasis as some "absolutely vital" principle loomed up in the discourse. But, alas, I have forgotten what they said, which was of course the most important thing.

The recreations of that time seem to stand out more vividly in one's mind than the work that was done—although there was plenty of that, and the snowball growth of the field covered by subjects like Real Property and Equity was a source of constant dismay to those who had to wrestle with those abstruse topics. They tell me it is even worse now. But while the more subtle mysteries of the rule against perpetuities have become a comfortable blur, the chess and draughts tournaments that were a feature of Law School common room are sidelights that live.

A. J. Mansfield, now in practice in Brisbane, was the lead-



ing exponent of the fine art of draughts. In spite of his prowess he had a broad democratic touch about his choice of opponents. No doubt in his heart of hearts he looked forward, though without great hope, to meeting at last some adversary who would fully extend his skill. In the meantime, however, he was not only willing but more than happy to play with anyone, including even such a very indifferent player as myself. It was no use protesting that there was a lecture in six minutes' time. He would point out that that would be quite long enough—and it usually was!

I mentioned chess, and there was a good deal of it played, although personally I never cared overmuch for the game. In the first place it was a time-eater, and then again the kind of mental problems it raised (unless one was to be promptly defeated) reminded me far too acutely of cerebral efforts which I had yet to make to solve the dark riddles of estates limited in succession and other kindred mysteries.

One of the great masters of chess was T. R. Ladds, who is these days engaged in bringing aid and comfort (in return for traditional rewards) to those in legal travail at Tamworth. How he would have fared in an encounter with Capablanca or Koshnitsky may be open to doubt, but at the Law School "Tommy," as he was affectionately and perhaps inevitably called, had no serious rivals.

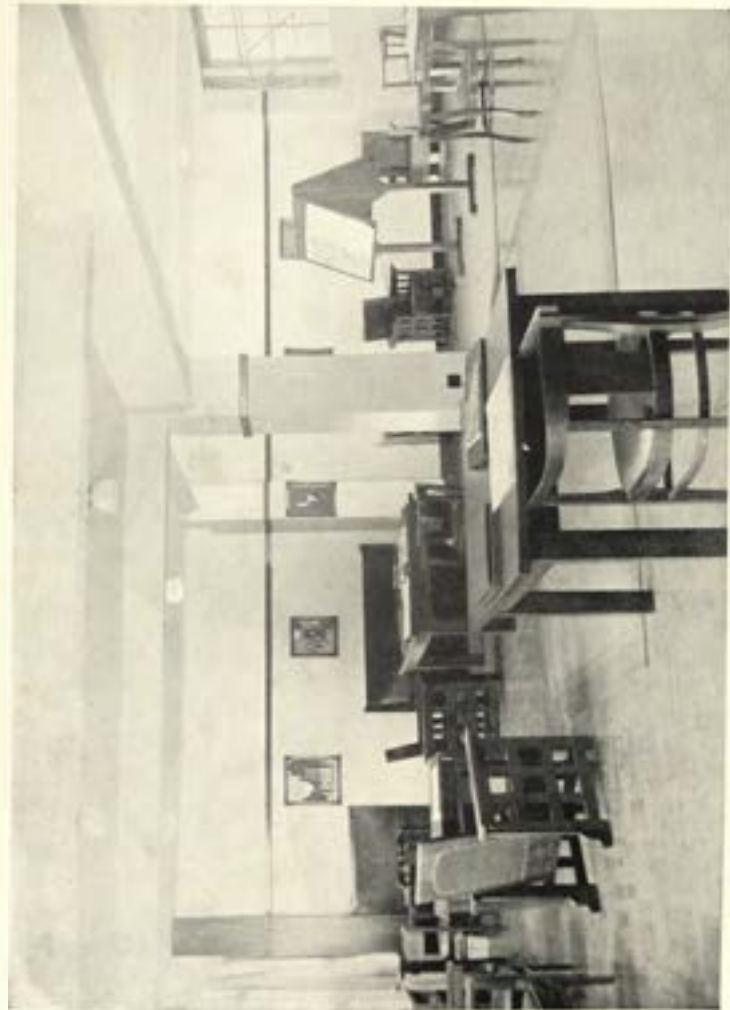
Another artist at the game was Ross Gollan, a Master of Arts, studying law with an air of entire detachment characteristic of his philosophic temperament. Journalism claimed him later, and he now holds an important post in the newspaper world.

Speaking of recreations, dare one now record that they were not limited to the time spent outside the lecture room? In those days there was a jolly little invention which had just made its appearance on the market called "put-and-take." It consisted of a small metal top with five or six flat sides to it carrying meaningful inscriptions. According to the side which was uppermost when the top ended its spinning and fell over, the players either paid or collected. It had been found as a result of judicious experiment that this exciting game

could be played in the back rows of a lecture room without disturbing the lecturer, and without finding the tones of his voice any undue distraction. Mind you, it must not be thought that the proprieties were in any way outraged. On the contrary, the pastime was pursued with the utmost decorum—and only when the lecturer from time to time raised his voice to a louder tone to emphasize the casting of some special pearl of learning could the subtle ear detect the sudden clatter of metal upon wood—a sound gone so swiftly that it might have been the falling of a patent pencil. And indeed, who will say at this distance that it was not?

There were other diversions of the time. We had a mock trial which was a sufficiently uproarious travesty of the ancient principles of justice to make Blackstone shift uneasily in his grave. I recall that P. C. Spender took a flippant part with until then unsuspected talent. At the moment of writing I have just listened to him delivering an important address as Assistant Treasurer of the Commonwealth. It seemed to be as keenly appreciated by his hearers as the earlier performance was by a different and more critical audience.

One memory of these fugitive years still burns with a rich warmth, and that is the daily meetings of many groups of us in the coffee-houses of Elizabeth Street. I call them meetings, but their utter and complete informality makes that a wrong word. Our gathering together was a kind of regular accident. The ostensible purpose was, of course, to drink coffee (and the coffee was better then than it is now-a-days) but the coffee-drinking was a prosaic pretext to cloak the nobler aim of conversation. To us clerks and students who were just beginning to discover the world and investigate how it worked, human affairs seemed to be very gravely wrong—a judgment which events since seem to have borne out. It also seemed to us that the remedies for all the world's troubles were transparently simple, and only the incredible stupidity and malice of elder folk were preventing these remedies from being applied. I find now that I have forgotten what those sovereign specifics were for the lifting of human burdens, and no doubt my brave young comrades who leaned their elbows



LAW SCHOOL COMMON ROOM

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on those tables of yellowed marble, and who were so terribly earnest, have forgotten too. It is a pity, because I more than suspect that we may have been right.

Is this not the secret of the way nature works to foil men's hopes? We are mature men now and have reached the stage of doing things, but we have lost the fierce clarity of the vision that showed us what to do. Another generation of students, gathered in some newer coffee-house, is eager to tell us, but there is already a gulf fixed between, and we will not listen. It pleases us to think we know better—but I wonder?

FRANK LOUAT.

### 1927-1932

By R. O. McGechan, B.A. LL.B.

The list of graduates in Law from 1927 to 1932 contains the names of few better students or barristers than Alf. Gain, so unfortunately lost to us in an aeroplane disaster a year ago. I remember working with Gain in my first moot and appreciate yet the encouragement and assistance I received from him as a raw First Year. We represented the Law School against the Clerks of the Peace, with a magistrate on the Bench. There were two points mooted, and honours were even, his worship being convinced that his judgment was correct because the same moot had tested the brains of Oxford and Cambridge students at a period more remote in history and in his worship's opinion was set to secure victory for both sides. Gain was convinced, and even I suspected, however, that his worship must have arrived at a different conclusion on each point to that reached by the learned Judge who graced the bench in the Oxford and Cambridge Moot. V. J. Flynn will be remembered as a Rhodes Scholar and for his confusion of the Law School with the Oxford football team in a toast to the Law School on his return.

Among the 1928 graduates was S. R. Phippard, now after sundry deviations from law a solicitor at Canberra. Phippard was a fellow articled clerk of mine whom I always remember

for a costly habit of discussing matters of state while playing dominoes, and for a genial bon-mot of Sheldon's, who described him as one who could only study robed in gown and mortar board. Sheldon incidentally was known to his contemporaries not only as the possessor of a deep bass voice, but as an accomplished debater who toured America with a local team with success and as the writer of some perfect pieces in the *Sydney Morning Herald* describing the tour.

A graduate in 1929 who shall be nameless achieved the highest flight of articulated clerkly imagination. His firm was acting for a Chinese defendant and succeeded against a plaintiff who claimed to have been injured by the defendant's negligence. The same articulated clerk zealously contended on taxation of costs that the Chinese was a market gardener having before him a picture of a fat and slowly plodding horse which negatived any chance of negligence for any judge or jury. On disinterested enquiry from his master solicitor after the taxation, he was however, informed that the plaintiff had been injured by a defendant who knocked in a wall of a hospital with a motor lorry.

In the 1929 list are also the names of N. R. Burns, sprint champion of those days, and Lytton Wright who worked harder and more systematically than any other first class honour's man I have known—and of Sydney Rose whose short stories in the *Hermes* and *Blackacre* of those days showed a genius for something other than or as well as for law—we all remember "The Man Who Took His Wife to a Dance." Another who at the same time hovered between Literature and Law was George Cassidy who now writes a good play and plays an artistic part on the stage every now and then.

In the next year were O'Meally, who had an extraordinary photographic memory including an accurate knowledge of the page number of everything dealt with in Law School Notes—a walking index if ever there were one—and Maguire, who then helped every one in his year over the intricacies of the routine of that chamber of mysteries the District Court Office—and Duke, who won the lottery—and Rosenblum, who combined a genius for football and discus throwing with another for play-



ing the oboe and another for eating—and Wailes, whom Professor Charteris assured a Chief Justiceship as a reward for somnolence in lectures—and Wilmshurst, who fought harder for one tenth pennies at dominoes than any other person I have known—altogether we were a varied lot.

In later years came talkers like Storey, romantics like Smith, and philosophers like O'Toole—not to mention a genius or two like Bill Power. There are many good tales of Bill Power, one always appealed to me. There is a prize in Jurisprudence—the name is unimportant even if I knew it—which has been won by Holland, Salmon and Vinogradoff and by no others. Imagine our astonishment when Bill, without any show of trepidation nor yet of bravado announced his intention to be the fourth to gain the same.

Another figure of those days was F. W. Coss who combined fleetness of foot with a first rate baritone, and both with the ability to take at least one prize in his law course.

The name of Bill Power reminds me of the group of young men of letters who made *Hermes* a topic of University conversation for a year or two. Bill Power himself wrote at least two very fine critiques on Bernard Shaw and Norman Lindsay. The leader was Howard Daniel, a remarkable romantic who might have been the original of Linklater's Juan in America. When studying law in Sydney, he was anxious to do medicine, and spent some time ascertaining where he could most quickly acquire the necessary qualification. Subsequently he did study medicine in London after a few years successful practice as a solicitor in N.S.W. There was later a newspaper report of a detention and a smashed camera belonging to one Daniel an Australian in Sicily where he, probably with good cause, had aroused the animosity of a few Fascist officials by a habit of snapping matters of interest. Of late he has been employed in getting refugees and their belongings out of Germany and Austria. Officially he obtained official permits etc.; this only cloaked the more serious and hazardous business of sewing their family jewels in the lining of his greatcoat and the even more dangerous business of having a young fraulein gratefully unpick the stitches of

the same greatcoat in the safety of a more friendly London. Small wonder that he married a "young and charming" German girl. As the war has put an end to his jewel-running and we cannot expect our Daniel to settle down to either law or medicine, it is not surprising to hear that he is now in New York. Goodness knows what he is now doing to make life more interesting. It is small wonder that this same Daniel published one number of *Hermes* all from cover to cover in free verse: or that when there were complaints that *Hermes* was the work of a narrow clique—which it was—that he published again the work of the clique and, under the heading "Other contributions," everything else sent in to him as editor. The rest of that small group of *Hermes* contributors have not had adventures in Europe or Hollywood: we have all practised the law—A. G. Crawford, J. M. K. Phillips, who have contributed a poem or two to the jubilee book, Comans, Storey, Bruxner, myself, for that matter, and one who under the name of "Norman" won a personality contest which carried a six months' contract in Hollywood, took it, and returned to practice. So the law cannot be so unattractive after all.

As important as the variety of its undergraduates was the Law School of those days itself, with its old and uncomfortable and cramped library accommodation, its older and more uncomfortable seating accommodation, its cloak room—a black hole of Calcutta where a hundred students smoked and shouted between lectures, and its rainstains of past winters for mural decorations.

The Law School naturally changes a good deal in ten years and a reminiscence or two about our then lecturers is not out of place: Hooton had us for Equity and achieved a record in slow motion covering the first thirty pages of the Equity printed notes in thirty lectures, they were as valuable lectures as any I ever listened to. For Roman Law we had Maccallum: it was rumoured that he had two jokes and that attention should be paid to his lectures for fear these were missed. E. F. McDonald had us for Bankruptcy and Probate. Rowland for Procedure Pleading and Evidence—Rowland had the worst



collection of old fashioned legal anecdotes I have ever heard—but most of our teachers still carry on as they did then.

R. O. McGECHAN.

1933-1939

By A. B. K. I. Bridge, LL.B.

As a 1937 graduate I have been invited to review personalities among those who, from 1933 onwards, were in some measure my contemporaries. One welcomes an invitation to dwell upon forceful influences upon one's own life, and of all such influences none is stronger than that of the personal environment in which Law School men work together, first of all as fellow students for the LL.B. Degree, and then for the rest of their lives as graduate members of an intensely personal profession.

Among the graduates of 1933, I recall E. J. Hook, now with Messrs. Minter Simpson & Co., whom common-law office routine could not deter from winning numerous Law School distinctions, including the University Medal, an honour shared with Alex Kahn, now in commercial life; Doug. Murray, who repeated at Cambridge the honours won under Sir John, before receding into matrimony; Bill McMahon, whose earlier diversions at St. Paul's did not impede his recent admission as a partner of Allen, Allen & Hemsley; J. M. Hammond, whose name adorns the cover of the new Supreme Court Practice; Dave Hicks, now dividing his gun-fire evenly between military, political and forensic marks; and Harry Storey, an orator of the rarest talent, now trying to talk himself into Parliament. There were, too, D. P. O'Connor, since gone into the church, and C. O'Gorman Hughes, now in medicine.

In 1934 the brilliance of medallist Cyril Walsh shut the gate against runner-up G. P. Donovan and all other comers. A notable exception, however, to the monotony of Walsh's predatory habits was the Rose Scott Prize, which, since it is only awarded to outstanding women students, went to Olga Sang-



well. N. G. Ferguson, a model of industry, passed on to the United States where he distinguished himself in post-graduate legal study, and has now an International Law professorship at an American University. The graduates of this year established a record not yet broken, in that the honour list was the longest in the history of the Law School.

Academic supremacy in 1935 was keenly contested by Allan Eastman and Bruce Macfarlan, both keen Vice-Presidents of the Law Society. Eastman was first past the post for the Medal, but shared other distinctions with his rival. I recall the *Hermes and Blackacre* trio of literary fame, Howard Daniel (who later left a promising solicitor's practice to study medicine abroad), Alan G. Crawford, and J. M. K. Phillips, all writers of meritorious verse. There was A. K. ("Wing") Kennedy, who qualified for the Bar mainly as wing three-quarter for University, State and country; and Jim Dive, now a solicitor, who held the record for assignments of articles of clerkship.

In 1936, John R. Kerr won outright or shared every prize or scholarship to be won in the Faculty. C. E. Martin, M.Ec., was another outstanding personality who lost a seat in Parliament just before he came to the Law School and gained another shortly after he left. Keith Harris was conspicuous for his unique feat of taking ten legal subjects in one year, and John Nagle, beside leading the debating teams of the Law School and St. John's College, and editing *Blackacre*, amazed even his admirers by performing a numerically fabulous marathon round and round the University oval, and then, still alive, joined the Bar, and more recently the 2nd A.L.F. Peter Heydon, of the External Affairs Department, recently abroad as secretary to a Federal Minister, and now appointed to the staff of the first Australian Minister at Washington, organized moots and debates, found time to act as secretary to the Australian Institute of International Affairs, and shook the Law School lift and corridors with hearty jests and still more hearty laughter.

Among the graduates of 1937 my mind passes to Jim Massie, a medallist, and my fellow articulated clerk in Messrs.

Allen, Allen & Hemsley. When he and Lance Shirley (one brilliant enough to run close to Walsh in 1934) met their death in the "Kyeema" air disaster in Victoria, a little over a year ago, the profession lost two young men who had before them outstanding careers. Jim also shone as an oarsman, represented St. Andrew's College in the Inter-Collegiate Boat Race on several occasions, and the University when its eight was victorious in the Inter-Varsity Boat Race rowed at Perth in 1936. Another winner of high merit in 1937 was Jean Malor, who by combining a 'Varsity Swimming Blue with two scholarships and two prizes proved herself the most distinguished woman student ever to have gone through our faculty. Val Nagle, another winner of merit, has now joined brother Jack in the 2nd A.I.F. Forbes Officer shared an illustrious record as a debater with Frank Bowler, while Ivan Black's sartorial perfection and genial nods to late-comers at lectures are still not forgotten by men of his year.

Messrs. Allen, Allen & Hemsley drew two first-class honours men from the 1938 graduates—medallist Clive Weston, just returned from a trip round the world after an academic career as glamorous as his exhibitions of dancing, and Bob Stevenson, 'Varsity Hockey Blue and member of the Sydney University Regiment, who had also the distinction of being the first tutor appointed to the Law School staff. Athol Moffitt, now fluctuating between artillery bases and Oxford Chambers, was another to whom first-class honours were awarded. Solicitor Charles Gilbert, of the same year, learned all his present documentary craft as former draftsman of the Song Book, and John O'Neill, in turn Hon. Treasurer and Vice-President of the Law Society, was no less famed for his hobby of producing revues and floor shows than for his present professional stimulus to Messrs. Murphy and Maloney. Don. Rankin and Bruce Parkhill secured University Blues in embarrassing numbers, and Hugh Robson debated inter-Faculty, inter-Varsity, and international, before proceeding on the debating tour of Canada and U.S.A. from which he returned this year.

Outstanding students who cleared the last hurdle in 1939



were medal-sharers Jack O'Brien and Frank Hutley, present Law School tutor and editor of *Blackacre*, and J. A. Melville, a close competitor. Brian Brennan, Royce Jeffrey and Keith Donald all made their mark in the Law Society; Sammy Wolfe showed that neither marriage nor stardom in University revues were obstacles to examination success; and lastly and perhaps the most illustrious of us all, I must mention Jack P. Metcalfe, whose Olympian successes have won a reputation throughout the athletic world.

Before concluding I must add a word or two about our lecturers. The Dean, Sir John Peden, lectured in Constitutional Law, Property and Private International Law, and is one whom I shall always remember with esteem and admiration. He never failed to set the highest example in matters of personal honour, public-spirited citizenship and common courtesy to aspirants to a profession in which these things count for much. It is with deep regret that I learn of his proposed retirement.

No student who attended Professor Charteris' lectures in Political Science, Public International Law and Jurisprudence, failed to appreciate his originality and wit, which won him universal affectionate regard beside the reputation of being the Law School's most individual personality. Effortless attention to Equity and Criminal Law was commanded respectively by Mr. E. D. Roper (now Mr. Justice Roper), and Mr. Vernon Treatt (now the Hon. V. H. Treatt, M.L.A., Minister of Justice). Each of them knew the art of penetration by easy delivery, packed with popular and gripping illustrations, and balanced with touches of humour which never missed their mark; nor was either outdone by Mr. W. McMinn, whose limitless repertoire of anecdotes, as illuminating as they were entertaining, roused far more student interest in the technicalities of Procedure, Pleading and Evidence, than his own modesty ever allowed him to believe.

Mr. W. S. Sheldon's ability unravelled the difficulties of Probate, Bankruptcy and Company Law, the former of which subjects has now fallen to the lot of Mr. Bruce Macfarlan to expound. Mr. B. Sugerman, with a wide grasp of legal prin-



ciples, often treated us far more lightly than we deserved at his lectures on Contracts, Torts and Mercantile Law. So did Mr. T. P. Flattery, whose erudite dissertations on Roman Law were sometimes received with behaviour justifying immediate expulsion, but apparently he was sustained by hope that our enthusiasm for his subject would some day rise to the standard of his exposition. What he spared us, however, was meted out by Mr. Rex Chambers and Mr. W. J. V. Windeyer, who sometimes forestalled student contempt for their respective subjects of Legal Interpretation and Legal History by ejecting disturbing miscreants. The Law School was, and is, fortunate in having as Conveyancing lecturer Mr. P. R. Watts, in the vanguard of conveyancing solicitors. He imparted procedural knowledge also to late arrivals whom he ordered to write a note showing cause why lateness should not result in the name of the defaulter being struck off his class roll.

The scarcity of failures each year in Divorce, then as now, speaks for itself on the value of lectures delivered by Colonel W. K. S. Mackenzie, the author of the much-used Divorce Practice. Our only remaining lecturer—one whose work we all appreciated and of whom we saw too little—was Mr. J. A. Ferguson (now Mr. Justice Ferguson), the exponent of a short course of lectures on Industrial Law.

Bench appointments or pressure of Bar work have led to resignations from and new appointments to the Law School staff since my day, and no doubt the newcomers, Dr. Currey, Mr. A. R. Taylor, Mr. R. O. McGeachan, Mr. Lytton Wright and Mr. Barraclough will be the subjects of reminiscences in days to come.

The careers of most graduates of the period covered are still at a formative stage. Some will be more successful than others. Simultaneous starters in any profession resemble a mass of stones pushed together to roll down a hill. Some are a shape conducive to progress, others are not; some are obstructed or assisted by influences met on the way; some are forced to deviate into other avenues, and some gravitate smoothly and with certainty to the objective clearly defined from their

start. But whatever the future may hold in store for us, we know that if the Law School did not provide us with an open door to success, it at least provided us with opportunities to learn. What we gained there depended upon our own capacity to assimilate and progress.

A. B. BRIDGE.

• • • • •

### THE WASTE LAND

There is no beauty in that land  
That rigid, staring scene,  
Where distant ranges are not blue,  
Nor nearing mountains, green;  
But bare and yellow, far and wide,  
Heave tidal waves of stone;  
Where rippling wheat pursues no breeze  
And corn was never sown.  
And though at least the watered palm  
Would shimmer fitly there,  
Oasis and mirage alike  
Have never plumed the air.  
There is no music in that land  
Of bird, or beast, or faun;  
No crickets chirr the evening in,  
No larks flute up the dawn.  
No volleying lion shakes a hill,  
No reed sings in the breeze,  
No muted bells of blooming flowers  
Are swung by swinging bees—  
A desert that has never stirred  
To necromantic spells  
Cast over its gaunt, trackless death  
By chanting camel bells.  
No passion gives that land a soul,  
A living, burning grace,

No memories soften to a dream  
The rigour of its face.  
No heroes' blood has signed those fields  
With everlasting fame,  
Adventure never scrawled the hills  
With honour, or with shame.  
And yet—what loveliness of earth  
In dawn, or dusk, or noon,  
May match that palsied, glamorous waste,  
The mountains of the moon!

F. J. H. LETTERS.



## THE SYDNEY UNIVERSITY LAW SOCIETY: PAST AND PRESENT

By W. P. Ash, B.A., and J. C. Moore, B.A.  
Graduands in Law



AMONG the students of every faculty within the University there have been formed at various times, societies whose object—to steal from calendars and handbooks a hackneyed phrase—is in each case “to promote social and intellectual intercourse between its members, and to further generally the interests of the students.” In a school of learning where college life is allowed only to the few, and where opportunities of fellowship and the free association of undergraduates are otherwise limited, it has been the endeavour of these societies to supplement the academic training of their members by providing for them a wide field of activities, “social and intellectual,” into which they may enter and leave as they choose. During the past forty years the Sydney University Law Society has compared more than favourably with its sister associations within the University, and it should be a happy reflection for the many men who have unselfishly devoted themselves to its advancement that their efforts have continued to bear fruit right up to the present day.

The Law Society was inaugurated in 1902. The columns of *Hermes* in the nineties afford evidence of occasional but lively gatherings of law students for various purposes, and in particular the dinners of those earlier days were very spirited. It was not, however, until the year mentioned that, at a meeting of graduates and undergraduates presided over by the then Dean of the Faculty, Professor Pitt Cobbett, the Society was formally constituted. Originally

named the Law School Society, its first committee was as follows:

Patron: Professor Pitt Cobbett.

President: Mr. A. J. Kelynack.

Vice-Presidents: Messrs. T. R. Bavin, D. Ferguson, F. Leverrier, J. B. Peden and G. Rich.

Honorary Secretaries: Messrs. N. G. Pilcher and R. C. Teece.

Committee: Messrs. H. G. Edwards, W. G. Forsyth, E. M. Mitchell, Robson and Young.

Hon. Treasurer: Mr. G. H. Wilson.

At the meeting Mr. Kelynack delivered a presidential address "full of racy reminiscences of the Law School," and Messrs. James, Rich and J. H. Carruthers also spoke. The Senate granted the Society two rooms in Selborne Chambers, which Professor Pitt Cobbett generously furnished, one as a smoking room and the other as a reading room containing law periodicals and other journals of general interest.

The records of the Society for the ensuing twenty years are remarkably flimsy, but not so, apparently, its achievements. The complete dearth of authority concerning the social side of its activities during these years is no doubt the best evidence of unqualified success in this sphere; the shame or the discretion, whichever it was, of the secretaries of the day in refraining from recording in tangible form accounts of functions which are better placed in the minds, and perhaps in the hearts, of those who enjoyed them, is surely to be commended rather than deplored. What does appear from the annals of those days, however, is the eager attention and interest bestowed on moots and mock trials. The first permanent moot court was established in 1912, with Professor Peden as president, and included in its list of members all the lecturers and several leading barristers. But the organizers seem to have encountered the same obstacles as those with which their successors are faced even to-day, and the court was deemed "not a success" within a few months of its inception.

Especially in those pre-war days, the law students' per-



petual wail over their lack of comforts was to be heard at its loudest. Written apparently after the leather of Professor Pitt Cobbett's chairs had lost its shine, the words of an undergraduate who put the case to the editor of *Hermes* in 1914 bear witness to the overriding sentiment of law students of all years:

The University Calendar and the Students' Handbook inform the freshers that we have a Law Society. The former sets out its objects, which are: To unite law students and members of both branches of the legal profession in a society which will bring them together for social intercourse and discussion of subjects of professional interest. The Society's rooms have been elegantly furnished, the reading room containing all the principal English and American legal magazines, as well as more important magazines and reviews of general interest.

Armed with this information and filled with the pleasure of Arts and Union life, the embryo law student enters his land of legal promise. His awakening is rude and sudden. The "elegantly furnished rooms" consists of one that from its appointment might be adjudged the spare room of the building; for "the discussion of subjects of professional interest" one joins Biddy's "coterie round the fire" (they did have a fire anyway) and the . . . office-bearers are discovered from a stray notice, or when, as the Final man informs us, five bob is demanded one of these days.

The welfare of the Law Society suffered so severely as a result of the Great War that those who undertook its revival in the early twenties saw fit to call what was in fact a resurrection, another "foundation." The existence of the Society before 1922 was at once acknowledged and denied in the report of the Committee for the year 1922-23, who, though presenting the "first annual report of the Law Society," were not ashamed to admit that the financial embarrassment caused to them by the "smoko" which they organized at the Macquarie Café was "overcome by the discovery of some funds belonging to the old Society."

From this time the annual reports of the Society have been preserved in the Fisher Library, and a more detailed knowledge of its activities is therefore available. A glance at these records leads to the realization that since 1922 the prestige of the Law Society has steadily advanced, and the ambit of its operations, especially in the last few years, has considerably widened. The Committee, almost alone of the committees of undergraduates associations, has regularly been characterized by an ability to combine conservatism and pro-



gress, and the remarkably prosperous state of the Society today is the logical culmination of the efforts of the Committees of the past seventeen years.

Of the annual activities of the Law Society, three—the moots, the social events and the journal—always claim more attention than the others. The holding of moots has been the first consideration of most Committees, and participation in these mock court cases has regularly appealed to budding barristers as a useful complement to their legal studies. Twice, in 1912 and in 1923, permanent moot courts have been established, and on the latter occasion a meticulously drafted constitution was adopted. Each of these, however, was short-lived, and it has been found more expedient not to be governed by fixed rules for the conduct of these courts. Sometimes three on either side, but more often one or two, will spend an evening in thrashing out a point of law on which the Privy Council has preferred to leave open its decision, and their arguments, either exhausted or not admitted owing to lack of time, will await the decision of the learned judges, who frequently arrive at the moots with their carefully written judgments in their pockets. High Court Justices or fourth year students are equally likely to constitute the Bench on a particular night, but more often it is the lecturers, who, after infusing learning into young minds until six o'clock, are summoned back within the hour to listen until nearly midnight to a particular student's opinions on how the reservoir of Mr. Fletcher and his accomplices happened to annoy Mr. Rylands, or to his impressions of Lord Parker's reasoning on clogs.

The moots are primarily, of course, for undergraduates, but members of the profession have spoken from time to time. Although over the years several have been held in the Supreme Court, in the District Court, and even in the Water Police Court, they are in the main confined to the precincts of the Law School, as the organizers have usually discovered to their chagrin that the enthusiasm of those likely to compose an audience is sufficient to carry them up to the sixth floor of University Chambers (if the lift is working), but not

across the road. Occasionally a strong desire for formality grips the moots sub-committee and speakers are requested to make their statements clothed in gowns. The latter in their turn demand that the Bench be properly attired, and that the unfortunate year representative complete his already fatiguing efforts by donning an associate's collar and bands. Usually, however, within the first hour of controversy all wigs are on the bench or table, and gowns are draped over the backs of chairs, and instead rich columns of smoke arise from their Honours' pipes, while the speakers are to be seen fumbling for cigarettes to aid them in assembling their thoughts.

As distinct from moots, mock criminal trials are conducted every few years, and have always proved very entertaining and instructive; but the necessity of long and careful organization prevents their too frequent occurrence. In debating, repeated experience should by now have convinced the Society's Committees that there is little opportunity available for this valuable pastime in the Law School as it exists at present. Although isolated debates have attracted large gatherings, and although representatives are never wanting for inter-faculty contests, every attempt to institute a Debating Club has failed, due no doubt to the prior claims of moots and other interests in already crowded leisure hours. Another means, however, of convening students for discourse on legal problems and of stimulating self-expression has been successfully tried by the Committee only in the past twelve months. The holding of informal Discussion Groups, which afford the members of each year an opportunity of airing their views on knotty points which crop up in lectures, has proved a most beneficial innovation, and one with considerable possibilities.

The most conspicuous, if not the most valuable, of the Committee's annual tasks are on the social side, namely, the Dinner and the Ball. Perhaps the more spontaneous support accorded by undergraduates to the latter event may be indicative of the extent to which the members of the legal profession appreciate the company of their womenfolk; but what-



THE HON. JUSTICE SIR THOMAS BAVIN, K.C.M.G.  
President of Sydney University Law Society since 1922.

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ever the reason, it is a fact that an intense campaign is always necessary to guarantee a "good roll-up" at the Dinner, and the varying attendances over the years bear witness to the persuasive powers of the contemporary organizers. The annals also reveal that there is scarcely an eating-house in Sydney that has not been commandeered by the Society for this ceremony at one time or another. Some few years ago the University Union was selected, and it was there in 1935 that the record dinner (one hundred and thirty-two were present) took place on the occasion of the presentation of the portrait of Sir John Peden to commemorate his twenty-five years as Dean of the Faculty. The last two dinners have been held at the University Club. The Committee has always felt that the expense involved in this function should, within limits, be quite a secondary consideration to its enjoyment, and all past honorary treasurers will readily bear witness to the startling ease with which this object has been attained.

The Ball, like the Dinner, is liable to change its venue at any time. This extremely popular function, the only one of its type for the profession as a whole, has acquired a reputation for combining formality and gaiety to an extent unsurpassed by any other similar annual event. The distinguished array of judges and other guests at the official table, the mock-trial enacted by the more histrionically inclined undergraduates, the tickets in the form of a writ, a lease, or a certificate of title, and the placards hung around the hall dividing it into its many "jurisdictions," all contribute to produce an atmosphere appropriate to the occasion. The fact that the ball has recently taken giant strides, being attended in each of the last three years by almost a thousand guests, has been a source of gratification from the financial point of view, for, in the absence of a subscription, this night of pleasure is the Society's sole source of income. Although the Society is not "run for profit," an endeavour is made every year to show a small credit in the books in order that emergencies such as the opening of new buildings, the retirement of a President, or the departure for a trip of a Dean or lecturer should not prove embarrassing. Whenever the bank balance, such as it

is, appreciably passes a working minimum, the Committee willingly diverts the excess into channels which it considers deserving of its favour. When there is money to spare, new books are purchased for the Library, while on the occasion of the opening of the new premises, the Committee equipped the Library with an electric clock. The Ball, therefore, has a dual purpose.

The journal of the Law Society, *Blackacre*, is comparatively youthful, having begun its career in 1924. The honorary secretary of that year stated that "this production has made an auspicious beginning, and if given proper support by the students, promises to develop into a very important part of the life of the faculty." Nevertheless, almost every annual report since that time has failed to furnish any more enlightening assurance than that *Blackacre* has maintained its usual literary standard." The blunt truth of the matter is that the standard alluded to has never been high, and every committee since 1924 has neglected to give its journal due attention. The sole responsibility for any apathy among the members of an association such as the Law Society must rest with the Committee, and that body has therefore only itself to admonish for the half-hearted support accorded by most undergraduates to the many able editors who have nurtured this magazine. At present *Blackacre* is, as far as it goes, in a healthy state, but it requires development both in scope and in substance.

Considering the difficulties which arise by reason of the location of the Law School, the Society has performed to the full its share in University affairs. In inter-faculty debating, of course, the team is usually a hot favourite and it frequently talks its way to victory. In sport, the struggles of the Society's representatives have met with varied requitals. The firm attitude of the large majority of master solicitors operates as a strong prohibitive against the winning of football competitions, and only very rarely is an unusually enthusiastic organizer able to place fifteen men on the University Oval for the first round; if he does so, he is almost certain to fail to repeat the performance for succeeding



rounds. Cricket, tennis and golf, however, seem to have presented fewer obstacles and it is quite common for the Society's team to carry off the palm in these sports. The days of the Law School eight are apparently past, while representation in athletics, shooting, swimming and pugilism is scattered.

