Bar News

The journal of the NSW Bar Association

John Mortimer Q.C.

Autumn 1987

In this issue

COVER

John Mortimer Q.C.

John Mortimer Q.C., author and creator of the famous Barrister "Rumpole" was recently in Australia. Sydney Solicitor, Simon Fieldhouse photographed him whilst standing on the steps of St. James Church opposite The Supreme Court of New South Wales.

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Centre: The Chief Justice, Sir Anthony Mason then (L to R) Justice Toohey, Justice Deane, Justice Wilson, Justice Brennan, Justice Dawson and Justice Gaudron

The New High Court

Members of the legal profession gathered in Canberra in the first week of term to farewell the retiring Chief Justice of the High Court, Sir Harry Gibbs, and to welcome the new Chief Justice, Sir Anthony Mason and the two new members of the Court, Justices Toohey and Gaudron.

Gyles Q.C., wearing two hats, as President of both the Australian and New South Wales Bar Associations, paid tribute to Sir Harry's career on the Bench and his contribution to the Bar. He welcomed Sir Anthony and the two new Justices. He pointed out that during Sir Anthony's career at the New South Wales Bar, His Honour had "strongly influenced several more junior rising stars such as Priestley, Meagher and Gleeson, mostly for the good".

Sir Anthony will be the guest of honour at the Bench and Bar Dinner to be held on 19 June 1987.

Justice Gaudron will be the guest of honour at a special Bench and Bar Dinner on 8 May 1987. □

Legal Professional Bill

In early March the Attorney-General forwarded to the Bar Council a draft of that portion of the Legal Profession Bill which relates to professional misconduct. On 10 and 11 March the Bar Council held special meetings to consider the draft. As a result of those meetings a thirty page document providing a detailed commentary on the draft was forwarded to the Attorney General. Further drafts of other parts of the Bill will be forwarded to the Council for consideration in the next few weeks.

The Attorney-General hopes to introduce the Bill in State Parliament before the end of the current session in the first week of May.

In anticipation of the increased administative workload which will arise from the issuing of practising certificates and the three tiered disciplinary structure (professional conduct review panel, professional standards board and discriplinary tribunal) the Bar Council intends to appoint a member of the profession to devise and institute procedures to give effect to the changes. The appointee will also be called upon to deal with other public and professional issues of importance to the Association as they arise. □

Bar Notes

A Treasurer's Lament

"He who budgets for a deficit is irresponsible. He who balances the books is tax hungry".

At its meeting of 19 February 1987 the Bar Council decided that the Association should make an administrative charge of 10% of the fees recovered, for collection of fees, save in respect of accounts rendered for work done during the first 2 years of practise at the Bar.

During 1986 $368,397 was recovered, on behalf of 201 Barristers, an average of $1,832 per Barrister, with a **mean** of $850. There are 1062 members of the Association.

The cost to the Association of collecting the fees was in the order of $30,000 in 1986 and is increasing as the amount recovered increases (1983 - $88,000; 1984- $142,000; 1985 - $196,000).

The Association's finances are marginal at best. The Council took the view that the "user pay" princple should apply.

"Why not a flat fee?" we have been asked. Because to meet the cost it would have to be $150 per case. In a quarter of the cases the amount recovered was less then $300. □

Constructive Action On Courts

The Attoney-General has informed the Bar Association of the Government's plans for construction of new courts over the next five years.

On 10 February last following a cabinet meeting at Katoomba, the Premier announced a five year, $150 million project programme designed to rejuvenate court accomodation in the areas of great need.

Tenders are to be called in April for the constuction of two additional court rooms at Katoomba, one with jury facilities, together with registry and sheriffs' officers and modern facilities for the legal profession and the public. This project is expected to be completed by October 1988.

Tenders will also be called later this year to provide new courts at Campbelltown, Parramatta and Burwood. Campbelltown Court House is the Government's No.1 capital works priority for the new courts in the 1987-88 financial year. Plans are currently being drawn up for a $20 million multi-court complex for the District Court at Parramatta to relieve the problems of the Sydney Western District Court. Burwood will be the site for a new complex of six local courts which will cost approximately $9 million.

Last year the Government purchased the old Mark Foys' building on the corner of Elizabeth and Liverpool Streets. Plans are well underway to convert the building into a District Court complex of sixteen courts which is expected to be available for use from the beginning of term in 1990.

This building programme follows the recent opening of a new Court House at Port Macquarie and the near completion of a major complex at both Gosford and Albury.

It is hoped that when the programme is completed it will result in an improvement in the facilities available to the legal profession and litigants and the Attorney-General hopes it will also contribute to a significant decline in court delays. □

Law Council

As reported in the last issue, in June 1986 the Bar Association gave notice of its intention to withdraw from the Law Council of Australia at the expiration of the necessary six months period of notice.

There are now discussions proceeding between the New South Wales Bar Association, the Victorian Bar Association and the Law Society of New South Wales and the Victorian Law Institute and the President of the Law Council which may lead to a compromise being reached. It is hoped that the matter will be resolved at the meeting of the Law Council in Hobart in April. □

Evatt J. Retires

The Hon. Mr. Justice Phillip Evatt, DSC LL.B. retired from the Federal Court on 27 February 1987. Typically he wished for no formal ceremony. After he had delivered his last judgment Milne Q.C. paid a personal tribute as did Coombs Q.C., in a Court crowded with His Honour's friends.

After a distinguished naval career in submarines during World War II His Honour was called to the Bar in 1951 and took silk in 1973. He appeared in the Petrov Royal Commission in his early career and presided over the Agent Orange Royal Commission at the later stages of his judicial life.

His work at the Bar was marked by skill, fairness and a relaxed style. It is said that he invented "out to lunch".

He goes to retirement in Leura with his wife, his pre-war sweetheart Nan, with the best wishes of all in the law who knew him well. □

Form of Address — Justices of the High Court

The Justices of the High Court have decided that the honorific "Mr. Justice" will no longer be used. In its place the term "Justice" will be adopted. Consistently with this change the Chief Justice will be referred to as "Chief Justice Mason".

These changes are not to affect the form of address used in personal conversations in which the practice is to address a Justice as "Judge". □

Communication with Jurors

It has come to the Council's attention that following the conclusion of a criminal trial in the District Court, counsel in the trial, through the Sheriff's Officer, indicated that they, counsel, were going to some nominated place for a drink and invited the members of the jury to join them.

The Bar Council is of the view that counsel involved in a trial should not solicit the company of members of the jury which heard the trial for the purpose of discussing the case with them after the trial. □

Book Review

Voumard: The Sale of Land, Victoria, 4th Edition

(Law Book Company, $89.50 HC)

In recent years there has been a proliferation of reported conveyancing cases. To some extent this reflects the increasing volume of litigation generally, but in large measure results from the efforts of the authors of the C.C.H. and Butterworths conveyancing publications to deliver to their readers reports, or at least notes, of all conveyancing decisions of possible significance.

Many see the multiplication of specialised law reports in a whole host of different fields as undesirable because of the increasing burden of research time and subscription cost which it places upon the practitioner. The trend does however have at least one beneficial result. Prior to the publication of specialised reports, those with a large practice in a particular field tended to have vast collections of unreported decisions which were not available to all. The advantage that these collections provided has tended to be negated in recent years in fields such as conveyancing. Although the cost is high, the C.C.H. and Butterworths publications are well organised and indexed and one would think that the little extra time involved in research would be far outweighed by the savings resulting from avoiding having to argue a point which has been the subject of a decision of which counsel would otherwise have been unaware.

Like it or not, specialised reports are now a fact of life and a barrister arguing a case in a field where specialised reports exist, ignores them at his or her peril. It is curious in these circumstances that the editor of the recently published 4th edition of Voumard's The Sale of Land in Victoria, has consciously chosen to disregard these reports. They are dismissed in the Preface in the following terms:

> "There have also been several publications of law reports in recent times. Some of these reports merely contain a brief summary of the reasons for judgment, which may not be of assistance to practitioners. I have not referred to any of these reports in this book."

