

as anomalous the old rule that the husband had a right to sue for a negligent deprivation of *consortium* and that the wife did not, whether based on the view that the husband had a proprietary right in *consortium* or that the cause of action was based on the concept of *servitium* as well as *consortium*, but whereas Birkett L.J. thought that the exclusion of the wife's right of action in such circumstances had been overthrown by the whole character of the legislation passed in the last seventy years, the other two judges thought that the rule of exclusion was too strongly entrenched to yield to anything but the intervention of the legislature.²⁰

E. I. SYKES.

THOMAS PENBERTHY FRY.

Dr. Thomas Penberthy Fry, E.D., M.A., LL.M. (Qld.), B.C.L. (Oxon.), S.J.D. (Harv.), at first Lecturer and later Senior Lecturer in Law at the University of Queensland from 1936 to 1948, died at Canberra on 23rd September, 1952. Dr. Fry was born on 19th June, 1904, and after attending various schools in Brisbane entered the Faculty of Arts at the University in 1922. After obtaining First Class Honours in History and Economics in 1926 he was awarded a Foundation Travelling Scholarship, and took the B.C.L. degree at Oxford. While in England he became a member of Gray's Inn, and was called to the Bar. From Oxford he proceeded to Harvard University with a Commonwealth Fund Fellowship, and there he obtained the degree of Doctor of Juridical Science (S.J.D.). Other degrees awarded to him were the Queensland Master of Arts and Master of Laws.

After returning to Queensland he was called to the Bar in September, 1931. Until 1936 he practised at the Bar, and at the same time held a part-time lecturing position in the Department of History. When the T. C. Beirne School of Law was established at the University in 1936 he was appointed Lecturer in Law, and later, on a general re-grading of University teaching staff, a Senior Lecturer.

Dr. Fry was a man of boundless energy and extraordinary power of work, and during the years before the war he was active in many fields besides his practice at the Bar and later his University teaching. He was mainly responsible for the founding of the Australian and New Zealand Society of International Law, and was its Honorary Secretary and a joint editor of its Proceedings. He also established a Queensland

20. The decision of the Court of Appeal has now been affirmed by the House of Lords, but on the ground taken by Croom-Johnson J. The view of Birkett L.J. on the wife's right to sue in respect of a negligent deprivation was clearly rejected.

Branch of the Royal Institute of International Affairs, and became President of the Branch. He was active in the Australian Military Forces, holding the rank of Captain, and he organised and was commanding officer of the University Military Detachment. In 1933 he was appointed Honorary A.D.C. to the Governor of Queensland.

In May, 1940, Dr. Fry joined the A.I.F. and was appointed to General Blamey's staff as judge-advocate with the rank of Major. In the same year he went to the Middle East, and was appointed Deputy Judge-Advocate-General with the rank of Lieutenant-Colonel. He was mentioned in despatches for distinguished service in the Middle East. He returned to Australia in March, 1942, and served here for the remainder of the war. During the last period of the war he was attached to the Directorate of Research, Department of the Army, for the purpose of producing an annotated edition of the laws of Papua and New Guinea. He continued with this work, which later was transferred to the Legal Research Section of the Department of External Territories, in a part-time capacity after his return to University duties in 1946.

On returning to civilian life, Dr. Fry took up his University teaching duties and other peace-time activities with his usual energy. He continued at the University until early 1948, when he resigned to become officer in charge of the Legal Research Section of the Commonwealth Department of External Territories.

In the early days of the Law School the small teaching staff carried a heavy load of subjects, and Dr. Fry was responsible for Constitutional Law, Equity, Criminal Law, Real Property and Conveyancing, Torts, and part of Roman Law. Even after the war, when the staff had been increased, he lectured in Constitutional Law, Land Law, Public International Law, and part of Equity. Constitutional Law and Land Law were the subjects to which he devoted most research, and the result of his work in these fields is to be found in cyclostyled bound volumes entitled "The Crown, Cabinets and Parliaments in Australia," "Australian Courts and Administrative Tribunals," and "Freehold and Leasehold Tenancies of Queensland Land." The last volume mentioned contains a unique study of the highly elaborate system of Crown Land leases. It is unfortunate that Dr. Fry did not, before his premature death, find opportunity to carry out his plan of putting these works in a form suitable for ordinary publication. As it is, his published work in general fields of law consists mainly of articles in various Australian and overseas journals. A rather more substantial publication is his "International and National Competence of Australian Parliaments to Legislate in Respect of Extra-Territorial Crime" (University of Queensland Papers, Faculty of Law, Vol. I, No. 2). His main work in his later years was his editorship of the Annotated Laws of Papua and New Guinea, already mentioned. At the time of his death he was engaged on a revision and consolidation of the criminal law of Papua and New Guinea.

