

Chapter 7: Old and grey and full of years -1940-1949

‘Something has been saved after all this time’

Writing to Nettie in March 1940, Christian described her workload. ‘I’ve just got the whole of the Ironworkers’ Compensation cases and a very heavy Transport Workers Union fight. That means – or last week it meant – a 65 hour week’.¹ She was pleased with the way she had survived the strain. ‘Fancy me, old and grey and full of years managing to stand up to that amount of work.’ She had turned fifty-five that month but the strain of working such long hours would undermine her long-term health. She was also happy with her office staff. ‘I seem to have managed to get a co-operative, happy, friendly atmosphere and slaves who treat me as a non-imbecile.’ She was even enjoying office work for the first time – but it would not last.

During the 1940s Christian and Nettie recovered the kind of friendship they had shared before Christian moved to Sydney in 1919. After Nettie had visited her in Sydney in October 1942, Christian acknowledged that she too ‘felt that something had been saved after all this time.’ Christian described her relief in being able to speak the same language, ‘of being able to make any remark without having to further qualify and expand and explain it.’² In 1943, she ended a letter with ‘I can’t tell you how good it feels to hear from you, that is one good thing 1943 brought anyway.’³ Throughout the 1940s Christian confided her thoughts and problems to Nettie and, although they can be tantalisingly cryptic, they provide the best available account of Christian’s life during this decade.

By 1940 Christian was living at Camp Cove and appears to have been there for some time judging by her response to Nettie ‘Yes, I am still at Camp Cove.’⁴ Just when she moved there is unclear but she was to remain there until almost the end of her life. Camp Cove is located between Watson’s Bay and South Head near the entrance to Sydney Harbour. The author Christina Stead lived at Watson’s Bay during the 1920s and the area features in her novel *Seven Poor Men of Sydney*.⁵ Ships from all over the world passed close by on their way to and from the port and the area was often battered by gales.⁶ Camp Cove was quite isolated at this time.

¹ CJS to Nettie Palmer, March 1940, *Palmer Papers*, NLA MS 1174/1/5740.

² CJS to Nettie Palmer, Nov-Dec 1942, *Palmer Papers*, 1174/1/6446.

³ CJS to Nettie Palmer, 30 December 1943, *Palmer Papers*, NLA MS 1174/1/6464.

⁴ CJS to Nettie Palmer, March 1940, *Palmer Papers*, NLA MS 1174/1/5740.

⁵ Named Fishermen’s Bay in the novel.

⁶ Hazel Rowley, *Christina Stead: A Biography*, Minerva Australia, Melbourne, 1993, p 35.

Christian kept her address secret from everyone,⁷ perhaps with the intention of ensuring some respite from her busy legal practice, but she told Nettie that she hardly ever saw it, no doubt because of the long hours she was working. She also lamented not having a ‘char’ and that there were no services such as deliveries or laundry ‘out here’. Consequently she had to ‘do my own marketing, carrying every bite of food from town and the ½ mile from the tram, my own washing... my own charring ... and of course, cooking.’ The erstwhile ‘servant of the rebel proletariat’ was now herself a would-be employer of servants.

The generally low level of litigation that was noted towards the end of 1939 continued into 1940. Between the opening and the end of the first law term there were few cases reported for Christian. One was a successful damages claim for which Christian briefed Frank Dwyer and a female barrister, Miss Nerida Cohen.⁸ Nerida Cohen had been admitted to the Bar on 25 July 1935⁹ and was the only practising female barrister at this time.¹⁰ In 1945, Cohen was reported as being a member of the provisional executive committee of the newly formed Liberal Party.¹¹ In addition, there were seven uncontested divorce petitions.¹²

Meanwhile the Federal Government was preparing to move against the Communist Party because of its increasingly vocal anti-war attitude. After several years of warning the world that Germany and fascism threatened world peace, in August 1939 the Soviet Union had entered into a non-aggression pact with Germany. This about-face shocked many CPA members who left the Party at this time but most loyally supported the Soviet Union’s position. However, Communist speakers at public meetings were attacked when they denounced the war and attempted to justify the Soviet Union’s actions and many local councils banned Communist meetings. In April 1940, the Federal Government reacted and ordered that all Communist newspapers, pamphlets and leaflets be submitted to censorship before publication and a month later nine Communist papers were banned. On 15 June, the Communist Party itself was declared an illegal organisation.¹³ The banning of the Communist Party, however, seems not to

⁷ Nettie Palmer, Diary entry, 12 March 1945, *Palmer Papers*, NLA MS 1174/16/25.