This feature of Voumard renders the book of limited value to practitioners, at least those in New South Wales from whence come most of the judgments reported or noted in the specialised reports.

By way of example, there is reference at page 78 of the 4th Edition to the principle in **Eccles v Bryant [1948]** Ch. 93, that where parties have shown an intention of agreeing to sell by the customary method, namely by exchange of contracts, there is no binding contract until exchange has occured. The discussion would be more complete if reference had been made to the decision of the New South Wales Court of Appeal in **B. Seppelt & Sons Limited v Commissioner for Main Roads** 1 B.P.R. 9147 which is reported only in the Butterworths Property Reports. In that case, the **Eccles v Bryant** principle was applied to an alleged contract made by a Government Department. Various factors attracting the application of the principle in the particular circumstances were discussed. Furthermore, an interesting extension of the principle is to be found in **Summit Properties v Comserv (No. 784) Pty. Limited** 2 B.P.R. 9173, again a decision of the New South Wales Court of Appeal reported only in the specialised reports. The concept of a ceremony necessary to mark the completion of a bargain in relation to Torrens title land was considered in that case to extend to the need for execution by both parties to a proposed lease of a registrable memorandum of lease.

Another example relates to the important decision of the High Court in **Sindel v Georgiou** 154 C.L.R. 661, in which it was held that a binding contract had been made despite the fact that the forms of contract which had been exchanged were not identical. The High Court considered that the parties had agreed upon the terms of their bargain and that the lack of correspondence between the two copies was capable of being remedied by rectification. The decision was distinguished by the New South Wales Court of Appeal in **Longpocket Investments Pty. Limited v Hoadley** (1985) C.C.H. N.S.W. Conv. R. 55-244, where the vendor's solicitor was found to have had no authority to make a relevant change to the form of contract and that therefore it could not be considered that the parties "intended to treat the documents actually signed and exchanged as merely sealing a bargain . . . negotiated and agreed upon".

These comments aside, it must be acknowledged that Voumard has, since publication of its first edition in 1939, acquired a well-deserved reputation as a work of scholarship and as a valuable aid to the practitioner. Although, for reasons given above, and for the obvious reason that its accent is, as the title suggests, on Victorian conveyancing law, it cannot be treated as the only source of reference for a New South Wales practitioner, it is a very valuable aid to research. Its counterpart in New South Wales, Vendor and Purchaser by Stonham, as good as it may have been, is now over 20 years out of date. Voumard on the other hand is up to date and on many topics provides the most detailed, if not the only, discussion to be found in the texts and services of many of the intricate questions that arise in conveyancing law. The high standard of previous editions has been maintained in the 4th edition. □

R.B.S. Macfarlan Q.C.

A Personal View of Mr Justice Murphy

by Sir Maurice Byers Q.C.

Those committed by duty or inclination to a consistent perusal of the Commonwealth Law Reports observe that diversity of judicial opinion co-exists with uniformity of judicial method. The method is labelled legalistic by those who dislike it or are impatient with its consequences. Despite the strictures of many and the anathemas of several, it is a flexible judicial technique for the orderly development of law. It is understandable to those who must advise the community on what has been and may hereafter be decided. It restricts judicial fancy by requiring the premise to contain the seeds of the conclusion and thereby tends to exclude random judicial mutants. The justices of the High Court have long been polished performers in this mode.

Those justices who have turned the course of decision in constitutional matters, have done so by persistent dissent elaborately expressed. Sir Isaac Isaacs swung the Court from the errors of reserved powers in this way. Sir Owen Dixon performed a like feat at least for a time, for Section 92.

What then happens to a judge who scorns both current orthodoxy and current method? Mr Justice Murphy's judicial career must be viewed bearing in mind that many of his constitutional beliefs or assumptions were unorthodox and that his modes of justifying them were in the main employed neither by the judiciary nor understood by the profession. This is not to say that his beliefs were wrong, even if in this field absolutes are admissible. For each generation views the Constitution anew against the background of changing perceptions of Australian needs and of Australia's relations with other countries including the United Kingdom. A generation ago the Australia Act would have been unthinkable to many, yet each State Parliament, and the Parliaments of the Commonwealth and the United Kingdom co-operated in its passing. The people barely raised an eyebrow. Thus, the legal relation between Australia and the United Kingdom is now undoubtedly what Mr Justice Murphy in 1976, asserted was then the case. He said: "The United Kingdom Parliament has no power (and had none in 1958) to make a law having force in any part of Australia": **Bistricic v. Rokov** (1976) 135 C.L.R. 552 at p. 565.

However, he went on to say (at p.567): "In my opinion (notwithstanding any statements to the contrary) Australia's independence and freedom from the United Kingdom legislative authority should be taken as dating from 1901. The United Kingdom Parliament ceased to be an Imperial Parliament in relation to Australia at the Inauguration of the Commonwealth. Provisions of statutes directed towards regulating the Imperial-Colonial relations (e.g. those in the Colonial Law Validity Act, 1865) then ceased to be applicable. There are strong grounds for considering that cases which held Commonwealth legislation ultra vires because of inconsistency with any law other than the Constitution (e.g. **Union Steamship Company of New Zealand Limited v. The Commonwealth**) were wrongly decided". Now, there is much to support the view that a law of the Commonwealth Parliament within its Constitutional powers could never have been invalidated by the Colonial Laws Validity Act if only because the Constitution, being a later Imperial Act, could hardly be construed as subject to the Act of 1865. So much was made clear in **China Ocean Shipping Company v. South Australia** (1979) 145 C.L.R. 172 at pp.204, 227. This would result only in the conclusion that the **Union Steamship of New Zealand Case** (supra) reflected the assumptions current in 1925 and for that reason, as well as that of logic, should no longer be applied. This view, namely the necessity to accomodate to changing constitutional conditions, is well enough accepted: **Spratt v. Hermes** (1965) 114 C.L.R. 225 at pp.272-3 per Windeyer J., **Bistricic v. Rokov** (supra) at p.558 per Mason J.

The point of my reference to and quotation of the second passage from Mr Justice Murphy's judgement in **Bistricic** is that he did not resort to the traditional judicial tools of reasoning and discussion of previous decisions to establish his heterodox position. His refusal to do so makes his statement more immediately understandable. And it is absurd to imagine that in 1902 the United Kingdom Parliament could legally, despite section 128 of the Constitution, have abolished the High Court and substituted, against the will of the Australian people, a Bench of Surrey Justices of the Peace. The whole point of the Constitution was the creation of responsible government for the Australian people in the federation to which the local Courts presence was central.

That after 1901 there were at least severe restrictions on the United Kingdom Parliament's legislative power over Australia is therefore unarguable. But the judge did not argue it and left his wider statement exposed to the criticisms showered on it in the **China Steamship Case** (supra) at pp.182, 209-214. I should say in fairness to him, that those who relied, in the **China Steamship Case**, on this obiter dictum made no attempt to support it by argument. They thus exposed what may then have been a passing judicial observation to a storm of analysis. A more sustained and convincing discussion had to await his decision in the latter case: see pp.234-239. Then it appeared surrounded by other and critical judgements.

A similiar example is the judge's statement of his views upon section 92. What he said in **Buck v. Bavone** (1976) 135 C.L.R. p.110 at 138 was that the prohibition did not extend beyond the imposition on interstate trade, commerce and intercourse of "customs duties or similar taxes, direct or indirect". What he wrote is lucid and powerful. It cannot be disputed that the Court's approach to section 92 is, shall we say, fluid. It is also obscure to the point of despair. Powerful voices on the Court have recently been raised for a reconsideration of what has been decided and a reformulation, or rather a new formulation, of the application and content of the section. When that occurs, Mr Justice Murphy's remarks in **Buck v. Barone** will be important, for at least he both recognized before many of his peers that reconsideration was necessary and ventured his adoption of Lord Wright's extra-curial opinion of its meaning. But his drastic departure from all received judicial opinions as to its operation served to imperil the force of what he had to say. Judicial techique required a more elaborate and argued approach if the Bench and the profession were to be convinced.