The Society may always be depended upon to play a leading role in Commemoration Week, and especially to take a prominent part in the Festival Revue. Its efforts are just as likely to be rewarded with a blue ribbon as with an untimely curtain, and perhaps it is because of this glorious uncertainty, or possibly for other reasons, that the audience ever waits with hungry eyes and ears for the Law School item to take its turn on the stage.

The least conspicuous obligation of the Committee of the Law Society is probably the most important. Besides undertaking the organization of student affairs, the Committee must constantly be prepared to bring sundry complaints or suggestions under the notice of the authorities, and to act as champion of the righteous causes of the students. From time to time minorities have insisted on the calling of general meetings to discuss the initiation of movements to abolish lectures, to eliminate half of the curriculum or to have the Dean sacked. On such occasions the embarrassed chairman, if he is also a student, may usually avoid charges of being two-faced by the employment of a few well-balanced and tactfully chosen words, and so gain the confidence of the meeting as to persuade the agitators that their recommendations are, at all events, ill-timed. There are, however, innumerable propositions of a more moderate nature which have been made by the representatives of the students over the years, and which have often been adopted by the powers that be. The Society has in general received a ready and considerate response to its overtures from the Dean and the lecturers alike.

Notwithstanding these major duties of the Committee and the several smaller matters to which it must apply itself during the year, the greatest part of its labour is not evidenced

in tangible form at all. Three-quarters of the work of the committee, to put it expressively, if not gracefully, is in "rounding the men up." The nature of the Law School course and the requirements of the Solicitors' Admission Board allow the average man little free time to devote to the Society's activities during the four (or more) years of his studies, and the value, therefore, and the achievements of the Law Society necessarily vary to a large extent with the personalities of its annually elected leaders. While the majority are willing to co-operate, their circumstances oblige them to leave it to others to promote their interests as undergraduates. It is to the energy and ability then of the members of the committees of the past forty odd years that the law students of to-day owe many of their facilities and opportunities.

There have been only two Patrons of the Law Society, but Professor Pitt Cobbett and Sir John Peden have been patrons in the truest sense of the word. The generations of students have had in them the firmest of friends. Of all the officers of the Society, it is easy to single out one whose name will be perpetually associated with its birth and development. The editor of this journal, Sir Thomas Bavin, was an inaugural Vice-President of the Society, and it was not without reason that he was twelve times re-elected to that office and once as President between 1902 and 1921, and that he has been President continuously since 1922. The Society has been indeed fortunate in its ability to claim the attention of one who has occupied his life in a far wider sphere. Every committee since 1922 will testify to the constructive interest taken in all its affairs by Sir Thomas. As for the Society's friends outside the pale of its members, there is one close at hand whose name is necessarily included in any record of its accomplishments—Miss Dalrymple Hay, whose constant readiness to assist on every occasion has proved a boon to many committees.

Necessarily controlled almost entirely by undergraduates, the Society nevertheless counts among its members the whole legal profession in New South Wales. In contributing to the



fellowship which characterizes that profession, it has played well its part by ensuring that each generation of law students is united by a bond of friendship more secure than their mere common interest would provide. The University Law Society will go on; its history shows that there are always men to be found who feel that the cause is worthy of their efforts.

W. P. ASH.

### OFFICERS OF THE SYDNEY UNIVERSITY LAW SOCIETY

#### Presidents

- 1902 A. J. Kelynack.
- 1903 J. P. Pickburn.
- 1904 Dr. G. W. Waddell.
- 1905 E. M. Mitchell.
- 1906 A. B. Piddington.
- 1907 T. R. Bavin.
- 1908 } Dr. W. P. Cullen,
- 1909 } K.C.
- 1910 F. Leverrier.
- 1911 A. J. Kelynack.
- 1912 } The Hon. Mr.
- 1913 } Justice Ferguson.
- 1914 } T. Rolin.
- 1915 } The Hon. Mr.
- 1916 } Justice Harvey.
- 1917 } The Hon. Mr.
- 1918 } Justice Ferguson.
- 1919 } A. B. Piddington.
- 1920 } A. B. Piddington.
- 1921 } The Hon. Mr.
- Justice Street.
- 1922 } The Hon. Sir
- 1939 } Thomas Bavin,
- K.C.M.G.

#### Honorary Secretaries

(A complete list of these officers before 1922 has not been obtainable).

- 1922-1923 A. H. Curlewis.
- 1924 K. Hunter.
- 1925 R. C. Kirby.
- 1926 E. R. W. Caldwell.
- 1927 J. H. McClemens.
- 1928 C. A. H. Dezarnaulds.
- 1929 A. E. Davis.
- 1930 R. W. Keegan.
- 1931 D. F. Lewis.
- 1932 B. P. Macfarlan.
- 1933 J. C. Dive.
- 1934 O. L. Davis.
- 1935 A. B. K. I. Bridge.
- 1936 B. L. Brennan.
- 1937 R. H. Jeffrey.
- 1938 W. P. Ash.
- 1939 E. H. StJohn.



## LAW

Have such themes as lungs and livers, filling teeth or damming rivers,

An atmosphere of learning such as always must surround  
Cherished topics like attainders, tortious feoffments or remainders,

Justinian on planting shrubs in someone else's ground,  
Correlatives or renvoi, or a venerable saw

Of some old bloke like Choke or Coke about a point of law?  
Law, law—

Bow down your heads in awe!

The greatest of Lord Chancellors could find no fault or flaw  
In its subtlest involution;

But a rigid constitution

Is required for execution of your plan to study law.

On yer Constit they can knock yer, or on Property they'll  
block yer,

And who comes into Equity must do it, none can doubt,  
If on these they can't impede yer, then they'll get yer on  
Procedure,

And when at last the goal's in sight, proceed to hound yer  
out.

More skilled in fearful tortures than a savage Indian squaw  
Is a Torquemada tough or Wilfred Shadbolt of the law.

Year by year you feel you're dumber as you labour through  
the summer,

A serf who never sees the surf, whose brain begins to creak;  
When you go and ask your master for a week to dodge  
disaster,

He says, "It's not for that I pay you half a quid a week:  
The deal that my solicitor gave *me* was twice as raw—  
I was sweated, never petted, long ago when doing Law."

Students yet unborn must suffer, for "The boss was treated rougher,"

Is a hoary legal fiction lapse of time can never quell,  
And at the School's centenary a Horace in the Deanery  
Will sacrifice the sportive kid to spirits of the well  
(And the tutor in iconoclastic, drastic words will draw  
Attention to the crass conservatism of the law).

Law, law—

Nature red in tooth and claw

A struggle like the Law Stude's for survival never saw—  
*Chorus.*

Law, law—

It's time to shut your jaw,

When you should be jubilating, like a bilious crow you cawl  
Life is sometimes not so black-o,  
It's the Jubilee, so whacko

For the Law School and for Jacko—thirty years the Dean of  
Law!

W. G. McDONALD.

LAW IV

## THE LAW SCHOOL AND PARLIAMENT

By The Hon. L. O. Martin, M.L.A.



WHEN the Faculty of Law ceased to be an examining body only, and became a teaching faculty in 1890 there were wide expectations that it would become, through its graduates, a factor of major importance in the Parliamentary and public life of the State, or the Colony, as it then was.

It seemed probable that the British tradition that a training in law created special qualifications for public life in a free democracy would be repeated in our midst. The object of this article is to examine the position after the passage of 50 years. It is of great interest to the Law School and I venture to say of equal interest to the State to consider whether those expectations have been fulfilled and, if not, what have been the reasons.

The trend of all democratic communities has, down the ages, given the man versed in law an advantage at public gatherings as well as in public administration. When systems of law were more jealously guarded and less frequently altered than is customary in modern times, the lawyer had a still greater advantage, more particularly when the lawyers were priests as well.

It is obvious that for the adequate examination of proposed laws a knowledge of the fundamental principles and philosophy of legal systems is of very great advantage, and so a proper teaching of law is not only of importance for the purpose of providing a training for lawyers as such, but also for the purpose of giving a democratic State a body of men capable of understanding and working its constitutional system and developing its laws.



Since the establishment of the Law School in 1890, 1111 students have obtained their degrees in the faculty—the first of whom graduated in 1894. Since that year the number of individual persons who have served in the Legislative Assembly is 472, while the number who have been members of the Legislative Council from the same year is 193, while 100 served in both Houses, making a total of individual persons who have been members of the State Parliament since 1894 of 765.

During that period which, of course, is the only one in which law graduates could have served in Parliament, 8 of them served in the Legislative Council, 14 in the Legislative Assembly, 2 in the House of Representatives of Australia (of whom one had sat in the Assembly), and one in the Queensland Parliament.

There may possibly have been others, but I think this list is complete. Thus there have been 24 law graduates who have given public service in Parliament.

At the present time in the Legislative Council there are 5 law graduates, while in the Assembly there are 6, and one in the House of Representatives, making a total of 12, which is, I believe, the largest number that at any one period has so served.

It is obvious that the value of the contribution of law graduates to the parliamentary government of the State and Commonwealth cannot be measured by the percentage of such graduates to the total number of members or graduates. Hence it is necessary to examine the individual records of those who have served in order to arrive at any reasonable estimate of the direct value of the Law School in our parliamentary institutions.

It is of interest to recall that the first Cabinet under responsible government in 1856 had 5 members and contained 3 lawyers. The present cabinet of 15 members contains 7 lawyers, of whom 4 are graduates of the Law School. This affords an interesting comparison of the first responsible government with the present.

I now proceed to examine the records of those who served:

## The Legislative Council

The Hon. B. B. O'Connor, B.A., LL.B. (1895) was the first law graduate to serve in Parliament, and was elected to the Legislative Assembly in 1898, and served there until 1907. During 1904 to 1907 he was Minister of Public Instruction. In 1908 he was called to the Legislative Council from which he will retire early in 1940—not having sought re-election. In the Council he was President for a few months at the end of 1928 and Chairman of Committees from 1912 to 1934—both very distinguished offices.

When he leaves his parliamentary duties in April next he will look back over a very long period of valuable service to the State. As Minister of Public Instruction he served at a time when educational advantages lagged far behind. His main work was undoubtedly done in the Council where he came to be looked upon as one of the elder statesmen whose opinions on public questions were always listened to with the greatest respect by both parties.

The Hon. J. A. Browne, LL.B., K.C. (1904) was called to the Legislative Council in 1912 and served there until 1932, when he resigned to become President of the Industrial Commission of N.S.W. His career as a legislator was distinguished by the closeness of his reasoning on matters before the House. He was appointed by a Labour Government to the Council and he left it on his appointment to the Industrial Commission by a Government of the opposite side in politics—a rare distinction.

The Hon. Sir J. B. Peden, K.C.M.G., K.C., B.A., LL.B. (1898) was appointed to the Legislative Council in 1917 and is still there. His period of service will expire early in 1946 unless he is re-elected. He still retains the high office of President of the Council to which he was appointed in 1929. He has given a measure of service to the Council and to the State of very great value indeed. During his time there the Council has passed through more constitutional crises than in any other period of its existence. His wide constitutional knowledge and power to apply it has been of the greatest



value to the State during these difficult periods. It is fair to say that the secure position of the Council in our legislative machinery is largely due to him.

The Hon. R. Sproule, B.A., LL.B. (1913) was called to the Council in 1920 and remained there until its reconstruction in 1934. He was Solicitor-General from 1920 to 1922. He was noted as a keen advocate of the political principles to which he gave adherence. When he left the Cabinet, however, he gradually ceased to take an active part in legislative affairs.

The Hon. F. S. Boyce, K.C., B.A., LL.B. (1896) became a member of the Legislative Council in 1923, and remained until 1932 when he resigned on his appointment to the Supreme Court Bench as Judge in Divorce. He was a Minister without Portfolio and a Member of the Executive Council from 1924 until 1925 and Attorney-General and Vice-President of the Executive Council from 1927 to 1930. During his whole period in the Council he gave very distinguished service to the State. He, too, served during great constitutional difficulties when his advice and his capacity in debate were of inestimable value.

From 1930 to 1932 he acted as leader in the Council of the forces opposed to the Lang Government. This was probably the most strenuous period that the Council has ever experienced, and, although it is too soon to estimate the real value of his work, his political tact and acumen, together with his knowledge of men and affairs, were invaluable. His elevation to the Bench was a loss to the political life of the State.

The Hon. Sir Henry Manning, K.C.M.G., K.C., B.A., LL.B. (1902) was appointed to the Council in 1932. He is still a member and, unless re-elected, will retire in 1946. He became Attorney-General, Vice-President of the Executive Council and Representative of the Government in the Council in 1932 and still retains those offices. The task set him of becoming the Leader of the Government in the Council on his first introduction to Parliamentary life was difficult, but he has fulfilled it with complete satisfaction to the Government and the Council. He brought to his task a know-



ledge of law to which he had added a wide knowledge of affairs. With these he combines an urbanity and reasonableness which has gained the respect of his bitterest political opponents. He came into the Council at a time of acute constitutional unrest, and he will probably be remembered best for the work he did in settling the new constitution of the Council and guiding it during the running-in period.

The Hon. E. M. Mitchell, K.C., B.A., LL.B. (1900) was elected under the new constitution in 1934 for a period of 3 years and re-elected in 1937 for a period of 12 years. Apparently he has no political ambitions. His one desire appears to be to give in full measure that service which every citizen owes to the State. He has brought to Parliament a knowledge of constitutional law and practice which has been invaluable both to the Council and the State. Seemingly without effort he has achieved a position in the Upper House which for the most part only comes after long years of service and even then to few.

The Hon. T. S. Holden, LL.B. (1928) is one of the youngest members in the Council. He was elected at the first election under the new constitution for 6 years and was re-elected in 1939 for a further period of 12 years. This is a recognition of his value. He has been a student of the legislation of his time and has given the closest attention to his duties.

#### The Legislative Assembly

The Hon. Sir Daniel Levy, Kt., B.A., LL.B. (1895), was elected to the Assembly in 1901 and remained a member continuously until his death in 1937. He had, after a very distinguished academic career in Arts and Law, an exceptionally long career in the Assembly. He was Chairman of Committees from 1917 to 1918, Speaker in 1919, again from 1920 to 1921; from 1921 to 1925; and from 1927 to 1930. He was Attorney-General and Minister of Justice for about a month in 1932 and Speaker once more from 1932 to 1937.

During his earlier years he devoted a good deal of his attention to the debates. He exceeded all records in the office of

Speaker in which, of course, it was impracticable for him to take part in debates. He was a master of parliamentary practice and constitutional government. His occupancy of the office of Attorney-General and Minister of Justice was during the interim at the end of the Lang Government for just one month. He died while holding the office of Speaker.

The Hon. Sir Thomas R. Bavin, K.C., B.A., LL.B. (1897), was elected on the 30th March, 1917, to the Assembly and remained until he resigned to take a seat on the Supreme Court Bench in 1935. During that period he was a stormy petrel in politics. He became Attorney-General and Minister of Justice in 1921 and Attorney-General from 1922 to 1925. His great work, however, was done during his premiership which began at the end of 1927 and ended in November, 1930. He was also Colonial Treasurer from 1927 to 1929, and Colonial Secretary for a short time in the same year.

Of all the Law School men who have served in Parliament Sir Thomas Bavin gave the most distinguished service. Always of advanced ideas, possessed of a logical mind and a power of rapid decision he gave to public life a distinction and zest that few other men have done. He obtained and held the respect of all parties in the House. Whenever it was known that he was to speak he was always sure of a full House and particularly the attendance of members on the opposite side in politics. He also brought a cultured, well-stocked mind to bear on the problems with which he had to deal. He showed himself a man of very wide interests with a broad vision of human affairs not bounded by State politics. He will long be remembered for his sincerity and honesty as a public man.

Mr. H. V. Jaques, B.A., LL.B. (1906), entered Parliament in 1920, and remained until 1930. During his 10 years of service he endeared himself to all the members—friends and political foes alike. He did not take a great part in debate. His retirement from politics was regretted by everyone.

The Hon. E. A. McTiernan, B.A., LL.B. (1915), served in the State Parliament from 1920 to 1927. He was also in the House of Representatives in 1929-30. In the Legislative Assembly he was Attorney-General and Minister of Justice



from 1920 to 1921; Attorney-General from 1921 to 1922 and from 1925 to 1927. He was also acting Minister of Justice for a short time in 1927. He gave great service to the side of politics which he represented; was a clear logical debater and had he not left politics for the High Court Bench appeared to have a real political career before him.

The Hon. H. V. Evatt, M.A., LL.D. (1924), came into Parliament in 1925 and served until 1930. He took a very active part in the stormy debate of 1925-7 and a less active part in the 1927-30 Parliament. The political accidents of the time prevented him from exhibiting in the House the really great parliamentary qualities which he possessed.

The Hon. L. O. Martin, B.A., LL.B. (1895), was elected in 1927 and is still in the House. During his first Parliament he served as Acting-Chairman of Committees and also for a period as Acting-Speaker. He became Minister of Justice in 1932 which portfolio he relinquished in 1939 to become Secretary for Public Works and Minister for Local Government which office he still holds.

Mr. J. Lamaro, B.A., LL.B. (1922), entered Parliament in 1927 and served until 1934 when he resigned. He became Minister of Justice in 1930 remaining until 1931 when he became Attorney-General which office he held until 1932. His ministerial life was cast in a very difficult and troublesome period both economically and politically. He was a fair debater and exhibited an aptitude to appreciate an argument opposed to his own viewpoint.

Mr. A. Landa, LL.B. (1927), was first elected in 1930 and served until the dissolution of that Parliament in 1932. He was regarded rather as a one-sided debater. His parliamentary life was too short to enable him to make any real impression on the House.

Mr. C. E. Martin, M.Ec., LL.B., A.A.I.S. (1936), came into Parliament in 1930, and was defeated at the elections of 1932. He, however, was re-elected in 1939 to the present Parliament. During the stormy period of the Lang Government he early showed considerable aptitude for debate. The course of events seemed to chill his activities at a time which was not a



happy one. When he was re-elected he was welcomed into the House and showed at once the steadying effect of experience. He is ready and logical in argument, resourceful in tactics and, unless his activities lead him into other fields, has a real career before him in Parliament.

The Hon. C. A. Sinclair, B.A., LL.B. (1905), never really embarked on the practice of law. He entered Parliament in 1932 and is still there. He became an Honorary Minister from 1937 until 1938 when he became Secretary for Lands. He is a well-known grazier and has devoted his life to that pursuit of which he possesses a vast knowledge and of land matters generally. His very considerable commercial knowledge has been sharpened and improved by his early training at the Law School. Before he became a Minister he was always listened to with respect in debate and since he has held a portfolio his reputation has steadily risen. He has been a most valuable addition to the House.

Mr. E. Murray Robson, B.A., LL.B. (1930), came into the House in 1936 as one of the youngest members. He speaks attractively and once youthful excrescences are rubbed off should become a useful member.

Mr. H. H. Mason, K.C., LL.B. (1913), entered the House as an Independent at a by-election in 1937. He remained almost 8 months and did not seek re-election. He came into Parliament with a great legal reputation. Many of the older members expected much from him. Notwithstanding the fact, however, that he took a very active part in the debates for the short period he was there he was not impressive. Somehow or other, notwithstanding his profound knowledge of law, he did not fit in.

The Hon. Vernon Treatt, M.M., M.A., B.C.L., after graduating in Arts at Sydney attended the Law School for two years when he went to Oxford as a Rhodes Scholar. He entered the Assembly in 1938. He early showed an aptitude for parliamentary work and became Minister of Justice in the present Ministry in 1939. He will prove a valued addition to Parliament.

Mr. C. R. Evatt, K.C., LL.B. (1926), entered Parliament

at a by-election in 1939. It is all too soon to form any estimate as to his ultimate career in public life.

### House of Representatives

The Hon. P. C. Spender, K.C., LL.B. (1922), was elected to the House of Representatives at the general elections in December, 1937. He became Assistant Minister when the present Federal Government was formed in 1939 and later Assistant Treasurer. In this office he has shown, particularly since the war, very great activity and he gives every promise of a distinguished Parliamentary career.

This record is certainly not impressive so far as numbers are concerned. It can hardly be suggested that the service of 24 out of a total of 1111 Law graduates during a period of 50 years is a satisfactory exhibition of that spirit of citizenship and service that should be found amongst those men who have enjoyed the very great advantage of the Law School.

Is it that our graduates are too much absorbed in professional duties to give up the time required for parliamentary life? If this is the reason for the paucity of numbers found in our legislative halls it is not one that can be viewed with any satisfaction by those who value university life and training. It cannot be contended that the graduate having achieved his degree and thereby entering his profession is entitled to neglect one of the greatest duties of citizenship, more particularly after having been the beneficiary of an organization equipped and maintained largely at the cost of the State.

It is, of course, highly advisable that a young professional man should establish himself. It is his career, but it should not be pursued so closely as to ignore his other duties to life.

It may be that the ill-grounded public suspicion of lawyers is another reason which operates to make lawyers not always acceptable candidates. To this may be added a natural disinclination on the part of the graduates to submit to what is really a drudgery in parliamentary life or to the difficulties associated with campaigning to secure election.



It is frequently alleged that professional men who enter public life discount their chances of success in their profession—the public holding a belief that they cannot attend to both. This feeling certainly does exist and is to be deplored.

Whatever the reasons, looking back over the period under review, Law School men can hardly be happy at the number of their alumni who have served in Parliament. Many of them are well endowed and equipped for that service and they owe it to the State. This more particularly appears from a consideration of the actual service given by those who have entered public life.

If, however, the *number* of men who have given service is disregarded, and the value of the service rendered is considered, the position is much more satisfactory. Viewed from that aspect Law School men will have a feeling of pride at being associated with such a band, while, at the same time, regret will be increased that, seeing the quality of the service rendered, there were not more of them.

Amongst them are eleven who have been or are Ministers of the Crown: five are Judges of the High and Supreme Courts: one is President of the Council: and one was Speaker of the Assembly more often and for a longer period than any other Member. The numerical side, although interesting and important, gives no true appreciation of the quality of the service. Sir Henry Manning has occupied the position of Attorney-General longer than any of his predecessors and has been a conspicuous figure in our public life. I had the distinction of serving as Minister of Justice for a greater period than any one before me, and the good fortune to prepare and pass into law more important and more numerous measures than any other holder of that office. Sir Thomas Bavin as well as Mr. Justice Boyce will have places in our political history during a period of great difficulty. Mr. Colin Sinclair is the first example of the English tradition that a degree in law has other uses than as a qualification for professional practice. Sir John Peden has achieved a distinction in politics which raised him above party strife as a trusted counsellor. Mr. Justice Evatt, already a great Judge, may well become



one of the greatest. Mr. O'Connor will shortly retire after 42 years of public service. There remain some younger men who, while yet to win their spurs, give promise that in their hands the torch will not be dimmed.

Fairly viewed it is indeed a great record not equalled by any other body of men.

To sum it all up the quality and quantum of the service have been satisfactory, from those who gave it—the number of Law School men who served all too few.

L. O. MARTIN.



## THE LAW SCHOOL AND THE BENCH

By the Hon. Mr. Justice Davidson

Any discussion of such institutions as the Law School and the Bench would be futile without some mention of the reason for their existence and of the aims which guided them in the past and should direct their policy in the future. A Law School is not a mere factory for the turning out of students adorned with a degree as if they were goods stamped with a trade mark; nor is the Bench designed simply to arrange settlements of disputes, without regard to the legal principles which govern them. The most cursory glance at recorded events, kept in their true perspective, will reveal much more interesting and imposing conclusions. If one might imagine, for instance, a picture gallery of all modern British institutions it would be found that probably none is characterized by a more illuminating background than the Bench and that the School has borne a valiant part in the creation of that background. Many dominating figures, which emerge into relief from time to time over the centuries, are the first to arrest the eye; but behind them lies the even, yet forceful, colouring of a great principle. Developed from the crude efforts of the primitives and sometimes besmirched by less skilful successors, the setting will be seen to have become in the hands of the masters, both ancient and modern, and still to remain, the basis of a great work of art. Each of the

many outstanding exponents of the law, whose portraits appear, provided his contribution to the final result and history has added the impulse of tradition. Thus, the framed picture is presented of a vital institution resting on the concept that ultimate power and justice in the State are vested in the King, who is a symbol of the will of the people, and whose decrees, interpreted and applied by a trained independent and readily accessible judiciary, are enforced according to its rulings. The story so illustrated will also show that despite its modest birth in a small country which was not the most advanced of its time the Bench after a continuous development for almost eight hundred years still exercises its original functions, but now in an imposing group of independent States comprising the greatest of all Empires.

Mention of the judicial office is found in remote antiquity. Moses, it is said, accepted the advice that he should not wear himself out by teaching his community the ordinances and laws, and judging between one another; but that he should provide "out of all the people, able men, such as fear God, men of truth, hating covetousness, and let them judge the people at all seasons, bringing to him the great matters" and in the small matters deciding themselves. Naturally, in a primitive society, the purely judicial side of these functions was largely confused with administrative duties, just as they were in the early days in England. The Norman Kings in all probability acted on similar advice to that tendered to the Hebrew lawgiver, when they found their vigorous efforts, in both making and interpreting the laws, although aided by their *curia regis*, becoming too burdensome. They secured their judges, but it fell to the lot of the active Plantagenet Henry II to provide a ready access to his courts, when he commissioned his justices to travel periodically on circuits throughout the country, to perform the judicial work at the assizes, thus instituting the practice which has continued up to the present time and has been adopted in New South Wales. The same monarch appears even to have evolved a remedy for the law's delays, which unkindly critics might also claim should be applied to-day. The allegation, supported by



apocryphal stories, is, that he "kept his staff up to their work." When Glanvil, a judge, and the first of the great English figures in the law, asserted that cases were more quickly decided in the King's Court than in those of the bishops, he was told that if the King were as far away from his tribunals as the Pope was from his bishops both the courts would go equally slowly.

Glanvil's outstanding work was to bring coherence to the loose mass of Saxon customs which formed the basis of the law. It remained for Bracton, the second notable figure and one of the greatest of all English lawyers, to introduce in the middle of the following century the two germinal ideas which developed into such immense proportions. These ideas were, firstly that the law should proceed from precedent to precedent, as it has since done, and secondly, that the law should rule, so that the King himself should be bound by the law. Bracton was an ecclesiastic like most other judges of the period, except Glanvil, and probably acquired his learning in the civil law in the University of Bologna, but his two revolutionary ideas were not derived from that source. Yet, he had created the precedent which was followed by his eminent successors Littleton, Coke and Blackstone, so that when ultimately parliament gained control of the executive, more than an equal share of the victory was due to the attitude of the courts.

In England up to Bracton's time the church had provided the judges. The Law School had not arrived. But, since the establishment under Henry III of the permanent court at Westminster, as required by Magna Charta, there had grown up colleges for persons studying or practising the law in London. These practitioners were lay lawyers, and from their ranks, during the reign of Edward I, were drawn the majority of the judges. The latter were directed, "to procure and appoint a certain number of attorneys and apprentices of the law from every County of such as seemed to them best, worthiest and most apt to learn so that the King's Court and the people of the Kingdom should be better served and that those chosen should follow his Court and be present therein

to conduct affairs, and no others." The common lawyers, trained in their own schools, had won. The ecclesiastics had lost favour and it was never regained. Some still were chosen as judges until the time of Edward III, when, it is said, the law had become so distinct a profession that "all who follow it will bear a similar intellectual stamp." But it was a stamp despised by the clerics who claimed, no doubt with reason, to be possessed of a wider culture.

The Bench preceded the Law Schools in England but, once founded, their influence was steadily if inconspicuously exerted. Their vitality must have been unailing. By the time of Henry VI the Schools were firmly ensconced in the Temples and in Lincoln's and Gray's Inns where they taught and criticized the pronouncements of the law made by the occupants of the Bench whom they had trained for the positions in which they could dictate to their teachers. Modern critics may find amusement in the fact that societies of mere lawyers in the Inns, who still maintain their ancient strongholds, should make the proud boast, that "here everything which is good and virtuous is to be learned, all vice is discouraged and banished." But it seems to be inherent in scholastic organizations to advertise their tender care of the morals of their students. The governing Act of Parliament in our own University, founded by Royal Charter on the 27th February, 1858, and now providing its own School of Law, speaks ponderously on the subject. "No student," says the Statute, "shall be allowed to attend lectures or classes in the University unless he dwells with his parents or guardian or with some friend selected by his parents or guardian and approved by the Chancellor, Deputy Chancellor or Vice Chancellor; or in some Collegiate or other educational establishment; or with a tutor or master of a boarding house licensed by the Chancellor, Deputy Chancellor or Vice Chancellor." Here, likewise, is no room for vice when those grave officials make their rounds selecting good boarding houses.

In the inns of Court, called by Sir William Blackstone, "Our Judicial University," are seen the potent figures of Littleton,



Coke and Blackstone acting as "Readers," before they were translated to the Bench; and in grand array thereafter, stand with them, the other selected portraits in the picture of the School and Bench. Little effort is needed to recall their names to mind. Many of them exerted their influence from the Bench, but of those without that sphere, there must be included within the modern honour group such names as Pollock, Maitland, Dicey and Holdsworth, to mention only a few.

In New South Wales the Bench also preceded the Law School. By the Charter of Justice in 1823 the Supreme Court was constituted of one judge, Sir Francis Forbes, an English barrister of five years standing, who was appointed Chief Justice, and was given power to enrol a sufficient number of barristers, advocates, proctors, solicitors and attorneys to provide for public requirements. Not till 1890 did the Senate of the University confer with the judges, "in order to give to the Faculty of Law as practical an application as possible, with a view to amalgamating the regulations for admission to the Bar with those of the University for the granting of the degree of Bachelor of Laws, and also to provide for the legal instruction of articled clerks to Solicitors." For the School which eventuated no finer guide to its future destiny could have been found than Professor Pitt Cobbett. During the nineteen years from 1890 onwards the legal profession as a whole, and many subsequent members of the Bench, had the inestimable benefit of the lucidity, power and breadth of his teaching, which was enhanced by his scholarship and the forcefulness of his personality. One of his students, Sir John Peden, who became his successor and has maintained his methods with such marked success, would be foremost in acknowledging the value of the foundation laid by the first Professor of the School. Two of the original "Readers" or Challis lecturers in law went to the Bench, Sir George Rich to the Supreme Court and afterwards to the High Court of Australia, and Sir William Cullen to be Chief Justice of New South Wales. It was not until 1917, or twenty-seven years after the creation of the School, that another student,



the late Judge Pickburn, was elevated to the Arbitration Court, to be followed on the same Bench by his Honour Judge Curlewis, who subsequently was appointed to the District Court. A further ten years elapsed before the School was represented on the Supreme Court Bench. Since that time, however, graduates have filled most judicial positions. There are included two Justices of the High Court of Australia, the Chief Justice and six Justices of the Supreme Court of New South Wales, a Justice of the Land and Valuation Court, six Justices of the Industrial Arbitration Commission, a Master in Equity, eleven District Court Judges, three Judges of the Workers' Compensation Commission and a Justice of the Supreme Court of the Northern Territory.

Now that the Law School, according to tradition, is fulfilling one of its most important functions of furnishing the personnel of the Bench, consideration may be given to the problem whether the educational methods adopted are perfectly designed. Comparison with the system in vogue in the early days of the "Judicial University" of the Inns of Court in England suggests that the training in New South Wales may be too academic. A considerable proportion of a lawyer's work is necessarily technical and the founders of the Law School themselves announced the object of giving to the Faculty of Law as practical an application as possible. It is only in comparatively recent times that the value of a University training in industry is ceasing to be depreciated on the ground that early and continued experience of a particular type of work produces better results. The lesson of centuries also seems to establish that the test of capacity for the practice of the law, and more particularly for the occupancy of the Bench, lies not merely in the ability to pass examinations or even in the possession of supreme mental attainments alone, but rather in the strengthening of character, to be achieved by a liberal education combined with training in the ethics, practice and principles of the law. Such a conclusion has been evolved as part of British policy in pursuance of which the technical side was attended to partly by the schools and partly by actual practice in the courts. Ordinarily it is the

function of a University or School to equip a student with a knowledge of the principles of his subject and to train him to reason clearly so that he may apply those principles to the circumstances which may arise and thereby to afford him the opportunity of a wider vision and a more refined executive capacity. But where the subject is largely technical a training by some means in the actual technique is also essential. The Inns of Court were fully alive to these ideas. It comes as a shock to a student in the Law School to find that centuries ago an intensive training of twelve years was regarded as necessary before the advocate was deemed to be qualified to plead in the courts. This period was afterwards reduced to five years, whilst in the Law School in New South Wales the course extends over only four years. In England the apprentice was first trained in the Inns of Chancery in the technique of original and judicial writs before passing into the Inns of Court, where he attended lectures and engaged in moots and debates, in addition to being required to follow the proceedings in the courts. The subjects of the moots and the pleadings defining them were prepared by senior counsel, who often attended and took part. Examinations did not arrive until a much later date and the opinions of many experts, including some in America, are not to be ignored when they suggest that a combination of both methods might well be beneficial.

Another suggestion relates to a matter now outside the ambit of the School. When a profession demands a high standard of ethics, as most professions do, the necessity of an effective disciplinary authority is indicated. The Inns of Court have always arrogated to themselves this power in relation to the Bar and, assisted by maintaining close contact with its members, have produced excellent results. The same jurisdiction in New South Wales is wielded by the Supreme Court, and here also consideration might be given to the idea of transferring at least portion of the control to a Statutory Committee similar to that which is so admirably conducted by the solicitors.

The picture presented by the Law School and the Bench



shows that they have done a great work in their own domain and in the sphere of public usefulness. The lawyers constitute only a small section in the community, but they have followed a light, which, although sometimes dim, has led them far towards a noble goal. They found their way with the aid of their own schools which pointed out different paths to those they would have pursued through the Civil Law and the Continental Universities. But the light they have followed is again growing dim. Parliament itself can become despotic, when controlled by a powerful party, and depart from principles which are ingrained in the law. Because it may be difficult to detect some offences or to collect taxes or to conduct other activities of the State, persons are in some instances required to prove their innocence of charges instead of being deemed innocent until their guilt is proved. Another practice is to make conclusive the decision of some ministerial officer of the Crown so that access to the King's Court is denied. The same reasons of expediency may be, and are in some countries, given to support uncontrolled executive action in all matters which are claimed to be vital to the safety of the State. Thus the step is very short to the law being purely based on the personal caprice of a King, a political party or a dictator. It is not by this means that the ultimate goal may be reached. The principles of the British law as devised by the Schools and the Bench are directed to the attainment of justice, human peace and happiness; but those principles are not yet appreciated in their true significance by all people, even in British States. When they are fully appreciated, perhaps they may be extended by the will of all peoples to nations as well as to individuals, so that national destinies may be directed by the rule of the law as taught by a still more mature Law School interpreted by a cosmopolitan Bench, and enforced by some universal power.