As a teacher, Dr. Fry took a close personal interest in his pupils as individuals, and was always most concerned to do the best he could for them. On the basis of his experience in America he introduced into his classes here a modified case method of teaching and preferred seminars to the traditional lecturing system. Students sometimes complained of the volume of cyclostyled material he put into their hands, but although he could not bring himself to withhold from them the results of his own research, he was an indulgent examiner.

As a member of the Faculty of Law, Dr. Fry was fertile in suggestions for improvement of the course and the provision made for students, and energetic in assisting to carry out the suggestions adopted. Amongst the developments he proposed and helped to get adopted were the first stages of the introduction of a day course as well as the original evening course in Law, the establishment of a separate departmental Law Library providing greatly improved facilities for study by law students, and the founding of this Journal. He was always a salutary influence on those around him who were inclined to sit back and be content with things as they were.

For this reason what he did was not always as well received as it might have been; and it would create a false picture to speak of his immense power of work, his enthusiasm, initiative, driving force, and power to get things done in face of apathy and even hostility, without at least mentioning that he had the defects of his qualities. Although at bottom a kindly man, and active in helping those he felt needed and deserved help, he also trod on many toes, with the result that professional opinion in Queensland has done him less than justice. But in fact, as our contemporary, the *Australian Law Journal*, has said, his death is a loss to Australian legal thought. With somewhat less dispersal of his energies, or with longer life and better health, he would have left a far greater permanent contribution to legal literature than he has.

W. N. HARRISON.

BOOK REVIEWS.

Essays on the Australian Constitution. Edited by R. Else-Mitchell. The Law Book Co. of Australasia Pty. Ltd., 1952.

In 1901 Sir John Quick and Sir Robert Garran in their work on the Constitution (at p. 340) wrote: "Nations are made only by great occasions, not by paper constitutions. But the energy will be there, and in the fulness of time, when the opportunity comes, the nation will arise like a bridegroom coming forth from his chamber, like a strong man to run a race." How far this rather picturesque forecast has been assisted by the Constitution itself is amply illustrated by this comprehensive and well balanced set of essays. In covering an important range of Constitutional subjects the particular significance of the Commonwealth's fifty years of life receives some prominence.

The first essay is that of the recently retired Chief Justice, the Right Honourable Sir John Latham, on the "Interpretation of the Constitution," a vast subject most compendiously treated. Approaching the subject historically, the learned author considers the true nature of the Constitution, a supreme law capable of meeting expanding needs, and the significance of these considerations. He comments pointedly on important powers and developments. The result is a bird's-eye view of the Constitution delightfully expressed.

One matter of considerable moment dealt with by Sir John Latham is that of uniform taxation, the widespread effects of which are also mentioned by Mr. Ross Anderson and Mr. A. J. Hannan. Indeed one thing the essays emphasise is the dwindling power of the States. The Senate has failed as a protector of State rights. The taxation power is enormous. The *Capital Issues Case* has shown the wide scope of the defence power, even in the absence of hostilities. The potentialities of the External Affairs power, as Mr. Ross Anderson points out, are tremendous. Moreover, Section 105 A (inserted by Act number 1, 1929, s. 2, and providing for agreements with the States with respect to public debts) contains possibilities for circumventing other provisions of the Constitution (as Mr. A. J. Hannan indicates), the extent of which is unmeasured.

Other Essayists are Professor F. R. Beasley, who provides a vigorous study of Parliamentary history, and Professor G. Sawyer, who grapples with problems of the judicial power. Mr. D. I. Menzies, Q.C., makes a lucid statement of the defence power, weaving his authorities into his thesis in the way of the practising Barrister. He analyses the *Communist Case* and adds a pertinent addendum on the effect of the *Capital Issues Case* on the *Communist Case*. Compulsory acquisition relating to the Commonwealth is handled by Professor R. W. Baker, who discusses at the outset the moot point as to whether there is a prerogative power of