One feels when reading Mr Justice Murphy's judgements that they were written not for his colleagues or the practising members of the profession, but for the public and the students. It was his view that the law and its processes should be, and should be made to be,

understandable by all. He believed that the Court's decisions should be explained to those who reported them, to the public and to those affected by them. The Court, in involved cases, has done this from time to time, but I think he had in mind more sustained and widespread action.

His approach to the judicial art has, I think, obscured his worth as a lawyer. He had, beyond dispute, a powerful and original mind. If he had constitutional preconceptions, well, he was not alone in that. It would be difficult to find a Justice without them. In argument he went quickly to the core of the problem and dealt with counsel with unfailing courtesy and humour. His tragically early death left a gap on the Court that will not soon or easily be filled.

His influence will not I think be immediately felt. But I imagine many of those who as students have read his judgements will carry into their professional and judicial careers the impact of those pithy legal certainties in which his judgments abound. □

Sagas in Law

The long running Southern Cross v. Offshore Oil case which went for days in front of the Chief Judge in Equity, Mr. Justice Waddell, may have set records in New South Wales but it pales into insignificance compared with a case which is running in the United States.

In January 1979 a railroad tank car spilt less than a teaspoon of dioxin in Sturgeon, Mo.

In February 1984 the trial of a law suit filed by residents of Sturgeon began in the St. Clare County Court in Belleville presided over by Judge Richard Goldenhersh. In December 1986 the case was still going and the twelve jurors, and two alternates, hearing the case were about to break for their third Christmas.

The central issue is whether the residents were injured by the chemical. Dozens of medical experts have testified. One a physician and immunologist, was in the witness box for three months.

The jurors have become close friends, celebrating birthdays and anniversaries together. They have had two week vacations as well as breaking on two occasions to allow jurors to honeymoon and one to recover from an emergency appendectomy. □

On the Roof

Anyone who takes their midday stroll on the roof of Wentworth and Selborne Chambers these days will find workmen busily constructing a roof garden and barbecue area there. It appears that Counsel's Chambers has decided the denizens of Phillip Street should be lured away from their subterranean dining room to enjoy the sunlight and fresh air of the rooftop at lunchtime.

There is to be a restaurant which, presumably, will provide the fatted calf for the charcoal and usual barbecue features such as foil wrapped spuds, coleslaw, tomato sauce etc. It will not be licensed but you will probably be able to get high just breathing the fumes wafting up from the traffic in Phillip Street. There are also showers in the bathrooms so sweaty joggers can clean up there as well as in the showers in the basement.

The roof garden will be available for hire for functions in the evenings.

Counsel's Chambers intends to inform the huddled masses in Wentworth and Selborne Chambers of their new playground around Easter. It is hoped the announcement will be made well before the crisp winter air means no-one will dare set foot on the roof. □

Tune in . . . .

Those who set their clock radios on 2MBS-FM to awake them between the hours of midnight to dawn could be forgiven for thinking when they awaken to the dulcet tones of the announcer that they are already in court and an equity court to boot. This is because the recently retired Chief Judge in Equity, Michael Manifold Helsham, has kicked over the traces and taken up a career with that radio station.

Starting as a telephonist, the former Chief Judge's talents were rapidly recognised and after an initial training period he rose to the position of announcer of some of the station's musical programmes. Not content with that, and no doubt thinking wistfully of his days as an advocate, he has persuaded 2MBS to depart from its usual music format to allow him to give vent to his cross examination skills in a programme entitled "Powerpoint", in which he interviews such notables as Dame Leonie Kramer. □

Australian Federal Police — Interviews with Suspects in the presence of Solicitors.

A member of the Association drew the Bar Council's attention to an incident which occurred when some members of the Australian Federal Police, who allowed a solicitor to attend the interrogation of a suspect would not, however, permit him to interrupt the proceedings to advise his client.

The President wrote to the Commissioner of Police of the Australian Federal Police pointing out that the Council's view was that a person in police custody facing interrogation who has his solicitor present should have the right to seek such advice as he thinks fit from time to time.

R.J. McCabe, the Assistant Commissioner of the Australian Federal Police (Eastern Division), responded to the President's letter. He has agreed to take the necessary action to ensure that members of the Australian Federal Police under his command do not place unjustified restrictions on a solicitor called upon to advise his client during an interview.

Members of the Bar are reminded that they should not attend police interviews save in exceptional circumstances as their presence may render them liable to be called as witnesses in the proceedings and expose them to difficulties in retaining or accepting a brief in the matter: see Bar Rules 4 (g) and (h).

It would not, however, be inappropiate for counsel to remain outside the interview room and be consulted by the solicitor from time to time if desired. □

Countdown

These days a commercial cause is over almost before it begins. This is the result of the new procedures set out in Practice Note 39 which came into effect on 1 January 1987, the same day as was appointed for the commencement of the Supreme Court (Commercial Division) Amendment Act.

The latter Act inserted into the Supreme Court Act s.76A which enables the Supreme Court to give such directions as the Court thinks fit (whether or not inconsistent with the Rules) for the speedy determination of the real questions between the parties to proceedings in the Commercial Division. The new procedures are made pursuant to that section and are designed to give effect to the philosophy inherent in the concept of a Commercial Division, viz. to "provide a service to the commercial community by enabling commercial disputes to be decided as quickly and as cheaply as possible".

There are a number of innovations particularly in the area of commencement of proceedings, interrogatories, amendments and experts' reports. It is in the preparation for hearing, however, that the greatest changes have been wrought. Annexure 3 to the Practice Note sets out a "usual order for hearing". When a date for hearing is fixed the Court is to direct which parts of the "usual order" are to be complied with by the parties. The "usual order" requires a number of steps to be taken in the days immediately before hearing.

* Seven days before the trial each party is to serve on each other party a written statement by each proposed witness of the oral evidence which that party intends to lead on an issue of fact to be decided at the trial.
* Seven days before the trial each party is to serve upon the other a written notice specifying the documents it intends to tender at the hearing.
* No later than four working days before the trial each party is to inform the other in writing which of the specified documents may be tendered by consent.
* Three days before the hearing each party other than the plaintiff is to deliver to the plaintiff two copies of all documents intended to be tendered by such party at the hearing which have not been identified in the plaintiff's notes of documents.
* By midday on the last working day before the date fixed for hearing the plaintiff is to file two copies of the bundle of agreed documents duly paginated and indexed.
* No later than 4.30p.m. on the last working day before the hearing the plaintiff's counsel must file and serve:—

  — a statement of agreed issues;

  — a chronology of relevant events;

  — a list of **dramatis personae** (where appropiate);

  — a list of topics to be covered by submissions;

  — a list of propositions of law relied on together with the authorities to be cited in support.

If this sounds like the countdown to a NASA lift-off be assured, by one who has already had to comply with the order, that it feels like one. One might be forgiven for musing that the purpose of the order is to ensure counsel are so exhausted by the time they stagger to the door of the court armed with all the relevant documents (and praying fervently that their solicitors have delivered correct copies of everything to the right judge, opponent etc.) that they will be more interested in settling the wretched case than ever.

In fact, of course, the procedures are designed to reduce the time spent in Court while everyone from the judge down scratches their respective wigs and wonders what to do with a twenty page statement of claim, a defence of equal length, three hundred interrogatories and a cast of a thousand witnesses gazing anxiously into Court awaiting their turn in the box. To be fair, the procedures appear to achieve their purpose.

The procedures appear, to a certain extent, to be based on the new Guidelines to Commercial Practice which came into force in the English Commercial Court on 1 October 1986. These guidelines, which are set out as a note to Order 72 in the White Book were based on the recommendations of a Working Party of the practitioner members of the Commercial Court Committee chaired by Mr. Nicholas Phillips Q.C.

