

MORE LAW REFORM

(By Harry Thomson)

There is nothing particularly epoch-making in the third progress report of the Law Reform Commission. This is probably really a compliment for law reform is not a matter that can be handled successfully with dynamite, and it is in line with the whole course of the British administration of justice to proceed slowly and by way of correction of anomalies rather than at a gallop.

In fact, it may be said that most of the conclusions of the Commission will receive general adherence both from legal and lay critics. The matters on which there will be some difference of opinion are the disallowance of appeals on questions of fact, and the continuance of Justices of the Peace as constituent members of Local Courts of Full Jurisdiction.

So far as appeals are concerned, the general legal opinion is in favor of granting them on questions of fact as well as of law. It is a difficult matter to draw the line between them. In every collision case it must be decided whether there is any evidence that the defendant was negligent, and whether on the facts of the case he was actually negligent.

To the man in the street each of these questions means much the same thing (if it means anything at all), and yet the first is a question of law and the second is a question of fact. If the Local Court goes wrong on the first there is an appeal, and if its goes wrong on the second there is not.

Fear of Appeals.

The real reason underlying the recommendation is fear of the Commission of large numbers of appeals. The proportion of appeals to decided cases in all other courts, where appeals may be brought on any grounds, is small and, speaking generally, no appeal Court will overrule an inferior court's decision on any fact unless there are strong grounds for believing the inferior court has made a mistake.

Certainly no court will underrate the advantage that the lower court has had of seeing the witnesses in court and listening to them. The knowledge for example that a woman's "No" may mean "perhaps," and that a woman's "perhaps" probably means "yes" is not confined to the inferior courts. Abstract justice may, of course, in small cases have to be weighed in the balance against promptness and cheapness—but the cost may be too high. It is too high where even bad mistakes involving perhaps £400—or twice that if there is a counterclaim—cannot be remedied.

So far as Justices of the Peace are concerned opinion is more evenly divided. Most lawyers will say that it does not matter much. Often the parties agree at trial to dispense with them. Few lawyers have much to say against justices sitting with the Special Magistrate in Adelaide, for they are mainly competent men with a good deal of experience, but for this reason they do not tend to affect the decision much. Their experience almost invariably coincides with that of the Special Magistrate. Justices of the Peace also perform invaluable work in the country in minor cases which they settle by themselves. The only real fear that any lawyer has is that local prejudice in the country may bulk too large.

There is something to be said for the educative effect of allowing justices to sit with Special Magistrates. Understanding of and respect for the law of the land and the administration of justice ought to be one of the qualifications of the good citizen.

Anomaly in Fees

In the proposed schedule of fees an anomaly remains and that is that Counsel's Fees are not allowed per diem (if the Commission will pardon the use of the Latin phrase). In the report the Commission states "obviously it was intended that the fee should be at per day . . ." and in the recommendation from the Law Society this was inserted. The Commission has omitted it—perhaps by mistake.

To prevent a misconception it may be stated that it will not affect the legal profession. Counsel will not charge the same fee for three days as for one. But it does affect his successful client who can only recover

one day's fees from his defeated adversary and is therefore two days "fees out of pocket," as the result of having secured justice and a verdict in his favor.

Much more interesting is the reading of the evidence and in particular the form of some of the questions. Right through there is mention of the Conciliation Courts already recommended. The Commission has now an admirable opportunity to put its suggestion into practice. The Hon. W. J. Denny (Attorney-General) and Sir Henry Barwell apparently do not see eye to eye on a number of things. Both these men are lawyers, and the Commission need therefore have no compunction about forming themselves into a Conciliation Court to reconcile these gentlemen to the avoidance of court proceedings. If it is successful many people will reconsider their opinion that one of the most urgent needs is a Commission to reform our Parliamentary life, and to bring a little dignity and courtesy into public life.

There is one other general criticism. The Commission contains no trained lawyer. It does not much matter whether they are in Parliament or not, but at least one or two experienced lawyers ought to have been appointed to the Commission in the first place. They might, of course, have contaminated the other members, but it is just possible they might have been of assistance.

Government Enquiry Officer

Mr. J. W. Wainwright, B.A., of the State Audit Department, fills a number of important positions in the Government service.

Under the Auditor-General he has held the position of Audit Inspector since 1910, and under the Public Service Commissioner has been Government Enquiry officer since March.

