

The Late Frank Rutledge Louat Q.C.

The only practising Doctor of Laws at the N.S.W. Bar for many years, Frank Rutledge Louat died at Dijon in France on 26th January, 1963, during a vacation visit to that country. A man of innumerable interests of an intellectual, artistic, and social nature, Louat was perhaps as well known both in the Australian community and internationally as any lawyer in Australia, and his loss will be widely felt.

After an education at Sydney Church of England Grammar School and the University, he was admitted to the Bar in 1925, obtained his Doctorate in 1933 and took silk in 1953. He was made a Chevalier of the French Legion of Honour in 1958 for his work in furtherance of Australian-French relations. Among his numerous distinctions, he was President of the N.S.W. Constitutional Association from 1940 to 1946 and a trustee of the National Art Gallery from 1958 and took part as the British member in the all-nations Council which arbitrated on the French-Indian Territories after India achieved independence.

Louat was a good Bar man, always eager to assist in furthering the interests of the Bar and willing to carry out any task which might be imposed on him to that end. A memorial service, arranged by the Association was held in St. James Church on 7th March, 1963, and attended by Mrs. Louat, and many Judges, fellow members of the Bar, Solicitors and other friends. A memorial address was given by the Chief Justice of the Supreme Court of N.S.W. (the Hon. L. J. Herron) in terms which will long be remembered by those who heard it.

INTERSTATE NOTES

Victorian Bar

From a Correspondent

As a State under the Judicature Act, Victoria has, of course, no separate courts administering law and equity; nor is it the practice for Supreme Court judges to be allocated exclusively to one branch of work(1). Judicial specialisation survived the Judicature Act until 1886 when Mr. Thomas a'Beckett, an equity barrister, was appointed to fill a vacancy on the common law side of the court. So that his experience would not be wasted Mr. Justice a'Beckett came to share the equity work with Mr. Justice Holroyd, and in the course of time the strict division between equity and common law or divorce judges was relaxed. In turn, the composition of the lists became more varied until the multiplication of motor cars changed the character of so much common law work. To New South Wales' eyes, indeed to English, the lists of the Victorian court contain a curious admixture of business. A leading New South Wales silk not long ago flew to Melbourne to appear on a company motion, only to find most of the morning in the court in which the motion was to be heard taken up with the hearing of applications for the remission of bail. There is no commercial court: all causes to be heard before a judge alone are taken in the one list.

But because most of our judges sit in all kinds of cases, the question whether particular work is more appropriately undertaken by an equity or a common law judge

is of small interest. It will be remembered that it was not until after the last war that the Lord Chancellor—at the suggestion of an Australian judge—transferred revenue business to the Chancery Division of the High Court from the King's Bench Division, which had acquired it when it was merged with the Exchequer Division in 1880. It does not surprise that revenue work should have been thought to belong more appropriately to the Chancery side, as, in modern taxation cases, the conveyancer's skills are usually of greater importance than the cross-examiner's wiles. It is perhaps surprising that this fact should have been recognised in England so recently. Once made, the change seems to have been complete, for Lord Justice Diplock, who before his appointment to the Court of Appeal was a judge of the King's Bench Division not unversed in commercial matters, in a recent case admitted that it was not until his judicial promotion that he had encountered the provisions of the Finance Act 1894(2). A judge of the Victorian Supreme Court might well be heard to say that he last had to consider the taxation legislation in a professional capacity the day before his appointment to the bench. Few taxpayers take advantage of the jurisdiction vested in State courts by the Commonwealth Income Tax Assessment Act and Estate Duty Assessment Act, probably because it is thought that the Commonwealth will be more ready to appeal from an adverse decision of a Supreme Court judge than of a judge of the High Court exercising original jurisdiction. The accuracy of this assumption may be doubted: the High Court in its appellate jurisdiction has shown no disinclination to reverse the decision of one of its members sitting alone.

These reflections are given point by the announcement that Mr. J. A. Nimmo Q.C. will be an Acting Judge of the Supreme Court during the absence on leave of Sir Charles Lowe. Sir Charles Lowe will retire from the court on 10th December, 1963. Although before the war he had an extensive common law practice, Mr. Nimmo has enjoyed little recent association with the civil jury courts in which he will sit for some months, his practice having been mainly in the field of income and estate taxation. Mr. Nimmo has had previous judicial experience (if that word may be used in disregard of the decisions in *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation* (1930) 44 C.L.R. 530 and *Reg. v. Coppel ex parte Viney Industries Pty. Ltd.* (1962) V.R. 630) as a member of the Taxation Board of Review and an inspector for the investigation of the affairs of a company under the Companies Act. He was recently elected to the Victorian Bar Council and was at the time of his appointment the only member of the Council occupying chambers in Equity Chambers.

