

and liable under the covenants of the lease; and that proceedings may be brought against any one adult person in occupation.

As a consequence of any such provision it was recommended that Section 83A be amended so as to make it clear that orders made under Section 83A (2) would terminate any rights of the Public Trustee in the premises.

Abatement and Evidence on Commission and Discovery

The problem of abatement of proceedings was considered and it was recommended that provisions for revivor of abated proceedings similar to those existing

in respect of actions in higher Courts should be incorporated into the Act.

The absence of a power to take evidence on commission and to obtain discovery has caused difficulty and hardship in some cases and it was recommended that the power to allow the taking of such evidence and the ordering of discovery should be incorporated into the Act and perhaps in appropriate cases conferred on the District Court which has the machinery to exercise such powers.

The report of the Commission was tabled in the Legislative Assembly on 1st November, 1961.

The Moneylenders and Infants Loans Act

In the past year there have been several reported cases which disclosed, or, perhaps, emphasised that the provisions of the Moneylenders and Infants Loans Act do not operate to protect only the weak against the strong.

Concerned at the possibility of widespread use of the Act for purposes other than those for which it was designed, the President (Bowen Q.C.) joined with the President of the Law Society (Mr. J. J. Watling) in making a statement which was published in the Press on 26th May, 1961, drawing attention to the inadequacies of the Act. A committee consisting of Holmes, Q.C., Waddell and Howell, was appointed to report on the evils of the legislation. In addition the President (Bowen, Q.C.) saw the Minister of Justice (the Hon. N. J. Mannix) and discussed the question of amendment of the Act with him. The committee prepared a preliminary report which, to use the words of the report itself was "intended to be no more than an introduction to the approach which should be made to the extremely complex problem of re-drafting the whole of the Act". On 29th June, 1961, the Council adopted this report and the substance of it was sent to the Minister. At the same time, the Council appointed another Committee (St. John, Q.C., Howell and Bainton) to formulate specific proposals for the amendment of the Act.

On 26th July, 1961, the Minister announced that he would recommend to State Cabinet that the Act be amended in certain respects and indicated what these amendments would be.

On 21st August, 1961, the report of St. John's Committee was, after detailed consideration at a special meeting of the Council, adopted and forwarded to the Minister.

The main recommendations of the report are briefly set out below for the information of members of the Bar:—

(1) The committee considered that failure by a lender to comply with some technical requirement of the Act should not result in the loss of his principal and security. The committee suggested that compliance with the

requirements of the Act could be sufficiently ensured if failure were to result in loss of interest.

(2) The committee recommended that the Act should not continue to apply to the so-called "ad hoc" moneylender, that is, one who from time to time lends money at a rate of interest exceeding 10% per annum. As an alternative, the committee took the view that, if the Act were to continue to apply to the "ad hoc" moneylender, then as the rate of 10% per annum was now so little above the ruling commercial rate, the rate prescribed by the Act should be raised to at least 15% per annum.

(3) The Minister's earlier intimation that he was considering an amendment which would take loans to corporations out of the ambit of the Act was welcomed but it was suggested that, as many companies are but small family trading companies, it might be expedient to continue the application of the re-opening provisions of the Act to loans to corporations which, but for the proposed amendment, would be within the ambit of the Act.

(4) The committee also welcomed the Minister's statement that loans over a certain figure (the Minister had suggested £10,000) should be excluded from the ambit of the Act. However, as there were many loans of a commercial nature below £10,000, it was considered that this figure could with advantage be reduced to a much lower figure, £3,000 being suggested.

(5) The committee recommended that the Act should not continue to apply to commercial transactions, such as discounting, which were within the ambit of the Act because of the extended definition of "loan". It was pointed out that, since transactions of this nature had been well known and in use by the commercial community for many years, the operation of the Act upon them resulted in commercial people being driven to adopt less satisfactory expedients, a result which was outside the purpose and scope of the Act.

(6) The committee urged that, bearing in mind the apparent purpose of the Act, loans of any nature to any person at a rate of interest less than the bank rate for the time being should be outside the ambit of the Act.