With characteristic modesty Mr. Wainwright stated when interviewed recently that he thought he had bitten off more than he could chew when he accepted the



MR. J. W. WAINWRIGHT

position of enquiry officer. He claims, however, that in gathering data he has had much assistance from his fellow officers, and that credit for any success he has attained is more theirs than his. He has often been obliged to go beyond the Public Service in search of information and states that he has been extended the same courtesy by heads of business firms and others. He never works alone and often relies on the assistance of others.

Mr. Wainwright's latest appointment is that of secretary to the Royal Commission on the Thousand Homes Scheme. Recently with Mr. W. Bishop he assisted on the gas enquiry. At the beginning of the year he was appointed a member of the Municipal Tramways Trust by Executive Council, a position he still holds. Mr. Wainwright is a Bachelor of Arts, and an Associate of the Commonwealth Institute of Accountants.

Born in 1880, he received his early education at Naracoorte. He later attended the Kadunda and Adelaide High Schools, and took his arts degree at the University of Adelaide. In August, 1910, he joined the Audit Department.

I had a most pleasant time during the five years I spent in Adelaide, and made a great many friends and acquaintances. Professor Coleman Phillipson today prior to his departure for Britain by the Naldora. "I am sorry to leave South Australia for various reasons, but in London there is a larger sphere of activities and interests for me. I felt that I was too severely handicapped by lack of books and documents to continue my research work here."

DR. HEATON'S FAREWELL

Tributes from Workers' Educational Association.

The esteem in which Dr. H. Heaton is held in educational circles in Adelaide was indicated on Saturday evening, when the Stow Lecture Hall, Flinders street, was crowded on the occasion of a farewell tendered to him by the Workers' Educational Association. Mr. E. Cheary (President) occupied the chair, and was supported by Professor W. Mitchell (Vice-Chancellor of the University), Professor H. Darnley Naylor, and the guest of the evening.

The Chairman stated that Dr. Heaton's work was too well known to them to call for any references from him. He arrived in Australia in 1914, and in January, 1917, was appointed Director of Tutorial Classes and Lecturer in Economics at the University of Adelaide. Having accepted the



DR. H. HEATON.

Macdonald Chair of Economics and Political Science at Queen's University, Kingston, Canada, he would be leaving Adelaide next Friday. He had proved to be a true friend to the students who had been trained under him, and it was therefore a very unpleasant duty to have to say farewell.

"A Great Future."

Professor Mitchell said the occasion recalled another gathering, when he was present to bid farewell to Professor (now Sir William) Bragg when he left for Leeds. They then thought that Leeds would not compare favourably with Adelaide, and therefore they did not fill his chair for a year. If Dr. Heaton showed any symptoms of wanting to return they would not try to fill his position for a year. (Applause.) There was an ignorant notion that a man in practice was better able to teach than a man acquainted with the theory of the subject. That was true in only a few faculties, but in the vast majority it was rightly the scientist, and not the practitioner who taught. Dr. Heaton's place would be difficult to fill. He had done his best for them, while in Adelaide, and he now intended to specialise more on his economic work. It was a pity that that work could not be continued by him in Australia, instead of in America, where there were so many leaders, and where they were appreciated. Dr. Heaton's work was of a kind that would soon place him at the front. He must have been appreciated, as was shown by his unfortunate visit to Canada. (Laughter.) Men of Dr. Heaton's standing who had left Queen's University in Canada, had all justified their going. One was to-day President of the British Association, another was Director of the Royal Institute, and another represented New Zealand at Washington. Dr. Heaton required a large field, and given that, he predicted for him a great future. (Applause.)

A Lecture on "Bolshevism."

Mr. A. G. Roberts (President of the W.E.A. Club) said that gathering could have been avoided, for they should not have lost Dr. Heaton's services. A few years ago he gave a lecture on "Bolshevism," and that appeared to have created a certain amount of antagonism toward him. They did not get a sufficient lead from the University in regard to great questions, but the time was coming when it would have to lead the people more than it had in the past. Students of the university in Victoria, as an example, had applied for recognition as a Liberal organization, and another organization connected with the Labour Party, and it was only a matter of time when those two bodies would function, and through them the two great voices of political opinion in Australia would receive further expression. He hoped the University of Adelaide would allow such bodies to be formed before long. In Canada there was a similar organization. Why should Australia, which was leading the people in democracy, be behind in that respect? Dr. Heaton had practically made the W.E.A. Club. Whoever was appointed in charge of Economics at the University should automatically take a class in one of the

W.E.A. subjects. They hoped that when a Chair of Economics was established there, Dr. Heaton would be back again with them. (Applause.)