⁸ “Mother’s Action Succeeds”, *SMH*, 27 February 1940, p 6.

⁹ *NSW Law Almanac 1936*.

¹⁰ Daphne Kok, Joan O’Brien and Ruth Taylor, “In the Office and at the Bar – Women in the legal Profession” in Judy Macinoltz and Heather Radi (eds), *In pursuit of Justice: Australian Women and the Law 1788-1979*, Hale and Iremonger, Sydney, 1979, p 183.

¹¹ *SMH*, 31 January 1945, p 4.

¹² “O’Brien v O’Brien”, *SMH*, 14 March 1940, p 4; “Hulme v Hulme”, and “Morley v Morley”, *SMH*, 20 April 1940, 10; “Naylor v Naylor”, and “Agar v Agar”, *SMH*, 3 May 1940, p 4; “McKaig v McKaig”, *SMH*, 11 May 1940; p 8; “Keogh v Keogh”, *SMH*, 25 June 1940, p 3.

¹³ Paul Hasluck, *The Government and the People 1939-1941*, Adelaide, 1952, pp588-589.

have affected Christian's legal practice perhaps because it was the Communist-led unions with which she had the closest links and they were not banned.

In August she briefed Frank Dwyer to appear in a case before the Supreme Court involving one of the Communist-led unions, the WWF. Robert Kitto, who had been expelled from the union for disloyalty and misconduct, sought a Court order for reinstatement. The expulsion had occurred under the new WWF rules which Christian had helped to draft. Kitto claimed that he had been denied natural justice and also sought a declaration that the new rules were illegal. The Court ruled that Kitto had not been denied natural justice but that the WWF had exceeded its powers in applying the new rules because the circumstances for which Kitto had been expelled had occurred before the new rules had been registered. The old rules did not provide for expulsion but only a fine. Kitto was reinstated.¹⁴

The second law term in 1940 was much busier for Christian. At the end of August, there was a successful compensation case in the District Court. After a contested divorce case in September,¹⁵ there was another damages case in which the parties reached a settlement,¹⁶ and a successful claim for unpaid wages against the Commissioner for Road Transport and Tramways.¹⁷ In another successful claim against the Commissioner for Railways in November, Christian briefed Jock McClemens and John Kerr on behalf of her client.¹⁸ However, the Commissioner for Railways successfully appealed against the decision.¹⁹ Christian's client then appealed to the High Court which heard the appeal in July. Christian briefed Eric Miller KC and Jock McClemens to appear before the High Court but the appeal was dismissed by a three to one majority.²⁰ Four uncontested divorce cases followed.²¹ Then in December she briefed Frank Dwyer and John Kerr on behalf of her client who was appealing against a decision by the Railways Superannuation Board not to grant him a gratuity. After the Supreme Court dismissed the appeal²² her client appealed to the High Court which heard the case in April 1941. The appeal was upheld and the High Court granted him a gratuity.²³

¹⁴ "Expulsion from Union", *SMH*, 14 August 1940, p 6 and 20 August 1940, p 3.

¹⁵ "Sleeman v Sleeman", *SMH*, 17 September 1940, p 5.

¹⁶ "Settlement Payment of £1,600", *SMH*, 11 October 1940, p 5.

¹⁷ "Railway Ruling Questioned", *SMH*, 18 October 1940, p 3; "Railways Test case", *SMH*, 19 December 1940, p 4

¹⁸ "Key v Commissioner for Railways", *SMH*, 7 November 1940, p 4.

¹⁹ "Widow's Verdict Challenged", *SMH*, 21 February 1941, p 5; "Jury's Verdict Set Aside", *SMH*, 7 March 1941, p 3.

²⁰ "Key v Commissioner for Railways", *NSW Weekly Notes*, Vol 58, p 214.