C. DAVIDSON.



## THE LAW SCHOOL AND THE WAR

By the Hon. Vernon Treatt, M.L.A.



WHEN the storm burst in 1914, Law School graduates early proved that they were as ready and eager to take up arms in defence of their country as they had been for action in defence of their clients.

The records of just over one hundred who joined the A.I.F. show how well the traditions of the University were preserved. Not only, however, from the ranks of the practising barristers and solicitors did the volunteers go, but from the students who were still attending lectures. Those who were in attendance at the Law School after the declaration of war recall the excitement which prevailed in both class and common rooms and the efforts of even the youngest students to enlist.

The Faculty of Law removed, or at least diminished, one embarrassing obstacle by providing early examinations. Students, their minds in part occupied by making preparations for enlistment and departure from Australia, at examination time had reason to believe that sympathetic consideration characterized the examiners! Forty of the eighty-four of those who were then attending classes eventually saw active service—no mean record.

There were yet others who foregathered at the Law School for the first time after the War, and, for the few years succeeding 1919, there were men there putting their soldiers' lives behind them and becoming mere students again. It was a difficult job for those so recently from the battlefield. A Pollock on Torts or some other heavy tome, artfully dropped on the floor of the library to imitate the bursting of a shell,

would occasion quick nervous and physical reaction on the part of some returned soldiers, but, after all, they seemed little different from their class mates, who came straight from school. There were some gaps in the ranks that could never be filled, for some had found a last resting place overseas. Many soldier students were quite successful after the War, the late A. C. Gain being an outstanding example of how well some succeeded in spite of the long interruption.

Any mention of the Law School and the War would be completely inadequate if reference were not made to "Bob," the man who, for so many years, conveyed per medium of the lift, undergraduates to and from the lecture room. I suppose every student, man or woman, recalls the gallant attempts on the part of Bob to stem the rush to the lift—how often he sought by word and deed to preserve his citadel from disaster. Students however, were not so fully aware of the equally determined and courageous activity by Bob on the battlefields during the Great War. His commander, now a Judge of the District Court, and one-time lecturer in Criminal Law, declares that when Bob served as his batman in France he always displayed complete readiness to undertake tasks which involved grave danger. The same spirit which animated Bob in assisting to block the German onrush helped him in his less hazardous work at the Law School.

Because decorations were so often earned by men who did not receive them, no individual mention is made here of honours save one, and as this one is the Victoria Cross, no explanation is needed as to the reason for its inclusion. It was won by Percy Storkey, now Judge Storkey, of whom the *Sydney Morning Herald* of June 8th, 1918, said:—"Lieutenant P. V. Storkey, an Australian, commanded an attacking platoon. He emerged from a wood, and observed 80 or 100 of the enemy, with several machine guns, holding the advance of the troops on his right. Storkey now had only six men. Lieutenant Lipscomb and four men joined Storkey, who decided to attack the enemy on the flank and rear. The two officers and 10 men charged with their bayonets, Storkey leading. They expelled the enemy. They killed and wounded

30, captured three officers and 50 men and the machine-guns. Storkey's courage, promptness and skilful attack removed a dangerous obstacle to the advance and were a great inspiration to the remainder of the party."

There were twenty-five or more other decorations, among which it is interesting to record that a certain noted authority on the divorce laws of this State, who proved himself an outstanding soldier, gained the Russian Order of St. Stanislaus.

Finally, a word should be said about the staff, one of whom saw service in France and others of whom, ineligible to go abroad, gave generously of their time and knowledge in war activities on the Home Front. In this connection, too, tribute must be paid to the many law graduates who undertook such duties as censorship, as well as much honorary work, thus sacrificing personal advancement in their country's service.

In the following Honour Roll there appear the names of graduates and undergraduates of the Law School who served overseas, and also those who came there after seeing service abroad. It should be made clear that this list does not include the names of those students who attended the Law School after the War but who failed to complete the course. It may well have been that included in their ranks were men who felt that the profession of law did not offer sufficient activity or excitement after participation in the gigantic drama abroad, but it is interesting to note that many of them have made their mark in other spheres. Probably their association with the Law School helped.

VERNON TREATT.



## LAW SCHOOL HONOUR ROLL

(This does not include the names of those who offered their services or enlisted but through some misfortune were precluded from active service abroad.)

Abbott, J. A.	Clayton, H. J. R.	Gilder, T. G.
Allen, H. D.	Coen, F. (k.)	Glen, A. M.
Allen, K.	Cohen, A. M.	Gould, J. V.
Allen, R. A. M.	Cohen, C. A. K.	Green, H. M.
Baggott, J. P.	Cohen, C. H.	Griffin, N. L. R.
Baldick, G.	Collier, C. T. (k.)	Haigh, V. A.
Baldock, W. J.	Collins, V. A.	Hall, A. J. P.
Bales, J.	Corbett, G. H. S.	Hastings, R.
Barton, F. W. (k.)	Denham, H. K.	Hayes, E. W. (k.)
Beasley, F. R.	Denison, R. E.	Helsham, C. H.
Beaver, E.	Dickinson, G. A.	Henry, H. A.
Benecke, J. S.	Dixon, T. S. (k.)	Heron, N. G.
Bennett, C. E.	Donaldson, C. B.	Hill, A. G.
Berne, F. W.	(k.)	Hill, B. H. V.
Berry, J. S.	Dovey, W. R.	Hinton, W. S.
Biddulph, L. H.	Duckworth, R. K.	Hollingdale, E. T.
Blacket, A. R. (k.)	(k.)	Holt, H. T. E.
Blanksby, H. R.	Edwards, G. M.	Hooke, E. J.
(k.)	Ferguson, A. G.	Horniman, L. V.
Blumer, P. W.	(k.)	(k.)
Bowden, R.	Ferguson, K. A.	Houston, R. M. M.
Braddon, H. R.	Ferns, O. C.	Hughes, G. F.
Bradfield, A. B.	Fetherstou, V. E.	Ice-ton, E. A.
Bradshaw, T. E.	Fincham, W. R.	Jaques, H. V.
(k.)	Fisher, A. D.	Jermyn, H. W. S.
Buchan, W.	Fisher, W. G. D.	Johnston, R. S.
Burns, P. H. C.	(k.)	Johnstone, J. T.
Chambers, R.	Flannerv. F. L.	Jones, F. H.
Champion, G. C. B.	French, B. R.	Kay, R. I.
Chedgcy, H. V.	Gain, A. C.	Kelly, T. P.
Clancy, J. S.	Gallagher, J. B.	Kench, A. G. T.
Clancy, B. P.	Garnock, R. C. D.	Kennedy, D. E. S.

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|---------------------|----------------------|---------------------|
| Kerry, R. A. (k.)   | Nield, J. R.         | Stacy, B. V.        |
| Kidston, R. R.      | Nolan, M. K. (k.)    | Stafford, G. M.     |
| King, P. W.         | Oliver, W. D.        | Stephen, A. C. (k.) |
| King, W. L.         | O'Mara, T. P.        | Stewart, W. K. (k.) |
| Kinthead, J. J. B.  | Page, H. H.          | Storkey, P. V.      |
| Kinsella, E. P.     | Pilkington, L. J.    | Street, L. W. (k.)  |
| Lamaro, J.          | Pratt, E. S.         | Stuckey, G. P.      |
| Lane, F. E.         | Prescott, C. G.      | Studdert, H. J.     |
| Lane, J. B.         | Ralston, A. W.       | Summers, P. L.      |
| Learoyd, H.         | Ralston, J. M.       | Telfer, B. F. F.    |
| Legge, J. G.        | Ranson, J. R. (k.)   | Townsend, S. E.     |
| Leslie, A. N. C. G. | Reid, H. L. U. (k.)  | (k.)                |
| Little, E.          | Rex, G. R.           | Treath, V. H.       |
| Loxton, M. F.       | Rickard, J. C.       | Tweeddale, S. C.    |
| Lucas, C. R.        | Rofe, A. B. F.       | Tyler, E. M.        |
| McCulloch, C. V.    | Rofe, E. P. F.       | Vine Hall, A. P.    |
| (k.)                | Roseby, K. B.        | Vivian, P. J. A.    |
| McCulloch, J. E.    | Rowland, N. de H.    | Walker, G. W. E.    |
| McDonald, E. F.     | Roxburgh, N. W.      | Wall, W. T. S.      |
| McElhone, F. E.     | Russell Jones, J.    | Watson, H. F.       |
| McGown, A.          | Scott, K. E.         | Webb, A. M.         |
| McKenzie, J. G.     | Seeligson, C.        | Wells, T. A.        |
| Mackenzie, W. K. S. | Shand, J. W.         | Wells, T. le M.     |
| MacLaurin, H. N.    | Sheldon, A. B.       | Whitfield, L. O'G.  |
| (k.)                | Shield, R. V.        | Williams, D.        |
| Maclean, W. I.      | Simpson, A. J. G.    | Williams, K.        |
| McNeil, A. R.       | Simpson, E. T. de L. | Wilson, W. H.       |
| Mant, J. F.         | Simpson, W. B.       | Wray, C. D. W.      |
| Mitchell, A. D.     | Slade, C. S.         | Wurth, W. C.        |
| (k.)                | Smith, C.            | York, W. R.         |
| Mitchell, E. M.     | Solomon, K. M. H.    | Youll, J. J.        |
| Mitchell, G.        | (k.)                 |                     |
| Neaves, H. H.       |                      |                     |

## RHODES SCHOLARS AND THE LAW

By The Hon. Sir Percival Halse Rogers, K.B.E.



THE first Rhodes scholar was appointed in 1904 and since that time eleven of those selected have followed the profession of the Law. With one exception they have returned to New South Wales and are known to members of the Law Society. So when the president of that society asked me to write about them for the volume to be published to celebrate the jubilee of the Law School it seemed to me that he could not be asking for something on the lines of a "Who's Who"—a dry compilation of dates and degrees and achievements. But on interrogation I found him delightfully vague as to what was expected and I have been left to follow my own line.

I propose in the first place to say something of the courses in law which existed at Oxford in the early years of the century when the first Rhodes scholars went into residence. The usual thing for the undergraduate was to prepare for the examinations in the Final Honours School of Jurisprudence after he had qualified himself by Moderations or the Law Preliminary. In this way the student obtained the B.A. degree and in due course he was entitled to proceed to his M.A. without further examination if his name remained on the books of his college. There was also a higher degree in law—the B.C.L.—but in the ordinary way candidates for this degree must already hold an Oxford degree. I have said "in the ordinary way" because students who went up as graduates of certain "recognized" universities were entitled to sit for the examinations for this degree without preliminary examination or



the obtaining of an Oxford degree on the way. Such a student had "senior standing"—something which gave him privileges in regard to examinations but did not make any difference in his position in his college or in regard to the ordinary obligations of university routine or discipline.

In those days there was very little organization of the lecturing system. The dons in the various colleges lectured in their own subjects and the student often had a choice—he might attend, say, the Roman Law lectures of Leage at Brasenose or Potts at Keble; he might choose to listen to Professor Dicey discoursing on Contracts at All Souls or to one or two other lectures on the same subject. His course was under the supervision of his college tutor, whom he had to satisfy as to reasonable attendance at lectures and as to his progress in his studies.

Up to the time of the coming into residence of Rhodes scholars, and for quite a considerable period thereafter there was no course of lectures for those wishing to proceed to the B.C.L. degree. There were very few students in residence who were reading for it. The candidates were, in the main, men who had "gone down" and were reading in barristers' chambers in London or following some other avocation preparatory to their taking the plunge and starting practice at the Bar. The usual procedure for Rhodes scholars was to take the examinations in the School of Jurisprudence at the end of their second year if they intended proceeding to the higher degree, leaving themselves one year for the extra work for the B.C.L. Those who decided to put the matter to the test in the latter examination alone had to do their reading very much at large. There was always the college tutor as friend or adviser, but relations with him were generally on a most informal basis. As a rule an essay was expected once a week and when that had been criticized and disposed of there was a discussion of problems and difficulties, often to the accompaniment of a glass of port followed by a cigar. As there were no lecture courses specially provided with the examination in view the student was usually left to decide whether he would attend any lectures or not. Probably he would be

advised to attend a few and to avail himself of the opportunity of attending to hear distinguished jurists such as Professor Dicey or Professor Vinogradoff; but there was no compulsion.

The examination was on legal principles, and details touching practice were of little importance: so little, that Procedure was taken in the general paper on Common Law, and if one were content to run the risk of finding sufficient questions to answer in the rest of the paper one need not worry about attempting to commit to memory such dry-as-dust things as rules. Memory played a comparatively small part in the test: what was required was a grasp of the subject. The examiners always included "externals," usually jurists of distinction. They were not cramped by a syllabus: for instance, the student was informed that "there will be an examination in Jurisprudence" and then his attention was invited to practically all the works or essays directly or remotely bearing on the subject. The examination consisted of eight papers: two on Roman Law, one general and one on a title of the Digest selected by the candidate—rather an over-emphasis this on Roman Law: one paper on Common Law and one on Equity: one on Property and one on Jurisprudence: one on International Law—either Public or Private, and one on a selected subject in English Law, e.g., Criminal Law or the Law of Partnership. The papers always followed a set pattern—there were always ten questions and the candidate had to decide for himself how many should be attempted. If he knew his subject well he would probably not attempt more than four; if he attempted more than six he was courting disaster.

Of course, an Oxford degree in law did not qualify its holder for admission to the Bar. That was entirely a matter for the Inns of Court. Students of Oxford and Cambridge, however, had the privilege of keeping their terms at the Universities and need not attend the lectures at the Inns provided they made three appearances during term at dinner in the Hall of their Inn—a practice commonly called "eating Dinners."

Law has always been popular with Rhodes scholars. My



figures are out of date as they are taken from a handbook issued in 1927, but the proportions remain about the same. Up to that time 1462 scholars had gone into residence. Of these 434 had read Law, the next most popular courses being Modern History and Natural Science. When one turns to the table of professions followed since leaving Oxford, one finds that education heads the list with 452 and the legal profession comes next with 334. Of the 35 scholars elected in New South Wales 11 are lawyers.

Wilfred Barton, son of the first Prime Minister, was the first of our scholars. He obtained a first class in Jurisprudence and the Vinerian and Barstow Scholarships. He remained in England and practised there and took silk in 1937. Since his time Hooton is the only one of our men to obtain a first in Jurisprudence and so far we have not had a first in the B.C.L. In the latter examination our results are not up to the standard of the Victorians who have had several firsts.

Practically all our lawyer scholars are well known at the Law School where some of them have lectured. Here is the list:

1904: W. A. Barton.	1921: A. S. Watt.
1905: P. Halse Rogers.	1922: A. C. Wallace.
1906: M. L. MacCallum.	1927: V. J. Flynn.
1910: J. R. Hooton.	1928: R. Ashburner.
1914: H. A. Henry.	1938: T. G. G. Glasheen.
1920: V. H. Treatt.	

P. HALSE ROGERS.



## THE ARTICLED CLERK AND THE LAW SCHOOL

By F. C. Hutley, B.A., LL.B.



THE great majority of those studying at the Law School at the present time are clerks articulated to solicitors. Of those who are not articulated, a considerable number are employed in Government offices. Except in the first year, where there are a certain number of students engaged in finishing their Arts course, the student who can devote his whole time to legal study is almost non-existent.

To the average solicitor the articulated clerk is indispensable, and upon his ill-remunerated labours the solicitor depends for the performance of the routine duties of the office; the duties which were at one time performed by the adult law-clerk are now done by the articulated clerk, so that the race of solicitor's clerks is a dying one. In some of the smaller offices, the articulated clerk has displaced the humble office boy. Often the clerk does receive responsible and instructive work, but a large part of the work of most clerks, especially in their first two years, consists of uninteresting drudgery, which contributes nothing to their legal education and only exhausts their energy and circumscribes their time for study. I have known articulated clerks whose duties included the delivery of their master solicitor's letters, noting up the petty cash book, and paying money into the bank. To the solicitor the articulated clerk means cheap labour, and he treats his clerk on that basis; it is very exceptional to find it recognized that the articulated clerk is a future member of the same profession and, though a learner, is soon to be an equal.

Originally the solicitor was the teacher of his clerk, and the

solicitor still contracts "that he will by the best means he can and to the utmost of his skill and knowledge teach and instruct the clerk or cause him to be taught and instructed in the practice and profession of a solicitor." Even the best solicitors seem to consider that to give a perfunctory lecture on why this and that form is used, to put the clerk wise to the traditional wrinkles of the profession, to discuss a legal problem now and then, and, above all, to keep the clerk as busy as possible, constitute a performance of this clause in the contract.

The present system of articles is a heritage of the time when the attorney was something of a general business agent, who busied himself especially with the work of the courts and had a smattering of substantive law and an intimate knowledge of the rules, regulations and orders of the courts of justice. The practice was all-important, and in learning the practice the real work of the solicitor was being learned. Nowadays the solicitor has become a legal adviser, an expert who requires a sound grounding in legal theory to do his work. The University Law School, in English-speaking countries, a modern phenomenon, is a recognition of this change. The old outmoded method of training whereby the clerk picks up the scraps from his master's table is incongruously retained to supplement the institutions for systematic legal training.

The University Law School is founded on the assumption that it is possible to have a systematic body of legal knowledge, and that those who have been taught to approach law in a systematic manner will be better lawyers than those who have not been so trained. If legal studies cannot be carried on in a systematic manner then there is no place for a University Law School. Teaching law is not just the inculcation of legal rules, but the showing how the legal rules work out by giving instruction in the art of their manipulation. A system which hands over the practical training to the solicitor and the theoretical training to the University handicaps the University, because only students gifted with a high legal imagination can clothe the abstract legal rules with



the proper empirical content. The place of a legal rule in the solution of legal problems can only be grasped by those who have actually attempted the solution of problems. In law and in science, the ideal combination is to be in the position both to think through and to work through a given problem at the one moment, and practical work and theorizing should as much as possible be carried on together.

It is difficult to attain this object in legal studies, but some improvement on the present system can be made. At present no co-ordination between the office work and the Law School course is possible. My own experience illustrates the fantastic way in which the system works. In the first office in which I was an articled clerk some divorce work was done, and ultimately much of it was done by me. I obtained an assignment of articles at the beginning of my fourth year in the Law School and went to an office in which I did no divorce work at all, despite the fact that I was for the first time studying the Law of Matrimonial Causes. Frequently a clerk puts simple conveyancing matters through without having studied Property, and another clerk completes his study of Property without ever putting one through at all. Some clerks learn litigation only in moots, others learn little else. This chaos is unavoidable while the education of the student in the practice of his profession is in the hands of his master solicitor and his education in theory in the hands of the University Law School.

The time devoted to office work restricts the time which the clerk can devote to study to such an extent that it stands in the way of a liberal presentation of the law on the part of the lecturers. The subjects have to be taught dogmatically, because it is not possible for any but the most exceptional students to find time to grapple with doubtful points. Similarly, it prevents the introduction of the essay system into the course, forces the student to rely on the treacherous aid of sets of cases, and drives him from aiming at a proper mastery of a subject to unscholarly devices such as tipping examination papers. The impulse to study law as a science, i.e., jurisprudence, dies in the atmosphere of dogmatism which



the present system of legal education demands. Even the consideration of possible improvements in the law has to be excluded from the courses, practical though this question is. The abolition of a system of legal education which forces the student to spend his day in routine, uninteresting labour, is a condition precedent to any real improvement of the curriculum of the Law School, and to the liberalizing of the legal education in this State. No repairs will achieve the proper co-ordination between the theoretical and the practical while legal education is divided between the solicitor and the University Law School, or that liberation of the clerk from office cares, which will enable him to prosecute his studies in circumstances favourable to real legal education.

The main difficulty which stands in the way of any scheme involving an assumption by the University of the sole responsibility for the legal education of its students is the practical work; the practical training given in the offices may be unsatisfactory, it may be argued, but it is better than nothing. With this one can agree, but the difficulty is not insuperable. Practical work is of two kinds—conveyancing, including the preparation of commercial documents, and court work. Practical courses in conveyancing could and should be given side by side with the training in the substantive law upon which the various branches of the art depend. The training in drafting given by requiring various members of a class to draw simple agreements involving a knowledge of the law of contracts would be much better than the training in manipulating precedent books a clerk is given in the office. Side by side with the Mercantile Law course could be given a practical course in drafting commercial documents; side by side with Property the drafting of simple conveyances, caveats, protective trusts, restraints on anticipation, and so on. The practical problems would illumine the theoretical instruction, the theoretical knowledge would guide the apprentice hand. The combination of theoretical and practical instruction would produce learned and skilled lawyers with greater certainty and with less expenditure of

physical and mental energy than the methods now in vogue. The neglected art of legal draftsmanship would revive.

In the development of practical court work under the control of the Law School the methods of the Faculty of Dentistry could well be imitated. Since a University Dental School was set up and the training of dentists by a system of apprenticeship similar to that which obtains in law abandoned, dental students obtain their practical training by attending to the teeth of patients at the Dental Hospital who volunteer to let them try. Similarly the Law School could collaborate with the Legal Aid Office, and receive from it a selection of its cases to prepare for trial. The cases brought to the Legal Aid Office involve every type of action. Under the supervision of demonstrators, each student, either individually, or as a member of a group, as part of, or immediately after, each course directly involving litigation, such as bankruptcy and so on, would prepare one or more cases for trial. As regards criminal law practice, no training in which is given by most offices, the preparation of briefs of counsel for prisoners who have availed themselves of the privilege of dock defences, could perhaps be undertaken. The advantages of such a system, in addition to those detailed above, are that some experience would be given to each student of proceedings in each jurisdiction, the student would be put upon his own initiative, and though the cases which would be handled by students would not be nearly so numerous as the cases that are handled by some articled clerks, the cases would be seen through by the student.

This scheme, which assumes that the whole of every student's time will be available for legal studies, provides no place for the members of the Government service who are at present studying in the Law School. The time has come to give more intensive courses on public law, administrative law, public administration, and the role of legislation in society in the Law School for the benefit of the members of Government service and others primarily interested in Public Law. Thus instead of a course in conveyancing, a course in the drafting of bills, statutory rules and orders, as is given in some of the more



reputable American Law Schools, could be given. A degree course of this nature would have the same fundamental basis as the ordinary course in private law, because the basic traditions and methods of the law are still those which have been worked out in private law, but instead of the practical subjects such as Probate, Bankruptcy, Procedure, Divorce and Pleading, the above courses could be taken by those who wanted a degree in public and not in private law.

Such a reorganization of the law course would involve a considerable expenditure of money and more generous public support for the Law School. The adoption of the principle that learning to be a lawyer is a full-time occupation implies that the teacher of law should be freed from the burden of carrying on a practice. A staff of demonstrators (not necessarily full-time men) and typists would have to be provided. To offset this, some revenue from the successful prosecution of meritorious cases could be expected.

No other faculty of the University is so entitled to press its claims for increased financial support at the present time. Compared with the sums which have been showered on the Faculties of Medicine and Engineering, the resources available for the Law Faculty are pitiful. Yet solicitors, barristers, and judges play a tremendous part in the organization of business enterprise and in the preservation and destruction of rights. The quality of the life possible in a modern community depends just as much on its lawyers as its doctors. The methods of legal education are, therefore, of public importance. To expect an understaffed, underequipped law faculty to train a body of liberal judges, counsel and solicitors, in the short intervals allowed to articled clerks from their futile drudgery is to expect a miracle. An impossible burden has been cast on the University and the students, and must be lightened.

F. C. HUTLEY.



## SOLICITORS AND THE LAW SCHOOL

By Norman Cowper, B.A., LL.B.



WHEN the Law School began, it was frowned on or sneered at by a great many solicitors as a training ground for their branch of the profession. How could a professor and a few young barristers teach an articled clerk to draw a conveyance or a will, investigate an old system title, or instruct counsel in a common-law action? And what else did he need to know? It was all very well for aspiring barristers, but a solicitor didn't want to have his head filled with a lot of legal theory. What he needed was practical experience and commonsense. Attendance at this new-fangled institution was likely to stint him of the one and deprive him of the other. It was an expensive luxury and a waste of time.

These views are still held by many solicitors, but their number has been, and is, steadily diminishing. The following table shows how opinion has changed:

Year.	Number of Solicitors on the roll.		Graduates of the Law School.
1900 . . . . .	}	Sydney 552	9
		Country 376	3
1920 . . . . .	}	Sydney 638	55
		Country 354	12
1939 . . . . .	}	Sydney 1089	393
		Country 634	98

No doubt, there are several causes of this great increase in the number of solicitors who hold the LL.B. degree. One is the fact that the degree qualifies for each branch. In the old days a young man had to make up his mind at the start

whether he wanted to be a barrister or a solicitor. If the former, he registered as a student-at-law and sat for the examinations of the Barristers Admission Board. If the latter, he entered into articles of clerkship, served in a solicitor's office, and took the Solicitors Admission Board examinations. Nowadays the decision, whether to become a solicitor or go to the Bar, can be deferred to a very late stage. The majority of those who go through the Law School enter into articles at the beginning of their Law School course, and at the same time register as students-at-law. Not until they have graduated, and completed the terms of their articles, must they make their choice. Then, if a man decides to go to the Bar, he can be admitted at once, upon complying with the prescribed formalities. If he decides to become a solicitor he can be admitted, provided that he passes the Section 6 examination of the Solicitors Admission Board, and complies with the prescribed formalities.

Of the men who enter the Law School with the intention or the hope of becoming barristers, most, no doubt, do go to the Bar within a year or two of graduating; others become convinced that they are fitted for the work of a solicitor rather than a barrister; others, again, though they still hanker after the forensic side of the profession, decide that they cannot go through the early lean period, or face the uncertainties and risk of failure, which a career at the Bar involves, and choose the greater safety (and more modest rewards) of the lower branch. Thus many Law School men become solicitors who would otherwise go to the Bar.

But the more important cause is that Law School men in solicitors' offices have proved the great value of a University legal education. I am far from asserting that a solicitor who is a graduate is always a better lawyer than one who is not. On the contrary, many of the best men in the profession are not graduates; and a first-rate non-graduate will always be superior to a mediocre graduate. But it is true that on the average the Law School man begins practice far better equipped than his colleague who has not done the University course. He has a grasp of legal principles, and a knowledge



of case law, which many of the others only acquire with difficulty through years of practice, and some never acquire at all.

Elsewhere in this book Mr. Hutley points out that "nowadays the solicitor has become a legal adviser, an expert who requires a sound grounding in legal theory to do his work." Plenty of solicitors who never had anything to do with the Law School have acquired this "sound grounding in legal theory" through native ability, keen interest in their profession, and solid hard work. But the Law School has added to the ranks of the solicitors numbers of able young men already equipped with a sound knowledge of legal principles. Many a distinguished student has carried over to the practice of a solicitor the habits of systematic study and thorough research which he developed at the Law School. The solicitor graduates have undoubtedly strengthened the lower branch, and helped to raise its standards.

Here it is not inappropriate that some tribute should be paid to the work of the teaching staff of the Faculty of Law, and particularly of the present Dean. His single-minded devotion to his job, his rigid insistence on precise knowledge and the reading of cases, his belief in the sovereign virtue of hard conscientious work, and the example of his own high character, have made an enduring impression on the minds of the generations of students who have passed through his hands. There is plenty of slap-dash advising and slipshod work amongst solicitors still; but many a solicitor graduate, tempted in the rush of business or the natural laziness of mankind to slummock a job, has been influenced to do it properly by some subconscious recollection of a couple of burning blue eyes and an outstretched forefinger, and a voice declaiming (oh, so slowly, and with such straining of syllables for emphasis) against a wretched solicitor in some leading case who had "*slaughtered* his client—a menace to his profession."

In theory the Law School and the master solicitor co-operate in the legal education of the articled clerk. The Law School provides the systematic body of learning, the master solicitor the practical training and guidance. It must be confessed that the partnership has always been an uneasy one. The



conflicting claims of the two are apt to harass some students so that they do justice to neither. A solicitor who has no faith in academic training, but takes his own obligations to his artied clerk seriously, resents the time which must be given up to lectures. At the very hours when he is free from appointments and would be able to explain documents and discuss problems with his clerk, the latter is at the Law School. The greedy or impecunious solicitor, who wants to run his office on artied clerks, finds that they are absent at lectures just when a pleading has to be filed or a search made in a hurry, or just when Mrs. So-and-So has called to give instructions for the disposal of her property or the divorcing of her husband. The very busy solicitor, who tries to give his artied clerk some useful experience, finds that he is not there just when the opportunity arises of parcelling out some work or taking him along to an interesting conference. The Law School, on its side, strenuously resists any attempt to encroach on its preserves. A student who is given a certain amount of responsibility in his office often finds that he cannot get to a four o'clock or even a five o'clock lecture without sacrificing some office matter. Sometimes there is an urgent settlement, sometimes counsel is engaged in court all the week and can give a conference only between four and five, sometimes it is imperative to see a witness who will not come in before five o'clock. If he is as keen on his office work as he should be, and is honest enough to scorn the subterfuge of getting some one else to answer his name at lectures, he gets into trouble with the Law School, which does not recognise the claims of the office as a good excuse for missing lectures. Altogether, a student's life is not a happy one. If he never has to skip his lectures, it's ten to one that he is getting very little experience in his office. He is constantly torn between Codlin & Short—the Law School and the master solicitor.

Mr. F. C. Hutley, in a valuable paper, which is published in this book and which I have had the advantage of reading, presents a formidable indictment of the present system. It is an indictment which is hard to answer. I will only say that I think he paints a fairly accurate but one-sided picture. It

is true that many solicitors do make of an articled clerk something between a search and registration clerk and an office boy. They thereby get for £1 a week the services for which they ought to be paying £4 a week, and they give practically nothing in return. But there are others. There are some offices that regard the articled clerk as an unmitigated nuisance, and will not take him unless he pays a premium of two or three hundred guineas. This premium they proceed to pay back by weekly instalments over the period of his articles. He naturally feels under no obligation to them, and is usually a gilded youth who doesn't know how to work anyway, so that he and his office see as little as possible of each other. We need not waste many tears over him. There are some offices again, which regard the articled clerk as a heaven-sent source of revenue. They, too, insist on a high premium, but they neither pay it back by way of a weekly allowance, nor give the clerk any useful work. They are plain robbers, and should perhaps be in gaol for obtaining money under false pretences. Some offices do not ask a premium, and will not take a boy into articles unless they are satisfied that he has ability and will work. They insist on punctual and regular attendance at the office (subject to Law School lectures), allow very little time off to study for the annual examinations, and give the clerk as much responsible work as they can. Whether he gets valuable experience depends partly on the nature of the practice and partly on himself. They are at least giving him a fair deal. A few offices charge small premiums or none at all, are very generous in the matter of time off for study and holidays, give two or three pounds a week towards the end of the period of the articles, and go to considerable pains to see that the clerk gets useful and responsible work. But the master solicitor who has the time as well as the disposition to give his articled clerks the kind of tutoring which Mr. Hutley seems to think necessary is a rare bird, if he exists at all.

Summing up, it is clear that the system is being abused in a good many offices. Yet I believe that in the *majority* of offices an articled clerk can, if he has initiative and curiosity



as well as ability and application, obtain a great deal of very useful experience.

It remains to consider Mr. Hutley's alternative. I am not impressed with the suggestion that budding solicitors should gain their practical experience through co-operation with the Legal Aid Office. My understanding is that at least ninety per cent. of the work of that office consists of investigating the hopeless claims of cranks. In any case, neither through "demonstrators" at the Law School nor through collaboration with the Legal Aid Office could the student acquire that close practical experience of company matters and business matters which nowadays comprise so much of the work of a solicitor. My strong feeling is that most articulated clerks do get, through working in solicitors' offices, a knowledge of practical details which is of value, and which they could not get elsewhere. And how otherwise could they learn how to handle people and manage affairs—knowledge which is not a substitute for legal learning, but is equally valuable to a solicitor? I should therefore reject the solution that the whole education of the solicitor should be handed over to the Law School.

On the other hand I venture to suggest that the Law School might consider reforming itself in some respects. The waste of time involved in attendance at lectures has been the subject of complaint for at least twenty years. Too often a lecture consists in the lecturer religiously ploughing through page after page of typed notes, with only a feeble effort here and there to amplify the text. The lectures should be printed (as have been those admirable Equity notes of the present Chief Justice), and some of the time now given to lectures should be devoted to moots and discussions. Less time should be required for compulsory attendance at the Law School, and more should be asked of the student in the way of opinions and short essays. The system of tutors, recently introduced, should be greatly extended.

But, while these reforms at the Law School would make life a little easier for the harried student, and might help the master solicitor who is really trying to fulfill his obligations to his articulated clerks, it is essential that Mr. Hutley's in-



dictment should be seriously considered by the solicitors. It is, I suggest, the manifest duty of the Law Institute to investigate thoroughly the conditions of employment of articulated clerks, and to take such steps as will ensure that the abuses which have been pointed out are removed. Mr. Hutley would divorce the master solicitor *a mensa et thoro* and hand over to the Law School the whole custody and control of the infant solicitor. I should like to see both the spouses mend their ways with a view to continued co-operation.

NORMAN COWPER.



## TWO FAMOUS TEXTBOOKS ON INTERNATIONAL LAW

By Professor A. H. Charteris, M.A., LL.B.



In the year 1889 the late W. E. Hall concluded the preface to the first edition of his treatise on International Law with a passage that has often been quoted. Writing while events of the Franco-Prussian War, 1870-1, were still in the public memory, it is perhaps not surprising that his conjectures as to the future of international law should be coloured by his fears for the rules of warfare. What he wrote was as follows:—

"And it would be idle to pretend that Europe is not now in great likelihood moving towards a time at which the strength of international law will be too hardly tried. Probably in the next great war the questions which have accumulated during the last half century and more will all be given their answers at once. Some hates moreover will crave for satisfaction; much envy and greed will be at work; but above all, and at the bottom of all, there will be the hard sense of necessity. Whole nations will be in the field; the commerce of the world may be on the sea to win or lose; national existences will be at stake; men will be tempted to do anything which will shorten hostilities and tend to a decisive issue. Conduct in the next great war will certainly be hard; it is very doubtful if it will be scrupulous, whether on the part of belligerents or neutrals; and most likely the next war will be great. But there can be very little doubt that if the next war is unscrupulously waged, it will be followed by a reaction towards an increased stringency of law. In a community, as in an individual, passionate excess is followed by a reaction of lassitude and, to some extent of conscience. On the whole the collective seems to exert itself in this way more surely than the individual conscience; and in things within the scope of international law, conscience, if it works less impulsively, can at least work more freely than in home affairs. Continuing temptation ceases with the war. At any rate it is a matter of experience that times in which international law has been seriously disregarded, have been followed by periods in which the European conscience has done penance by putting itself under stricter obligations than those which it before acknowledged. There is no reason to suppose that things will be different in the future. 1

therefore look forward with much misgiving to the manner in which the next war will be waged, but with no misgiving at all to the character of the rules which will be acknowledged ten years after its termination, by comparison with the rules now considered to exist."

