

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

advocated a smaller committee and was disappointed at the constitution of the committee which it felt to be somewhat unwieldy. However, it is understood that the Committee will carry out most of its work through sub-committees which will submit their reports direct to the Attorney-General for the Government's consideration.

Despite the measure of disappointment to which reference has been made, the Council feels, and is sure that all members of the Association will agree, that the appointment of the Committee is an important advance towards law reform in this State.

#### *Special Committees*

The first two of the terms of reference set out above cover subject matters already receiving attention from the Council which had, before the short vacation decided to set up five committees to collate material and to formulate views relating to various problems connected with the administration of Justice and the efficient handling of the business of the courts. The work of these committees, whose constitution and terms of reference are set out below, is particularly important as they will provide the Association with carefully formulated and well documented views which it can place before the official Law Reform Committee when it embarks upon its work.

#### **Membership and Terms of Reference**

**Committee I:** Meares, Q.C., Kerr, Q.C., McGregor, Helsham, Yeldham.

- (a) Pre-trial procedure.
- (b) Appointment of Master or Business Manager.
- (c) The judicial functions performed by the Prothonotary.
- (d) Methods of listing cases.
- (e) Saving of judicial time.

**Committee II:** Moffitt, Q.C., Hicks, Q.C., Needham, K. G. Gee, G. Smith.

- (a) Adoption of the rule of strict liability or modification of the present law as to contributory negligence.
- (b) The submitting of specific questions to juries in civil actions in preference to taking a general verdict.
- (c) Power in an Appellate Court to substitute a verdict for a jury's verdict.
- (d) The present constitution of the Criminal Appeals Court.

**Committee III:** Riley, Q.C., Byers, Q.C., Robson, Waddell, Simos.

- (a) Constitution of a permanent Appellate Court or courts.
- (b) The adoption in whole or part of preparing written cases in Appellate jurisdictions.
- (c) The allocation of judicial work.
- (d) The wisdom of reserving judgments for substantial periods of time.

**Committee IV:** Bowen, Q.C., Rath, Q.C., Glass, R. J. B. St. John, Conacher, R. D. Meagher.

- (a) The fusion of Law and Equity.
- (b) The right to grant declaratory relief.
- (c) Stream-lining of equity procedure.
- (d) Adoption of Judicature Act system of pleading.
- (e) Co-ordination of procedure in various jurisdiction in Supreme Court.

**Committee V:** Reynolds, Q.C., Davoren, Q.C., Samuels, Fisher, Wran.  
Coronial and Magisterial Enquiries.

#### **The International Commission of Jurists— Australian Section**

Readers of the "Gazette" will already be acquainted with the general nature and objects of the International Commission of Jurists, which was founded in 1952 for the object of upholding the Rule of Law and human rights, as an outline of its history is contained in 31 Australian Law Journal 870. We set out below information about the Australian Section of the Commission, which will interest members of the Bar.

The Australian Section of the Commission was formed in 1958 under the presidency of Sir Owen Dixon, and its membership now consists of more than 350 members throughout Australia. Branches of the Section are being formed in every State.

In addition to establishing the Section and the State Branches, the Council of the Australian Section has already concerned itself with a number of matters affecting human rights and the Rule of Law in Australia, and has arranged addresses about them in some capital cities.

Australian members took part in the Congress of the Commission held in New Delhi in 1959, and attended as observers at the South African Treason Trial and the Eichmann Trial. At the present time, the Section is conducting a Survey on the operation of the Rule of Law in Australia, as part of a world-wide survey sponsored by the Commission.

All judges and magistrates, practising lawyers, teachers of law, and law students are eligible for membership. Members receive the publications of the Commission from its headquarters in Geneva. Persons joining the Australian Section now will also receive prior publications of the Commission touching on matters of interest and concern to lawyers. Application forms may be obtained from Grogan, the present Secretary-General of the Australian Section.

The Commission has arranged a public meeting for **Tuesday, 28th November, 1961**, at 8 p.m. at Stawell Hall, 145 Macquarie Street, Sydney, when an address will be given by Kerr, Q.C., on the subject "Human Rights in New Guinea". All persons interested, whether they are members of the Section or not, are invited to attend.