²¹ "Pickard v Pickard", "Pickard v Pickard", *SMH*, 8 November 1940, p5; "Nolan v Nolan" and "Cleary v Cleary", *SMH*, 10 December 1940, p 5; "Poole v Poole", *SMH*, 4 December 1940, p 5.

²² "Claim for a Gratuity", *SMH*, 21 December 1940, p 6.

²³ "Deeble v Nott", *SMH*, 9 April 1941, p 6 and 22 April 1941, p 4.

This routine of industrial, compensation and divorce cases continued into 1941. The first case involved a dispute over the conduct of a ballot held by the Seamen's Union. Desmond Charles Rolfe, a candidate for the position of general secretary of the union sought a court ruling that the ballot should be declared void because of suspected irregularities and a fresh ballot ordered. One of the other candidates was the Queensland branch secretary, Eliot V Elliot, now a member of the CPA. The counting of the ballot had been suspended by the union's Federal Returning Officer, Joseph Keenan, following allegations of irregularity. Keenan, also a member of the CPA, sought the advice of the Industrial Registrar who recommended that the ballot be declared void and the ballot papers reissued. However, a stop-work meeting in Sydney did not support such action, hence Rolfe's application for a court ruling. Christian was retained by Keenan and she briefed Jock Mc Clemens to appear on his behalf before Mr Justice Beeby in the Commonwealth Arbitration Court.²⁴ Beeby dismissed the application and ordered the completion of the count.²⁵ When the count was completed, Elliot was elected general secretary of the Seamen's Union. In addition, Christian handled another successful compensation case against the Commissioner for Railways in February,²⁶ several uncontested divorce cases,²⁷ and an undefended damages action.²⁸

From May 1941 the *Sydney Morning Herald* ceased publishing the daily Law Report because of restrictions on newsprint. Consequently, it is more difficult to track the cases handled by C Jollie Smith and Co during this period.²⁹ Even so, it appears that Christian had a steady flow of work during this period. In particular the number of divorce cases soared during the war. The average number of divorce cases for the period 1937-1940 was 2,300 but there were 3,820 divorce cases in 1943 and 4,900 in 1944.³⁰ Given that she had a steady flow of divorce petitions during the 1930s, averaging around ten cases per year, it is most likely that Christian was kept busy handling divorces.

²⁴ "Dispute Over Seamen's Ballot", *SMH*, 12 February 1941, p 6, 13 February 1941, p 4, 18 February 1941, p 3, 19 February 1941, p5.

²⁵ "Desmond Charles Rolfe v William John Daley and others *In re* The Seaman's Union of Australia", 44 *Commonwealth Arbitration Reports (CAR)* (1941), pp 174-176. See also Fitzpatrick and Cahill, *op cit.*, pp 121-122.

²⁶ "Johnson v The Commissioner for Railways", *Workers Compensation Reports*, Vol 15 (1941), pp 114-117.

²⁷ "Clark v Clark" and "Bull v Bull", *SMH*, 7 March 1941, p 3; "Cassidy v Cassidy" and "Josephs v Josephs", *SMH*, 1 May 1941, p 3; "Woods v Woods", "Jones v Jones, and "Rice v Rice" *SMH*, 15 March 1941, p 9.

²⁸ "Verdict for £1,620", 1,620", *SMH*, 29 May 1941, p 3.

²⁹ The official law reports – the NSW State Reports (which report actions in the Supreme Court), NSW Industrial Reports and Workers' Compensation Reports - continued to be published but not all cases were officially reported.

³⁰ 'Record Year for NSW Divorces', *Daily Telegraph*, 28 December 1944, p 7.

Representations and reunions

On 2 July 1941, Christian was a member of a United Associations (of Women) delegation led by Mrs Jessie Street to the Attorney-General, Clarence Martin. Martin had recently been appointed to the position after the Labor Party led by William McKell won the state elections in May. The United Associations had been formed in 1929 when three women's organisations – the Women's League, the Women's Service Club and the Women Voters Association – amalgamated. The United Associations pursued policies which aimed to advance the political, social and economic equality of women.³¹ Mrs Jessie Street was the Associations' president. Other members of Mrs Street's delegation included the barrister, Nerida Cohen, and the solicitor, Marie Byles. The delegation urged the Minister to reform the divorce legislation particularly the vexed issue of a woman's domicile, where a married woman was deemed to have the same domicile as her husband even if they were not co-habiting.³² It was a long-standing grievance. Marie Byles had addressed the issue of domicile at a UAW Conference in 1935³³ and had published an article on the topic in *Woman Today* in November 1937.³⁴ Martin responded that the question of domicile could not be resolved piecemeal and that uniform Federal divorce legislation was needed.³⁵