As to the character of "the next war" Mr. Hall was a good prophet. There is room for doubt touching the "straiter rules" which Europe was to assume ten years after the peace. Yet here too he was not far out. 1929—ten years after the peace—was the first year of the Kellogg-Briand Pact of 1928 for something that he never dreamed of—the outlawry of war. It was also the ninth year of the Covenant of the League of Nations of which the States undertook to make recourse to war less easy and frequent than it had been in the nineteenth century. And against specific engines of destruction used by the central powers in the World War the victorious powers had indeed accepted "straiter rules" in the form of a self-denying ordinance, as in the abortive Submarine and Poison Gas Convention of Washington 1922 and the subsequent and more limited Geneva Gas Protocol of 1925. But on the substantive rules of warfare and neutrality, which Mr. Hall had in mind in 1889, the victorious powers, notwithstanding prodigious violation, amounting to virtual repudiation on the part of their enemies in the World War, refrained from attempting to effect any improvements—perhaps for distrust in the efficiency of the rules themselves in the light of recent experiences and perhaps too from preoccupation with the more fundamental task of organizing the relations of States in time of peace. Contrary, therefore, to the letter of Mr. Hall's prediction, the Hague Conventions of 1907 on war law and neutrality remain "on the statute-book" unaltered, in which form they are to be found, for example, in the 1928 edition of the British "Manual of Military Law."

Of post-war effort under the auspices of the League of Nations the editor of Hall's 8th edition, the late Professor A. Pearce Higgins of Trinity College, Cambridge, took note, necessarily brief, by means of annotations, which, if they do not abate the authority of Mr. Hall's text, betray no great confidence on the editor's part in the permanence of the new institutions.





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Challis Professor of International Law and Jurisprudence.

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Nevertheless the attentive reader is enabled to realize that up to 1924 international effort did take this new and unprecedented direction.

To make the same claim for fifth edition of Pitt Cobbett's *Leading Cases*, is unfortunately impossible.

It was in 1885—four years earlier than the date of W. E. Hall's first edition—that Mr. Pitt Cobbett, as he then was, published in London his firstling, a selection of *Cases on International Law*, covering the topics of Peace, War and Neutrality in a single slender volume, designed as he stated in the Preface "mainly as an adjunct or companion volume to existing text-books." After the second Peace Conference in 1907 it was enlarged in scope; so that the third edition, which appeared in 1909, Systematic Notes, were added "with a view to ensuring a fuller consideration of the many recent changes both in the subject-matter and literature of international law." Indeed, the character of case-book was now doubled with that of text-book.

At the time of its first appearance, and long after, the merits of Mr. Pitt Cobbett's compilation were outstanding. Not only had he brought the subject of international law for the law student down from the clouds to "good gross earth," but to the layman at large he had demonstrated how this topic was handled in appropriate cases by responsible English statesmen and judges, with the result that, taken as a whole, his compilation exhibits strong evidence of the views on international law enforced and upheld in England. The author's remarkable gift of condensing an argument or narrative into "pemmican," at once palatable and nutritious, was exhibited in this work to the full. Accordingly one is not surprised to learn from Sir Robert Garran that when he had to handle questions of international law for the Commonwealth as Solicitor-General he found Cobbett's *Cases* worth all the other writers put together. For possessing Pitt Cobbett he had his predecessors as well. For the cultivation of the "unweeded garden of the student's mind," however, the merits of the *Cases* are less obvious. Some students—not perhaps the best—have confessed themselves repelled by an exor-



dium, which, instead of outlining the subject in hand presents a "case," un-introduced. To those who persist, however, this defect of arrangement proves the least permanent of hindrances to appreciation. For there is no deviation from a set plan. To every group of cognate cases or controversy the author added a passage of individual comment and at regular intervals an ample excursus on the law to which the preceding cases related. As the reader continues his progress through this work, he finds himself at last in possession of a text-book as well as a collection of annotated cases, together with a digest of contemporary views and abundant reference to authority. The Cinderella of English legal studies has, in short, received the services of a competent English lawyer, who has deemed it not unworthy of the expository technique, traditional in his craft.

So long as subsequent editions were prepared by the author, these merits adhered to the work. But when the work of revision passed into other hands, a change set in that was no improvement. The editor cannot be held blameless for the deviation of the fourth edition from the simplicity and directness of the earlier ones.

In the present edition, which is the fifth, there is also a certain lack of balance which the learned author would never have permitted. The editorship is now twofold. The first volume on Peace, which appeared in 1931, edited by F. T. Grey, M.A., of Lincoln's Inn, barrister-at-law, comprising 372 pages, has been so re-cast that Pitt Cobbett's views are hard to identify. Already the text requires amendment in view of subsequent cases. The recent pronouncement of the Judicial Committee *In re Piracy juris gentium* (1934) A.C. 526, at p. 583 on the duty of an English court confronted with a question of international law is one. The remarkable dissenting opinions expressed in *The Cristina* ( (1938) A.C. 485), in which Lords Thankerton (p. 496), Macmillan (p. 498) and Maugham (pp. 520-23) reserved their opinion whether *The Porto Alexandre* (1920), P. 30 was rightly decided, for lack of an established rule of international law that the immunity of public vessels from the local jurisdiction was not lost

by trading, is another. Is this to be regarded as a mere flash in the pan, or are their Lordships acknowledging acceptance of the primacy of international law, as expounded by Professor Hans Kelsen? This language, it is true, derives from the *Parlement Belge* (1880), 5 P.D. 197.

Volume II on War and Neutrality from the hand of the learned Wyndham Leigh Walker, M.A., Barrister-at-Law, was published in 1937, comprising no less than 598 pages and including some of the original cases which were topical when first included by Professor Pitt Cobbett, although they have now been overtaken by later precedents. A sympathetic reviewer in the *Journal of Comparative Legislation* has been moved to declare that what he now desires is a Pitt Cobbett recast from beginning to end (J. C. L. 3rd Ser. 156 (1938)).

Certain it is that from the student's point of view this famous collection in its present form takes second place. Recent American collections of Professor Edwin Dickinson, Professor Manly O. Hudson (now of the Bench of the World Court at the Hague), and Professor H. W. Briggs of Princeton, are each superior to it for convenience of reference and freshness of critical comment.

On the other hand an unexpected posthumous success has awaited Professor Pitt Cobbett in Germany. Contrary to previous German practice, Strupp's *Dictionary of International Law*, published in three volumes between 1924-27 abounds in decided cases (or as he calls them *Praejudizien*), and in almost every instance he has drawn, with due acknowledgment, on the pages of Pitt Cobbett.

A. H. CHARTERIS.



# FIFTY YEARS OF LAW



## CONSTITUTIONAL DEVELOPMENTS

By the Hon. Sir Robert Garran, G.C.M.G.

### *1. Empire Relations—Statute of Westminster.*

The Statute of Westminster 1931 is an historical as well as a legal document. For its full understanding it must be looked at, in the words of Mr. K. C. Wheare, "as an event in the history of the constitutional structure of the British Commonwealth, rather than as an isolated legal document."

Dominion status is the result of slow progress from the very beginnings of the British Colonial Empire. It has been achieved step by step, by divers means: by pressure from below and concession from above; by enactments at Westminster such as Constitution Acts and the Colonial Laws Validity Act; by state documents such as Lord Durham's Report; by resolutions of Imperial Conferences; and so forth. Before the war of 1914-18, the Dominions could reasonably be called "self-governing"; the sovereignty of the Parliament of the United Kingdom, absolute in law, was tempered by constitutional understandings and practices which gave the Dominions almost complete autonomy in their internal affairs; and in international relations they had gained a limited recognition by representation in certain administrative conventions and conferences. At the Peace Conference in 1919, their individual status as members of the British Commonwealth (incomprehensible as it was to the outside world) received further confirmation by their special representation at the Conference, and their special signature of the Treaty of Versailles and the associated treaties; and later, by precedents



of diplomatic representation of Dominions, and negotiation and signature by Dominion Ministers of International Conventions specially affecting the Dominion.

Thereafter, the question of precise formulation of Dominion status came into prominence. Australia and New Zealand were fairly well satisfied with the substance of self-government already achieved, and had some misgivings as to the policy of trying to crystallize Dominion status into a rigid text. The motive power for a definite formula came from Canada, South Africa and the Irish Free State. The Imperial Conference of 1926 adopted the famous Balfour Declaration, which proclaimed that Great Britain and the Dominions "*are autonomous Communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*" This was followed by the comments that "the principles of equality and similarity, appropriate to *status*, do not universally extend to *function*"; and that "existing administrative, legislative and judicial forms are admittedly not wholly in accord with the position as described."

The language of the Declaration was the language of political philosophy; it was left to an expert committee to translate it into legal phraseology. The result, after adoption by the Imperial Conference of 1930 and consideration by Dominion Parliaments, was the Statute of Westminster.

The history of the Statute is the key to its form. The problem set to the draftsmen was to reconcile the old anti-monopoly: the absolute sovereignty of the Parliament at Westminster, and the complete self-government of the Dominions. A compromise between central sovereignty and local independence can be obtained by division of sovereign powers between central and local governments; but here was no question of compromise, but of reconciling opposites. Complete central sovereignty and complete local independence is a contradiction in terms. Practical common sense had evolved a practical solution by dealing with the two opposites on

different planes: not challenging central sovereignty in the legal sense, but holding it in abeyance by unwritten understandings that central sovereignty would not be exercised in derogation of local autonomy. But the draftsmen were now set the task of expressing this "conventional" autonomy in terms of law.

Examination of the philosophic concept of the Balfour Declaration—a group of autonomous communities with a common King—suggests that its full implementing would mean abdication by the Parliament at Westminster of its real legal sovereignty in relation to the whole Commonwealth, and the retention only of the titular sovereignty of the Crown; that is, dissolution of the Commonwealth of Nations into a group of sovereign States united "by a common allegiance to the Crown," *and by that only*: what is known to political science as a Union of Crowns. Whether that meaning was intended is not clear. Whether, and how, that could have been done by a statute of the Parliament of the United Kingdom, need not here be discussed; the Statute of Westminster makes no pretence of doing it. The Parliament that passed the Statute has not legally abdicated one jot of its sovereign power. It could legally repeal the Statute to-morrow; or, without expressly doing that, it could legally pass Acts inconsistent with the Statute. By the Statute, the Parliament at Westminster has constitutionally pledged itself not to do these things; it has not legally bound itself. From a legal point of view, the "Mother of Parliaments" has not stepped down from the status of mother to the status of elder sister.

What then has the Statute really done? In what way has it changed the status of the Dominions?

The short answer is: that by its substantive sections it has removed practically all the remaining legal limitations on the legislative power of the Dominions; and by its preamble it has given a parliamentary recognition of Dominion status.

The pre-existing limitations on the powers of Dominion legislatures were practically these:—

- (1) Incapacity to pass laws repugnant to Imperial laws ex-



tending to the Dominion, within the meaning of the Colonial Laws Validity Act;

- (2) Incapacity to pass laws operating outside the territory of the Dominion. (This rule was long assumed to have been established by the Privy Council in *Macleod v. Att-Gen. of N.S.W.* (1891) A.C. 455); but in recent years the highest courts of appeal and eminent jurists have raised doubts of the universality, and even of the existence, of the rule);
- (3) Limitations expressed in particular Imperial enactments, such as secs. 735 and 736 of the Merchant Shipping Act and secs. 4 and 7 of the Colonial Courts of Admiralty Act.

These limitations are all swept away by the substantive sections of the Statute of Westminster. In addition, there were the royal powers of disallowance and reservation of Bills, set out in Dominion Constitutions. These latter are not mentioned in the body of the Statute, but would come within the general principles referred to in the preamble.

As regards Australia and New Zealand, of course the substantive sections are not yet in force. At the request of those Dominions, a provision was inserted that none of those sections shall extend to either of those Dominions unless it is adopted by the Parliament of the Dominion. For Australia and New Zealand, therefore, the Statute has at present no legal operation. It is there, ready for any or all of its substantive sections to be adopted in whole or in part by those Dominions, if and when they see fit; but if it has meanwhile any other operation at all, it is only as evidence of declaratory recognition by the Parliament at Westminster, in the preamble, of certain constitutional principles.

That recognition is partly direct, partly indirect. It is declared to be "in accord with the established constitutional position"—

- (1) that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall require the assent of the Dominion Parliaments (and parenthetically, that the Crown is the symbol of the



free association of members of the British Commonwealth of Nations, and that they are united by a common allegiance to the Crown);

- (2) that no law thereafter made by the Parliament of the United Kingdom shall extend to a Dominion, otherwise than at the request and with the consent of the Dominion.

Indirect recognition is contained in the recitals that delegates of His Majesty's Governments in the United Kingdom and the Dominions, at the Imperial Conferences of 1926 and 1930, concurred in the declarations and resolutions set forth in the reports of the Conferences; and that it is necessary for the ratifying, confirming and establishing of certain of those declarations and resolutions that a law be made and enacted in due form by the Parliaments of the United Kingdom.

## *2. The Constitution of the Commonwealth.*

A Constitution may change or develop by textual amendment or by judicial interpretation. In theory, courts do not make laws, they only interpret them; but inasmuch as the meaning declared by the courts is authoritative, the distinction is a fine one.

To textual amendment the Constitution has so far proved almost invulnerable. It has realized the ideal of one of its chief sponsors—to be "strong as a fortress, sacred as a shrine." In the whole 39 years of its life, only one significant amendment has pierced its armour: that which was passed ten years ago, empowering the Commonwealth to make agreements with the States as to their public debts, and giving binding force to such agreements, notwithstanding anything in the Commonwealth or State Constitutions. It was by virtue of agreements made in pursuance of this amendment that the Australian Loan Council was given a large measure of control over Commonwealth and State finance, and that the debt conversion of 1931 was arranged.

On the other hand there has been extensive development by judicial interpretation by the High Court and the Privy Council. There has been a steady stream of decisions adding



THE PITT COBBETT CABINET

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precision to the general expressions in the Constitution; but in its most striking manifestations this development has had a more erratic course, set by accidents of litigation and affected by currents, not always flowing in the same direction, and by the personnel of the tribunal.

The main interest centred at first in the apportionment of legislative power between Commonwealth and States, as to which the Constitution follows the American plan of assigning specific subject-matters to the Commonwealth, and leaving to the States the unspecified residue—i.e., exclusive powers outside the specified subject-matters, and "concurrent" power (in most cases) within those subject-matters so far as consistent with over-riding Commonwealth legislation. The natural consequence of following the American plan was that at the outset American decisions were largely relied on—not as binding authorities, but as "a welcome aid."

The early High Court decision in *d'Emden v. Pedder* (1904), 1 C.L.R. 91, which decided that State law could not require a Commonwealth officer to put a stamp on the receipt which Commonwealth law required him to give for his salary, was based on two grounds. The first, which has never since been questioned, was that, when a valid Commonwealth law requires the performance of a duty, a State cannot impose any tax or condition on the performance of that duty. The second ground, fortified by the "welcome aid" of Chief Justice Marshall in the American case of *McCulloch v. Maryland* (4 Wheat. 316), was what came to be known as the rule of immunity of Federal instrumentalities: that it is an implied term of the Constitution that a State must not interfere with a Federal agency or instrumentality. This rule soon gave the court great trouble. It was applied to exempt from State income tax salaries paid by the Commonwealth; and when this decision brought the High Court into conflict with the Privy Council and with public opinion, the Federal Parliament passed an Act to make it ineffective. Next, the rule was declared to be reciprocal, and applied to Commonwealth interference with State instrumentalities; and in the *Railway Servants Case* (1906), 4 C.L.R. 488, it was held that a Com-

monwealth industrial award could not affect employment in State railway services. But in the *Steel Rails Case* ( (1908), 5 C.L.R. 818), it was held that the rule of mutual non-interference did not exempt a State from paying Commonwealth customs duty on rails imported for its railways; and in the *Municipalities Case* ( (1919), 26 C.L.R. 508) it was held that municipal corporations were not instrumentalities of a State within the meaning of the rule. Things were getting complicated, and the difficulties were brought to a head in the *Engineers' Case* ( (1920), 28 C.L.R. 129), when immunity from Commonwealth awards was sought by the State of Western Australia for its trading concerns—factories and mills which differed from ordinary trading ventures only in being owned by the State.

The case could be distinguished from the *Railway Servants Case* ( (1906), 4 C.L.R. 488), only by holding that some kinds of business were proper functions of government, and others were not. That was how the Supreme Court of the United States had dealt with a claim for immunity of State liquor saloons. But the High Court did not see its way to bring Herbert Spencer up to date and try to define the proper sphere of government—distinguishing between government post offices or railways on the one hand and government implement works or liquor saloons on the other. Yet to admit the State claims would open the door to unlimited inroads by the States on Commonwealth powers. No one could tell how far State-owned industries would extend; nor, perhaps, was the court anxious to encourage them by declaring their exemption from Commonwealth taxation and control. In this dilemma, the court swept away the whole doctrine of implied immunity, and came "back to the Constitution."

In constitutional law, as in physics, a balance is needed between centrifugal and centripetal forces. When we have a formula of extension, it is well to have a corresponding formula of limitation. The rule of mutual non-interference was such a formula of limitation; and the supporters of State rights feared that its abolition by the *Engineers' Case* ( (1920), 28 C.L.R. 129) would advantage the centripetal forces and



lead to wide encroachments by the Commonwealth on the State sphere. So far, this has not proved so. The proper balance, the court said, is found in the Constitution itself, without introducing any implied prohibitions. Commonwealth encroachment is prevented by the specific nature of the subject-matters of Commonwealth legislation, and by the rule, variously expressed, that the "pith and substance" of the law must fall within the permitted subject-matters; State encroachment is prevented by section 109 of the Constitution, which secures the dominance of the Commonwealth within its allotted field.

Possibilities of wide extension of Commonwealth powers may however be seen in *R. v. Burgess, ex p. Henry* (1936), 55 C.L.R. 608, from which it appears that under the "external affairs" power, the Commonwealth may legislate to carry into effect an international Convention for aerial navigation (including navigation within a State) though aerial navigation within a State is not, by itself, a subject of Commonwealth legislation. Whether this principle is applicable to all international Conventions, whatever their subject-matter, is still uncertain; there was a suggestion that it might be limited—e.g., to matters "proper for international agreement"; but it seems as difficult for a court to decide what matters are proper for international agreement as to decide what businesses are proper to be undertaken by government—a task that the High Court declined in the *Engineers' Case* (1920), 28 C.L.R. 129). Nor is it easy to suggest any other relevant principle of bisection of the ever-widening field of international agreement.

Section 92 has proved to be the most debatable in the whole constitution. "Trade, commerce and intercourse among the States . . . shall be absolutely free." What could be clearer? Yet those simple words contain many a trap, and have led to weeks of argument "about it and about," and conflicting judgments of the High Court and of the Privy Council.

For years it was assumed without question that this was a prohibition addressed to everybody—Commonwealth as well as States—for securing, as between State and State, the political



principle known as free trade. But in *McArthur's Case* ( (1920), 28 C.L.R. 530), the High Court, with some violence to the words of the section, reached a curious conclusion. Trade and commerce, it reasoned, must mean the same thing in section 92 as in section 51. Therefore, if the Commonwealth is bound by section 92, which declares that trade and commerce among the States shall be absolutely free, section 92 directly contradicts section 51, which empowers the Commonwealth to make laws with respect to such trade and commerce. Which, as Euclid says, is absurd. Therefore, section 92 must be construed not to bind the Commonwealth. The assumption underlying this reasoning is the anarchical one that all law is a restraint of liberty—that a law which regulates trade must necessarily impair freedom of trade. One consequence of the decision was that in effect it declared inter-State trade to be an *exclusive* power of the Commonwealth, so that all State laws affecting it were invalid, even though not in conflict with any Commonwealth Act.

The High Court began to have qualms about *McArthur's Case* ( (1920), 28 C.L.R. 530), which led it into many difficulties. At last it was directly challenged by the Commonwealth. Unlimited competition with State railways by road motor traffic caused more than one State to pass Transport Acts (not limited to trade within the State) for the co-ordination of rail and road traffic, with licences to and restrictions on carriers by road. In *R. v. Vizzard* ( (1933), 50 C.L.R. 30), a carrier convicted under the State Transport (Co-ordination) Act of N.S.W., challenged the validity of the Act as violating section 92, and the Commonwealth (somewhat unusually) intervened in support of the State Act—as it would have been embarrassed if it were held that the State had no power to deal with what the Commonwealth Government regarded as a traffic problem within the State—the “canalizing” of traffic within the State, not an impairment of inter-State trade. The substance of the Commonwealth argument was that the States had concurrent power as to inter-State trade—so far as the field was left open by the absence of Commonwealth legislation; that section 92 was not a prohibition, addressed to the States

only, against *regulating* inter-State trade, but a prohibition addressed to everybody against *obstructing* inter-State trade—i.e., by barriers or burdens at State borders or in relation to crossing State borders; and that there was no such obstruction here. The High Court upheld the State Act, three at least of the judges agreeing in principle with the above reasoning, which was afterwards accepted as sound by the Privy Council in *James v. Commonwealth* ( (1936), A.C. 578), which overruled *McArthur's Case* ( (1920), 28 C.L.R. 530), and established that section 92 binds the Commonwealth.

One consequence of this decision is that neither Commonwealth nor States, nor both together, can, in aid of a scheme to control marketing, use the means of restricting the inter-State transfer of goods. Section 92, therefore, still leaves a "gap" in the legislative power: a class of legislation, not within the real mischief of the section, which no legislature in Australia can enact. The opinion may be ventured that, in the field either of judicial decision or of constitutional amendment, the last has not yet been heard of section 92.

R. R. GARRAN.

## CONSTITUTIONAL LAW IN NEW SOUTH WALES

By F. C. HUTLEY, B.A., LL.B.

The era of pure liberalism in State politics was all but over in 1890. Henceforth the political field was to be dominated by the problems raised by the Labour Party. At first these problems were not constitutional, but during the last fifteen years the main political parties in the State have been divided upon basic constitutional issues. The Labour Party has striven to abolish the second chamber, the Legislative Council, and to remove all checks upon the power of a majority in the popular House to make constitutional or other changes. Its opponents have aimed at maintaining a bicameral system and at preserving or adding checks which



they regard as safeguards against the misuse of a temporary majority by a Government that might not feel itself bound to keep within the limits of its mandate. Almost coincident with the rise of the Labour Party the Federal movement became a serious political force, and the impact of the Federal Constitution on the State Constitution has added interest and importance to the study of constitutional law.

The Parliament of New South Wales in 1890 consisted of the Queen, represented by the Governor, the Legislative Council, nominated by him, and the Legislative Assembly. For the Assembly there was manhood suffrage, but besides a vote in the electorate in which he resided the owner of freehold or leasehold property of the value of £100 or of the annual value of £10 had a vote in the electorate in which the property was situated. Until 1893 the number of members was not fixed, but increased with the population. In 1893 the system of single-member constituencies was established, and the property vote abolished. Ten years later adult suffrage was adopted. Women became entitled to be members of the Assembly in 1918, and of the Council in 1926. Since 1906 it has not been necessary for a Minister on accepting office to submit himself for re-election. Shortly after the Great War began, all offices of profit in the navy or army were excluded from the list of disqualifying offices, and from 1916 a public servant may contest an election, but, if he is successful, he must resign his office in the public service.

A trial was made from 1918 to 1926 of proportional representation, with five-member constituencies for city areas and three-member constituencies for the country, but after three elections the Parliament abandoned proportional representation and reverted to single-member constituencies. New principles have been introduced into the electoral system, a number of them being contained in an Act of 1928 passed during the Bavin administration. New South Wales is divided into three areas—Sydney, Newcastle and the country, with forty-three members for Sydney, five for Newcastle, and forty-two for the country, the object being to give the country four or five more members than it would be entitled to if the States



were treated as one area and each of the ninety electorates had the same number of electors. The distribution into electorates is made by three electoral district commissioners, who must be the persons who are for the time being the holders of the offices of electoral commissioner, government statistician and surveyor-general. The electoral commissioner, who has an independent tenure, sees to the enrolment of electors, the preparation of rolls, and the conduct of elections. There are joint Commonwealth and State rolls, and both enrolment and voting are compulsory, the voting being preferential. Disputed elections are determined by a court of disputed returns.

The history of the Assembly has been uneventful compared with that of the Council, whose survival is due to a remarkable legal victory. Until the reformed Council came into existence in 1934, the Council was a nominee body with no fixed numbers. The members were appointed by the Governor, so that he became embroiled in every conflict between the Council and the Government, if the Government decided to coerce the Council by appointing pledged nominees. The Council regarded itself as a delaying-house, and contended that it passed those measures of which it considered the people had clearly indicated their approval at the polls. This position was not satisfactory to the Labour Party, and when the Council rejected bills of the first Lang administration in 1925, an attempt was made to abolish the Council by obtaining the Governor's assent to the appointment of a sufficient number of its supporters. Though the Governor accepted the advice of his Ministers and appointed twenty-five, the bill was not passed. The Governor refused the request of his Ministers for a further batch of appointments. This action brought out of obscurity that boggy of constitutional law, the precise powers of the Governor of a State of the Australian Commonwealth to act against the wishes of his Ministers.

The Bavin administration, which came into power in October, 1927, inserted in the Constitution Act, 1902, a new provision, section 7A, which was later to run the gauntlet of

the State Supreme Court, the High Court of Australia, and the Privy Council. Under the section there had to be a referendum if the Council was to be abolished or its constitution or powers were to be altered except in regard to some specified points of minor consequence. Moreover, there was the all-important provision that the section itself could only be repealed or amended by a referendum.

At the general election in 1930 Mr. Lang was returned to power with a large majority in the Assembly. In December, 1930, two Bills, to repeal section 7A, and to abolish the Council, passed both Houses. Before the Bill for the abolition of the Council was presented to the Governor for his assent, a suit was commenced in the Supreme Court for an injunction to restrain the President of the Council, by whom Bills originating in the Council would normally be presented, and also all the Ministers, from presenting the Bill to the Governor, until after the referendum contemplated by section 7A had been held. A Full Court of five justices with one dissident granted the injunction; the decision was upheld by the High Court of Australia, by a majority of three to two, and by the Privy Council (31 S.R. 183; 44 C.L.R. 394; (1932) A.C. 526). The question turned upon the true construction of section 5 of the Colonial Laws Validity Act 1865, which enables the representative legislature of a colony to make laws respecting its constitution powers and procedure, provided that they are passed "in such manner and form as may from time to time be required by . . . any colonial law for the time being in force in the said colony." It was held that section 7A was such a law, and that it could only be repealed in the manner and form required by itself. The decision appears to be epoch-making. Mr. Justice Dixon has said of it: "Perhaps the future may say that the most important legal development of the time lies in the discovery of the means of making it impossible to alter the State Constitution without a referendum" (51 L.Q.R. at 603).

The defeat of Mr. Lang's Government in the election of 1932 put an end to the plans for abolishing the Council. It



was reconstituted by an Act which came into force after approval by the people at a referendum held on the 13th May, 1933. The legality of the referendum was attacked in vain in *Piddington v. Attorney-General* (33 S.R. 717), and in *Doyle v. Attorney-General* (33 S.R. 317; (1934) A.C. 511).

The new Council came into existence on the 23rd April, 1934. It has sixty members, with a normal tenure of twelve years, fifteen retiring every three years. At the first election in order to start the rotation fifteen were elected for three years, fifteen for six years, fifteen for nine, and fifteen for twelve. The electorate consists of members of the Assembly and the Council. The elections are held under a system of proportional representation. The Council is protected by section 7A, as amended by the Act approved at the referendum. Apart from origination of appropriation and taxing Bills, the two Houses have co-ordinate powers, except that appropriation Bills for the ordinary annual services of the Government may become law without the assent of the Council. Conflicts between the two Houses which cannot be solved by compromise may be settled by a referendum, to which so far it has not been necessary to resort.

The law with respect to the executive powers of the Government under the State constitution has been clarified by two decisions of the High Court. The war prerogative of the Crown can only be exercised by the King in right of the Commonwealth (*Joseph v. Colonial Treasurer*, 25 C.L.R. 32). Contracts of the Crown authorized by members of the Cabinet may be sued on whether or not money has been appropriated by Parliament, and it is not necessary for every contract of the Crown to be assented to by Parliament (*N.S.W. v. Bardolph*: 52 C.L.R. 455). This case renders the position of these having dealings with the Government more secure than it had been.

There has been no express alteration of the constitutional position of the Governor in regard to accepting or rejecting advice of Ministers, as clause VI of the Instructions still stands, but the acquisition of Dominion status by the Com-



monwealth appears to have inferentially affected the position, though it is still a matter of debate how far it has been affected, and perhaps even whether it has been affected at all.

From the result of two of the three important disputes between a Governor and his Ministers it seems clear that a Governor still retains very real power. In the first, Sir Gerald Strickland, in 1916, gave way to Mr. Holman, then head of a Labour Government, who claimed he was entitled to form a National Government from a minority of the Labour Party in combination with the Liberal Party. Sir Dudley de Chair refused Mr. Lang's request for a second batch of appointments for the purpose of abolishing the Council in 1926. Sir Phillip Game dismissed Mr. Lang in 1932 on the ground that he was persisting in illegal acts.

The most important fact in the constitutional history of the State has been the establishment of the Commonwealth. It has meant not merely that other organs of government came to exist in New South Wales, but the Commonwealth power itself so grew as to be decisive on constitutional issues which have arisen in New South Wales. Because of financial weakness the States were compelled to assent to the Financial Agreement in 1927, which was followed by the insertion of section 105A in the Constitution. As a result, if a State breaks the agreement, the Commonwealth may coerce it by attaching its revenues: (*N.S.W. v. The Commonwealth* 46 C.L.R. 155).

The Commonwealth has undermined State powers in other ways. It can deny the States power to tax interest on Commonwealth loans (*The Commonwealth v. Queensland*, 29 C.L.R. 1). It can annex what conditions it likes to the financial aid which it gives to the States under section 96 (*Victoria v. The Commonwealth*: 38 C.L.R. 399). The Commonwealth Court of Conciliation and Arbitration does not make mere awards; it makes laws, which, under section 109 have supremacy over State laws (*Clyde Engineering Co. v. Cowburn* 37 C.L.R. 477).

The States have discovered that, as Mr. Justice Higgins said, the residuary legatee does not always come off best under the will. There has been no surplus revenue distributable among the States, despite section 94: (*N.S.W. v. The Commonwealth*, 7 C.L.R. 179). Customs duty has to be paid on the importation of goods owned by the States, despite section 114 (*Attorney-General of N.S.W. v. Collector of Customs for New South Wales*: 5 C.L.R. 818). The wages and conditions of State Railway employees are determined by the Court of Conciliation and Arbitration (*A.R.U. v. Victorian Railway Commissioners*: 44 C.L.R. 319). State employees who can be parties to an industrial dispute extending beyond the limits of any one State can have their conditions of employment settled by that Court. The wide interpretation given to the term excise duty has made the raising of revenue by indirect taxation on a large scale impossible: (*John Fairfax & Sons Ltd. v. N.S.W.* 39 C.L.R. 139). The States are liable to be sued in tort and contract without their consent: (*Commonwealth v. N.S.W.* 32 C.L.R. 200). In one respect, however, the restrictions upon the States have proved less severe than was supposed. Section 92, it seems, does not seriously hinder the efforts of the States to set up monopolies and to organize trade and commerce within their borders on a collectivist basis: (*Crothers v. Sheil* 49 C.L.R. 399; *Hartley v. Walsh*: 57 C.L.R. 372).

The centralizing tendencies in Australia may succeed in abolishing the States, but New South Wales is assured of at least one kind of immortality. The conflicts to which its political situation and constitutional structure have given rise will provide powder and shot for legal arguments while responsible government and the British Empire endure.

F. C. HUTLEY.



## PROPERTY AND CONVEYANCING LAW

By P. R. Watts, B.A., LL.B.

*Two Main Lines of Development.*

In New South Wales a survey of the history of property and conveyancing law during the last fifty years reveals two main lines of development, the contrast between which is obvious. On the one hand, we see the attempts made by Parliament to simplify and rationalize the "old" or "common" law system of landholding which we inherited from England. On the other hand, we see the efforts of the judges to bring into harmony with the traditional principles of jurisprudence a statutory system of land titles which had been created by a South Australian layman, Sir Robert Torrens, in 1857 and adopted in New South Wales by an Act which came into force on the 1st January, 1863.

*1. Legislative Reforms in the "Old System."*

When, early in the nineteenth century, the Real Property Commissioners asked whether anything could be done to simplify conveyancing, English conveyancers replied: "Yes, simplify the law." Certainly the English law of property, as it then existed, still retained most of the characteristics which prompted, if they did not excuse, Oliver Cromwell's rude description of it as an "ungodly jumble." There was, indeed, ample scope for improvement.

In England, so far as such improvements are concerned, there have been four principal periods of activity. The first was between 1833 and 1845, the second between 1859 and 1862, the third between 1880 and 1914, and the fourth between 1922 and 1925. The New South Wales legislature followed in the footsteps of the English Parliament with respect to the legislation of the first two periods, but up to the time of the passing of the Conveyancing Act, 1919, English legislation of the third period had only found its way into our Statute Book to a very limited extent and in a piece-





COMMON RECOVERY GEORGE I, 1718

From the collection of deeds presented by H. W. Knocket, Esquire.



meal and haphazard fashion. Generally speaking, right up to the year 1920 New South Wales conveyancers used, as a matter of deliberate choice, the precedent books published in England prior to 1880. The Conveyancing Act, 1919, which came into force on the 1st July, 1920, had hardly brought us abreast—or fairly abreast—of English legislation, when a fresh access of reforming zeal seized the Mother Country. Of the great measures associated with the name of Lord Birkenhead, only an occasional provision has been adopted here. To-day the gulf between English and New South Wales conveyancing is greater than ever.

In considering the reforms which our legislature has effected in "old system" conveyancing, I will refer principally to the provisions of the (N.S.W.) Conveyancing Act, 1919-1938, and all references to sections, unless otherwise indicated, will be to that enactment.