The guidelines in force in the English Commercial Court allow a somewhat more leisurely timetable. For example, the procedures for exchange of witnesses' statements contemplate that exercise will take place over a period commencing six weeks before the date for hearing. Bundles of documents are required to be filed and served, duly paginated and indexed, ten days before the hearing. Counsel must provide to the Court their list of issues and propositions of law to be advanced together with authorities relied on (with page references to the passages relied on) by 3.30p.m. on the day before hearing and must hand up at the hearing a chronology, list of **dramatis personae** and a list of topics to be covered by the submissions in the order in which they are to be covered. In addition, five days before the hearing counsel are required to submit to the Court their estimates of the length of the hearing.

The English guidelines go a bit further than Practice Note 39 in dictating the course of the hearing. The plaintiff's counsel is required to open in a "brief and uncontroversial" manner and the defendant's counsel is then required to respond (Chapter XV(2)). The evidence of all parties on one topic is required to be given before any other topic and all factual evidenced is given before the expert evidence. Every effort is to be made to "avoid prolonged reading aloud of documents and authorities".

The new procedures appear to have been effective **Counsel,** the Journal of the Bar of England and Wales reports that during the Michaelmas term (the first term in which the new procedures operated) the average length of a commercial case was 3.27 days compared with 5.61 days prior to the implementation of the new guidelines.

Counsel identified the main problem with the implementation of the new procedures as the failure to

provide a satisfactory bundle of documents. In many case, it pointed out, the pagination of the judge's bundle differed from that of one or both counsel or the court was just provided with a bundle of loose documents and left to sort them out.

Another common occurrence was "distraught telephone calls at twenty past four in the afternoon (prior to the date for hearing) confessing that the chambers' word processor had either broken down or that it refuses to divulge part of the contents of Counsel's written submissions". In England such problems are approached sympathetically and, apparently, counsel are even allowed to deliver their submissions in legible handwriting.

The Lord Chancellor still has the Commercial Court under review. In November 1986 he put forward a number of proposals aimed at further reducing the delay in the Court including:

* an increase in the judicial strength of the Court;
* control of access to the Court;
* close monitoring of commercial causes with a special procedure for especially complex cases.

These new proposals are based on a study of the Commercial Court carried out for the Lord Chancellor by Coopers & Lybrand Associats. One could be forgiven for thinking that some of them are based on the system already in force in New South Wales Commercial Division expecially that of control of access to the Court and the close monitoring of commercial cases. It does not appear that the English Commercial Court employs the system of early monitoring of each case by way of directions hearings so effectively employed in the New South Wales Commercial Division.

One assumes that the theory is that none of this new paperwork will add to the costs of the litigation. In practice, however, it is hard to see the counsel sweating it out producing the numerous documents required by the "usual order for hearing" not charging for their labours. Presumably, it is assumed that this cost will be offset by the reduction in hearing time. □

Just the Nearness of you . . .

Rivkin James Capel v. Allen
Cor: Rogers J., Hughes Q.C. is cross-examining stockbroker Rene Rivkin

"Q. Would you agree that you speak English about as fluently as anyone could? A. Not when excited.

Q. Not when excited? A. No.

Q. Are you excited now? A. I think that always in the witness box, on the rare occasions I have been there, barristers can excite me.

Q. Are you excited now? A. Mr. Hughes, you excite me."

NSW Bar Honours Sir Harry Gibbs

On December 5, 1986 the NSW Bar Association paid tribute to Sir Harry Gibbs G.C.M.G., K.B.E. in anticipation of his retirement as Chief Justice of the High Court on February 5, 1987. Sir Maurice Byers Q.C. proposed the toast.

(L to R) The President of the Court of Appeal, Mr Justice Kirby, Sir Harry Gibbs, Sir Frank Kitto and Sir Garfield Barwick.

There must be something about the air of Ipswich. Not only did Sir Harry Gibbs spend his boyhood there, but so did Sir Samuel Griffiths. There is at least one thing they have in common — The Chief Justiceship of Australia. Those who have seen his portrait in the High Court (rather I should say the copy presented by the judges of Queensland's Supreme Court) can easily understand the daunting effect the first Chief Justice had upon his early colleagues. You have Mr Justice Barton "strongly" concurring (Vol. 1 CLR at 233) and saying later after like language "it would not therefore be any use to add anything to what he has already said". Sometimes the reporter mentions the presence of his fellow Justices only in the side note at the commencement of the report (Vol.1 CLR 421).

Supreme legal craftsman as he is — indeed, if I may say so, undoubtedly one of the most accomplished ever to have sat on the court — Sir Harry has to date failed to elicit from any of his brethren such heartfelt tributes. I can't imagine Sir Anthony Mason saying so, even in jest. But in those days they often expressed their debt to counsel not only for his argument but for his ability as well. May I say I mention Mr Justice Mason only by way of example. If necessary I'll run through the rest.

I'm sorry to harp on this, but I notice that in the last case reported in Vol.1 of the Commonwealth Law Reports Mr Justice Barton says "I **entirely** agree with what my learned brother has said". No reservations. No agreement in the conclusion only — implying reservation about the reasoning.

At his swearing in as Chief Justice on 12 February 1981 Sir Harry said: "It is the proper role of the courts to apply and develop the law in a way that will lead to decisions that are humane, practical and just, but it would eventually be destructive of the authority of the courts if they were to put social or political theories of their own in place of legal principle. It is the most extreme heresy to suggest that the theories in accordance with which the courts should decide should be those which find favour with any Government or powerful section of society. The great powers which society accords to the courts are only conceded because the courts are regarded as instruments for the impartial application of law."

Those words were well said and have been adhered to by the court. No lawyer, more importantly no citizen, would deny the necessity for Judge made law, indeed all law, to be humane, practical and just. It is easy for Judges to lose sight of what is humane and just when they feel in the grip of some supposed principle of law apparently compelling a decision both inhumane and unjust. It is hard then to pause and inquire whether a principle compelling those conclusions really exists, or, if it appears to, whether judicial development of it is desirable. The common law gives the Bench a reasonably free hand in order that the rule of law may be humane and just, but never to create a prison of inflexible rules.

I remember very well hearing Sir Harry speak the words I have just quoted. The day before Sir Garfield Barwick had said farewell and that had been a moving occasion. but while Sir Garfield would I'm sure have agreed with what his successor said, I doubt that he would have said it. So expectation of change was for me at least confirmed.

Nonetheless the first few times I appeared before the Gibbs High Court (to adopt a catchy Americanism) I was quite disconcerted. It took me some time to spot the difference. I was the only one talking. All the Judges appeared to be listening. I don't mean to imply that Sir Garfield was ever rude. He wasn't; but his judicial style was a participatory one. He had said in his farewell remarks that as a barrister he liked talking to a Judge and that he liked the Judge to talk to him. Well, he retained that liking and as a Judge he liked talking to a barrister, particularly when the barrister was advancing his argument. I don't mean to suggest that when putting an argument you felt like a dispatch rider delivering a message across no mans land amidst a storm of shells and bullets — only that you needed your wits about you to keep upright. Now Sir Garfield knew all this and you'll find his apologia but no apology if you read his farewell remarks.

Sir Harry has always been courteous and serene. He doesn't interrupt as a rule unless goaded by stupidity or heresy. As is often the case, the other Justices, according to the measure of their natures, take their cue from him. Under him the rapier has replaced the gatling gun. Advocates should remember however the wounds from each can be fatal.

When he retires next February, Sir Harry will have been a High Court Justice since 4 February 1970 — some sixteen and a half years. His appointment to that bench met the same universal approbation as did his appointment as Chief Justice. He had been a Judge of the Federal Court of Bankruptcy and of the Supreme Court of the Australian Capital Territory from 1967. It was common knowledge at the time that this appointment was offered and accepted as a preliminary to membership of the Federal Superior Court then mooted but which never eventuated. Prior thereto Sir Harry had been a Judge of the Supreme Court of Queensland from 1961. He has been a Privy Councillor since 1972, a Knight Commander of the Order of Saints Michael and George since 1981 and a Knight of the Order of the British Empire since 1970.