(7) In the light of recent litigation concerning the Act and of the large number of persons known to be

seeking to take advantage of minor technical breaches to avoid repaying money borrowed by them with a full knowledge of the extent of the obligations being undertaken by them, the committee took the stand that the amendments to the Act which the Minister saw fit to make ought to be retrospective in their operation, except in cases where litigation concerning any particular transaction had been concluded or compromised. If amendments to the Act were justified, then they were justified in respect of past as well as of future transactions.

(8) In addition to the proposals set out above, which may be described as recommending changes in the policy and operation of various provisions of the Act, the report drew the Minister's attention to a number of difficulties arising out of the draftsmanship or requirements of various of the sections of the Act and suggested alterations which might be made when the Act was under review. The more important of the matters dealt with in this section of the report were as follows:—

(a) The definition of "interest".

(b) The definition of "legal costs".

(c) The formal requirements and contents of the note or memorandum.

(d) The requirement of the consent of the spouse in the case of loans to husband and wife jointly.

(e) The limiting of a lender to the enforcement of his security.

It appears from an announcement subsequently published in the press that the recommendations dealt with in paragraphs 1, 3, 4, 5, 6, 7, 8 (c) and 8 (d) above have been adopted in whole or in part by the Minister. It is to be hoped that as amendments are to be made to the Act, the opportunity is taken to clarify many of the matters which in the past have given rise to considerable doubt and difficulty.

The introduction of the Bill to amend the Act is awaited with interest.

Law Reform

Law reform has always been, and must always be, a matter of living and continual concern to all lawyers, and from time to time for many years members of the Association and the Council, have discussed and made representations concerning the amendment of specific statutes and doctrines of the common law which have appeared not to accord with the requirements of the community or which have needed clarification or have been open to abuse.

Permanent Law Reform Committee

These efforts of the Bar at law reform, have been put forward on an ad hoc basis and, as a rule, the Association's representations are addressed to the Attorney-General, who either deals with them through his own department or transmits them to the appropriate Minister if they are outside his jurisdiction. It is on rare occasions only that suggestions for the reform of some aspect of the law are followed by legislative action, because, no doubt, of the pressure of day to day administrative problems in the departments of government, and upon the time of the legislature itself.

It has long been felt that the cause of law reform would be best served by the establishment of an official standing committee which would have more prospect of receiving official attention than the private committees of the Bar Association and of the Law Society. Accordingly, late last year the Council joined with the Law Society in suggesting the establishment of such a committee. For some time there was no official reaction to this proposal.

Early this year, as a result of the inquest into the death of Dr. Yeates, the Council made a report on Coronial Inquiries and resolved to consider the whole question of publicity in connection with committal proceedings before magistrates. This was followed by a

resolution of the Legislative Assembly for an official investigation into this and associated problems, a note of which appeared in "The Bar Gazette" of March, 1961.

The Bar Gazette of June, 1961, expressed disappointment at the non-implementation of the Assembly's resolution, but it gradually became apparent that the problem was being approached in a broader way and on 27th September, 1961, the Minister of Justice (the Hon. N. J. Mannix) announced in the Legislative Assembly that after conferences between himself and the Attorney-General (the Hon. R. R. Downing), it had been decided to establish a permanent Law Reform Committee. It would comprise three Judges, of the Supreme Court, two District Court Judges two nominees of the Bar Council, two nominees of the Law Society, two magistrates, and one representative of the University of Sydney. The terms of the reference of the Committee were to be:—

(1) To inquire into the state of business and the practice and procedure of the various Courts of Justice in New South Wales and to report whether, with a view to greater expedition, economy or efficiency in the administration of justice, any, and if so, what reforms of practice or procedure should be introduced;

(2) to inquire into and report on whether any, and if so, what, law reforms might be introduced which would tend directly or indirectly, to secure greater efficiency or economy in the administration of justice;

(3) to inquire into and report on such matters of law reform as may be referred from time to time to the Committee by the Attorney-General.

The Council, which had had various discussions with the Attorney-General on the subject, had always