#### *A. Elimination of Obsolete Elements.*

Certain elements of "old system" conveyancing were abolished or modified, because of their obsolete, over-technical, or otherwise inconvenient character. Thus—

(1) Estates tail were abolished; henceforth limitations in tail were to pass the fee simple (s. 19). This did not, it would seem, affect *quasi-entails*; but such estates are of very rare occurrence in New South Wales: *Millard, Real Property*, 5th edition, 36-37. It should be noted that s. 19 applies only to a limitation which, *if that section had not passed*, would have created an estate tail—as to which see below, B. (3).

(2) Long terms might, under certain conditions, be enlarged into fee simples by registered deed (s. 134). This provision was of little practical importance.

(3) The necessity (in deeds) for the use of technical words of limitation to create a fee simple was dispensed with; henceforth it was sufficient to use the words "in fee" or "in fee simple" (s. 47 (1)).

(4) Moreover, conveyances without words of limitation were (like wills) to be construed as passing the fee simple unless a contrary intention appeared (s. 47 (2)).



(5) Artificial rules as to the appropriate operative words to be used in a conveyance of land were swept aside; not only should all land, as regards the assurance of the immediate freehold thereof, be deemed to lie in *grant* as well as in *livery* (s. 14), but henceforth, in order to convey land, "any words heretofore proper to convey land, and any other words indicating an intention to convey land"—e.g., the word "convey" itself (see Second Schedule)—should be sufficient (s. 46).

(6) No assurance of land thereafter made should be deemed to have a tortious operation (s. 22). This corrected a curious omission in the Title to Land Act (22 Vict. No. 1, s. 19); see *Millard* 67.

(7) Although the Statute of Uses was not repealed, the traditional mode of conveyancing associated with it was doubtless intended to be displaced, to a greater or less extent, by a provision permitting every limitation which might be made by way of use operating under the Statute to be made by direct conveyance without the intervention of uses (s. 44 (2) and (2A)). The wisdom of this indecisive "middle" course may be questioned, for it has caused doubts to arise whether a particular limitation is to be construed (i) as made by way of use operating under the Statute, or (ii) as made by direct conveyance without the intervention of uses. Take, for example, a conveyance "to A. and his heirs in trust for B. and his heirs." As the Statute of Uses has not been repealed, *semble*, one should continue to construe a limitation so framed as it would have been construed before the Conveyancing Act, unless a contrary intention is clearly indicated. Another query, viz., whether a lease "to A.," without more, by a deed executed on or after the 1st July, 1920, vested the term in the lessee without entry, may be dismissed now as academic, having regard to s. 120A (2). See below, A. (17).

(8) The related doctrine of resulting uses was affected by a provision that "No use shall be held to result merely from the absence of consideration in a conveyance of land as to which no uses or trusts are therein declared" (s. 44 (1)). Here again questions as to the application of the section are likely

to arise; e.g., whether, in the case where land is limited "to A. and his heirs to the use of B." (an infant) "and his heirs when B. reaches the age of twenty-one years," there will be a resulting use to the conveyor until B. attains his majority.

*Semble*, that, as it cannot be said that *no* use is declared in the conveyance, the resulting use is not excluded by the section. It is true that the relevant expression is "conveyance of land," and "land" includes every estate and interest therein (s. 7); but in the case mentioned there is only one conveyance of land, viz., the conveyance of the fee simple to A., and s. 33 of the Conveyancing and Law of Property Act, 1898—the section abolishing and replacing the old doctrine of *scintilla juris*—applies.

(9) Dower and curtesy having been abolished by the Probate Act of 1890, and tenancy by entireties having been impliedly abolished by the Married Woman's Property Act, 1893 (*Woods v. The Registrar-General* (39 C.L.R. 46)), it was only another step in the same direction to provide that acknowledgment should no longer be necessary to the validity of any deed or instrument executed by a married woman (ss. 147, 148).

(10) Acknowledgment was also rendered unnecessary in the case of contingent remainders by the provision that these might be conveyed by ordinary deed (s. 50 (1)).

(11) Contingent remainders were protected from destruction by reason of the "vesting" rule; henceforth a contingent remainder was to be capable of taking effect notwithstanding the want of a particular estate of freehold to support it in the same manner as it would take effect if it were a contingent remainder of an equitable estate supported by an outstanding legal estate in fee simple (s. 16 (1)). The statutory legal estate vested in executors and administrators *c.f.a.* by s. 44 of the Wills Probate and Administration Act, 1898, had already been held sufficient to preserve from failure all contingent remainders in devises by will, even if in form legal devises: *Re Beavis* (1907) (7 S.R. 66); *Barrett v. Barrett* (1918) (18 S.R. 637). Although, by s. 16 (1), a legal contingent remainder is not now subject to the "vesting" rule, it



may, on the other hand, infringe the rule against perpetuities in cases where previously the fact that the contingency must have occurred, if at all, before or the very instant that the prior estate ended, necessarily kept the limitation within the period allowed by the rule against perpetuities. But see s. 36, below, A. (13).

(12) The old rule that a contingent remainder, because it was not an estate, could not prevent the merger of two estates between which it intervened, was reversed; henceforth a contingent remainder or a contingent interest lying between two estates vested in the same person was to prevent the merger of those two estates (s. 16 (2)).

(13) What was formerly a frequent cause of interests becoming entirely void for infringing the rule against perpetuities was obviated by a provision that where the absolute vesting of property, or the ascertainment of a beneficiary or class of beneficiaries, was made to depend on the attainment of an age exceeding twenty-one years, and thereby the disposition in favour of that beneficiary or class would be rendered void for remoteness, the instrument was to be rendered effective for the purpose of such disposition by the device of substituting twenty-one years for the age stated in the instrument (s. 36).

(14) The "double possibility rule" was abolished, but without prejudice to any other rule relating to perpetuities (s. 23A., inserted by the Conveyancing (Amendment) Act, 1930).

(15) Following upon the decision of the High Court of Australia in *Delohery v. Permanent Trustee Co.* (1 C.L.R. 283), it was enacted by s. 1 of the Ancient Lights Declaratory Act, 1904, that from and after the 1st December, 1904, no right to the access or use of light to or for any building should be deemed to exist, or to be capable of coming into existence by reason only of the enjoyment of such access, or use, for any period, or of any presumption of a lost grant based upon such enjoyment. This section (consolidated in Conveyancing Act, s. 179) was extended to air as well as light by the Conveyancing (Amendment) Act, 1923. Although, by reason of the Declaratory Act, the decision in *Delohery*



v. *Permanent Trustee Co.* is no longer the law in New South Wales so far as ancient lights are concerned, the reasoning upon which the High Court's judgment is founded would seem to be applicable to the acquisition of other easements not affected by the Act: *Millard* 453.

(16) The doctrine of consolidation of mortgages was abolished so far as a mortgage on or after the 1st July, 1920, was concerned (s. 97). This section applies notwithstanding any stipulation to the contrary. Nevertheless it is still open to a mortgagee either (a) to make each mortgage a security for the whole debt; or (b) to recite, if that is the fact, that portion of the debt secured by the one mortgage is also secured by the other: W.N. 22nd June, 1920.

(17) The doctrine of *interesse termini* was abolished (s. 120A (1)), and as from the 1st January, 1931, a lease might take effect without entry (s. 120A (2)); a term limited after 1st January, 1931, to take effect more than twenty-one years from the date of the instrument purporting to create it, was to be void (s. 120A (3)). These provisions raise difficult questions in relation to the rule against perpetuities. They unsettle the law which, since the decision of *Neville, J., in Mann, Crosman & Paulin Ltd. v. Land Registrar* ([1918] 1 Ch. 202), had approached a condition of clarification. In that case the learned judge had held that, although there was no vesting in possession, the *interesse termini* had vested in right or interest, and there was accordingly no infringement of the rule against perpetuities. Section 120A abolishes the doctrine of *interesse termini*, thereby destroying the reasoning upon which *Mann, Crosman & Paulin Ltd. v. Land Registrar* was decided, without itself making any mention of the rule against perpetuities. These difficulties are discussed in 11 A.L.J. 219 by "E. P. Facto," who observes another peculiarity in s. 120A, viz., that "There is an express invalidation of any term limited to take effect more than twenty-one years after the date of the instrument creating it, but terms which could infringe the rule otherwise than by reference to a specific number of years escape."

(18) No tenancy from year to year was to be implied by

payment of rent; henceforth if there was a tenancy, and no agreement as to its duration, then such tenancy was to be deemed a tenancy determinable at the will of either of the parties by one month's notice in writing expiring at any time (s. 127).

*B. Reversal of Presumptions of Law.*

Certain presumptions of law were reversed—because, it seems, of their being contrary to what the legislature supposed to be the probable intentions of the parties. Thus—

(1) The presumption of law that if property was conveyed or devised beneficially to two or more persons together they took as joint tenants—a presumption against which courts of equity had always leant—was reversed; henceforth (with certain specified exceptions, such as executors, administrators, trustees, mortgagees) they were to take as tenants in common (s. 26). Despite the specification of exceptions, however, the exact field of applicability of s. 26 is by no means clear. Does it apply, for example, to choses in action, such as shares in a company, having regard to the fact that at law no chose in action could be held in common? For a discussion of this question, see an article by *Mr. F. C. Hutley* in 13 A.L.J. 230.

(2) The reversal of another presumption of law—that of the resulting use—has already been noticed. See above, A. (8).

(3) The rule in *Shelley's Case* which, as the learned Commissioner (Mr. Justice Harvey) remarked, had probably defeated the intention of the settlor in almost every case in which it had been applied, was excluded in certain cases; henceforth a limitation to A. for life with remainder to his heirs would give A. a life estate, and his "heirs" (see s. 33) a remainder (s. 17). A curious effect of this section in relation to s. 19 (see above, A. (1)) is pointed out in *Millard* 254-255, note 56. "If a gift were now made to A. for life, with remainder to the heirs of A.'s body, it might seem at first sight that, since this would formerly have given A. an estate tail, it would now, by s. 19, give him a fee simple, contrary to s. 17. But it must be noted that s. 19 refers to limitations which would have created an estate tail if *this section had not passed*. Now if s. 17 had been passed and



not s. 19, A. would clearly get a life estate only by this limitation; and therefore it is not one to which s. 19 refers. Section 19 would operate to convert the estate tail in remainder, which the heirs of A.'s body would otherwise have taken, into a remainder in fee simple." In this instance, so far from having destroyed technicalities, ss. 17 and 19 seem to have preserved them—and rendered them more subtle.

#### *C. Changes wrought by "Social" Legislation.*

Various changes were effected in the law of property and conveyancing as the result of certain tendencies in "Social Legislation." In this category falls much of the emergency legislation that was feverishly enacted during the economic depression; some of the ameliorating Acts, however, date from an earlier period. As the subject of "Social Legislation" belongs to one of my colleagues, I will not trespass upon it beyond pointing out briefly—if I may be allowed to do so—the immense importance of the Married Women's Property Act, 1893 (now consolidated in the Married Women's Property Act, 1901). This Act made a complete change in the capacity of married women as regards all property which became their separate property by virtue of the Act, giving them power of acquiring and exercising legal rights of ownership in respect of such property: *Millard*, 238–239.

#### *D. Changes in Conveyancing Practice.*

A number of changes were made by the legislature in reference to conveyancing practice. The more important were those relating to (i) sales and other transactions, and (ii) forms of assurances.

##### *(i) Sales and Other Transactions.*

Part IV of the Conveyancing Act bears the heading "Sales and other Transactions." Some of its provisions (e.g., ss. 53 (except paragraph (2) of sub-section (2)), 54 and 57) were "subject to any stipulation to the contrary"; others, however (e.g., ss. 53 (2) (c), 55 and 56), had effect "notwithstanding any stipulation to the contrary." The more significant changes effected are the following:—



(1) Sixty years—the common law period of commencement of title—was reduced, first to forty years, then to thirty years (s. 53 (1), amended by Act No. 44, 1930, s. 13 (a)).

(2) Recitals, &c., twenty years old were made *prima facie* evidence for the vendor (s. 53 (2) (a)).

(3) Where the vendor retained any part of an estate he was to be entitled to retain the documents of title (s. 53 (2) (d)); but where he did not, he was to be obliged to deposit them with the Registrar-General (s. 53 (2) (c)).

(4) The purchaser was not to require the production or any abstract or copy of any deed, will or other document dated or made before the time prescribed by law or stipulated for the commencement of the title; nor was he to require any information or make any requisition or inquiry with respect to the prior title (s. 54 (1)). This, however, was not to preclude him from raising any *objection* thereto (s. 54 (10)).

(5) The purchaser was not to be affected with notice of the prior title unless he actually investigated or inquired into it (s. 53 (3)).

(6) Certain assumptions were to be made by the purchaser, unless the contrary appeared, in the case of land held by lease or by under-lease (s. 54 (2) and (3)).

(7) The expenses of the production and inspection of documentary evidence not in the vendor's possession were to be borne by the purchaser (s. 54 (4)).

(8) Nothing in s. 54 was to be construed as binding the purchaser to complete in cases where, if the provisions of the section had been express stipulations of a contract, specific performance would not have been enforced against him (s. 54 (9)).

(9) In every case where specific performance would not be enforced against the purchaser by reason of a defect in the vendor's title, but the purchaser was not entitled to rescind the contract, he was to be entitled nevertheless to recover his deposit and instalments, and to obtain certain other relief, unless the contract disclosed such defect and precluded him from objecting thereto (s. 55).

(10) The vendor was not to be entitled to rescind on the

ground of any requisition or objection made by the purchaser unless and until he had given the purchaser reasonable notice of his intention to rescind so as to enable the purchaser to waive the requisition or objection (s. 56).

(11) Certain special rights of the purchaser of land under "Torrens" title were defined (s. 57).

(12) Certain common conditions of sale were imported into all contracts for sale unless excluded (s. 60 and Schedule III).

(ii) *Forms of Assurances.*

The length of assurances was greatly shortened as the result of various elements, formerly set forth *in extenso*, being imported into them by statutory implication, or being rendered unnecessary. Thus—

(1) Statutory forms of "general words" were deemed to be included unless a contrary intention was expressed (s. 67).

(2) The necessity for inserting the "all the estate clause" was similarly obviated (s. 68).

(3) Appropriate statutory covenants for title were to be implied in cases where the conveyer conveyed, and was expressed to convey, as beneficial owner, or as settlor, or as trustee or mortgagee, or as executor or administrator of a deceased person, or as Master in Lunacy, &c., as the case might be (s. 78).

(4) It was no longer necessary to have an indorsed receipt in addition to the acknowledgment of receipt of the purchase money in the body of the deed (s. 39).

(5) In cases where it had formerly been necessary for A. to enter into a covenant with B. for the production and safe custody of the title deeds, all that need now be done was to include in the deed a schedule of documents expressed to be covenanted to be produced by A. as the covenantor to B. as the covenantee; a full statutory covenant would thereupon be implied (s. 63).

(6) Other covenants and powers were implied by the Conveyancing Act in particular cases; e.g.—

(a) A covenant by a person purchasing property subject to an incumbrance, to indemnify the vendor against the incumbrance (s. 79);



- (b) A covenant by a mortgagor to repair (s. 80);
- (c) Covenants by the lessee "in every lease" (*semble*, this means every lease *by deed* and every memorandum of lease under the Real Property Act, 1900: see 10 A.L.J. 357) to pay rent (with a proviso for abatement in the event of the premises being destroyed or damaged by fire, &c.) and to keep in repair (s. 84);
- (d) Powers in the lessor "in every lease" (*semble*, this should be similarly restricted: see 10 A.L.J. 413) to enter and view the state of repair, to enter and carry out the requirements of public authorities, and to re-enter on certain defaults (s. 85); and
- (e) Various powers in mortgagees (ss. 104-115).

Any covenant or power implied under the Act might, unless otherwise provided in the Act, be negatived, varied, or extended by (a) an express declaration in the deed wherein it was implied; or (b) another deed (s. 74 (2)).

(7) Short forms of covenants were provided for by Statute in certain cases. Part I (Facilitation of Leases) of the Landlord and Tenant Act of 1899 had afforded one instance of this; s. 81 of the Real Property Act, 1900, another. Both of these were repealed, and their place was taken by s. 86 and Schedule IV Part II of the Conveyancing Act. Section 81 and Schedule IV Part I of the Conveyancing Act similarly provided for short forms of covenants by mortgagors.

(8) Other statutory provisions on the subject of covenants were enacted in ss. 70-77, which simplified the drafting of the so-called "formal" parts of covenants by (*inter alia*) defining, in the case of covenants relating to land, the persons who were to have the benefit (s. 70) and be subject to the burden (s. 70A) of such covenants.

(9) Short memoranda in statutory form, indorsed on or annexed to a mortgage, were made effectual for certain purposes for which fully drawn documents had formerly been employed, e.g., (a) for discharging the mortgage, (b) for increasing or reducing the rate of interest, (c) for increasing or reducing the amount secured by the mortgage, (d) for shortening, extending, or renewing the term or currency of



the mortgage, and (c) for transferring the mortgage (s. 91). As to whether the statutory forms of transfer of mortgage (see Conveyancing Act, s. 91 (4); and Real Property Act, ss. 51 and 52) extend to collateral obligations, such as guarantees, given by strangers to the mortgage transaction, see *Consolidated Trust Co. v. Naylor* (55 C.L.R. 423).

## II. *Judicial Interpretation of the Torrens System.*

During the last fifty years the Torrens System has been the subject of a vast amount of judicial interpretation. The Acts in force in the various jurisdictions where the system obtains have so many features in common that not only decisions of the courts in New South Wales, but also decisions of the courts in the other Australian States, in New Zealand, and in the Provinces of Canada, may be consulted. The late *Dr. Kerr*, in his work on *The Australian Lands Titles (Torrens) System*, endeavoured to bring these cases together and present them in some sort of coherent shape. In the sketch that follows I can give no more than the briefest indication of the processes of judicial interpretation whereby the special features of the Torrens System have been brought into harmony with the general principles of jurisprudence.

### A. *General Character of the Real Property Act.*

(1) It has been recognized that the Real Property Act is primarily a conveyancing statute. As has been said of the (Victorian) Transfer of Land Act, it established "a new mode of conveyancing, the fundamental principle of which was that title to land and interests in land should depend upon registration, and not upon instruments *inter partes*": *per Griffith, C. J., Barton and O'Connor, JJ., in Fink v. Robertson* (1907 (4 C.L.R. 864, 871).

(2) To this end s. 2 (4) of the Real Property Act operates to sweep away the whole body of conveyancing practice, so far as it is inconsistent with the provisions of the Act: *per Boucaut, J., in In re Martin* ( (1900) S.A.L.R. 69, 79).

(3) Nevertheless, except so far as may be inconsistent with its provisions, the Act "does not interfere with the ordinary operation of contractual or other personal relations, or the

effect of instruments at law or equity": *per curiam* in *Groongal Pastoral Co. Ltd. (in Liquidation) v. Falkiner* (1924) (35 C.L.R. 157, 163). See also *Baker's Creek Consolidated Gold Mining Co. v. Hack* (1894) (15 L.R. (Eq.) 207, 221, *per Owen, C.J.* in Eq.); *Barry v. Heider* (1914) (19 C.L.R. 197, 213, *per Isaacs, J.*); *Butler v. Fairclough* (1917) (23 C.L.R. 78, 91, *per Griffith, C.J.*).

#### B. *The Register.*

"The cardinal principle of the Statute is that the register is everything, and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person upon registration of the title under which he takes from a registered proprietor, has an indefeasible title against all the world": *Fels v. Knowles* (1906) 26 N.Z.L.R. 604, 620), approved in *Waimiha Sawmilling Co. Ltd. (in Liquidation) v. Waione Timber Co. Ltd.* (1926) A.C. 101).

#### C. *The Estate of the Registered Proprietor.*

The estate of the registered proprietor is defined by s. 42 which provides—to give merely its general framework—that "Notwithstanding the existence in any other person of any estate or interest . . . which but for this Act might be held to be paramount or to have priority, the registered proprietor of land or of any estate or interest in land under the provisions of this Act shall, except in case of fraud, hold the same, subject to such encumbrances, liens, estates or interests as may be notified on the . . . register-book . . . but absolutely free from all other encumbrances, &c., except" (and then follow a number of specified exceptions). The corresponding Victorian section was described by *Evatt, J.*, in *Clements v. Ellis* (1934) V.L.R. 233) as "the key section of the Act." Having regard not merely to its importance, but also to its actual structure, one must allow some force to the view that, in specifying the exceptions to its operation, the section exhausted them. Nevertheless, *Dixon, J.*, in the same case, having examined the various sections dealing with the defeasibility and indefeasibility of titles—see ss. 40, 42, 43, 43A, 44, 124 and 135 of the New South Wales Act—came to the



conclusion—which, it is submitted with respect, is the correct one—that they “must be considered together in order to obtain a just view of the meaning of the legislation.” Approaching the Victorian s. 72 (N.S.W. s. 42) from this angle, *Dixon, J.*, thought that its operation was impliedly restricted by the Victorian s. 179 (N.S.W. s. 43)—a view which was diametrically opposed to that of *Rich* and *Evatt, JJ.* No case could illustrate more strikingly the difficulties of construction and application which the Torrens statutes occasionally present.

The important principle that “To enable an investigation to take place as to the right of the person to appear upon the register when he holds the certificate which is the evidence of his title, would be to defeat the very purpose and object of the statute of registration” seemed to be endangered a few years ago by the decision of *Davidson, J.*, in *Roseville Extended Ltd. v. Lucas* (1926) (26 S.R. 402), but the case of *Creelman v. Hudson Bay Insurance Co.* ( (1920) (A.C. 194, 197) ), in which the principle in question had been established, was not cited; and it was not long before the effect of *Davidson, J.*’s decision was removed by legislation (s. 339 (2) of the Local Government Act, 1919, enacted by s. 11 (d) of the Local Government (Amendment) Act, 1927).

D. *The Position of Persons dealing with the Registered Proprietor.*

The position of persons dealing with the registered proprietor is governed by s. 43—perhaps the most important section in the whole Act. The protection which this section affords the person “contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest” extends even to immunity from the effect of notice. It has been held, however, that the protection afforded a person by the terms of the section only applies when his title has been completed by registration: *Baker’s Creek Consolidated Gold Mining Co. v. Hack* (1894) (15 L.R. (Eq.) 207); *Templeton v. Leviathan Proprietary Ltd.* ( (1921) 30 C.L.R. 34).

The section itself contains an express exception to its



operation—"Except in the case of fraud." "By fraud in these Acts is meant actual fraud, i.e., dishonesty of some sort": *Assets Co. Ltd. v. Mere Roihi* (1905) A.C. 176). The same case is authority for the proposition that the fraud which must be proved is fraud on the part of the person, or agent of the person, whose registered title is sought to be impeached. Fraud under the section means something more than mere disregard of rights of which the person sought to be affected had notice: see *Cooke v. The Union Bank* (1893) (14 L.R. (Eq.) 280, 282, (*per Manning, J.*)).

Forgery, being more than fraud, gives rise to considerations peculiar to itself. The leading case on this subject, in regard to dealings under the Act, is *Gibbs v. Messer* (1891) A.C. 248). There their Lordships said, at p. 255: "The protection which the Statute gives to persons transacting on the faith of the register is, by its terms, limited to those who actually deal with and derive right from a proprietor whose name is upon the register. Those who deal, not with the registered proprietor, but with a forger who uses his name, do not transact on the faith of the register; and they cannot by registration of a forged deed acquire a valid title in their own person, although the fact of their being registered will enable them to pass a valid right to third parties who purchase from them in good faith and for onerous consideration."

The Court of Appeal in New Zealand, in *Boyd v. Mayor, &c. of Wellington* (1924) N.Z.L.R. 1174) refused to apply the principles in *Gibbs v. Messer* to the case of transfers void for reasons other than forgery in view of certain *dicta* in *Assets Co. Ltd. v. Mere Roihi* (*supra*).

The recent case of *Clements v. Ellis* (1934) V.L.R. 54); on appeal (1934) V.L.R. 233) is one which merits the closest consideration; unfortunately the fact that, on appeal, the Justices of the High Court were evenly divided on the question at issue, thus leaving the decision of *Lowe, J.*, in the court below undisturbed, somewhat detracts from its value as an authority. Taking the decision as it stands, it draws a distinction, most important in practice (see article in 9 A.L.J. 48), between a person who deals with a registered proprietor

upon the faith of an existing state of the register, and one who deals with such proprietor on the basis that upon the registration of a certain instrument he will be registered as proprietor free from incumbrance.

#### E. Unregistered Interests.

With regard to unregistered interests, it is clear that questions of priorities between these are to be decided on general principles of equity jurisprudence: see *Hogg on The Registration of Title to Land throughout the Empire*, pp. 125-127, a passage approved by Knox, C.J., in *Templeton v. Leviathan Proprietary Ltd.* (1921) (30 C.L.R. 34, 54, 55). Nevertheless questions have arisen in particular cases, the difficulty of which may be gauged by the divergent views expressed by the judges in dealing with them. The subject is too large and intricate to be pursued here, but reference may be made (*inter alia*) to the following cases: *O'Keefe v. Lynch* (1927) Q.S.R. 270, overruled in *Lynch v. O'Keefe* (1930) (Q.S.R. 74); and *Lapin v. Abigail* (1929-1930) (44 C.L.R. 166), reversing *Lapin v. Heavener* (1929) (29 S.R. 514), and itself afterwards reversed by the Privy Council in *Abigail v. Lapin; Lapin v. Abigail* (1934) (A.C. 491).

Section 43A (1) of the Real Property Act, inserted by the Conveyancing (Amendment) Act, 1930, was doubtless intended to give some degree of protection, even before registration, to persons taking under registrable instruments. It provides that "For the purpose only of protection against notice, the estate or interest . . . taken by a person under an instrument registrable . . . under this Act shall, before registration of that instrument, be deemed to be a legal estate." Elsewhere (see article in 6 A.L.J. 85) the writer has expressed an opinion as to the meaning of s. 43A (1), but so far as he is aware the section has not yet been the subject of judicial interpretation.

#### E. Caveats.

An important feature of the Real Property Act is the provision it makes for the lodging of caveats against dealings.



The caveat has been said to be "nothing more than a statutory injunction to keep the property *in statu quo* until the Court has had an opportunity of discovering what are the rights of the parties": *per Owen, J.*, in *In re Hitchcock* (1900) (17 W.N. 62, 63). As pointed out by *Isaacs, J.*, in *Barry v. Heider* (1914) (19 C.L.R. 197, 219), caveats are lodged, not registered. It follows that they take effect from the time of lodgment, and not of entry in the register-book. Under s. 74, in its original form, so long as any caveat remained in force the Registrar-General was absolutely forbidden to enter in the register-book any memorandum of transfer or other instrument purporting to transfer or otherwise deal with or affect the land, estate or interest in respect to which such caveat was lodged. Although the general public did not suspect it, this provision endangered in a vital point the security afforded by the Torrens System. A purchaser might have taken every possible precaution—he might have carried his searches right up to the very moment of completion—and yet, *after* the lodgment of his transfer and in the interval that must necessarily elapse before it could be registered, a caveat might have been lodged forbidding such registration. His position in such a case would have been that of an unregistered person, and he might have found himself postponed to the caveator, if the latter had the prior equity. To cure this defect, a proviso to s. 74 was added by the Conveyancing (Amendment) Act, 1930. The proviso enacts that nothing in the section shall prevent the entry in the register-book of a memorandum of transfer or other instrument presented for registration before and awaiting registration at the time of the lodgment of the caveat and not afterwards withdrawn.

P. R. WATTS.



## EQUITY

By B. P. Macfarlan, B.A., LL.B.

On an occasion when he was speaking of the principles of equity, Sir George Jessel, M.R., is reported to have said that it was perfectly well known "that they have been established from time to time" and that it was frequently possible to say when particular principles "were invented" and "for what purpose" *In re Hallett's Estate* ((1879), 13 Ch.D. 696, at p. 710). Although Equity since 1890 is under review, there is, it seems, no important decision in that year which gave rise to any new principle and would form a convenient point from which to commence a review of equity. It is intended, therefore, merely to adopt this date as the commencement of a period, ending with the present day, and to draw attention to some, though not all, of the tendencies and matters of interest that are apparent on a consideration of equity in New South Wales. Accordingly the article is not intended to be either an historically complete or a strictly chronological account of the development of equity.

At the outset it is useful to notice that neither in 1890, nor since, has a system similar to that created by the Judicature Acts, 1873-1875, been adopted in New South Wales. This fact, though generally appreciated by the lawyers who practised in New South Wales at the commencement of the period, occasioned differences of opinion among those, who, trained under the Judicature system in other States, were subsequently required to consider the relation of law and equity in New South Wales. Questions of this nature faced the justices of the High Court soon after its establishment in 1903. Emphatic dicta fell from some members of this court, that the Supreme Court of New South Wales with its various jurisdictions was but one court, and that if by chance, or by design, a proceeding were commenced in the wrong jurisdiction, then that was merely an irregularity which could be, and should be, cured by the order of

the presiding judge *Maiden v. Maiden* ((1908) 7 C.L.R. 727). This doctrine, however, did not meet with unqualified approval and was finally rejected by the decision of the High Court itself *David Jones v. Leventhal* ((1927) 40 C.L.R. 357). The position, therefore, in New South Wales, so far as concerns the general scope and arrangement of equity jurisdiction, is very similar to that in England prior to the enactment of the Judicature Acts. The equity jurisdiction and the common-law jurisdiction of the Supreme Court are as much separate jurisdictions as were formerly the Court of Chancery on the one hand and the Courts of Kings Bench, Common Pleas and Exchequer on the other. As the badge of entry to the Chancellor's Court was formerly the possession of an equity, so to-day a plaintiff may not obtain equitable relief, nor will his suit be so much as entertained, unless he can allege some fact or circumstance in his favour, that would, according to the settled principles of equity, have attracted the intervention of the Chancellor's Court. (*David Jones Ltd. v. Leventhal* (*supra*)). But just as before the Judicature Acts in England, Lord Cairns' Act and Rolt's Act had conferred on the Court of Chancery powers of a new, but necessary nature, so, the present administration of equity is assisted by the existence of similar provisions (Equity Act 1901—sec. 8, power to determine legal titles arising incidentally in an equity suit; sec. 9;—power to award damages in addition to or in substitution for other relief; sec. 10, power to make declaratory decrees whether any consequential relief is or could be claimed or not).

When estimating the present position in New South Wales, the fact should not be overlooked, however, that some changes that were wrought in England by means of the Judicature Acts have been effected here in other ways. The Equity Act, 1901, sec. 16, provides that the court may, by interlocutory order, grant an injunction or appoint a receiver in all cases in which it appears to the court to be "just or convenient." This section is substantially identical with sec. 25 (8) of the Judicature Act, 1873 (subsequently repealed but re-enacted). The practical effect of this section may now



be seen in the power of the court to appoint a receiver at the instance of a legal mortgagee, instead of leaving him, as formerly, to exercise and enforce at law the rights which possession of the legal estate conferred upon him.

Other changes of a similar character were made as from 1st July, 1920, by the Conveyancing Act, 1919-1939. Sec. 13, corresponding in its terms to a section of the Judicature Act, provides that stipulations in contracts as to time being of the essence of the contract shall receive in all courts the same construction and effect as they would in a court of equity. Sec. 12, adopting the words of sec. 25 (6) of the Judicature Act, 1873 (itself repealed but re-enacted), now provides that a legal chose in action may be assigned at law, as well as in equity. The indirect consequence of this section on the application of equitable principles in New South Wales is that consideration must now be given before the Equity Court will perfect an equitable assignment of a legal chose in action.

In addition to these illustrations of what has been achieved by statute, it is interesting to notice that a similar result has also been reached by judicial decision. In *Craddock Brothers v. Hunt* ((1923) 2 Ch. 136), the Court of Appeal decided that since the Judicature Acts the High Court of Justice has jurisdiction to grant, in the one action, rectification of a written agreement and specific performance of that agreement as rectified, notwithstanding that there is no instrument in writing to evidence the agreement other than the rectified document. It has now been held by *Long Innes, J.*, that the Equity Court in New South Wales may grant similar relief *Montgomery v. Beeby* ((1930) 30 S.R. 394) and that the source of the court's power is to be found in sec. 25 of the Equity Act, 1901.

In 1900 for the first time in New South Wales the practice of instituting suits by way of originating summons was introduced (sec. 10 (2) of the Supreme Court Procedure Act, 1900, repealed and re-enacted by sec. 22 (2) of the Equity Act, 1901). This procedure, which provides for the reception of evidence mainly by affidavit, achieves the double



merit of being shorter and cheaper than a suit instituted by statement of claim. Its use is, at present, confined to the purposes stated in the fourth schedule to the Equity Act. These purposes include, among others, the construction of a deed, will or other written instrument, and obtaining a decretal order for foreclosure or redemption of a mortgage. In practice the originating summons is used more frequently for the purpose of construing a will than for any other purpose. Resort may also be had to this procedure for the purpose of determining questions between vendor and purchaser (not being questions as to the validity of the contract). In this respect the originating summons serves a similar purpose to the vendor and purchaser summons in England. In all these cases, however, it is essential that the suit should be supported by an equity in the sense to which reference has previously been made.

In 1931, a new rule, rule 8A, was included in the originating summons rules. This rule provides that where a person desires an immediate injunction or the immediate appointment of a receiver, he may apply to the court by originating summons supported by affidavits stating the facts on which he relies. This is a shorter and much more convenient method of obtaining this class of order than first commencing a suit by statement of claim and then filing a notice of motion and affidavits in support.

Since 1st March, 1926, a procedure even simpler than originating summons has been available for some purposes to trustees. By sec. 63 of the Trustee Act, 1925-1938, a trustee may by summons in chambers seek the opinion, advice, or direction of the judge, or in the case of small estates, the Master in Equity, and if he acts in accordance with such advice and in good faith shall be deemed to have discharged his duty as trustee. Other sections of this same act, some of which will be referred to later, permit a trustee to approach the court by summons under the Act instead of originating summons. These provisions of the Trustee Act, however, are limited to cases where the applicant is a trustee.

Since 1890 an outstanding feature of New South Wales

equity has been the large increase in the administrative powers of the court, and the increasingly large part of the court's time that the exercise of these powers is occupying. As a matter of history, it is well known that the exercise of the Chancellor's jurisdiction was discretionary, though as time went on there came into existence a settled body of rules regulating the exercise of this discretion. In this way there grew up the body of principles which are familiarly known as "the principles of equity" and which are still constantly invoked and applied. But, in addition, there has by statute been given to the court a discretion in the administration of many matters and in particular of trust estates and the estates of deceased persons. It would appear that the policy of the legislature is to give the court a very wide discretion in these matters, and to impose no further restrictions on its exercise than that the order should, in one instance, be "expedient" or, in another, make "adequate provision for proper maintenance education and advancement." An instance of this is to be found in sec. 81 of the Trustee Act 1925-1938. This section enlarges the inherent "emergency" jurisdiction of the Equity Court, and empowers it to authorize the trustee to do any act or abstain from doing any act which the court considers expedient in the interests of the trust as a whole (including the authorization of what, apart from the order, would be a breach of trust.) Under this and other sections of the Trustee Act, applications may be, and frequently are, made to the court to sanction advantageous transactions or permit of sales where otherwise no power existed in the trust instrument.