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The death of Mr. Basil Buller Murphy has deprived the Bar of one of its best-loved members. Basil Buller Murphy was perhaps out of place in the harsh glare of

- (1) Mr. Justice Barry in recent years has sat only in the divorce court. This arrangement facilitates his Honour's arrangements in connexion with his work as the judicial member of the Parole Board.
- (2) *Morgan v. I.R.C.* (1963) 2 W.L.R. 416, at p. 427.

modern life, for he was a man who possessed the formal bearing and courteous manners of a day unfortunately now past. His enthusiasms were many and whole-hearted. He loved the theatre, and had himself considerable ability as an actor and mimic; his impersonations of members of the bench and bar at bar dinners will be missed. He was an untiring worker for the world federation movement both as organiser and as publicist. In the latter capacity he wrote a play on the theme of international comradeship as evidenced by the Melbourne Olympic Games. It is of some interest that he was a direct descendant of the great eighteenth century judge Francis Buller (author of Buller's "Nisi Prius" and mentor of James Mansfield) and a third cousin once removed of the present Lord Chancellor, Lord Dilhorne.

Since March 1960, Mr. Buller Murphy had been sitting as a Chairman of General Sessions. He was appointed under a commission for a year which was twice extended. His appointment was made at a time when the arrears of criminal business were causing concern. The Victorian Bar Council held the view that the increase in criminal business was not a temporary matter which might be cleared up by a temporary increase in the number of judges but it was likely to continue. A further proposal by the government last year to set up Courts of General Sessions in the suburbs presided over by senior members of the bar as recorders also met tepid enthusiasm from the Bar Council. There was a body of opinion amongst members of the Bar that the government by such expedients was trying to set up a system of cheap justice under cover of dealing with a temporary problem. Towards the end of last year, the statutory limit on the number of County Court judges was removed, and three new judges were appointed. A Court of General Sessions now sits in the petty sessions building at Hawthorn and criminal appeals from magistrates' courts are heard in the R.S.L. Hall there. There are now four chairmen sitting with temporary commissions. The crime rate does not appear to be waning, although since the jurisdiction of courts of petty sessions to deal summarily with certain classes of larceny, factory-breaking and assault was extended in December last year, the number of persons being committed for trial upon presentment has fallen sharply. This fall is probably accounted for by the fact that a plea of guilty can be made as effectively in a Court of Petty Sessions as upon presentment before a judge.

Queensland Letter

The Bar Association of Queensland welcomes the opportunity to contribute to the Bar Gazette and is grateful to the New South Wales Bar Association for its organisational and financial assistance which will enable the publication to become an Australian one both in circulation and in content.

Although, at first, the members of the Queensland Bar were inclined to view the then proposed Australian Bar Association with some degree of caution, they did resolve to give support to its formation. However, since the inaugural Australian Bar Council Meeting held in Brisbane in July 1962 and the first General Meeting held at Hobart in January 1963, the development of the Australian Bar Association has been discussed at two

General Meetings of this Association, and the objects and activities of the Australian Bar Association met generally with the approval of the Queensland members.

It is felt that the regular publication in the Gazette of items of interest to the Bars of member States, particularly those dealing with problems of practice, ethics, rulings and the like will greatly assist in the breaking down of some of the barriers presently existing between them and lead to a greater understanding of each other's problems, and, no doubt, to some uniformity of professional conduct, especially in matters where it is felt there are at present divergences between the various Bars.

To the members of the Queensland Bar these are matters of great importance. The geographic distribution of our Bar is wide in the sense that we have practising members in the three Supreme Court districts of the State. There are at the Northern Bar centred at Townsville presently five members, in the Central District centred at Rockhampton two members, and in the Southern District at Brisbane, 72 members. All are members of The Queensland Bar Association and members from all districts have from time to time approached the Bar Committee for advices, ethics, rulings and so on. However, there has never been any general publication of such matters and therefore the Gazette, it is hoped, will provide not only an instrument for the general circulation of matters of domestic significance but, moreover, on an Australia-wide basis. It will in Queensland, perhaps, more than Southern States, justify its existence.

In the current year the Queensland Bar has already held its Annual General Meeting. The former President, Mr. Justice Hart, was appointed to the Bench in January 1963 and because of technical difficulties then present in our Constitution, arising through his Honour's appointment and consequential resignation, it was considered desirable to bring the annual General Meeting forward from its normal time in May to February.

At the Annual General Meeting, Mr. G. A. G. Lucas Q.C. was elected President and Mr. J. A. Douglas Q.C. Vice-President. The following were elected members of the Committee: Messrs. D. M. Campbell Q.C., W. B. Campbell Q.C., D. Casey, R. H. Matthews, C. D. Sheahan, J. D. Dunn, A. S. Given, J. M. Macrossan, C. E. K. Hampson and A. K. McCracken.

Subsequently to the elections Mr. G. A. G. Lucas Q.C. was appointed our representative on the Executive of the Law Council of Australia, and together with Mr. A. K. McCracken, also to the Australian Bar Council.

Mr. Lucas has since, however, been appointed an Acting Justice of the Supreme Court during the absence of His Honour The Chief Justice, Sir Alan Mansfield, as Administrator, and accordingly, during the absence of the President, Mr. J. A. Douglas Q.C. will act as President and as delegate to the Law Council and to the Australian Bar Council.

In accordance with our normal practice, various sub-committees have been formed and some of these are in the process of reporting on matters of considerable importance as, for example, the consideration of the provision of Legal Aid and the introduction of a system of arbitration along the lines of the English system