This recital means that the community will have

received the benefits of his great legal gifts for twenty six years and only 15 or 16 were given to the rewards of private practice.

After being educated at Ipswich Grammer School, the University of Queensland and Emmanuel College he was admitted to the Queensland Bar in 1939. He was a member of the Australian Military Forces from 1939 to 1942 and of the AIF from 1942 to 1945 and was mentioned in dispatches. When Major Gibbs returned to the Bar he found time to lecture at the University of Queensland and took silk in 1957.

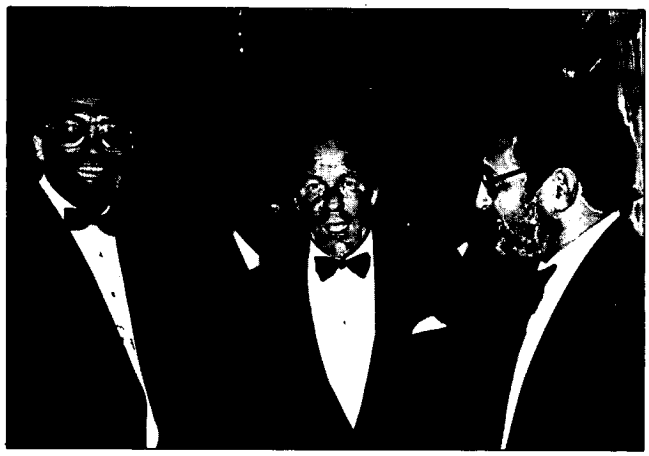
His career at the Bar was phenomenal. I still encounter Judges and members of that Bar who by direct or indirect knowledge speak of him with bated breath. A measure of his skill and eminence may be found in the High Court's decision in **Whitehouse v Queensland** (1960) 104 CLR 609 in which he persuaded them that a license fee calculated upon the hotelier's gross payments for liquor in the twelve months preceding the year of payment was not a duty of excise and hence that the Queensland statute was not struck down by S.90 of the constitution. The appeal to the Privy Council ran foul of S.74 and was dismissed, so that the consequences of the fatal argument remain with us today.

Sir Harry's years on the High Court have seen momentous changes not only in the law as declared by the court, but in the relationship between this country and the United Kingdom. The Federal Court and the Family Court are new Federal ventures — the validity of the latter's jurisdiction being sustained by a whisker and an imaginative exercise in reading down by Mr Justice Mason. I don't think it is an institution close to Sir Harry's heart.

(L to R) Mr Justice Glass, Sir John Kerr and Sir Maurice Byers Q.C.

But the existence of these courts side by side with the more venerable State Supreme Courts has greatly added to the High Court's work. It's responsibility has been increased by the abolition of Federal, and now State, appeals to the Privy Council. The High Court for some years appeared unmoved by the absurdity of the co-existence of two ultimate courts of appeal from the States in State Jurisdiction. Fortunately the Australia Act has remedied that and the situation now answers Sir Samuel Griffith's expectation in 1907. There is "an Australian Court, immediately available, constant in its composition, well versed in Australian history and conditions, Australian in its sympathies and whose judgements, rendered as occasion arose, . . . form a working code for the guidance of the Commonwealth", **Baxter v Commissioner of Taxation** (NSW) 4 CLR 1087 at p.1118.

Sir Harry's role in those years has been vastly important. His powerful intellect and authoritative yet courteous presence have put Counsel on their metal while



(L to R) Mr Justice McHugh, The Chief Justice, Sir Laurence Street and David Bennett Q.C.

they have been made to feel at their ease. I think it is easier and quicker now to acquaint the bench with your argument than it has been for many years., For this the Bar is greatly in Sir Harry's debt. Its members appreciate his attendance at their functions and his unassuming and approachable manner, although candour compels me to say that I rate his skill on the dance floor no higher than my own.

I earlier mentioned Sir Harry's legal craftsmanship. His judgments are like crystals — by that I mean not fragile, but clear and structured. They begin at the beginning and end at the end, have progressed through the middle. Not all judgments do that. Your are left in no doubt of the writer's meaning. This is at once the most difficult of skills to master and the writer's most precious gift to the reader. There is about almost every judgment of Sir Owen Dixon that I have read a slight haze of ambiguity, a hint of baffling distances and remote horizons. A Gibbs judgment is crystal clear. Its clarity and structure give it a certainty and permanence that may not always have been intended by the author.

He is an indefatigable traveller. Not only has he withstood those peregrinations around Australia that High Court Justices feel impelled to inflict on themselves, but, to my certain knowledge, has stood gazing at Darwin's finches on the Galapagos Islands. I have seen him disappearing down rocky and uncomfortable chasms in Central Australia; though when I come to think of it, it was always up these gorges while I sat breathless and with bruised feet far in the rear.

He has been a uniquely skilled lawyer, a courteous and gifted Judge and a fine gentleman.

Chief Justice this Bar is very much in your debt. □

Sir Harry responded

Assuming, as I do, that this gathering is not merely an expression of relief at my imminent departure, I feel very honoured by the fact that the Bar Council has arranged to hold this dinner for me and that you have paid me the compliment of attending it.

The New South Wales Bar is not only the most numerous, but also the most active and influential, of the bars in Australia. That is not say that it has a monopoly of wisdom and talent, or that all of its members are without fault or flaw. Indeed, as experience shows, the members of this bar, like those of others, are capable of ranging over the whole gamut of oratorical qualities from stubborn tediousness to scintillating eloquence. However, at all times during my life in the law, and I have no doubt ever since there has been a bar in Australia, there have always been, as there still are, barristers in New South Wales whose skills are of the very highest order. And because the bar here tends to take a bold and spirited attitude to the conduct of litigation, born no doubt of a sentimental attachment to the practices that predated the Judicature Act which New South Wales so belatedly adopted, one tends to look to the New South Wales Bar for fresh initiatives and for the setting of trends.

I do not need, in this company, to expound the virtues of a separate bar, whose existence I most strongly support.

However, I fear that the same view is not held by the community generally. At a time when a levelling egalitarianism is all the vogue, and change for the sake of change is orthodox, it is not surprising that there are many members of the public, and some of the legal profession, who doubt the need for the existence of a separate bar. Paradoxically enough, in a climate which is uncongenial to intellectual merit, the bar has so far fared better than most professions from a material point of view. That should not blind us to the fact that there are real threats to the continuance of the bar as we know it. One of those threats lies in the growth of the megafirms of solicitors, some of whose members seem to think that the emerging reorganization of the solicitors branch of the legal profession, with its reliance on size, specialisation and technology, will leave no place for a separate bar. Another is the influence of legal aid which, although highly desirable under modern conditions, makes a large section of the bar dependent on the public purse — a situation which must tend to undermine the bar's essential independence. A third threat may exist in the belief of some influential members of society that the bar provides costly examples of restrictive professional practices of a kind now distinctly out of favour. It is not surprising that members of public should suspect professional practices and traditions which they do not understand, and misunderstandings concerning the legal profession are revealed in unexpected places. For example, there appeared in the October number of the Australian Law News what purported to be a summary of a report by a committee which was set up by the Commonwealth Education Minister to review Australian studies in tertiary education. I do not know who the members of the committee were, but according to the report they said:

> "Law in Australia has tended to concentrate on that needed by the graziers and that needed to control convicts."

Mr Justice Morling and R.V. Gyles Q.C.

I do not think that a study of the law reports of any court in Australia, or of the statute law, would support that view.

The report went on:

> "There is an anachronistic concentration on what the law is and how it is to be applied, divorced from the social and historical context — that is, there is too great a concern for 'black letter law'."