This same influence is equally marked in the jurisdiction, which in 1916 was conferred on the court, to alter the will of a deceased person in the interests of certain near relatives. By the Testators Family Maintenance and Guardianship of Infants Act, 1916-1938, the court is given power to vary a testator's dispositions in cases where a wife, husband or child has been left without adequate provision for his or her proper maintenance, education or advancement. In 1938 this Act was amended to confer power on the court to vary, by



the application of similar principles, the share or shares which a widow of an intestate takes according to the ordinary law applicable to intestacy.

A consideration of these illustrations indicates that a modern trend in the work of the equity court is to administer, and where necessary in the interests of justice, to vary the provisions of the instruments before the court. The mode by which the court approaches these duties is not necessarily by an application of the historic principles of equity, but rather by a consideration of the merits of each individual case. It is suggested that in making the "just" order, or in doing what "a wise and just, rather than a fond and foolish husband or father" would have done, the court is acting in a manner that was not unfamiliar to the early Chancellors, who, in granting relief, did so according to the dictates of the King's conscience.

It is convenient here to refer to the change made by the Guardianship of Infants Act, 1934, in the application of the principles applied by the Equity Court in relation to infants. By that Act it is provided that in determining applications for the custody of children the court shall have regard to the claims of the mother as well of the father, and that in all cases the final determination of the question shall be in accordance with the welfare of the child.

Another example of a modern tendency is to be found in those statutes which relieve the court of certain branches of work that formerly came before it. Of this kind are the provisions of sec. 43 of the Trustee Act 1925-1938, authorizing trustees, without reference to the court and at their sole discretion, to make allowances out of income to infants where it is necessary for their maintenance, education or advancement. Of a similar character are the provisions of secs. 6 and 8 of the same Act, which permit the appointment or retirement of trustees by the execution and registration of a deed.

The system of registration of land with the object of conferring an indefeasible title is one of particular interest to all Australians. In the State of New South Wales the



system is given statutory recognition in the Real Property Act, 1900 (repealing and re-enacting certain earlier statutes). The operation of equity upon this system was probably never envisaged by its author, Sir Robert Torrens. The Act provides that, except in the case of fraud, the registered proprietor shall not upon registration be affected by notice of any unregistered interest, notwithstanding that he may have acquired this notice prior to registration. Courts of Equity, however, decree that, before registration, they will as between various persons claiming an interest in the land regard them as the holders of equitable interests, and enforce their respective equities. In determining these equities, the court applies such of its principles as are applicable to determine issues raised in the exercise of its ordinary jurisdiction. The decisions of the High Court in *Barry v. Heider* ((1914) 19 C.L.R. 197) and *Butler v. Fairclough* ((1917) 23 C.L.R. 78) are illustrations of this point. This method of approach subsequently received the approval of the Privy Council in *Great West Permanent Loan Company v. Friesen* ((1925) A.C. 208), when the opinion of the Judicial Committee was delivered by the Right Honourable Sir *Adrian Knox*, then the Chief Justice of the High Court of Australia, and formerly a distinguished practitioner at the Equity Bar of this State. It seems that the statute has created a new scope for the application of existing principles, rather than been the means of creating new principles. Over and above this aspect of the Torrens system, the Real Property Act, 1900, confers on "the Court" powers in relation to the extension of caveats, the determination of disputed questions between a caveator and a person who has lodged an instrument for registration, and other similar matters. This class of questions used formerly to be dealt with by the Full Court of the Supreme Court, but since 1900 they may be, and in practice generally are, entertained by the Equity Court.

In New South Wales, applications required to be made to the court in matters relating to companies are made to the Chief Judge in Equity. During the period under review, the two main statutes that have been passed are the Companies

Act, 1899, and the Companies Act, 1936, the latter of which repealed the former. Each of these Acts has been a step by the legislature towards assimilation of the local law to the law in England and in each case it has been taken some time after its English model. The present Act of 1936 is very similar to the English Act of 1929 and confers an extensive jurisdiction on the judges of the equity jurisdiction. There are included, in the wide range of powers conferred in this way, power to summon general meetings of the company, to approve a compromise between the company and a class of creditors or a class of contributories, to make an order for the compulsory winding up of a company and to determine questions arising in a voluntary winding up, and many others.

It will be seen that the scope of the equity jurisdiction has been greatly enlarged in the various ways to which reference has been made. On the other hand it would seem that there has, with a few exceptions, been very little local development in the body of principles which are historically associated with the Chancellor and his court, and which have been adopted and applied in this State. In the main, the courts of New South Wales have followed along the lines marked out by the English judges. In some instances, however, the step forward has been taken in advance of the English courts. In *Wright v. New Zealand Farmers' Co-operative Association of Canterbury Limited* ((1939) 55 T.L.R. 673) the Judicial Committee of the Privy Council decided that a mortgagee, who in exercise of his power of sale had entered into a contract, and then had lawfully rescinded before receiving any part of the purchase money, and thereafter entered into a second contract at a lower price than the first, was not accountable to the mortgagor for the price for which the property was contracted to be sold under the first contract. In delivering the opinion of the Judicial Committee, Lord Russell of Killowen, after drawing attention to the lack of authority on the point, said: "The last point has been decided, and their Lordships think, rightly decided, by the Courts in New South Wales (*Irving v. Commercial Banking Company of*



Sydney ((1878) 19 N.S.W.L.R. (Eq.) 54)" Furthermore, in *Nelan v. Downes* ((1917) 23 C.L.R. 546), the High Court decided that a trust for the purpose of saying masses was not illegal and was capable of being a good charitable gift, thus anticipating by nearly two years a result achieved by the House of Lords in *Bourne v. Keane* ((1919) A.C. 815).

It is also of interest to notice that a point on which text-writers in England have exhibited a diversity of opinion forms the subject of an express decision in this State. In *Thomas v. Harper* ((1935) 36 S.R. 142), *Long Innes, C.J.*, in Eq., decided that "want of mutuality" is a defence to a suit for specific performance, thereby giving judicial recognition to the views expressed by Lord Justice *Fry* and *Hanbury*.

Finally, there should be noticed the importance of the High Court of Australia in relation to the individual subjects with which equity deals. The source of this influence lies in the fact, among others, that since the creation of the court in 1903, an appeal may be brought direct to it from the Equity Court without the intervention of the State Full Court; and also in the fact that the High Court, being a court of appeal from the Supreme Court of each of the States of the Commonwealth, is frequently required to consider questions of equity doctrine arising in those States, and the pronouncements of the court on those questions are regarded as authoritative on similar questions arising in this State. It is impossible within the limits of an article of this nature to draw attention to particular instances of this court's treatment of equity, but from what has been written above it will be apparent that the decisions of this court exercise and will continue to exercise in the future, a very considerable influence on the course of equitable doctrine and practice in New South Wales.

B. P. MACFARLAN.



## CONTRACTS, MERCANTILE LAW AND TORTS

By B. Sugerman, LL.B.

To write a complete history of the law of New South Wales in these subjects for the last fifty years would amount to writing a history of these branches of English law for that period. The accomplishment of such a task in a bare three thousand words would require the skill of a Maitland. The present writer is grateful that he is not called upon to attempt it. For the present article, like others of this series, is designed to sketch only the development of the law in New South Wales by the decisions of the courts, and the enactments of the legislature, of that State.

Such a sketch will necessarily be deficient in form; it may exhibit a detail here and there, but the background of the development of the common law as a whole will be lacking. The justification for attempting it, notwithstanding its incompleteness and formlessness, is that the growth of the law of this State for fifty years is in a sense part of the history of the Law School of this State.

In the general law of contracts, it is difficult to point to any outstanding local decisions during our period. True it is that a great number of cases have been decided and reported and of these many have gone on appeal to the High Court and the Judicial Committee. But for the most part they are concerned with typical questions such as are constantly arising in practice; for instance, whether as a result of certain negotiations there is a concluded contract, or whether a particular transaction falls within the fourth section of the Statute of Frauds. Decisions of this class are of great interest and value to the profession (except, perhaps, where they are reported in such numbers as to give rise to the danger of obscuring of principle with detail) but fall outside the scope of this review.

It is no doubt true that certain portions of the law of contract may require recasting to cope adequately with modern mercantile practice, e.g., certain rules as to consideration

and the position of persons not parties to a contract. The principles of the general law of contracts are, however, in large part too well settled to permit of such changes without the intervention of the legislature. The Law Revision Committee in England has, indeed, recommended far-reaching alteration of the law in regard to, *inter alia*, consideration, requirements of writing, and the position of third parties. But Parliament has not acted upon these recommendations with the same promptitude as in the case of most other recommendations of the same body; possibly it has been felt that the recommendations affect the law too fundamentally to be carried out in their entirety. The settled state of the principles applicable to many types of case which commonly arise in practice explains the absence of notable decisions.

It cannot be said, of course, that the law of contracts is finally settled in all its branches. Some fields remain open for exploration. Thus certain aspects of quasi-contract have been recently much considered both by the courts and by learned writers in legal periodicals, and our own courts have recently furnished a somewhat striking illustration of the scope of the action for money had and received—*James v. Oxley* (61 C.L.R. 433). Another portion of the law which cannot be said to have been reduced to a body of settled principles is that relating to illegal and void contracts; *McFarlane v. Daniell* (38 S.R. 337), dealing with severability of consideration, is a recent local decision in this field. It is possible that, even if we cannot expect drastic legislative alterations in the law of contracts, we may see in the next few years an investigation of these and other subjects such as has been so outstanding in the recent development of the law of torts.

It is probably as much beyond the scope of this review to deal with decisions of the High Court on appeal from States other than New South Wales as it is to deal with decisions in England and other parts of the Empire. Two perhaps may be mentioned:—*The Crown v. Clarke* (40 C.L.R. 227); settling a famous controversy with respect to the right to claim a reward and *Perpetual Executors and Trustees Asso-*



*ciation of Australia Ltd. v. Russell* (45 C.L.R. 146), an important decision on the availability of the Statute of Frauds as a defence.

Of legislation affecting the general law of contracts there has been but little during the period under review, apart from mere consolidations of previous legislation.

The Conveyancing Act, 1919-1938, was an act to consolidate and amend the law of *property*; it affects the general law of contracts in three ways:—(i) by certain novel enactments—novel, at any rate so far as the law of England is concerned—such as the provisions of s. 38 requiring a deed to be signed and attested and enabling the formality of sealing to be dispensed with; (ii) by the recasting in modern form, on the model of the English legislation of 1925, of certain old Statutes, e.g., s. 54A re-enacting so much of the fourth section of the Statute of Frauds as relates to contracts for the sale or other disposition of land or any interest in land; and (iii) by the somewhat belated adoption of certain provisions of the Judicature Act, notably the provision as to assignability of choses in action (Conveyancing Act, s. 12).

So far, our legislature has no more acted upon the recommendations of the English Law Revision Committee on the law of contracts (including those which have been adopted by the British Parliament) than it has on those affecting the law of torts. Thus the provisions of the Law Reform (Miscellaneous Provisions) Act 1934, for the awarding of interest on a debt or damages have as yet had no counterpart here; there has been less time to consider the consolidation of the law with respect to limitation of actions effected in England by the Limitation Act passed last year.

By mercantile law in this brief review is meant the law relating to sale of goods, bills of exchange and promissory notes, insurance in its various forms, partnership, carriage of goods and other mercantile contracts.

It is familiar ground that the period under review has been one of codification in these branches of the law, and that with slight variations all the English codes have been adopted by the legislature of New South Wales or become operative in



that State by virtue of their adoption by the Commonwealth Parliament. Thus the Bills of Exchange Act, 1882, was, in 1887, shortly before the commencement of our period, adopted by the Bills of Exchange Act of that year (which ceased to apply on the commencement of the Commonwealth Act of 1909). The Partnership Act 1890, was adopted two years later. The Marine Insurance Act, 1906, was adopted by the Commonwealth in 1909; other forms of insurance have been little affected by legislation although in 1938 prompt action was taken (by the Life Fire and Marine Insurance (Amendment) Act of that year) to avoid the effect of the decision in *Beresford v. Royal Insurance Co.* (1938) A.C. 586, precluding, on grounds of public policy, recovery on the suicide of the life assured. The Sale of Goods Act was not adopted quite so promptly, thirty years elapsing before, in 1923, the English Act was copied in New South Wales. The Commonwealth Sea Carriage of Goods Act, 1924, like the English Act of the same year, adopts the Hague Rules of 1921; at about the time those rules were promulgated, the New South Wales Parliament had passed its Sea Carriage of Goods Act, 1921, based on the Commonwealth Act of 1904, and it has not as yet adopted the more modern legislation.

Much has been done in England in the way of interpreting these codes since their promulgation. Thus, in relation to sale of goods, a body of case law has grown up round the provisions of the code as to implied conditions of quality and fitness. The principal contribution of New South Wales to this has been not a case from that State but the dissenting judgment of a New South Wales lawyer on the High Court bench in a case from another State—*Australian Knitting Mills v. Grant* (50 C.L.R. 387); the majority judgment was reversed by the Judicial Committee—*Grant v. Australian Knitting Mills* ((1935) A.C. 85). The problems which the hire-purchase agreement has brought in its wake, both as to the applicability of the implied conditions in that form of agreement and the mode of their exclusion by express contract have, however, been considered in a series of decisions of the Supreme Court—see *Criss v. Alexander* (28 S.R. 297);

*Gemmell Power Farming Co. Ltd. v. Nies* (35 S.R. 469); *Mulray v. Henry Berry & Co. Pty. Ltd.* (38 S.R. 389).

As to bills of exchange and banking, two decisions on appeal from the Supreme Court of New South Wales—*Commissioners of Taxation v. English, Scottish and Australian Bank* ((1920) A.C. 683) in the Privy Council, and *London Bank of Australia Ltd. v. Kendall* (28 C.L.R. 401) in the High Court—have become important decisions, frequently quoted, on the liabilities of a collecting banker. *Marshall v. Colonial Bank* ((1906) A.C. 559), which went to the Privy Council on the question of the right of a bank to debit its customer's account with the full amount of a fraudulently altered cheque, has given rise to difficulties, the House of Lords having later taken a different view—see *London Joint Stock Bank v. McMillan* ((1918) A.C. 777).

Decisions on the law of torts have been so numerous, and have included so many cases of outstanding importance, as to make somewhat embarrassing the task of selecting those which should be mentioned in a brief review of the period. Chronological order may be perhaps disregarded, and in the forefront mention be made of *Victoria Park Racing and Recreation Grounds Company Ltd. v. Taylor* (58 C.L.R. 479), an excellent illustration of the type of problem which science and invention are setting law and of the diversity of opinion which is possible thereon. The plaintiff complained of the broadcasting from adjoining land, without the plaintiff's permission, of a description of horse races conducted on the plaintiff's land, with resulting diminution in attendance at the plaintiff's race meetings and consequent loss to the plaintiff. The majority held that there was no cause of action in nuisance or otherwise; the dissenting judges considered the wrong of nuisance to be wide enough in scope to include the conduct complained of. This and other cases indicate the reluctance of our courts to adopt the views of a number of modern text-writers who argue for the existence of a general principle of liability for harm.

The strides which have been made in medicine in the investigation and treatment of nervous and mental disorders



have been paralleled in law by an increasing interest in the question of nervous shock as affording a cause of action against the person whose action caused it. Medical science has progressed very far since the decision of the Judicial Committee in *Victorian Railway Commissioner v. Gaultas* (13 A.C. 222) and the danger of admitting a flood of imaginary claims is no longer acute; in fact it is now recognized that many such claims are as little imaginary as a claim in respect of a broken leg. But admitting reality of damage, existence and breach of duty, which must also be established, give rise to questions of a most difficult and delicate nature; it is in the establishment of the existence and breach of a duty that plaintiffs in our courts have, but not without dissent, failed so far (*Bunyan v. Jordan* (57 C.L.R. 1); *Chester v. Municipality of Waverley* (62 C.L.R.1); contrast *Barnes v. Commonwealth of Australia* (37 S.R. 511)). The shadow of *Victorian Railway Commissioner v. Coultas* (*supra*) still lies, perhaps not very darkly, across this branch of the law; our legislature has not followed Victoria in the desirable course of removing it by Statute.

Divergence of opinion between the courts here and in England is perhaps more to be expected in the law of torts than in other parts of the law. Thus, confining ourselves to cases which have originated in New South Wales, we find in *Cowell v. Rosehill Racecourse Co. Ltd.* (56 C.L.R. 605) the High Court, again not without dissent, refusing to follow a decision of the Court of Appeal which has stood so long as *Hurst v. Picture Theatres Ltd.* ( (1915) 1 K.B. 1). On the other hand the House of Lords has recently declined to follow *Bourke v. Butterfield and Lewis* (38 C.L.R. 354) on contributory negligence as a defence to an action for breach of statutory duty—*Caswell v. Powell Duffryn Associated Collieries Ltd.* (55 T.L.R. 1004).

The sufficiency of evidence of negligence, and the affixing of liability upon one party or the other where there has been negligence on both sides, are problems which arise over and over again and on which differences of opinion on the facts of individual cases must continually arise. The cases



over the past fifty years are too numerous and confusing to render profitable any attempt to deal in the space available with those which belong to New South Wales. Freedom from these difficulties may perhaps yet be found by the legislature's following the lead which has been given in some jurisdictions and applying the Admiralty principle to common-law claims or even, as has been suggested in some quarters, by the adoption of a principle of absolute liability in certain classes of cases.

Defamation, malicious prosecution, false imprisonment and conspiracy to injure are amongst other wrongs which have been the subject of notable local decisions during our period. In defamation, to take one amongst many points, the denial of qualified privilege to the reports of trade protection societies *Macintosh v. Dun* (1908) A.C. 390 led to an alteration of the law, now embodied in section 30 of the Defamation Act, 1912. In malicious prosecution, the decision in *Davis v. Gell* (35 C.L.R. 275) was long thought to add to the elements otherwise regarded as necessary to be proved a further one, i.e., the plaintiff's innocence of the crime for which he is prosecuted; *Davis v. Gell*, however, can now be regarded as supportable only on narrow grounds *Brain v. Commonwealth Life Assurance Co.* (53 C.L.R. 343) if at all. As to false imprisonment, mention may be made of the famous case of *Robinson v. Balmain New Ferry Co.* (1910) A. C. 295. *McKernan v. Fraser* (46 C.L.R. 343), the most notable case on conspiracy to injure, was not a New South Wales case but contains an outstanding contribution to the learning on the subject in the judgment of Evatt, J.

Leaving specific torts, and adverting to general principles of liability in tort we may refer to two matters:—(i) the heavier onus of proof which is placed in a series of local decisions upon a plaintiff alleging the relationship of master and servant between the defendant and the person by whom the plaintiff was injured e.g., *Ferguson v. Wagner* (27 S.R. 9); and (ii) the uncertainty, which still exists, whether a husband is still liable to be joined in an action for the tort of his wife (see *Hall v. Wilkins* (33 S.R. 220)).

A bill to remove any such liability as is last mentioned was introduced some years ago, but not proceeded with. In England this and certain other principles of the law of torts which were thought by the Law Revision Committee to be anomalous were dealt with by the Law Reform (Married Women and Tortfeasors) Act, 1935. So too, in England, the principle *actio personalis moritur cum persona* has been almost entirely abrogated (Law Reform (Miscellaneous Provisions) Act, 1934); in New South Wales, the only encroachment upon that principle made in the past fifty years has been the rather anomalous exception made by the Compensation to Relatives (Amendment) Act, 1928 (cause of action under Lord Campbell's Act survives death of wrongdoer).

Save for the enactments already mentioned, and the abolition of the doctrine of common employment by the Workers' Compensation Act, 1926, there has been no legislation (other than consolidating Acts) in New South Wales to change any of the common-law principles of the law of torts.

While, as forecast in opening, the above notes have of necessity been fragmentary, it may be said (i) that, as regards case law in New South Wales, the period has on the whole been one of quiescence in contracts but of considerable activity in torts, and (ii), that in both branches, and apart from the great codifications, the legislature has contributed little to either branch of the law. The last statement is intended, of course, to be limited to legislation directed to the alteration of general principles. Legislation directed towards other objects has had far-reaching effects on both branches of the law, in removing in large part, certain relationships (particularly that of employer and employee) from the operation of the law of contracts and in creating statutory duties enforceable by an action in tort. These matters, however, fall more properly within the scope of other articles in this series.

Enough has been said to show both that there are matters requiring attention at the hands of the legislature and that there is to be found in the recommendations of the Law Revision Committee, valuable guidance which should not be too long disregarded. While great progress has been made



in the simplification of, and the removal of anomalies in, the law of property, practically nothing has been done in those branches of the law with which this article is concerned. The necessity of following the lead of New Zealand in setting up a permanent Law Revision Committee on the English model, and of the legislature's giving prompt consideration to its recommendations, cannot be too greatly stressed. Both the committees mentioned include representatives of the law schools amongst their members; here is a field in which our own Law School might also perform a function of great urgency and public importance.

B. SUGERMAN.

### SOCIAL LEGISLATION

By R. O. McGechan, B.A., LL.B.

There are two difficulties in the way of any short account of social legislation in New South Wales during the last fifty years, the content of social legislation, and the fact that those years are by no means a self-contained unit where one continuous trend can be seen to originate and develop.

All legislation is in a very real sense social legislation. Development in the law of Property, such as the Conveyancing Act, 1919-1932, aiming at simplifying the law relating to the buying and selling of land, is social legislation, based on the view that greater fluidity in property is a social good. Still more obviously "social" is legislation interfering with the law of testate and intestate succession, including the Testator's Family Maintenance Act, 1916, recently applied to intestate as well as testate estates, and the recent amendment of the Wills Probate and Administration Act, 1898, to give the widow in cases of total intestacy and no issue a preferential right to £1000. This legislation is clearly based on social policy in respect of care of dependants left on a person's decease. Equally can bankruptcy, company and divorce legislation or the lack of



these be regarded as expressing social trends of greater or less importance and therefore as social legislation (or lack of legislation). A constitutional amendment, even, since it may shift the balance of power in a community can be regarded as social legislation. In this wide sense social legislation includes all legislation which affects the lives of the people; as nearly all legislation does this nearly all legislation is social legislation.

I regard my present task as a much narrower one. Much of the legislation I have referred to is already the subject of other articles in this very Jubilee book. My task is concerned with a residue of legislation—a Cinderella of legislation so far as the teaching of law is concerned—often referred to by the name of social legislation. The term means, as I understand it, legislation which affects the lives of the people but is not concerned with the law of property, equity, contracts, torts, bankruptcy, probate, divorce, the constitution, all of them well established branches of legal study. But even this in Sydney will not quite define such legislation, because industrial arbitration, indubitably social legislation, is included therein even though now made the subject of systematic legal study.

The other difficulty, the absence of anything in the nature of an historic period in respect of social legislation in the last fifty years, is even greater. Many types of social legislation were already established in 1890 and have only expanded since; there is not so much that is really fresh in the last two generations. Education in New South Wales is governed by the Public Instruction Act, 1880, amended since, it is true, but not altered in its main scheme or principal details. There has been an enormous increase in the volume and scope of public instruction, but the enabling legislation all antedates 1890. Even older is most paternal legislation, in which term I include those Acts of Parliament which aim at whatever the legislature consider uplifts the moral tone of the community. Typical is the Theatres and Public Halls Act, 1908, s. 27: "The Minister, whenever he is of opinion that it is fitting for the preservation of good manners and decorum, so to do may

... by writing under his hand, prohibit or regulate the holding of any public entertainment." Legislation of this type has its origin in the remote past of Australian history—this particular Act in "An act for regulating Places of Public Exhibition and Entertainment" being 9 Geo. IV. No. 14, the preamble of which reads: "Whereas it is expedient that provision should be made for guarding against the evil consequences which the unrestricted power of opening places of public exhibition and entertainment in the present circumstances of the Colony must necessarily produce." The circumstances of 1828 control to a very large extent some portion of our social legislation to-day: true if you broke the law so enacted to-day you would be no longer a rogue and a vagabond as you would have been in 1828, but the last fifty years have not greatly changed this type of statute. No doubt the law is administered in a different way and with different aims; that turns on the exercise of ministerial discretion and would be difficult to trace even if it were not beyond the scope of an article on legislation.

One would naturally expect any fifty years to retain much of the social legislation of earlier times, merely amplifying, pruning or expanding it to meet the new circumstances which arise. There is nothing remarkable about the amount of legislation still in force which has its roots in the days before 1850 even: what is remarkable is how little we realize that its detail is coloured by the circumstances existing at that time.

Naturally, one turns to directions in which there has been more pronounced development during these years. I propose to deal with this legislation under four headings: (1) Use of increased scientific knowledge; (2) Specialist protection; (3) Industrial legislation; (4) Economic readjustment legislation.

(1) Increased scientific knowledge. As experimental science has discovered ways of combating disease in human beings and plants, the legislature has forced on the community certain lines of conduct calculated to obtain the advantage of these discoveries.

Public health received its modern and comprehensive attention in 1896. There was before that date an Infectious Diseases Act (1881) which showed the trend legislation was



to take. The 1896 Act covered this, prevented building on unhealthy land and, with characteristic legal conservatism, under the heading nuisance provided for the abatement of much that might be injurious to health, polluted water supply, adulterated foods and drugs, dairies, cattle slaughtering; with provision for enforcement by local authorities. The tendency since has been to deal with these matters in separate Acts and to expand and develop all the aspects covered by the 1896 Act.

Agriculture and pastoral occupations have been similarly regimented along scientific lines. There were passed Vine Diseases Acts in the nineties and the Vegetation Diseases Act, 1897, all consolidated in 1901, No. 14, and again in 1912; Diseased Animals and Meat Acts, consolidated in 1902; Diseases in Sheep Acts had extended back to No. 17 Vic. No. 27 at least, but were given further attention in Acts in 1896, and were consolidated in 1901; dairies supervision legislation begins much about this time; there was a Noxious Insects Act, 1934. In all of these from time to time there have been additions as knowledge improved, e.g., fruit pests are dealt with in 1906, No. 37. These Acts do not on the face of them show that their existence depends on increased scientific knowledge: it would not be practicable to set out in detail the means of combating noxious insects in an Act of Parliament, for these would change from time to time as more was learnt. What the Act does is to give power to make regulations prescribing (a) details as to what is to be suppressed and (b) details of the methods to be used in the suppression. See by way of illustration the Noxious Insects Act, 1934, ss. 3 and 4. The increase in executive legislation and in departmental control has been very considerable in consequence of this type of legislation.

The progressive tendency in respect of the agricultural and pastoral sciences is not shown in the application of the more recently increased knowledge in the mental sciences. The provisions made in respect of habitual criminals are quite unscientific; criminal mentality is not made the test; the test is the fact that the person convicted has on two occasions



been convicted of offences of the same class (1905, No. 15, s. 3). Judges are not qualified by training nor have they placed before them material on which to form an opinion whether the convict is an habitual criminal. The same lag in application of scientific knowledge is shown in the inability of the legislature to deal with insanity as a ground for divorce and with irresistible impulse in relation to crime.

(2) Specialist protection. I am using this heading to cover a rather special type of Act designed to protect the trained man and the public alike from the inroads of the untrained charlatan. We have had this in respect of legal and medical practitioners for a very long time: we now have it in respect of dentists (1900), architects (1921), veterinary surgeons (1923), nurses (1924), electricians (1924), surveyors (1929), opticians (1930). These Acts have a fairly uniform pattern: they deal each with a highly specialized employment, requiring knowledge and skill and a lengthy preparatory training, they provide for registration in accordance with standards determined by boards set up for the purpose, and provide penalties for the unauthorized person in some cases doing the specialized work, in other cases advertising himself as qualified to do it either by use of the term used by qualified persons or otherwise. It would be a mistake to suppose that these Acts are paternal legislation in the sense that *Dicey* uses the term in his *Law and Opinion*, i.e. as directed to protecting the gullible against their own gullibility. In fact they aim at efficiency in skilled employment, by both the creation of standards and the grant of privileges to those who attain those standards.

(3) Industrial legislation. This is almost completely the contribution of the last fifty years. The machinery for solving industrial disputes by arbitration first emerged in Wise's Act in 1901. It was not the exclusive contribution of Australia to legal method; in fact it emerged earlier in Canada and New Zealand. Since 1901 it has developed to its present form through the continuous attention of the legislature, and the no less extensive legal creativeness of the judiciary. The details do not concern us, what does challenge explana-

tion is why industrial conditions fail to be determined by the machinery of arbitration and not directly by legislation or the decisions of ordinary courts. The explanation is probably historical. The need to settle industrial disputes as they arose must always have been, as it still is, more obvious to worker than to employer; strikes always outnumber lock-outs. And at the time the need became urgent the Labour Party had not achieved power in politics. The worker therefore preferred the decision of an industrial dispute by some independent judicial or semi-judicial body to the decision of the legislature in which he had little power. Convenience pointed and still points the same way. Parliament could not cope with the law-making awards an Act of Parliament would entail. And there exists the unwillingness of both sides to risk the sort of legislation the other side might bring in. Like much of Australia's political history industrial legislation is partially explained by the unwillingness to give legislatures power for fear the other fellow might use it. There is certainly even now a strong bias against interference by the legislature with working conditions. Beyond the fixing of maximum hours it scarcely ventures.

On the other hand no existing court was so constituted that it could deal with this extraordinary jurisdiction, which involved struggles between classes and groups, and above all decisions which were not the application so much of legal principles to facts as compromises tempered by a vague sense of justice between man and man, and where judges must undertake both the solution of economic problems and the economic construction or reconstruction of the community. The court which has emerged is unique in its attitude towards precedent and admissibility of evidence: it has not burdened itself with rules as to either; it could not and still perform its functions. It is unique in particular in its attention to and its admission of evidence to show the social effects of its proposed decision. Compare the position of the judge in the ordinary courts. Owing to the legal fiction that he is deciding a novel point (which may have quite considerable social effects) by reference to a principle already existing in the law,



he can obtain no evidence as to those social effects: he can do no more than draw on his own limited experience to determine what those effects will be. It will be interesting to see whether this will gradually affect the attitude of other courts.

(4) Economic readjustment legislation. The history of this really commences with the War Precautions (Moratorium) Regulations 1916 of the Commonwealth. The principle behind all moratory legislation is that there are temporary circumstances beyond the control of the persons concerned operating to the prejudice of a class of persons in the community and making that class one deserving humane consideration, which if unchecked will transfer wealth unmeritoriously to another class in the community. The soldier and the soldier's dependants were at an economic disadvantage; the community were under a duty to protect him and not allow him to be bankrupted. His landlord, his mortgagee and his furniture provider must wait. The same principles were applied when not war but economic depression placed unemployed persons in the same jeopardy. The legislation was much more comprehensive in 1930 and subsequent years, but it all fell into this pattern whether it was moratorium, interest reduction, or rent reduction. Sometimes the result is achieved by the litigation of individual cases before the Court and therefore only affecting those persons who take steps to bring themselves within it; sometimes it takes the form of a uniform scaling down of liabilities of a class of persons, e.g., tenants or those paying interest.

There emerges also another aim which is not more than a decade old and probably has its whole development before it. Not only is this legislation thought of as a provision doing justice between the classes concerned, it is regarded as an essential factor in a whole scheme of economic reconstruction. We can study these Acts therefore as so many conscious efforts to apply the science of Economics to economic construction of the community. This class of legislation has been more recently exemplified by various price-fixing regulations of Commonwealth and State.

R. O. McGECHAN.



## DIVORCE

By Colonel W. K. S. Mackenzie, D.S.O., B.A.

The law of divorce in New South Wales would seem to have been almost revolutionized since 1890. This has been due mainly to legislation increasing the grounds for dissolution of marriage, more particularly by the addition of desertion and statutory desertion. Other contributing causes appear to be the change, during and since the War, of judicial and public opinion as to the undesirability of maintaining the marriage tie where there was no possibility of a married couple living together again.

Prior to 1890 the sole grounds for dissolution of marriage in this State were adultery of either spouse, or adultery combined with certain other elements of sexual offences on the part of the husband, but in 1892, by the Act 55 Vict. No. 37, what have been termed "the more liberal grounds" were added. Those grounds are:—(1) desertion for 3 years; (2) habitual drunkenness and neglect of domestic duties by a wife, or non-support or cruelty by a husband, during 3 years; (3) imprisonment under a commuted sentence for a capital crime, etc.; (4) frequent convictions and sentences in the aggregate to imprisonment for 3 years by a husband, etc.; (5) conviction for attempted murder, etc.; (6) repeated assaults and cruel beatings.

Then in 1893, by the Act 56 Vict. No. 36, statutory desertion by reason of failure to comply with a decree for restitution of conjugal rights was created and the right was given forthwith to institute a suit for divorce (or judicial separation) though 3 years may not have elapsed since the failure to comply with the decree.

The result of the right to divorce on the ground of desertion for 3 years and statutory desertion was an immediate striking increase in divorce petitions, and there has been a progressive large increase up to the present time. Returns compiled by the Government Statistician show that whereas in five year period 1888 to 1892 approximately 90 petitions

were filed per year, in the next five years approximately 350 petitions per year. In 1913, 604 petitions, and in 1939, over 2000 petitions were filed. The returns further show that in 1938 out of a total of 1488 decrees absolute granted, 309 were in suits for adultery, 827 for desertion (549 granted to wives) and 252 for statutory desertion. The number of petitions filed on other grounds or in suits other than dissolution were negligible.

Important alterations were made in the practice and procedure in divorce by the Matrimonial Causes (Amendment) Act, 1929, and rules made thereunder, the more important of which has been the delegation to the Registrar (including the Deputy Registrar) of extensive judicial powers, other than the hearing of suit and of matters relating to the liberty of the subject. The effect has been to enable divorce judges to devote practically the whole of their time to the hearing of suits.

Although the divorce law of this State, so far as grounds for dissolution are concerned, was for many years perhaps "the most liberal" in the Commonwealth, in view of divorce legislation of other States passed in recent years, it is questionable whether the term "most liberal" can now be applied to the law of this State.

Reform of the divorce law in various respects has been strenuously advocated during the last twenty years, more particularly at the instance of women of this State. In one respect this State is not in line with all the other States, with the Dominion of New Zealand, and since 1937 with England. New South Wales alone has not "insanity and confinement in a mental institution for a prescribed period and improbability of recovery" as a ground for divorce.