Mr. R. Crocker, on behalf of the students of the arts faculty, said that Dr. Heaton had accomplished great things for the students. The creation of the commerce faculty, as well as the W.E.A., was due to him. There appeared to be no subject upon which he could not give an opinion. He had the faculty of combining great scholarship with the happy art of conveying it.

Mr. A. L. G. McKay, for the staff of the University and tutors of the W.E.A., said there had been no attempt at an organized system of teaching economics in Australia prior to the advent of Mr. R. F. Irvine, in Sydney, and Dr. Heaton, in Adelaide. Their guest had many outstanding qualities. He had the gift of clarity of expression, no matter how difficult the subject. His teaching versatility was wide. His outlook on life was broad, and

he was impartial in the treatment of students. People who had misjudged him had listened to the unreliable voice of rumour. When great questions arose, did they want their leaders in scholarship to sit on the fence? Dr. Heaton tackled fundamental questions, and indicated the road along which he thought they ought to go. In times of national crisis patriotism was not enough. There were qualities of mind and spirit that were greater, and it was for those qualities that they honoured their guest.

Mr. G. McRitchie (secretary of the W.E.A.), referred to the doctor as a leader of men. He had been a tower of strength to the association, and they hoped to see him back in Adelaide some day. They wished Godspeed to his wife and family and himself.

Mr. McDonald said that the classes in economics which had been started by the doctor had now grown to about 8,000 students.

Professor Naylor said it was a fine appointment to which Dr. Heaton was going, and he would do very well. He agreed that it was the duty of the university to lead the community. Directly it failed to do that, three-quarters of its value was hopelessly gone. On behalf of the association, he presented Dr. Heaton with a picture of their classrooms and an illustrated address.

"Somewhat of an Exile."

Dr. Heaton was cordially greeted on rising to respond. Although his family were looking forward to their stay in Canada, he felt somewhat of an exile. In deciding to come to Australia, he felt that the climate would be attractive, and that he would be able to study economic experiments in which Australia was the pioneer. As he looked back he felt that adult education of their type had become established as a recognised part of the educational system of their State, and if he were to hear that that work had been abandoned by the University or the workers, he would feel extremely disappointed. One did not mind criticism or opposition, provided it was disinterested and argued out on the lines that a university teacher endeavoured to adopt. Economists should seek the truth wherever it was to be found, regardless of the cost. He was well aware that in some quarters he had become a delightful bogey, but it was strange that a man brought up in a Liberal home should be classed as a Bolshevik. They had developed a sense of humour in the W.E.A., and taught charity and tolerance. They had been fortunate in the choice of their officials. Their present secretary was a most capable and industrious worker. He thanked them for their kindly references to his work, and good wishes for the future. (Applause.)

Minister's Tribute.

The Minister of Education (Hon. L. L. Hill) said that a prior engagement had prevented him from being at the meeting earlier, but he would have been lacking in his duty had he not attended to express his regret at the loss to Australia of such an able gentleman as Dr. Heaton. South Australia should not have lost his services. At the same time he congratulated him upon the success he had attained, and like many others he had to go to another country to have his ability recognised. He assured the W.E.A. that the Government was very sympathetic toward its work. He had known Dr. Heaton since he arrived in the State, and felt that he was losing a personal friend. They might be able to induce him to return to Australia at a later date. He wished the doctor and his family the best of health, and hoped that in his new position he would meet with that success which he so richly deserved. (Applause.)

An enjoyable programme of choruses and solos was provided by the W.E.A. singing class (under Mr. Wallace Packer), Mrs. Wahlaquist, Miss M. King, and Mr. E. Newell.

Mr. Claude Kingston, concert director for Messrs. J. & K. Tait, who had been in Adelaide completing arrangements for the season of Paul Althouse and Arthur Middleton, which will open in the Town Hall this evening, left for Perth on Friday to meet Dame Clara Butt and Mr. Kennerley Rumford, who are passengers from London by the R.M.S. Mooltan.