The writers appear to regret that law students are taught what the law is rather than the law as someone wishes it to be, but I must say that a little knowledge of black letter law, in the sense in which it is used by the committee, would be nothing but an asset to any barrister appearing in the High Court. I hope that the bar can survive these threats, for I have no doubt that without a strong separate bar judicial performance would be very much the poorer and the protection of the public from the insolence of office will be very much the less effective. The survival of the bar may come to depend upon the success of its efforts to maintain its integrity and efficiency and to moderate the activities of any of its members who carry either cupidity or professional licence too far.

I would take this occasion to express my regret at the fact that the bars of the eastern States are in the course of withdrawing from the Law Council of Australia. I am not in a position to express any view as to the merits of the dispute which has led to this action. It is most unfortunate if it is right to say that the Law Council is devoting its time to advancing the interests of one branch of the profession over those of the other. However, I think it will be even more unfortunate, both for the bar and for the legal profession generally, if the Law Council ceases to represent the profession as a whole. When governments

seek advice concerning the law generally or the profession they naturally enough turn to one representative body and the influence of the bar is likely to be weakened if it speaks alone. I am sure that the bars are endeavouring to find some way of staying in the Law Council without jeopardising their interests and I hope that they succeed in their efforts.

I am of course not qualified to tell you what the bar ought to do, for it is over a quarter of a century since I practised at the bar. For most of that time I have sat in an appellate court. The task of an appellate judge is not always easy. His or her role, besides deciding the case before the court as justly as the law permits, is to endeavour to develop principles that will meet the needs of a changing society but which will nevertheless fit harmoniously with the general body of the law, statutory and non-statutory. That is a very different thing from elevating into legal principles one's own idiosyncratic views of justice. It is a different thing also from using a computer to scour the law books of the world, from Wyoming to Swaziland, in the hope of finding some pronouncements that will fit one's preconceived notions. So far as the actual administration of justice is concerned, the qualities of the judge who conducts the trial usually play a more important part than that of any appellate court. But of both trial judges and appellate judges it remains true to say, as Francis Bacon said four centuries age, "Above all things, integrity is their portion and proper virtue". The tide of social change has swept away many old attitudes but not, I hope, that one.

Although life on the bench is not as exciting or remunerative as life at the bar, it has many compensations. It is true that the last year has not been altogether pleasant. It has not been made easier by the fact that some members of the media have sometimes apparently acted on the view that the freedom of speech is so important that it should not be restricted by too meticulous a regard for accuracy or too nice a sense of decency. Nevertheless I have enjoyed all my life on the bench, and particularly the opportunity which it has afforded to make and continue friendships with members of the bar. I appreciate your kindness in making me an honorary member of the New South Wales Bar Association. Indeed when I have left the legal scene I shall be able to combat nostalgia by recollecting the pleasant association that I have had with the members of this bar, and to console myself I shall be able to say "Et ego in Arcadia vixi", which of course means "I too was a member of the New South Wales Bar Association". □

Book Reviews

"Exemption Clauses and Implied Obligations of Contracts"

By John Livermore
(The Law Book Company Limited 1986; Price $45.00sc)

John Livermore defines exemption clauses as terms in a contract excluding or restricting or modifying a remedy or liability arising out of a breach of a contractual obligation. His book deals with such exemption clauses and the extent to which the Courts and various legislatures have endeavoured both to limit the operation of exemption clauses and to impose obligations upon parties to a contract notwithstanding express provisions of the contract to the contrary. It is not concerned with the implication of terms by necessity in the circumstances which are dealt with in **Codelfa Construction Pty Limitied** v. **State Rail Authority of N.S.W.** 149 CLR 337

The author begins with the attempts made by the Courts to read down exemption clauses by the doctrine of breach of a fundamental term and the clarification of that doctrine as involving no more than an instance of the proper construction of the clause in question. (The latest word by the High Court is **Darlington Futures Ltd** v. **Delco Australia Pty Limited,** December 1986). He then proceeds to deal with legislative attempts to restrict freedom of contract both by prohibiting or qualifying exemption clauses and by the compulsory imposition of additional obligations on the parties to a contract.

Section 9 of the Common Carriers Act 1902 (N.S.W.) is an early example of statutory interference with the right of a contracting party to exclude, restrict or modify a remedy or liability arising out of a breach of a contractual obligation to take care and reference is made in Chapter 2 to the High Court's consideration of that provision in **Commissioner for Railways** v. **Quinn** 72 CLR 345. The more recent approach of legislatures has been the granting of wholesale judicial discretions under such legislation as the Contracts Review Act (N.S.W.), authorising a Court to declare void a contract or a provision of a contract found to have been unjust in the circumstances relating to the contract at the time it was made. Such legislation is also dealt with in Chapter 2.

In dealing with legislative control of exemption clauses, no clear distinction is drawn (and maybe it does not matter) between legislative attempts to prevent contractual freedom to exclude, restrict or modify a remedy or liability which might arise out of a breach of a contractual obligation and legislative attempts to prohibit the exclusion of contractual terms which are imposed by statute. In the analysis of an exemption clause it will sometimes be important to determine whether the exemption clause is designed to exclude liability for breach of a contractual obligation (such as an obligation to take reasonable care) or to exclude the applications of terms imposed by statute (such as Section 19 of the Sale of Goods Act) to the extent that such exclusion is permitted.

Provisions such as Section 62 of the Sale of Goods Act (which renders void a provision in a contract for a consumer sale purporting to exclude or restrict any liability for a breach of the conditional warranty implied by sections 18, 19 or 20) and Section 68 of the Trade Practices Act (which renders void any term of a contract for the supply of goods or services to a consumer that purports to exclude, restrict or modify liability for breach of a conditional warranty implied by Division V of the Act) are of a different nature from provisions such as Section 9 of the Common Carriers Act and Contracts Review Act. Section 62 of the Sale of Goods Act and Section 68 of the Trade Practices Act are, in a sense, merely ancillary provisions in aid of other provisions of the legislation imposing terms upon contracting parties independently of consensus between them to that effect.

Chapter 3 is concerned with the author's perception of deficiencies in the Sale of Goods Act and embarks tentatively upon a consideration of warranties implied by the Sale of Goods Act. It is by no means, (and does not purport to be), an exhaustive treatment of the difficulties which have arisen in relation to the meaning of the implied terms as to merchantable quality and fitness for purpose and a considerable part of the chapter is concerned with United Kingdom law reform proposals for implied warranties and a critique of those proposals.

Chapter 4 addresses the question of whether exemption clauses in commercial contracts should be subject to statutory tests and is concerned, in particular, with the question of whether unreasonableness or unconscionableness are suitable criteria for control of exemption clauses in commercial contracts, as distinct from consumer contracts. Reference is made to the Contracts Review Act (N.S.W.) but there is no significant attempt to comment on the detailed criteria which the Act lays down for the purpose of determining whether a contract is unjust in the circumstances in which it is made.

Chapter 5 is concerned with warranties as to title, quiet possession and freedom from encumbrance. Intermingled with that question, however, is the question of liabilty of a manufacturer to a consumer in circumstances where there is no privity of contract between them. That material does not appear to sit happily with the balance of Chapter 5 and would, perhaps, be more appropriately dealt with in Chapter 6 which is expressly concerned with privity of contract and exemption clauses. Chapter 5 is generally a critique of legislation dealing with warranties as to title rather than an exposition of the law in that regard.

Chapter 6 is limited to the consideration of judicial developments in relation to the third party beneficiaries of exemption clauses ("The Eurymedon", "Himalaya clauses" and the like). In a sense, it is out of place with the balance of the material in the book. The chapter concludes with a reference to policy considerations in the development of principles permitting third parties to take advantage of exemption clauses in contracts to which they are not privy. The chapter is not an attempt to state the principles which are to be gleaned at the authorities.

Chapter 7 contains the results of surveys apparently conducted under the direction of the author in Tasmania. Having regard to the numbers involved in the surveys, one

might have some doubt as to the validity of any statistical conclusion which can be drawn from the results. Finally, in Chapters 8, 9 and Appendix B the author expresses views concerning the desirability for further legislative intervention in relation to exemption clauses.