In 1924, a Bill, which *inter alia* provided that "insanity" and also "separation under a decree of judicial separation which has continued in full force and effect for 3 years and upwards prior to the petition" should be grounds for dissolution of marriage, was passed by the Legislative Assembly, but was rejected by the Legislative Council. In 1932 a private Bill providing for "insanity" and "separation in certain cir-



cumstances" as grounds for divorce failed to receive the sanction of Parliament. The call for reform persists, and it is suggested that other matters in the way of reform are worthy of favourable consideration by the Government and legislature of the State, including the extension of the notional statutory domicile of a deserted wife under s. 16 (a) of the Consolidated Act to cover all grounds of divorce, instead of merely desertion; and powers to grant permanent maintenance to a wife in suits for nullity of marriage.

The question arises whether reform, if desirable, can be best effected by Commonwealth legislation providing a uniform body of divorce law for Australia, or by State legislation.

The Commonwealth Parliament under the Constitution Act undoubtedly has power to make uniform laws of marriage and divorce for Australia but, like the Dominion of Canada, it has refrained from doing so, the subject being a highly controversial one. Although in recent years a considerable degree of uniformity in the grounds of divorce has been arrived at in all the States, except Queensland, nevertheless no two States have entirely identical grounds. It should be borne in mind that New South Wales unless supported by the majority of the other States may well lose statutory desertion as a ground of divorce, and probably must lose the benefit of the useful recent reform by way of delegation of judicial powers to the Registrar, which would result in consequential difficulty as in the past in coping with the suit lists in this State.

It is believed that this State alone has an entirely separate Divorce Registry, and that the number of divorce suits listed and dealt with far exceeds that of any other State. Moreover the State legislature can if it so desires effect a considerable measure of reform in the State law of divorce, and at the present time the Commonwealth Government may not see its way to attempt any legislation in divorce.

The question of the creation by the Commonwealth Parliament of an Australian domicile has been advocated. A Bill for such purpose was drafted in 1929, but was not proceeded with. The question has recently again been raised and



has been considered by the Council of the Bar in the various States. Consideration of the matter discloses considerable difficulties. It may be questionable whether a Bill confined to creation of a domicile is within the constitutional powers of the Commonwealth; and in any event a domicile with an unrestricted right for either party to institute proceedings in any State would obviously give opening for considerable hardship and even injustice to a respondent party, particularly the husband who is required to meet the costs of litigation.

The case law of divorce since 1890 is of such a voluminous nature that it will only be possible to refer briefly to a limited number of cases which appear to constitute landmarks in the law of divorce. Generally speaking, the English case law of divorce is applicable to the law in this State, and the principles laid down in English cases have in the main been applied in the development of the law of this State. The main scope for independent development of principles by the State judges, therefore, has been restricted to the more liberal grounds for dissolution, consequently in the period under review the more important cases of general application have been those decided by the English Courts and the High Court of Australia.

In 1895 the Privy Council, in *Le Mesurier v. Le Mesurier* (1895), A. C. 517, in effect set at rest a doubt as to jurisdiction in dissolution of marriage by its decision that domicile affords the only true test of jurisdiction to dissolve a marriage. That test was adopted by the Court of Appeal in *Bater v. Bater-Lowe* (1906) P. 209, and is now the accepted law.

In *Eustace v. Eustace* (1924) P. 45, the Court of Appeal held that domicile is an alternative basis of jurisdiction in suits for judicial separation; and, in *Boardman v. Boardman* (36 S.R. 474), the Full Court determined, so far as this State is concerned, that domicile is sufficient to found jurisdiction in a suit for restitution of conjugal rights, a question reserved for future consideration in *Eustace v. Eustace*.

The question of jurisdiction in suits for nullity of marriage is not yet definitely settled. "Marriage celebrated within the

jurisdiction" has long been an accepted basis of jurisdiction in such suits: *Halsbury*, 1st ed., vol. 6, p. 265, and possibly also residence. In recent years, however, there has been a tendency to assert that domicile is the sole test, instead of merely an alternate basis, of jurisdiction.

It is necessary, however, to make a distinction between void and voidable marriage. In the case of a void marriage the woman does not in law acquire the domicile of the man, but in fact she may have, or may subsequently to the marriage ceremony acquire, the same domicile as the man. In *Salvesen v. Administrator of Austrian Property* (1927) A.C. 641, therefore, where the parties to a marriage void for informality had the same domicile, the House of Lords held that the court of that domicile had jurisdiction to annul the marriage, and notwithstanding a dictum of Lord Phillimore suggesting that the court of the domicile was the only competent court to annul the marriage, the case merely establishes that domicile, if of both parties, is a sufficient basis of jurisdiction.

In *Inverclyde v. Inverclyde* (1930) P. 29, however, a suit for nullity on the ground of impotence, *Bateson J.* held that the decree in such suit in substance was one for dissolution of marriage and was a judgment *in rem* altering the status of the parties, the court of the domicile, therefore, had exclusive jurisdiction to annul the marriage. A marriage merely voidable for impotence, therefore, may perhaps be on a different footing to void marriages or a marriage voidable for consanguinity or affinity, though the decision of *Bateson J.* has been the subject of adverse criticism.

Subsequently to *Salvesen's Case*, *Owen J.* in *Smart v. Maxwell* (47 N.S.W. W.N. 100), held that the court had no jurisdiction to annul marriages void for bigamy in the case where the guilty petitioner (husband) alone was domiciled and resident in, and the marriage had not been celebrated within, the jurisdiction of the court.

The above-mentioned case established that domicile, provided it is the domicile of *both* parties, is a basis of jurisdiction in nullity suits, and may be the exclusive test in suits on the ground of impotence. The question of jurisdiction, however,



has again been made uncertain by two recent English cases, *White v. White* (1937) P. 111, and *Hussein v. Hussein* (1928) P. 139.

In suits for restitution of conjugal rights two important alterations in the pre-existing law have been effected by case law. In the Ecclesiastical Courts (1) a decree for restitution was refused only where the petitioner had committed a matrimonial offence, and (2) the petitioner's sincerity or motives for instituting the suit was never considered.

In *Russell v. Russell* (1895) P. 315, the Court of Appeal held that s. 5 of the Act of 1884 (N.S.W. 11), which creates statutory desertion, had materially altered the old law as to restitution of conjugal rights; and in effect held that by necessary implication the court now had power to refuse a decree for restitution if it appeared that the petitioner's conduct merely afforded reasonable cause for the respondent's remaining away.

The second alteration was the introduction in 1921 of the principle requiring proof of the petitioner's sincerity in seeking restitution of conjugal rights, and the adoption of that principle by the Court of Appeal in *Palmer v. Palmer* (1923) P. 180 and *Harnett v. Harnett* (1924) P. 126. In *Woodlands v. Woodlands* (25 S.R. 260), the Full Court apparently somewhat reluctantly held that it was bound by those decisions.

In suits for dissolution of marriage possibly the most important cases have been those dealing with question of (1) the admissibility of evidence of non-access in proof of a wife's adultery, (2) the exercise of the statutory discretion to grant relief to a petitioner guilty of adultery, and (3) desertion as a ground for relief.

From the foundation of the Divorce Courts a frequent method used in proof of adultery by a wife was the proof of the birth of a child to the wife coupled with evidence of non-access by the husband at the material time. The House of Lords, however, by a majority in *Russell v. Russell* (1924) A.C. 687, held that "neither husband or wife may give evidence of non-intercourse after marriage with the object or



possible result of bastardizing a child born in wedlock," and that this principle must be applied in divorce proceedings.

The rule in *Russell v. Russell*, as it is termed, has been regarded as a retrograde step hampering the administration of justice in divorce, and ever since that decision the courts in England and in Australia have been astute in discovering various exceptions to the rule, and the legislature of South Australia has prohibited its application. Similar legislation in this State is worthy of consideration.

A progressive step has been the change in the exercise of the court's discretion to grant relief to a petitioner guilty of adultery. In *Wilson v. Wilson* ((1920) P. 20), Lord Merrivale (then Sir Henry Duke P.), judicially recognised the alteration, during the war of 1914-1918, in public opinion as to the relation between the sexes; and in *Apted v. Apted-Bliss* ((1930) P. 246), his Lordship after an exhaustive review of the authorities laid down principles which in the future should guide the court in the exercise of the discretion. In the result the effect has been that whereas in the earlier days relief was rarely granted to a petitioner guilty of adultery and only in a limited class of cases establishing circumstances mitigating or excusing the petitioner's offence, now the court takes into consideration all the relevant facts including the interest of children and of the guilty parties, the fact that the withholding of a decree will not be likely to reconcile husband and wife, and the fact that it is to the interest of parties to re-marry and provided the petitioner has frankly disclosed his or her guilt a decree nisi for dissolution is now rarely refused.

The question of desertion is possibly the most important as it is the ground for by far the greatest number of cases and it gives rise to many intricate problems. The law relating to desertion has been steadily developed by the courts in Australia and particularly by various decisions of the High Court. For instance, in *Bradford v. Bradford* (7 C.L.R. 470), it was held that the consent which negatives desertion is not constituted by a mere state of mind undisclosed to the desert-

ing party, and requires an acquiescence communicated to the other party, either by express words or conduct.

The existence of desertion depends upon the intention of one party to permanently end the matrimonial relationship. Constructive desertion arises where the innocent party is forced to withdraw from the matrimonial relationship by conduct on the part of the other spouse intended to permanently end it. The party guilty of such conduct, however, may in fact not desire the innocent party to withdraw, but he or she must be presumed to intend the natural and necessary consequences of their acts, and, accordingly, in *Moss v. Moss* (15 C.L.R. 538), and *Bain v. Bain* (33 C.L.R. 317), it was held that the necessary intention may be imputed in law to a spouse, irrespective of his or her actual intention, if the conduct of that spouse has been such that it is in itself inconsistent with the continuance of the matrimonial relationship.

*Crown Solicitor (S.A.) v. Gilbert* (59 C.L.R. 322), appears to be a decision of a retrogressive nature. In that case the High Court, Latham C.J. dissenting, held that where the petitioner, in a suit for desertion, had committed adultery before the expiration of the statutory period of desertion, his adultery terminated the desertion, even though the adultery was unknown to the deserter. This decision is contrary to the view hitherto taken in the divorce courts in England and in this State, and to that taken by Sir Boyd Merriman P. in *Herod v. Herod* ((1939) P. 11), and the Court of Appeal in *Earnshaw v. Earnshaw* ((1939), 2 All. E. R. 698).

The effect in relation to desertion of the pendency of a matrimonial suit or of the separation of the spouse by agreement has been dealt with in numerous cases. The institution and pendency of a suit, if desertion has commenced prior to the suit, suspends the continued running of the desertion, but if the suit is dismissed the prior desertion recommences to run and on the expiration of the statutory period a suit for relief may be instituted without a resumption of cohabitation or the institution of restitution proceedings. This principle definitely applies in the case where the deserted



party is the petitioner in both suits. In *Gidley v. Gidley* (43 W.N. 191), however, *Davidson J.* held that the above principle applied to the pendency of a prior suit instituted by the deserter, respondent to the subsequent suit for desertion. That decision was followed by *Owen J.* in *Oxenham v. Oxenham* (48 W.N. 168). The High Court in *Hall v. Hall* (60 C.L.R. 375), however, have now overruled *Gidley v. Gidley* and *Oxenham v. Oxenham*, and have held that a deserter cannot by filing a petition in divorce terminate or suspend his or her desertion.

The above principle applies to the case where after the commencement of desertion parties separate by mutual assent and subsequently by repudiation or otherwise the separation by agreement is terminated. Where, however, the cesser of cohabitation originates in separation by mutual consent different considerations may apply.

Since the passing of the English Matrimonial Causes Act, 1937, a torrent of decisions on various aspects of the law of desertion has flowed, and there appears also to be a tendency to depart from long-established principles without replacement by a sufficient substitute.

Recently in *Pardy v. Pardy* (1939) P. 288, the Court of Appeal has questioned, and possibly overruled, *Fitzgerald v. Fitzgerald* (L.R. 1 P. & D. 694), where Lord Penzance laid down that desertion must put an end to an existing state of cohabitation, and if it has already ceased to exist, whether adversely or by mutual consent, desertion cannot arise until cohabitation has been resumed or steps taken to enforce it.

In *Pardy v. Pardy*, however, the Court of Appeal held that where the original separation of the parties was by mutual consent, desertion may supervene without the necessity of a resumption of cohabitation, and this can happen where the alleged deserter has repudiated the separation agreement, taken no steps for a resumption of cohabitation and has the *animus deserendi*, and the party alleging desertion has not insisted on the terms of separation agreement, and has been bona fide willing to resume cohabitation without regard to its terms.



In conclusion, it would seem that prior to 1890 the lot of students of the Law School, and of the lecturer, so far as divorce was concerned must have been a happy one. Divorce was a subject of no importance. The authorities were comparatively limited in volume and the law was reasonably clear. To-day, however, the student has to rack his brain with intricate problems particularly in respect of jurisdiction and questions of desertion, and perhaps, if it is not presumptuous to say so, vagaries of the courts. It is perhaps some consolation that the subject is a human and live one, and its study may assist the relief of unhappiness suffered by many individuals.

W. K. S. MACKENZIE.

## INDUSTRIAL LAW

By the Hon. Mr. Justice O'Mara.

Fifty years ago Industrial Law as that expression is now understood was not known in New South Wales. While there then was and still is law industrial in character dealing with the rights and obligations of masters and servants and apprentices, that law is really the background of the system of law and law making which has followed the adoption in this country of compulsory industrial arbitration. Originally offered to the workers as an alternative to the right to strike and as a means of mitigating the suffering and loss occasioned by industrial dislocation, it has developed until to-day the Commonwealth and the State each have an extensive and self-contained system under which tribunals created by Parliament discharge the dual function of law-making authorities as well as judicial tribunals.

Here no attempt will be made to examine the merits of a system about which there has been and still is considerable difference of opinion, neither will the legal decisions or political action which led to the Commonwealth Court of Conciliation and Arbitration occupying the position it now occupies

be discussed in detail. Those questions cover a field far too wide and embrace questions too contentious to be dealt with here. The means selected rather than the results accomplished and the historical rather than the legal and legislative aspect will be the subject of this article. In New South Wales the first serious attempt to provide for the settlement of industrial disputes under a system of compulsory industrial arbitration was made when Parliament passed the Industrial Disputes Act of 1901. This was not the first legislative effort, as an abortive attempt had been made to deal with the situation by a statute of 1892. This first real effort of the Legislature succeeded hardly at all, as the employers in the legal battles which immediately ensued were generally successful and the ultimate fate of the 1901 Act is summed up in the following excellent piece of satire in the judgment of *Heydon, J.*, delivered in 1907.

The principle of settling industrial troubles by a tribunal may be very mischievous and quite impracticable—as to that I say nothing whatever—but if it is necessary to try it before condemning it, then I think it is not condemned by anything that has happened since I have been here, for it has not been tried. It has not been possible to try it. The barque of the Industrial Arbitration Act made a brave show with sails and bunting at its launching, and when directed by my predecessor. His captaincy speaks for itself; but since I took the helm, the Act has been riddled, shelled, broken fore and aft, and reduced to a sinking hulk. No pilot could navigate such a craft. Do not say, however, that no ship can sail the seas, because this one has been so badly built. When an Act is passed, which really means what it seems to mean,.....  
.....in which legal rights such as the rights to strike and lock-out are not taken away without anything being given in their place; then, and only then, can the principle of industrial arbitration be really tested, and if it breaks down, be fairly pronounced to have broken down.

Nothing deterred, the legislature passed the Industrial Disputes Act of 1908 and set up a system which it was hoped would function through wages boards. Although this Statute did not suffer as severely as the one of 1901 in the legal assaults made on it, it was in force only until 1912 when Act No. 17 of that year was passed. That Act is still in force and is the Principal Act of several amendments. Amended on many occasions, it has never been consolidated and it stands to-day with all its amendments, many of them unincorporable, a piece of legislation confused and to say the least a little be



wildering. Generally speaking, the powers conferred upon the tribunals constituted by that Act still remain, but the tribunals themselves no longer function.

In this State an outstanding feature has been a persistent changing of names, personnel and status of the tribunals and an increased delegation of law-making functions. Space does not permit us to examine in detail the changes in tribunals, many of them little more than changes of name, which have taken place since 1912. Amongst the names which have been tried over the years have been Court of Industrial Arbitration, Industrial Boards, Board of Trade, Industrial Commissioner, Deputy Commissioner, Conciliation Committees, chairmen of Conciliation Committees, Industrial Commission, Conciliation Commissioner, Apprenticeship Commissioner, Apprenticeship Council, and to-day we have an Industrial Commission of six Judges of Supreme Court status, a Conciliation Commissioner, an Additional Conciliation Commissioner, an Apprenticeship Commissioner and Council, some hundreds of conciliation committees and committeemen, all very busily engaged in a system of law-making and enforcement which was unknown half a century ago.

Another feature has been the progressive improvement of the position of the trade and industrial union of employees, which from a fettered state of being in restraint of trade has emerged to some extent a privileged entity having in some respects the benefit of a corporate existence and the right to hold and deal with property, to bring actions and to apply its funds for political purposes.

The extent to which law-making under the system of compulsory arbitration has developed during the present century can be appreciated when one considers that within its purview are labourers and craftsmen of all kinds, clerks and teachers, engineers and undertakers, ship commanders and stokers, those who build our roads and our railways as well as those who assess our income tax. In fact, apart from higher executive officers, members of the medical profession, certain sections of the legal profession and those following kindred occupations of chance, such as horse-racing, pugilism and



posing, there are few people in employment to whom the terms of an award do not apply. The sovereign State of New South Wales does not choose to employ its labourers, its clerks, its engineers, its scientists and most of its other employees except at the wages and salaries fixed by State awards and this notwithstanding the fact that there is another statutory authority—the Public Service Board—which is charged with the duty of fixing the wages and salaries of such employees. As to most of the employees on its Government railways it has no choice. Their conditions of employment are regulated by awards made under the Commonwealth Conciliation and Arbitration Act, and since the High Court has held that Government railways are no longer immune from regulation by awards of the Commonwealth Arbitration Court there is nothing the sovereign State can do about it and there is to that extent some impairment of its sovereignty.

While the legislature has been assiduous in changing the name and status of its tribunals it has not been idle in the way of legislating with respect to their powers, at times adding and at times taking away, but generally increasing them, until now they possess an extremely wide range of legislative and judicial powers in the exercise of which they are not subject to challenge in any court of judicature on any account whatever. To set out and discuss in detail the functions of these tribunals is here impracticable. In addition to those relating to the fixation of wages, hours and overtime, there is the wide power of dealing with the privileges, rights or duties of employers or employees in any industry. Recent extensions of power have been those relating to the fixation of the closing times and in some cases the opening times of shops, the determination of whether night baking shall be permitted or prohibited and the investigation of the prices proper to be charged for certain commodities.

As to the Commonwealth system it seems that the need or desire for change of name has not existed to the same extent as in the case of the State tribunals. The original Act of 1904 provided for a Commonwealth Court of Conciliation and Arbitration and that name still serves. The court was to con-

sist of a President who was to be appointed from among the Justices of the High Court to hold office for a term of years. Following *Alexander's Case* (25 C.L.R. 434), the court consisting of a President or Deputy President functioned only to the extent of exercising arbitral powers. Its inability to interpret and enforce its awards led to Parliament in 1926 amending the Act to provide for a court to consist of a Chief Judge and such other judges as should be appointed. To enable the court to exercise judicial powers the appointments are for life subject to the power of removal contained in section 72 of the Constitution, and at present the court consists of a Chief Judge and three other judges.

To discuss the growth of industrial law under the Commonwealth system is to discuss some of the most important developments under the Constitution, and that is not the purpose of this article. Although in industrial matters Parliament's power is restricted to making laws with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State, we find to-day that the awards of the Commonwealth Court now prevail over inconsistent State awards and regulate in detail the conditions of employment in most of the important manufacturing industries, in the maritime industries, in many of the distributing and transport services, in the primary industries and in many Governmental and quasi Governmental activities such as railways and tramways and local government bodies.

That the framers of the Constitution ever contemplated such a result is denied by many. One author, Mr. T. C. Brennan, K.C., in his book, *Interpreting the Constitution*, regards some of the interpretations put upon the industrial provisions of the Constitution as a humiliation of the State, and Mr. A. B. Piddington, K.C., when Industrial Commissioner of New South Wales, expressed himself as follows:—

From these two propelling factors—growth of industrial arbitration as a legislative function, and the need for national uniformity or parity in industrial laws under competitive conditions—law-making power of the Commonwealth Arbiter has grown by successive accretions, with each of which some fetter was broken or some qualification expunged, until now it is the only ultimate law-making power in Australia upon all questions



of employer and employee—any other legislation such as the laws made by the State Parliaments or by State Tribunals having only a permissive occupancy of the field of citizen duty and being liable to partial or total eviction whenever in the judgment of the Commonwealth Arbiter it would be better that the citizens who come before it should be released from their obligation to obey the labour laws of their State.

But what Sir Samuel Griffith could not imagine being done "by any legislature in full possession of its faculties," and what Mr Justice Barton thought to be "not a conceivable function of a judicial tribunal in a civilised country," is now the recognised daily experience of the Australian Constitution as developed in 1926. The stone which these builders rejected has become the chief corner-stone of the temple, and the constitutional structure which Deakin believed to be "strong as a fortress and sacred as a shrine" is now, to those who bear in memory that great parliamentarian, grotesque as a gargoyle, and as little likely to enchain veneration.

Sir Samuel Griffith said that the people would never have accepted the Constitution if they had known that *Placitum XXXV* could mean what it has now come to mean.....And if Sir Samuel Griffith is right, History, with all its lamentable wrecks of popular hope, presents no more memorable instance than this of a stupendous cheat practised by the people against the people.

Wide as the powers of the Court are, they are subject to the serious constitutional limitation that jurisdiction depends upon the existence of an industrial dispute extending beyond the limits of one state and is restricted both as to subject matter and persons, as the court may not arbitrate upon a subject not within the ambit of the dispute nor confer right or impose obligation and duties upon persons who are not parties to or represented in the dispute. It has however jurisdiction to impose duties upon a party to a dispute in respect of a third party and thereby affect that person although he may have been unrepresented or unheard. This last position has only been reached after some change of opinion on the part of the High Court and is a subject upon which more remains to be said and decided.

Wholly a product of the last fifty years and a movement in which Australia has led the world, compulsory industrial arbitration stands forth as an attempt to bring about industrial peace and failing that to do industrial justice.

T. O'MARA.



## RECORDS

### BENEFACTIONS

- 1880 John Henry Challis Bequest to be applied for the benefit of the University. From the income of this fund were established Challis Chairs, lectureships, and a readership in law.
- 1882 Wigram Allen Scholarship No. 1 for general proficiency in the First Year.  
Wigram Allen Scholarship No. 2 awarded to the most distinguished student entering the Law School from the Faculty of Arts.  
Founded by gifts from Sir George Wigram Allen for the encouragement of the study of law.
- 1900 George and Matilda Harris Scholarship No. 1 for general proficiency in the Second Year.  
George and Matilda Harris Scholarship No. 2 for general proficiency in the Third Year.  
Bequest from Mrs. George Harris of Ultimo House, in memory of her husband.
- 1901 Pitt Cobbett Prize for Political Science.  
Presented from 1901-1910 by Professor Pitt Cobbett.
- 1910 Pitt Cobbett Prize for Constitutional Law and Public International Law.  
Founded by subscribers to a fund in memory of Professor Pitt Cobbett.
- 1919 Morven K. Nolan Prize for Political Science.  
Presented from 1919-1933 in memory of Lieut. Morven Kelynack Nolan, B.A., who died on active service in France in March, 1918.
- 1921 Rose Scott Prize for the most distinguished woman student in Private International Law.  
Founded by a gift from Miss Rose Scott.

- 1922 John George Dalley Prize for the most distinguished student in the Fourth Year.

Founded by Mrs. M. A. Dalley in memory of her late son.

- 1924 The W. W. Perry Lectureship in Legal Ethics.

Founded by an anonymous gift in memory of W. W. Perry.

- 1932 Geoffrey Wellesley Hyman Memorial Lectureship in Industrial Law.

Founded by a gift from subscribers to a memorial of the late G. W. Hyman, B.A., who, while an undergraduate in the Faculty of Law, gave his life in his twenty-fourth year on the 29th January, 1930, in trying to save a girl from drowning in the surf at Tamarama Bay, Bondi.

- 1934 McGrath and O'Sullivan Prize for Political Science.

A set of *The Laws of the Commonwealth of Australia*, presented by the joint authors, Messrs. B. J. McGrath, B.A., B.Sc., and C. J. O'Sullivan, LL.B., from 1934-1938.

- 1938 John Geddes Prize for Equity and Equity Practice.

Founded by Mr. and Mrs. C. R. Geddes in memory of their son, Colin John Geddes, B.A., who died in the third year of his course.

## GRADUATES IN LAW

### GRADUATES BEFORE AND SINCE 1890

#### Before 1890

LL.D.	1884 Barry, A.*
1866 Peterson, J. S.	1885 Coghlan, C. A.
Stanley, G. H.	Jellies, J.
1867 Donovan, J. J.	1886 Morris, R. N.
1870 Garran, A.	1887 Cullen, W. P.
1873 Gilchrist, A.	Green, A. V.
Roseby, T.	1890 Marden, J.
Sly, J. D.	LL.B.
1874 White, J. S.	1867 Rogers, F. E.
1877 Sly, R. M.	1869 Purves, W. A.
1878 Sly, G.	Thompson, J.
1882 White, W. Moore*	Tole, J.

\* Admitted ad eundem gradum.

1881 Edmunds, W.

Quick, J.\*

Yarrington, W. H. H.

1887 Manning, J. N.

1889 Jones, A. E.\*

1890 Armstrong, L. F. M.

Legge, J. G.

\* Admitted ad eundem gradum.

*Since 1890*

1892

Curlewis, H. R. (Hons. Class III)

Kelynack, A. J. (Hons. Class II)

Mack, S. (Hons. Class III)

Meillon, J. M. A. (Hons. Class II)

1893

Harris, G. (Hons. Class II)

Lloyd, F.

Taylor, J. M. (Hons. Class II)

Uther, A. H. (Hons. Class II)

Veech, L. S. (Hons. Class III)

Waddy, P. R. (Hons. Class III)

1894

Flannery, G. E. (Hons. Class I)

Gerber, E. W. T. (Hons. Class II)

Halloran, A.

Meares, H.

O'Reilly, H. de B.

Pickburn, J. P. (Hons. Class II)

Thomson, A.

Tighe, W.

Watt, A. R. J. (Hons. Class II)

1895

Davies, W. J. E.

Gill, A. C.

Higgins, P. R.

Holme, J. B. (Hons. Class II)

Knox, A. (ad eundem gradum)

Levy, D. (Hons. Class II)

Martin, L. O. (Hons. Class II)

O'Connor, B. B.

Waldron, T. W. K.

1896

Boyce, F. S. (Hons. Class II)

Butler, S. J. St. C.

Colley, F. L. V.

Kershaw, J. C. (Hons. Class II)

Scarvell, E. S.

Walker, J. E. (Hons. Class II)

Wood, H. D.

1897

Bavin, T. R. (Hons. Class I)

Brierley, F. N.

Creagh, W. J.

Cullinane, J. A.

Davies, A. B.

Mills, P. H.

O'Brien, P. D.

O'Sullivan, G. J. J.

1898

Clines, P. J. (Hons. Class II)

Elphinstone, J. C.

Hammond, J. H. (Hons. Class II)

Merewether, H. H.

Merewether, W. D. M.

Parker, W. A. (Hons. Class II)

Peden, J. B. (Hons. Class I)

1899

Abigail, E. R.

Barradclough, F. E.

Bloomfield, W. J. (Hons. Class II)

Edwards, D. S. (Hons. Class II)

Scouler, D.

Waddell, G. W. (Hons. Class II),

LL.D. (1903)

Wallace, F. E.

1900

Craig, C.

Forsyth, W. G. (Hons. Class II)

Mitchell, E. M. (Hons. Class I)

Monohan, W. W.

Richardson, C. N. D.

Sullivan, R.

Warren, E. W.

1901

Clegg, W. G. (Hons. Class II)

Davidson, C. G. W. (Hons.

Class II)

Pilcher, N. G. S. (Hons. Class II)

Stacy, F. S. (Hons. Class II)

Toner, S. D. (Hons. Class II)

1902

Broderick, C. T. H.

Clark, F. G.



Manning, H. E.  
O'Donohue, J. P. M.  
Rutherford, G. W.  
Saywell, T. S.  
Varley, C. G. (ad eundem gradum)  
Young, J.  
Walton, G. H. M.

1903

Arnold, A. G. de L. (Hons. Class II)  
Chapman, A. E.  
Holliday, A.  
Lehane, T. J.  
McLaren, A. D.  
Robson, R. N. (Hons. Class II)  
Rogers, W.A.H. (Hons. Class II)  
Stephen, H. M. (Hons. Class II)  
Teece, R. C. (Hons. Class I)

1904

Browne, J. A. (Hons. Class II)  
Curtis, W. J.  
D'Apice, A. W. M.  
Evans-Jones, D. P.  
Fahey, B. F.  
Hinton, W. S.  
Kilgour, A. J.  
Pitt, A. G. M.  
Vickery, E. F. (Hons. Class II)  
Wilson, G. H. (Hons. Class II)

1905

Cohen, A. M.  
Ferguson, J. A. (Hons. Class II)  
Green, H. M. (Hons. Class II)  
Hodge, S. T.  
Kemp, R. C. K. (Hons. Class II)  
Lindsay, W. C.  
Sinclair, C. A.  
Swanwick, K. ff.  
Watson, H. F.

1906

Bathgate, D. G.  
Breckenridge, C. C. P.  
Brown, G. E.  
Denham, H. K.  
Jaques, H. V.  
Larkins, F. J. M.  
McWilliam, N. G.  
Murray, C. O'C.  
Rowland, N. de H. (Hons. Class I)  
Teece, R. N. (Hons. Class II)  
Wilson, D. (Hons. Class II)

1907

Bonney, R. S.  
Fisher, A. D. W. (Hons. Class II)  
Henry, H. (Hons. Class II)  
Jordan, F. R. (Hons. Class II)  
Manning, H. E. (Hons. Class II)  
Real, E. T. (Hons. Class I)  
Watts, P. R. (Hons. Class II)

1908

Beckenham, J. G.  
Coen, F.  
Ebsworth, S. W.  
Harris, L. A.  
Hertzberg, M.  
Hollingdale, B. A.  
Quinn, J. J.  
Watt, T. E.  
Wheeler, A. R.

1909

Baxter-Bruce, A. C.  
Haigh, V. (Hons. Class II)  
Hughes, J. (Hons. Class II)  
Merrick, J.  
Moore, H. E.  
Ralston, A. W.  
Spence, J.  
Thompson, E. H. (Hons. Class II)  
Townsend, S. E. (Hons. Class I)  
Waring, H. R.  
Williams, K.

1910

Clayton, H. J. R.  
Collins, C. M. (Hons. Class II)  
Dibbs, L. B.  
French, B. R.  
Lowe, M. H. (Hons. Class II)  
Minter, C. (Hons. Class II)

1911

Christie, G.  
Edwards, H. G. (Hons. Class II)  
Hooke, R. W. (Hons. Class II)  
Laird, H. H.  
Laurence, R. L. (Hons. Class II)  
Lamond, H. L.  
McKean, L. J.  
Markell, H. F.  
Rickard, J. C.  
Rishworth, H. S.  
Slade, O. C.

## 1912

- Bender, E. C. (Hons. Class II)  
 Bland, F. A. (Hons. Class II)  
 D'Arcy-Irvine, M. M. (Hons. Class II)  
 Gellatly, F. M.  
 Little, E.  
 Macken, J. V.  
 Moylan, W. P.  
 Toose, S. V.  
 Utz, H. S. (Hons. Class II)  
 Weston, C. A. (Hons. Class I)

## 1913

- Biddulph, L. H. (Hons. Class II)  
 Fuller, B. C.  
 Grahame, G. F.  
 McElhone, F. E.  
 McDonald, E. F.  
 McMinn, W.  
 Mason, H. H. (Hons. Class I)  
 Maxwell, A. V.  
 Sproule, R.  
 Stewart, W. K.  
 Swan, W. J.  
 Wray, C. D. W. (Hons. Class II)

## 1914

- Chedgley, H. V.  
 Collier, C. T. (Hons. Class II)  
 Lloyd, A. S.  
 McLelland, H. W.  
 Maughan, D. (ad eundem gradum)  
 Ranson, J. R.  
 Role, W. J. F.  
 Simpson, E. T. de L.  
 Stacy, B. V. (Hons. Class II)  
 Street, K. W. (Hons. Class II)

## 1915

- Baldick, G. L. (Hons. Class II)  
 Ferguson, J. A.  
 Hardwicke, C. A.  
 Lucas, C. R.  
 McTiernan, E. A. (Hons. Class I)  
 Makin, W.  
 Patrick, R. A. (Hons. Class II)  
 Sheppard, W. J. (Hons. Class II)  
 Slade, C. S. (Hons. Class I)  
 Stephen, A. C. (Hons. Class II)  
 Stephenson, J. H. (Hons. Class II)  
 Tait, E. W.  
 Williams, D. (Hons. Class II)

## 1916

- Braddon, H. R. (Hons. Class II)

- Kidston, R. R. (Hons. Class II)  
 McCulloch, C. V. (Hons. Class II)  
 Petrie, H. W. (Hons. Class I)  
 Summers, P. L.  
 Telfer, B. F. F. (Hons. Class II)  
 Vivian, P. J. A.

## 1917

- Edwards, G. M.  
 Henderson, S. H. (Hons. Class II)  
 McDougall, G. J. C. (Hons. Class II)  
 McTague, N. P. (Hons. Class I)  
 Mann, E. R.  
 Small, H. A.  
 Youll, J. J. (Hons. Class II)

## 1918

- Bourke, C. A. R.  
 Evatt, H. V. (Hons. Class I)  
 (LL.D. 1924)  
 Harper, A. M. (Hons. Class II)  
 Kay, R. I. (Hons. Class II)  
 Shield, R. V.  
 Simpson, C. H. G.  
 Tremlett, F. C. G.  
 Turner, G. V. M. (Hons. Class II)

## 1919

- Bradley, W. J.  
 Cahalan, E. B.  
 Davy, G. V. (Hons. Class II)  
 Jerdan, E. A. S. (Hons. Class II)  
 Leonard, J. St. C.  
 Perdriau, R. J.  
 Redshaw, S.  
 Reimer, H. E. E.