The work does not purport to be a text book or an exhaustive statement of the law or collection of authorities and legislation concerning exemption clauses and obligations implied by statute. The work originated in the author's report to the Law Reform Commission of Tasmania on a reference on "Exclusion Clauses and Implied Obligations in Contracts Relating to the Supply of Goods and Services". The approach and content of the book reflect that origin and the author does not attempt to set down an exposition of the law as it is in any particular jurisdiction. For that reason, it will be of limited value to practitioners. On the other hand, it may be a useful starting point for research. Some Courts today have a tendency to seek the policy considerations involved in a question before them (the foreword was written by the President of the Court of Appeal), and there are to be found in the work lucid, helpful and compelling observations as to such matters.

□ A.R. Emmett, Q.C.

ABC Guide to the Federal Court of Australia

By Matthew Smith.

Pages i-xvii, 1-230. 1986. Australia: The Law Book Co. Ltd. Price: (soft cover) $29.50

This book, by a member of the Sydney Bar, is the third recent publication using an alphabetical format to deal with a particular area of law; the earlier two volumes being Bartley and Brahe's **The ABC of Evidence** and Bartley, Brahe, Swanson and Foggo's **The ABC of Liquor Law in New South Wales.** Smith's book, as were the earlier two "ABC's", is a book designed for the practitioner.

The author's aim in producing the book is summarised in the opening sentence of his preface:-

> "In this book, I have attempted a short encyclopaedic guide to the jursidiction and procedure of the Federal Court of Australia."

Law Book Company publicity avoids the author's oxymoron by describing the book thus:-

> "A concise, reliable and up-to-date guide to the complex body of rules governing the jurisdiction of the Federal Court and its procedure . . . The work thus provides short but authoritative answers to most questions which concern practitioners who deal with the court."

The book commences with a quite useful table of contents which, as one would expect, is arranged alaphabetically. Where the particular topic is dealt with under several sub-topics (as about half of them are) the table lists the sub-topics. For example, the table contains the following entry as to "Supplementary Jurisdiction":-

> "SUPPLEMENTARY JURISDICTION
> 1. Accrued jurisdiction
> 2. Associated jurisdiction
> 3. Incidental powers
> 4. Inherent powers"

The actual topics are then dealth with and range, alphabetically, from **"Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984"** to **"Written submissions — see Appeals".** There is extensive use of cross-referencing both in the major articles or items and also by way of short inserts alphabetically arranged between major articles providing the reader with an indication of the major articles which deal with the particular subject matter. For example, at page 165, between the major articles entitled **"National Health Act 1953"** and **"Ombusdman Act 1976"** are the following one line cross-references:

> **"Next Friend** — see Disability
> **New trial** — see Appeals
> **Notice of produce** — see Discovery; Evidence
> **Oath** — see Affidavits; Evidence"

The book seems to be accurately described as concise, reliable and up-to-date and, again returning to the author's preface, his hope that he has given quick answers to most questions encountered in dealing with the Court is justified.

For example, major articles such as those entitled **"Commencement of Proceedings", "Industrial Proceedings", "Interin Orders", "Judicial Review"** and **"Jurisdiction"** fulfil these criteria and are readable and informative.

The arrangement and cross-referencing results in a most comprehensive picture of the jurisdiction, procedure etc. of the Court and usefully indexes the relevant topics. It is not inappropriate, however, to identify one or two apparent omissions. For example, although the grant of jurisdication to the Federal Court made by the addition of Section 39B of the **Judiciary Act** in 1983 is usefully dealt with as the second sub-topic under the item **"Judicial Review"**, one looks in vain for headings or cross-reference entitled **"Prerogative Writs", "Officer or Officers of the Commonwealth"** or **"Commonwealth — Officer or Officers".** Even though there are cross-references to the topic **"Judicial Review"** against the terms **"Mandamus", "Prohibition"** and **"Injunction"**, and **"Writ"**, inclusion of these headings, with appropriate cross-references, would enhance a future edition.

Similarily, one would have thought that in sub-topic 4 **"Inherent Powers"** of the topic **"Supplementary Jurisdiction"**, it would have been appropriate to have a cross-reference to the topic **"Security For Costs"**, where there is reference to a specific head of inherent power.

Since the author sees the work as being a useful research tool (and that it no doubt is) it could have been usefully improved, at minimal increase in production costs, by the addition of tables of cases, statutory provisions and Rules of Court. Perhaps another matter for the next edition?

Apart from these very minor criticisms, the **ABC Guide to the Federal Court** is a most useful addition to the material available in relation to the Federal Court. It will be of real use to any member of the Bar practising in that Court, although undoubtedly of more use to newer practitioners, It is a book which will justify the production of relatively frequent new editions brought about by decisions of the Court and by likely statutory changes which will enlarge, and probably complicate, the jurisdiction of the Federal Court.

□ F.L. Wright

Motions & Mentions

Legal World Cup

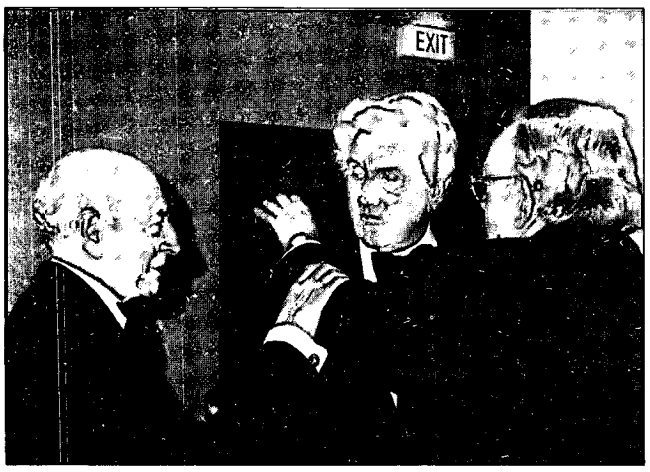
The Section on Business Law of the International Bar Association is proposing, in conjunction with its annual conference in London from 14th to 18th October 1987, to stage a "Legal World Cup" involving a series of 20-over cricket matches between teams from Australia, England and, it is hoped, India and the rest of the World. The matches will include a contest between Australia and England for the "Legal Ashes". The games will take place on Sunday 13 September 1987 at Vincent Square, The Westminster School Grounds, not far from Westminster Abbey. The implementation of the proposal depends upon support from Australian practioners who have a high profile in the Section on Business Law and at International Conferences generally. The Australian Branch of the Section on Business Law of the IBA would like an early indication of intention to visit England for the conference to be given to the Law Council of Australia, whether attendance is possible, probable or certain and the willingness to play cricket. If you intend to play cricket you are asked to advise your age, the date you last played regularly and the level at which you played. Only members of the IBA attending the conference will be qualified to play. The average age of the players is expected to be the wrong side of 40, if not 50, so you should not be inhibited by fears of physical, mental or competetive inadequacy in putting your name forward for selection.

If you wish to play for Australia please contact Peter Perry, Freehills, Sydney, DX 361. □

Caption Competition

Bar News is running a competition to find the best caption for the picture reproduced below. For those unfamiliar with the people in the photograph they are (left to right) Mr. Justice Glass, Sir John Kerr and Sir Maurice Byers Q.C. Entries close 31 May 1987. The winner will be the guest of Bar News at the Bench and Bar Dinner on 19 June 1987.

The winning entry and the five runners up will be published in the next issue of Bar News. Anonymity of the authors will be preserved, if requested.



Law Courts Library Unreported Judgments Classified "Not For Loan"

The Law Courts Library Management Committee is aware that many library readers are frustrated to discover the unreported judgements which they wish to consult, "on loan" when they visit the library.

For this reason, it has been RESOLVED that all unreported judgements be classified "not for loan" for a trial period of 12 months.

This ruling will apply to judges, court staff and counsel borrowing unreported judgements to take to hearings in the Law Courts Building.