## 1920

- Cassidy, J. E.  
 Christie, G. C. C.  
 Cordell, J. C. S.  
 De Baun, A. J.  
 Flannery, F. L.  
 Flattery, T. P. (Hons. Class II)  
 Simpson, W. B. (Hons. Class II)  
 Smith, C.  
 Swan, L. B.  
 Wilson, H. C.

## 1921

- Arnott, H. D.  
 Berne, A. P. (Hons. Class I)  
 Dare, L.  
 Gee, W. S. (Hons. Class II)  
 Gilder, T. G.  
 Hollingdale, E. T.

Hooke, E. J.  
Howard, D. F.  
Langker, A. V.  
Leaver, J. (Hons. Class II)  
McGuren, F.  
Nield, J. R. (Hons. Class I)  
Purcell, B. P. (Hons. Class II)  
Shand, J. W. (Hons. Class II)  
Smith, N. C.  
Stafford, G. M.  
Storkey, P. V.  
Symonds, S.  
Tweeddale, S. C.  
York, W. R.

1922

Anderson, J. W.  
Arnott, J. F.  
Baum, F. R.  
Benecke, J. S. (Hons. Class I)  
Blumer, P. W.  
Bowden, E. K. S. (Hons. Class II)  
Boyce, R. C. M. (Hons. Class II)  
Butterworth, R. S. (Hons. Class II)  
Cardinal, G. V.  
Curry, C. H. (Hons. Class II)  
(LL.D. 1929)

Davis, A. S.  
Dinan, E. J.  
Edwards, A. T.  
Ferguson, K. A.  
Fincham, W. R.  
Hughesdon, V. C. (Hons. Class II)  
Hunt, H. R.  
Kench, A. G. T.  
Lansaro, J.  
Lane, F. E.  
Lukin, L. G.  
McRae, F. P.  
Manion, H. J.  
O'Brien, J. J.  
Ralston, J. M. (Hons. Class II)  
Rose, A. B. F.  
Spender, P. C. (Hons. Class I)  
Sturt, R. M.  
Tonking, K. J. (Hons. Class II)  
Walker, G. W. E.  
Williams, L. G.

1923

Bales, J.  
Berne, F. W. (Hons. Class II)  
Best, H. P.  
Brooks, F. E. E.  
Chapman, S. V.  
Clancy, B. P. (Hons. Class II)  
Cowper, N. L. (Hons. Class II)

Denison, R. E.  
Francis, W. E. R.  
Gallagher, P.  
Hill, A. G.  
Hughes, G. F. (Hons. Class II)  
Hunter, D. B.  
Kennedy, D. E. S.  
King, P. W. (Hons. Class I)  
King, W. L.  
Loxton, M. F.  
Maclean, W. J. (Hons. Class II)  
Moffitt, H. W.  
Molloy, J. F. (Hons. Class II)  
Moore, H. H.  
Newton, W. S.  
Prescott, C. G.  
Roddy, M.  
Roseby, K. B.  
Samuelson, A. B.  
Scott, K. E.  
Sheldon, A. B.  
Street, J. L.  
Williams, T. F.  
Wilson, W. H. (Hons. Class II)

1924

Atkins, R. J.  
Aubrey, R. W.  
Baker, H. J.  
Beasley, F. R. (Hons. Class I)  
Bevan, H. G.  
Boland, W. J.  
Boyd, V. A.  
Boyle, A. C.  
Cohen, C. A. K. (Hons. Class II)  
Conroy, N. R.  
Cook, R. C. (Hons. Class II)  
Dash, K. M. (Hons. Class I)  
Fraser, D. B. (Hons. Class II)  
Hall, A. J. P.  
Hart, J. S.  
Head, R. L. (Hons. Class I)  
Herron, L. J.  
Holt, H. T. E. (Hons. Class II)  
Houston, R. M. M. (Hons. Class II)  
Howard, G. C.  
Hughes, J. A. F. F.  
Jones, D. M.  
McIntyre, M. W. D. (Hons. Class I)  
Maclean, W. I.  
MacMahon, T. P.  
Mansfield, A. J. (Hons. Class II)  
Mant, J. F.  
Martin, E. M.  
Miller, K. E.  
Milne, J. W.  
Mitchell, G. (Hons. Class II)



Monahan, C. D.  
 Myers, F. G.  
 Neaves, H. H. (Hons. Class II)  
 Nield, A. E.  
 O'Mara, T. P. (Hons. Class II)  
 O'Malley, J. D.  
 Pike, J. D.  
 Prendergast, G. A. (Hons. Class II)  
 Rex, G. R.  
 Rofe, E. P. F.  
 Rosenthal, A. L.  
 Shiress, R. A.  
 Stayner, A. B.  
 Stuckey, G. P. (Hons. Class II)  
 Studdert, H. J. (Hons. Class II)  
 Taylor, L. W. (Hons. Class I)  
 Tester, W. G. (Hons. Class II)  
 Vallentine, I. M.  
 Wells, T. A.  
 Wurth, W. C. (Hons. Class II)

## 1925

Aitken, L. S.  
 Andrew, Y. R. (Hons. Class II)  
 Beale, O. H.  
 Biggs, W. J.  
 Brierley, B. G.  
 Carroll, S. J.  
 Chambers, R. (Hons. Class I)  
 Clancy, J. S.  
 Courtney, E. E.  
 Crain, W. A. T. (Hons. Class II)  
 Dickinson, A. W. M.  
 Dunlop, C. H.  
 Forsyth, J. W.  
 Garratt, A. H. (Hons. Class II)  
 Harding, A. N.  
 Harris, H. L.  
 Heron, N. G.  
 Kinkead, J. J. B.  
 Ladds, T. R.  
 Leslie, A. N. C. G.  
 Louat, F. (Hons. Class II) (LL.D.)

## 1933

Lloyd, C. E. M.  
 McIntosh, N. D.  
 McLoukey, H. L. (Hons. Class II)  
 Martin, E. W. O.  
 Mitchell, J. A.  
 Phillips, P. F.  
 Pickering, N. S.  
 Pilkington, L. J. (Hons. Class I)  
 Pratt, E. S.  
 Reed, F. E.  
 Roper, E. D. (Hons. Class II)  
 Rosenberg, A.  
 Rosendahl, E. E.

Ross, J. M.  
 Scott, H. M.  
 Seaton, G. E. C.  
 Smyth, J. W. (Hons. Class II)  
 Somerville, A. J. L.  
 Sugerman, B. (Hons. Class I)  
 Tracey, E. R.  
 Watling, J. J. (Hons. Class II)  
 Webb, A. M.  
 Webb, G. S.  
 Whitfield, L. A. (Hons. Class I)  
 Windeyer, W. J. V. (Hons. Class II)

## 1926

Allen, H. D.  
 Amsberg, G. F. (Hons. Class I)  
 Baldwin, H.  
 Barwick, G. E. J. (Hons. Class I)  
 Bell, N. J.  
 Booth, H. R.  
 Brown, A.  
 Brown, T. J. (Hons. Class II)  
 Bryant, F. C.  
 Collins, V. A.  
 Crawford, J. W.  
 Davidson, J. Y.  
 Densley, W. P.  
 Dignam, W. J. J.  
 Evatt, C. R.  
 Ewart, F. W. (Hons. Class II)  
 Ferns, O. C.  
 Gould, J. V.  
 Henery, T. T. (Hons. Class II)  
 Irvine, P. F.  
 Jagelman, J. M.  
 Laidlaw, J. A. R.  
 Lampert, A. M.  
 Learoyd, H.  
 Letters, F. J. H.  
 McHugh, H. B.  
 Mackay, R. W. G.  
 Martin, R. A. O.  
 Miller, E. S. J.  
 Moverley, A. J.  
 Russell, E. A. S.  
 Sendall, H. R. (Hons. Class I)  
 Sharpe, D. R. (Hons. Class II)  
 Sheed, F. J.  
 Snelling, H. A. R. (Hons. Class I)  
 Stephen, F. C. (Hons. Class I)  
 Taylor, A. R. (Hons. Class II)  
 Tebbutt, R. E.  
 Weir, G. (Hons. Class II)  
 Yeldham, J. H. (Hons. Class II)

## 1927

Bennett, C. N.  
 Bridges, C. M. E.

- Buchan, W.  
 Champion, G. C. B.  
 Conybeare, A. T.  
 Corbett, G. H. S.  
 Currie, W. O.  
 Dickinson, H. B.  
 Dowe, W. A. E.  
 Dwyer, F. A. (Hons. Class I)  
 Ellison, A. O. (Hons. Class II)  
 Ferguson, A. H.  
 Flynn, V. J. (Hons. Class II)  
 Goldberg, N.  
 Griffin, C. E. (Hons. Class II)  
 Hake, A. C.  
 Hancock, W. G.  
 Harvey, W. F. A.  
 Hesslein, M. B.  
 Higgins, A. W. (Hons. Class II)  
 Hodgson, F. A.  
 Isaacs, G.  
 Isaacs, S. (Hons. Class I)  
 Jenkyn, N. A.  
 Johnson, R. A. (Hons. Class II)  
 Kinsella, E. P.  
 Kirby, R. C.  
 Kitto, F. W. (Hons. Class I)  
 Landa, A.  
 Landers, N. L.  
 Law, A. C.  
 Lieberman, W. (Hons. Class I)  
 Little, F. G. B.  
 McCulloch, J. E.  
 McDougall, J. H.  
 Macgregor, K. A.  
 McHutchison, M. W.  
 McTague, F. D.  
 Magnus, A. C.  
 Phillips, R. S.  
 Pratt, A. F. M.  
 Smith, B. E. O.  
 Starling, P. W. G.  
 Storey, G. P.  
 Symington, R. B.  
 Symonds, H. M.  
 White, B. K.
- 1928
- Addison, I. L.  
 Akhurst, P. O.  
 Alexander, C. A.  
 Beswick, G. H. J. (Hons. Class I)  
 Blood, F. B. (Hons. Class II)  
 Brady, M. J.  
 Brewster, M. W.  
 Buckle, F. N.  
 Button, S. A. (Hons. Class II)  
 Caldwell, E. R. W.  
 Codd, K. C.  
 Connare, J. P.  
 Creer, J. E. N.  
 Culey, E. J. (Hons. Class II)  
 Cummins, D. K.  
 Dawson, B. P. (Hons. Class II)  
 Devereux, A. J.  
 Donovan, F. M.  
 Doyle, F. H.  
 Dryhurst, C. R.  
 Elrington, A. G. (Hons. Class II)  
 Fetherston, V. E.  
 Fisher, J. H.  
 Flynn, W. S.  
 Gain, A. C. (Hons. Class I)  
 Goddall, H. G. (Hons. Class II)  
 Grove, R. H.  
 Hall, J. T. A.  
 Hancock, E. A. J. (Hons. Class I)  
 Hastings, R.  
 Henchman, H. J. H. (Hons. Class II)  
 Holden, T. S.  
 Holt, L. W.  
 Hunter, K.  
 Jennings, F. E. (Hons. Class II)  
 Jermyn, H. W. S.  
 Jones, O. A. (Hons. Class II)  
 Levy, A. A.  
 Lochrin, L. A. (Hons. Class II)  
 McClemons, J. H.  
 MacDermott, V. B.  
 Macdonald, H. M.  
 McLelland, A. R.  
 McNevin, T. A.  
 Madigan, F. T. (Hons. Class II)  
 Mason, R. W.  
 Mayne, A. W.  
 Nelson, N. C.  
 Newnham, F. A.  
 Nicholl, R. W.  
 O'Dea, J. C.  
 Phippard, S. R.  
 Renshaw, A. R.  
 Robertson, I. A.  
 Rowe, D. S.  
 Tanner, L. G.  
 Thirlwell, J.  
 Thomson, W. R.  
 Throsby, G. F. O.  
 Uther, E. A.  
 Walker, R. E.  
 Wilson, K. H.  
 Wilson, W. J. S.  
 Windeyer, A. C. (Hons. Class II)  
 Woodward, H. R. (Hons. Class I)  
 Wright, R. A.

## 1929

Asprey, K. W. (Hons. Class II)  
 Baggott, J. P. (Hons. Class II)  
 Baker, B. (Hons. Class II)  
 Barr, G. D. (Hons. Class II)  
 Begg, J. W.  
 Boland, M. J.  
 Bowring, J. P.  
 Byrnes, B. M.  
 Burns, N. R. (Hons. Class II)  
 Cassidy, W. G. B.  
 Chilton, F. O. (Hons. Class I)  
 Cohen, A. P.  
 Cox, B. C.  
 Dash, E. A.  
 Dickson, W. H. B.  
 Donohoe, F. P.  
 Dunlop, L. R.  
 Emerton, J. K.  
 Flynn, J. S.  
 Garvin, J. H.  
 Gibson, A. R. M.  
 Giles, K. M.  
 Godfrey, W. S. (Hons. Class II)  
 Hamilton, E. H.  
 Houen, E. H.  
 Ick-Hewins, S. S.  
 Jones, D. G.  
 Knight, A. J.  
 Layton, W. D.  
 Leask, E. A.  
 Lewis, C. I.  
 Love, J. M. W.  
 McGee, H. X.  
 McLelland, C. (Hons. Class I)  
 Mansfield, H.  
 Marshall, T. G. D.  
 May, H. W. (Hons. Class II)  
 Morgan, A. T.  
 Nicholas, J. G.  
 O'Connor, B. J.  
 Osborne, L. F.  
 Rose, S. B.  
 Sendall, N. C.  
 Stewart, A. T.  
 Sykes, W. D. J.  
 Thomas, G. B. (Hons. Class II)  
 Vincent, G. R.  
 Wells, T. le M. (Hons. Class II)  
 Wilcox, C. R. (Hons. Class II)  
 Wright, G. L. (Hons. Class I)

## 1930

Ambrose, T. R.  
 Attwood, E. H.  
 Baldock, W. J.  
 Baldwin, A. R.

Benson, V. H.  
 Berry, J. S.  
 Buttfeld, E. A.  
 Cadogan, M. C.  
 Custer, D. C.  
 Duke, A. W. M.  
 Edmunds, J.  
 Edwards, R. V.  
 Galvin, P. F.  
 Hardie, M. F. (Hons. Class I)  
 Higgins, A. G.  
 Hooke, M. M.  
 Hudson, E. R.  
 Hyde, V. D.  
 Jones, L. W.  
 Keane, F. J.  
 Kirkpatrick, M. A. A.  
 Lumsden, A. D.  
 McGechan, R. O. (Hons. Class I)  
 McGlynn, L. W.  
 Maddocks, S. A.  
 Maguire, H. (Hons. Class I)  
 Mitchell, G. W.  
 Nicol, A. A.  
 O'Halloran, V. P. S.  
 O'Meally, J. D. (Hons. Class I)  
 Parks, J. H.  
 Pilcher, J. E. H.  
 Quinn, G. E.  
 Rishworth, J. C.  
 Robson, E. M.  
 Robertson, C.  
 Roper, P. H.  
 Rosenblum, M.  
 Sexton, J. L.  
 Shaw, E. C.  
 Sheahan, W. F. P.  
 Sheldon, W. S. (Hons. Class I)  
 Smith, G. S.  
 Solomons, C. L.  
 Spain, I. A. H.  
 Thornton, G. W.  
 Wailes, J. E. (Hons. Class II)  
 Ward, C. K.  
 Wilmshurst, F. J. (Hons. Class II)

## 1931

Armstrong, I. W.  
 Baillie, R. G. L.  
 Black, W. E.  
 Boulton, J. B.  
 Bradfield, A. J.  
 Brandt, E. P.  
 Burge, R.  
 Cassidy, F. W.  
 Cook, S.  
 Coss, F. W.



Currie, G. B.  
Davis, A. E.  
Dezarnaulds, C. A. H.  
Doyle, B. S.  
Ellis, K. W. C. (Hons. Class I)  
Evans, H. B. C.  
Halliday, L. H.  
Hill, B. H. V.  
Mack, C. S.  
McNamara, J. J.  
Macpherson, A. G.  
Mitchell, C.  
Morison, R. R.  
O'Neal, L. J. (Hons. Class II)  
O'Toole, J. E. (Hons. Class II)  
Parker, G. R.  
Richards, J.  
Rishworth, N. S.  
Selby, D. M.  
Smith, A. G.  
Stack, E. R. (Hons. Class II)  
Storey, H. M.  
Thom, J.  
Townsend, N. S.  
Vincent, T. G.  
Weaver, C. B.  
Williams, J. F.  
Woodhill, P. J.

1952

Abbott, A. C.  
Alexander, L.  
Allen, P. H. (Hons. Class II)  
Bergman, N. T. H.  
Bishop, J. S.  
Bland, H. A. (Hons. Class II)  
Bruce, R. R. (Hons. Class II)  
Burke, A. W. C.  
Caldwell, N. W.  
Collins, W. H. A.  
Connery, M. F.  
Coop, W. H.  
Cotter, N. S.  
Dalton, C. G.  
Devenish-Meares, C. L.  
Dibbs, R. G.  
Fitzpatrick, J. P.  
Gill, A. W. McK.  
Hemingway, W. H.  
Harris, E. C. (Hons. Class II)  
Hepburn, J. (Hons. Class II)  
Hidden, F. C.  
Holmes, J. D.  
Johnson, L. M.  
Jones, R. M.  
Kaleski, J. H. F. (Hons. Class II)  
Keegan, R. W. (Hons. Class II)

Kennedy, A. C. (Hons. Class II)  
Kevin, J. C. G. (Hons. Class II)  
Levine, A.  
McInerney, T. B.  
McIntyre, N. H.  
Maxwell, A. F.  
Munro, F. F.  
Murphy, J. F. (Hons. Class II)  
Murphy, W. E.  
Power, W. L.  
Sedgwick, L. C. T.  
Stevens, A. K. (Hons. Class I)  
Stupart, R. S. G.  
Sweeney, J. B.  
Turner, R. W. N. (Hons. Class II)  
Vizard, F. W.  
Walsh, F. J.  
Whiteley, L. R. (Hons. Class II)  
Williams, H. P.  
Wishart, J. R. (Hons. Class II)

1953

Braun, J.  
Brewer, W. J.  
Butler, J. R.  
Carson, B. M.  
Carter, A. L.  
Cassidy, R. B.  
Clark, W. H.  
Comans, J. G.  
Conlon, A. H. S. (Hons. Class II)  
Corcoran, J.  
Dale, H. E.  
Ewing, R. M.  
Forsyth, W. J. C.  
Gallagher, F.  
Giles, M. B.  
Hammond, J. M.  
Harrison, P. N.  
Hayes, J. E.  
Hicks, D. S.  
Hook, E. J. (Hons. Class I)  
Howell, C. W. (Hons. Class II)  
Hudson, I. H.  
Hughes, C. O'G.  
Jones, D. F. (Hons. Class II)  
Kahn, A. H. (Hons. Class I)  
Love, J. G.  
MacDermott, B. St.C.  
Macdonald, E. L.  
McMahon, W. D.  
McPhee, H. J.  
Mann, W. H.  
Melville, W. S.  
Molloy, W. B.  
Monaghan, J. T.  
Murray, D. R. A. (Hons. Class II)

O'Connor, D. P.  
Ormsby, A. I.  
Patience, J. D. (Hons. Class II)  
Ratner, S. D.  
Reynolds, R. S. L.  
Riddle, J. G.  
Roulston, H. S.  
Saywell, T. A. R.  
Sofer-Schreiber, M.  
Stokes, W. H.  
Storey, H. C.  
Taylor, R. L.  
Woodward, P. M.  
Young, J. W.

## 1934

Addison, C. G. B.  
Allen, R. I.  
Baines, W. G. A.  
Blamey, H. K.  
Bohane, T. J.  
Booth, R. D.  
Bowen, N. H. (Hons. Class II)  
Brennan, L. T.  
Brown, A. A.  
Campbell, K. B.  
Coen, J. V.  
Deer, A. F. (Hons. Class II)  
Denniston, J. A. Y.  
Dey, J. F. (Hons. Class II)  
Donovan, G. P. (Hons. Class I)  
Doyle, M. A.  
Dwyer, D. H.  
Ferguson, N. G.  
Hall, E. L. S.  
Hay, N. H. (Hons. Class II)  
Head, P. L.  
Kearney, T. J.  
Laurence, A.  
Lewis, D. F. (Hons. Class II)  
Litherland, J. C.  
Lobb, J. V.  
Lynch, J. P.  
McKay, T. S.  
McKeon, J. J.  
McLellan, A. A. (Hons. Class II)  
McLeod, R. M.  
Milverton, E. F. (Hons. Class II)  
Moore, G. G. H. (Hons. Class II)  
Morck, W. T. (Hons. Class II)  
Nolan, B. R. (Hons. Class II)  
Oakes, B. R. (Hons. Class II)  
O'Brien, P. F.  
Old, C. C.  
Old, T.  
Osborne, F. M.  
Owen, N. T. (Hons. Class II)

Parsonage, T. G.  
Peacock, A. S. (Hons. Class II)  
Pye, E.  
Reynolds, R. G. (Hons. Class II)  
Roife, P.  
Shannon, C. R. (Hons. Class I)  
Shirley, L. W. (Hons. Class I)  
Short, W. I.  
Single, H. V.  
Taperell, S. C.  
Thorburn, A. J. K. (Hons. Class II)  
Waddell, S. E.  
Walsh, C. A. (Hons. Class I)  
Watson, J. P. C. (Hons. Class II)  
White, G. D.

## 1935

Allen, L. S.  
Baldock, J. O.  
Beattie, A. C.  
Beerworth, W. C. (Hons. Class I)  
Bishop, E. S.  
Blamey, J. M.  
Brown, S. W. M.  
Bruxner, J. M. (Hons. Class II)  
Carruthers, J. E.  
Charker, G. W. L.  
Church, F. J.  
Crawford, A. G.  
Daniel, H.  
D'Arcy, W. G.  
Davis, J. D.  
De Miklouho-Maclay, K. A.  
Dillon, C. B.  
Dive, J. G.  
Eastman, A. J. (Hons. Class I)  
Edgley, J. L.  
Everitt, V. H. (Hons. Class II)  
Gash, I. P.  
Hains, I.  
Howitt, E. W.  
Jenkins, H. J.  
Jordan, L. C.  
Kelleher, J. A.  
Kennedy, A. K.  
McCarthy, T. V.  
McFarlan, B. P. (Hons. Class I)  
Mackey, A. E.  
McMahon, K. C. (Hons. Class II)  
Mallam, C. G.  
Malor, R. L.  
Mathieson, A. S. (Hons. Class II)  
Matthews, W. J.  
Newman, G. M.  
Nolan, J. R. W. (Hons. Class II)  
Old, G. S.  
O'Reilly, B. H.

Phillips, J. M. K.  
Redapple, W. P. (Hons. Class II)  
Richard, L.  
Richardson, D. M.  
Rowles, N. C. L.  
Simblist, S. H.  
Smail, J. M.  
Spencer, T. G. D.  
Tisdale, R. C. (Hons. Class II)  
Warburton, M. E.  
White, S. C.

1936

Bond, H. A.  
Braund, F. N. B.  
Burns, B.  
Conway, W. A.  
Coyle, J. G.  
Evans, J. D. (Hons. Class I)  
Falkingham, T.  
Ferrari, J. S.  
Foster, J. C.  
Gee, K. G.  
Goldie, G. F.  
Harris, K. G. F.  
Herlihy, F. T.  
Heydon, P. R.  
Holmwood, L. C.  
Hungerford, W. Le W.  
Inglis, J. J.  
Kerr, J. R. (Hons. Class I)  
Langsworth, C. G.  
Laurence, P. R. L.  
McDonald, B. J.  
McMaster, P. E.  
Martin, C. E.  
Martin, R. N.  
Mitchell, R. E. (Hons. Class I)  
Morton, M. F.  
Mote, R. L.  
Nagle, J. H. F.  
Norton, D. A.  
Osborn, E. M.  
Peoples, J. H.  
Pile, M. E. de M.  
Poole, J.  
Robinson, J. B. (Hons. Class I)  
Scott, L. G.  
Spencer, I. G.  
Tobias, R. H.  
Vine Hall, A. P.  
Walker, F. H.  
Williams, A. J. N.  
Williams, K. E.

1937

Austin, J. J.  
Benjafield, R. V.  
Black, I. C.  
Bowler, F. K. (Hons. Class II)  
Brereton, R. Le G. (Hons. Class II)  
Bridge, A. B. K. I. (Hons. Class II)  
Broadbent, J. R. (Hons. Class II)  
Cowlshaw, T. A. (Hons. Class II)  
Davis, O. L. (Hons. Class II)  
Glasson, D. E.  
Goldman, P.  
Green, R. N. R. (Hons. Class II)  
Henderson, R. G.  
Hennessy, F. P. (Hons. Class II)  
Jackson, L. W.  
Johnstone, J. T.  
Jones, F. H.  
Kenny, P. J.  
McDowell, D. A.  
Maclean, R. M.  
Martin, T. J. (Hons. Class I)  
Massie, J. I. (Hons. Class I)  
Nagle, V. F. (Hons. Class I)  
Naughton, L. V.  
Officer, F. J. D.  
O'Neill, P. W.  
Page, B. J. D.  
Smith, G. W. F.  
Swain, K. V.  
Swinson, R. W. G.  
Thomson, F. W.  
Tribe, K. W.  
Walker, T. C.  
Watson, J. H.  
Westgarth, B. D. (Hons. Class II)

1938

Arnold, J. C.  
Atkin, P.  
Barton, G.  
Beit, D. C.  
Benson, A. P.  
Brathwaite, R. G. A. (Hons. Class II)  
Coleman, A. R.  
Cruttenden, D. P.  
Dale, N. C. L.  
Daley, C. W. J.  
Davis, A. I.  
Dawes, E. N.  
Dettmann, H. K. C.  
Dind, D. S. (Hons. Class I)  
Dunne, M. J. P.  
Ferguson, J. B.  
Gilbert, C. W. N.



- Green, F. J.  
 Horsfield, R. S.  
 Hutchison, R. B.  
 Irving, G. M.  
 Janes, A. F.  
 Johnstone, J. R. L.  
 Kershaw, H. B.  
 Lane, E. O. (Hons. Class I)  
 Lee, W. J.  
 L'Estrange, W. R.  
 McDowell, N. R.  
 McKnight, A. D. (Hons. Class II)  
 Maxwell, I. J. (Hons. Class I)  
 Moffitt, A. R. (Hons. Class I)  
 O'Neill, M. J.  
 Paisley, R. E.  
 Parkhill, R. J. B.  
 Paynter, J. C.  
 Pennington, W. H.  
 Prentice, C. K.  
 Rankin, D. N. P.  
 Robertson, C. A. M.  
 Robson, H. W.  
 Smith, A. C.  
 Snelson, T. M. L. (Hons. Class II)  
 Spong, K. B.  
 Steed, J. D. (Hons. Class II)  
 Stevenson, W. R. D. (Hons. Class I)  
 Thomas, E. O. B.  
 Tuck, W. H.  
 Warburton, W. K. (Hons. Class II)  
 Weston, C. F. (Hons. Class I)  
 White, C. H.  
 Williams, K. N.  
 Windeyer, H. F.
- 1939
- Begg, C. E.  
 Bowen, J. K.  
 Brennan, B. L.  
 Britten, C. B. (Hons. Class II)  
 Corfe, D. A.  
 Dickinson, G. A.  
 Donald, D. K.  
 Fallaw, C.  
 Gold, G. R.  
 Griffin, C. D.  
 Griffiths, F. P.  
 Harris, J. C.  
 Hudson, H. R.  
 Hutchinson, W. B.  
 Hutley, F. C. (Hons. Class I)  
 Jeffrey, R. H.  
 Johnston, R. S.  
 Lusher, E. A.  
 Magney, T. K.  
 Masters, R. G.  
 Metcalfe, J. P.  
 Meillon, J. A. (Hons. Class II)  
 Melville, J. A. (Hons. Class I)  
 Moore, I. S.  
 O'Brien, J. (Hons. Class I)  
 Opie, C. W.  
 Penman, E. B. (Hons. Class II)  
 Ritchie, A. V.  
 Rundle, L.  
 Russell, A. M.  
 Ryrie, E. J.  
 Shaw, H. M.  
 Slattery, K.  
 Williams, J. M. (Hons. Class II)  
 Wild, K. E.  
 Wolfe, S. E.  
 Wybrow, K. G.  
 Webb, G. L. M.

## WOMEN GRADUATES

- 1902 Evans, Ada Emily  
 1924 Byles, Marie Beuzeville  
       Gibbs, Sybil Enid Vera  
 1925 Kirkpatrick, Eleanor Blanche Bertin MacKinnon  
 1926 Shorter, Elaine Hamilton  
 1927 Donoghue, Margaret Kathleen  
 1928 Hudson, Muriel Hamilton  
 1929 McLeod, Sheila Annie Rogerson  
       Thompson, Mary Fraser  
 1933 Thomas, Florence Mary Thurles  
 1934 Brandt, Margaret Dunoon  
       Sangwell, Olga Jean (Hons. Class II)  
 1935 Cohen, Nerida Josephine  
       McGarry, Kathleen Patricia  
 1937 Malor, Jean Lewis (Hons. Class I)  
 1938 Shatin, Sheila Rothschild  
 1939 Maddocks, Hilda

# UNIVERSITY MEDAL

## Awarded at Graduation

1894 Flannery, G. E.	1924 McIntyre, M. W. D.
1895 Bavin T. R.	Beasley, F. R., prox. acc.
1898 Peden, J. B.	1925 Pilkington, L. J. } aeq.
1900 Mitchell, E. M.	Sugerman, B. }
1903 Teece, R. C.	1926 Amsberg, G. F. } aeq.
1904 not awarded	Barwick, G. E. J. }
1905 not awarded	1927 Lieberman, W.
1906 Rowland, N. de H.	1928 Woodward, H. R.
1907 Real, E. T.	Gain, A. C. prox. acc.
1908 not awarded	1929 Wright, G. L.
1909 Townahend, S. E.	1930 Hardie, M. F. } aeq.
1910-1911 not awarded	Sheldon, W. S. }
1912 Weston, C. A.	1931 Ellis, K. W. C.
1913 Mason, H. H.	1932 Stevens, A. K.
1914 not awarded	1933 Hook, E. J.
1915 Slade, C. S.	1934 Walsh, C. A.
1916 Petrie, H. W.	1935 Eastman, A. J. F.,
1917 McTague, N. P.	1936 Kerr, J. R.
1918 Evatt, H. V.	1937 Massie, J. L.
1919-1920 not awarded	1938 Weston, C. F.
1921 Berne, A. P.	1939 Hutley, F. C. } aeq.
1922 Spender, P. C.	O'Brien, J. }
1923 King, P. W.	

## Awarded at LL.D. Examination

1924 Evatt, H. V.

# GRADUATES AND LECTURERS OF THE LAW SCHOOL APPOINTED TO THE BENCH

## High Court of Australia

The Right Hon. Sir George Rich, P.C., K.C.M.G.  
Mr. Justice H. V. Evatt.  
Mr. Justice E. A. McTiernan

## Commonwealth Court of Conciliation and Arbitration

Mr. Justice T. O'Mara

## Chief Justice of New South Wales

The Hon. Sir William Cullen, K.C.M.G.  
The Hon. Sir Frederick Jordan, K.C.M.G.

## Supreme Court of New South Wales

Sir David Ferguson, K.B.	Mr. Justice K. W. Street
Sir Percival Halse Rogers, K.B.E.	Mr. Justice F. S. Boyce
Sir Thomas Bavin, K.C.M.G.	Mr. Justice A. V. Maxwell
Mr. Justice C. G. W. Davidson	

*District Court of New South Wales*

Judge L. F. M. Armstrong	Judge J. R. Nield
Judge J. P. Pickburn	Judge H. F. Markell
Judge H. R. Curlewis	Judge A. G. Hill
Judge A. Thomson	Judge B. V. Stacy
Judge D. S. Edwards	Judge P. V. Storkey, V.C.
Judge J. S. J. Clancy	Judge, H. T. E. Holt
Judge E. A. Barton	

*Land and Valuation Court*

Mr. Justice E. D. Roper

*Industrial Commission of New South Wales*

Mr. Justice J. A. Browne	Mr. Justice A. M. Webb
Mr. Justice J. A. Ferguson	Mr. Justice H. C. Edwards
Mr. Justice A. J. De Baun	

*Workers Compensation Commission*

Judge H. L. Lamond	Judge H. W. Moffitt
Judge R. J. Perdriau	

*Master in Equity*

Mr. W. A. Parker

*Supreme Court of Queensland*

Mr. Justice A. J. Mansfield

*Supreme Court of Northern Territory*

Mr. Justice T. A. Wells

## STAFF 1939

- 1910 The Hon. Sir John Peden, K.C.M.G., K.C., B.A., LL.B., M.L.C. Challis Professor and Dean, Lecturer in Constitutional Law, Property and Private International Law.
- 1921 Professor A. H. Charteris, M.A., LL.B., Challis Professor, Lecturer in Public International Law, Jurisprudence and Political Science.
- 1914 Mr. P. R. Watts, B.A., LL.B. Challis Reader in Conveyancing.
- 1923 Colonel W. K. S. Mackenzie, D.S.O., B.A. Challis Lecturer in Divorce.
- 1925 The Hon. Vernon Treatt, M.L.A., B.A., B.C.L. (Ox.). Challis Lecturer in Criminal Law.
- 1926 Mr. B. Sugerman, LL.B. Challis Lecturer in Contracts, Torts and Mercantile Law.
- 1927 Mr. W. J. V. Windeyer, B.A., LL.B. Challis Lecturer in Equity, and Perry Lecturer in Legal Ethics.
- 1931 Mr. W. McMinn, B.A., LL.B. Challis Lecturer in Procedure, Pleading and Evidence.
- 1933 Mr. W. S. Sheldon, B.A., LL.B. Challis Lecturer in Company and Bankruptcy.
- 1935 Mr. T. P. Flattery, M.A., LL.B. Challis Lecturer in Roman Law.
- 1935 Mr. A. R. Taylor, LL.B. Challis Lecturer in Legal Interpretation.
- 1937 Dr. C. H. Currey, M.A., LL.D. Lecturer in Legal History.
- 1938 Mr. G. Lytton Wright, LL.B. Lecturer in Admiralty.
- Mr. F. E. Barracrough, M.A., LL.B. Lecturer in Lunacy.
- 1939 Mr. Bruce Macfarlan, B.A., LL.B. Lecturer in Probate.
- 1939 Mr. R. O. McGechan, B.A., LL.B. Lecturer in Jurisprudence.
- 1939 Mr. Rex Chambers, B.A., LL.B. Hyman Lecturer in Industrial Law.
- 1939 Mr. F. C. Hutley, B.A., LL.B. Tutor.





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