In future, it will be necessary to photocopy any such judgements even in emergencies.

Counsel are encouraged to order copies of judgements they require from the relevant registries or order offline prints from CLIRS. A number of commercial agents offer facilities for counsel who do not have direct access to CLIRS.

We would be grateful if, in future, counsel would regard our unreported judgement collection as a reference

collection and not a source of copies.

Use of the registries or CLIRS for copies will save counsel time and will avoid our reference copies being tied up for long periods at the photocopiers.

We regret inconveniece caused by this ruling but feel confident that the new procedures will be more satisfactory for all concerned in the long term. □

LYNN POLACK
Librarian

Criminal Appeal (Amendment) Act 1986

Members of the Bar should note that Section 4 of the Criminal Appeal (Amendment) Act 1986 and Schedule 1(2) of that Act commenced on 1 February 1987.

The amendment allows an appeal to be made where an indictment is quashed or stayed. The amendment is effected by inserting the words "or stayed" after the word "quashed" where firstly occuring in Section 5C of the Criminal Appeal Act 1912. □

Leaving The Bar

Persons who have had their names removed at their own request from the Roll of Barristers to the Roll of Solicitors from 7 November 1986 to 13 February 1987

7 November 1986	Gregory Leigh McCooey
	Peter Damian Schell
	Robert Dennis Meagher
	Colin Michael Girdler
	Beverley Anne Schurr
	Jillian Elizabeth Cash
	Mark William Sherring
	Bill Cortese
	Christine Mary Brew
19 December 1986	Craig Clive Joseph Williams
	Jagdish Manibhai Patel
	John Atkin
	Margaret Mary Cunneen
	Anthony McEwen Sherriff
	Stewart Ross Cole
	Donald Dean Bennett
	Wendy Rae Ball
	Peter Bugden
	Ronald Arthur Jenkins
	Richard Ong Kuee Hwa
13 February 1987	Ross Waite Parsons
	Terence Peter Griffin
	Mark William Mackrell
	Bryan Francis Rowe
	Roger Booth West
	Dennis James Newman
	Richard Gonda
	Samuel Stuart Clark
	Robert Raymond Heanes
	Graham John Bailey
	David Arthur Williams

Coming Conventions

MAY

10-11 — Cannes
IBA Seminar — The co-production of films: financing and legal aspects

Contact: IBA, 2 Harewood Place, Hanover Square, London W1R 9HB England — Tel: 01 629 1206 Fax: 01 4090456

13 — Washington
IBA Seminar — Franchising as a force in global marketing: the current legal issues affecting expansion

Contact — IBA (see above) or IFA, 1350 New York Avenue N.W., Washington D.C. 20005 U.S.A.

25-29 — Jerusalem
International Conference on Lawyers in Public Service

Contact — Conference Secretariat, P.O. Box 3378, Tel Aviv 61033, Israel

JUNE

16-18 — Ottawa
Canadian Conference on Nuclear Weapons and the Law — Canadian Bar Association and other sponsors

Contact — CBA, 130 Albert, Suite 1700, Ottawa, Ontario, Canada K1P 5G4

25-26 — Dusseldorf
IBA Seminar — Management Buyouts

Contact IBA (see above)

JULY

5-10 — London
Australian Bar Association Conference (see advertisement this issue)

10-15 — Dublin
Australian Bar Association Conference (see advertisement this issue)

15-18 — Brisbane
Australian Mining & Petroleum Law Association Limited — 11th Annual Conference

Contact — Executive Officer, 8th Floor, 160 Queen Street, Melbourne Vic. 3000 Telephone: (03) 67 2544 Fax: (03) 602 3495

18-27 — Hawaii
"Lawyers in Paradise" Law Congress — Update for the general practitioner. Speakers include Ellicott Q.C. (The Development of Legal Relationships in the Pacific Basin), Emmett Q.C. (The Jurisdiction of the Federal Court, Administrative Appeals — Trade Practices), Myers Q.C. of Melbourne (An Overview of the Law Relating to Companies and Securities and a discussion of current issues arising in relation to companies and securities) and Edmonds (a comparison of the taxation advantages and disadvantages of investment in shares, fixed interest, securities and other hybrid securities after 1 July 1987)

Contact — Sylvia Wheatley, Commonwealth Bank Travel, 38-44 York Street, Sydney. Telephone 227 5377

29-4 — Kuala Lumpur
10th Lawasia Conference

Contact Lawasia, 170 Phillip Street, Sydney. Telephone: 221 2970

SEPTEMBER

10-11 — London
IBA Seminar — International Arbitration

Contact — IBA (see above)

18-20 — Perth
9th National Labor Lawyers' Conference

Contact — Nuala Keating, Society of Labor Lawyers (W.A.), G.P.O. Box P1596, Perth, Western Australia Telephone: (09) 325 6666

20-25 — Perth
24th Australian Legal Convention — Law Council of Australia

Contact — Law Society of Western Australia, G.P.O. Box A35, Perth. Telephone: (09) 481 0548 DX 173 Perth — Fax: (09) 322 7026

OCTOBER

1-5 — Christchurch
New Zealand Law Conference (see advertisement this issue)

This Sporting Life

Smythe J. Scoops the Pool in Third Great Bar Boat Race

Sydney Harbour turned on a glorious day for the Third Great Bar Boat Race with warm, sunny conditions and a lively 15 knot south-east breeze.

The conditions were perfect for the skippers and crews of the 30 boats that faced Buckworth's starting gun. A late inclusion was "Ragamuffin" the 70 foot maxi that took line honours and added yet another illustrious name to the Race's history.

The event provided a showcase for the skill and mastery of Smythe J. who won the race on handicap and took the Law Book Company sailing trophy. He was also the winner of the inaugural "Chalfont Cup" for competition amongst Judges and Silks kindly donated by Chalfont Chambers in honour of A.J. Bellanto Q.C. He was closely follwed by Foster J. in "Bonfire" who took third position and was presented with a pewter donated by the Bar Association. The Bar was able to take second place with a good performance by Tomasetti in "Aston". As far as the silks were concerned — the less said the better! It is understood that Shand Q.C. has threatened to take himself off a grinder and on to a tiller for this year's race!

". . . Tomorrow the America's Cup!".

The precision crew work on "Ragamuffin" was in stark contrast to the activities on board the 80 foot ketch "Devine Decadence" skippered by Williams (of Kiwi Magic loyalty). Its name did not betray its true essence! Notwithstanding its good handicap it almost caused a complete pile up of boats near the Bradley's Head buoy as it came onto a port tack and stalled, forcing at least 4 or 5 competitors, who had right of way, to take evasive action in order to avoid collision. The boat was last seen passing into history as it headed towards the Rose Bay Wintergarden.

Kelly in "Blind Justice" at one stage was seriously challenging the ultimate winner in the run towards the Manly buoys. The pressures of the race obviously proved too much for him! As he rounded the buoy, he either came into collision with or failed to give right of way to several boats, bringing about much clenching of fists and profuse apologies on his part. He was fortunate to come home 4th in the race ahead of the fast-finishing Curtis in "Dilemma", whom he beat across the line by one second.

"Misty", skippered by Egan, could see the race slipping from his grasp. As he raced towards the Manly buoy he was seen to head out towards the Heads — no doubt to pick up a wind shift or passing breeze. Neptune was not to come to his aid!

The many incidents during the race became tales of heroic deeds and great seamanship as the post-race social activities gathered pace on Store Beach.

The handicapper, David Goode, again produced a close result amongst the leading boats and the race proved to be a very successful event. The social activities were enjoyed by all who were involved and the race is fast becoming one of the leading events in the Bar's annual calendar.

□

The Featherless Kookaburra

Note: Norrish has pointed out he was **not** the semi naked man identified as him in the report in the "Winter" 1986 issue of Bar News. — Ed.

Chacun à son gout

Three Sydney Silks take their leisure in different ways.

Meagher lunches

Gleeson goes running (and smiling)

Shand is sheepish