In August 1941, Robert Menzies resigned as Prime Minister and Arthur Fadden was elected Prime Minister by the combined UAP and Country parties. However, Fadden's leadership was short-lived. On 7 October 1941, the Government was defeated when two Independents crossed the floor and John Curtin was invited to form government. While the new government did not do anything immediately about lifting the ban on the Communist Party the ban was less vigorously enforced.³⁶ On 29 October there was a mass meeting at Sydney Town Hall during which the previous government, particularly Billy Hughes, was attacked and a plea made for the lifting of the ban on the Communist Party.³⁷ Hughes responded that he was strongly opposed to the lifting of the ban on the Communist Party because 'the Communist Party of Australia had not done a hand's turn for Russia... in her desperate extremity'.³⁸

³¹ Marilyn Lake, *Getting Equal: The History of Australian Feminism*, Allen and Unwin, Sydney, 1999, p 53.

³² "Divorce Law Reform", *SMH*, 3 July 1941, p 5.

³³ "Conference Ends: Divorce Laws" *SMH*, 3 October 1935, p 5.

³⁴ Marie Byles, LLB, "Married Women's Domicile", *Woman Today*, November 1937, p 8. CJS is also supposed to have written about divorce (see ADB Vol 11, p 641) but I have not been able to locate any articles.

³⁵ The Commonwealth eventually passed comprehensive legislation in 1959, although a limited act to address the question of domicile was passed in 1945. See Paul Toose, Ray Watson, David Benjafield, *Australian Divorce Law and Practice*, The Law Book Company, 1968, p ci.

³⁶ Hasluck, *op cit.*, p 591.

³⁷ "In Defence of Communists: Plea to End ban on Party", *SMH*, 30 October 1941, p 11.

³⁸ "Communists Assailed: Done Nothing for Russia", *SMH*, 28 November 1941 p 9.

Nettie Palmer was also in Sydney during October and visited Christian, having dinner with her one evening. They talked over 'Sydney people and opinions.' Nettie noted in her diary that Christian was disappointed with [H V] Evatt who refused to answer her letters 'about a refugee whose bona fides she guarantees' even though he was a personal and business friend.³⁹ Dr Evatt had stepped down from the High Court bench in September 1940 and had been elected for the Federal seat of Barton. After the Labor Party had succeeded to government he had been appointed Attorney-General and Minister for External Affairs.⁴⁰ New in the job, and with the war situation commanding the government's attention, he probably had no time for Christian's representations if indeed he had even seen her letters.

A month later Vance Palmer was in Sydney and 'saw Christian a good deal.' They had lunch together one day and discussed the Australian Council of Civil Liberties. Towards the end of the meal, Katharine Susannah Prichard strolled in. To be closer to her son, Ric Throssell, Katharine had moved to Sydney taking a flat at 14 Forbes Street in Woolloomooloo not far from the harbour and the Botanic Gardens. Living in the same block of flats were Len and Glen Fox whom she often visited.⁴¹ Katharine also frequently visited Christian at Camp Cove where Christian played the piano for her entertainment.⁴² Vance reported to Nettie that he had found Christian 'a little bitter but greatly worried and with a way of persisting in some grievance which is not so important to her as she thinks.'⁴³ What Christian's grievance was is not clear but perhaps it was related to Evatt's failure to respond to her letters. Nettie commented in her diary that 'sheer fatigue makes you keep on the same slide.'

The fatigue was probably related to Christian's pernicious anaemia which 'only gets especially worrying when I am especially worried.'⁴⁴ There were also problems in the office. The attendance of her managing legal clerk, Harry Thorne, had been causing concern but 'he has taken a turn. He has been in by 9:30 and has been working well. So I breathe again' Her other legal clerk, Courtney, had been called up which meant that 'things will be a bit tough in the office.' However, she changed her own work habits which had a beneficial effect. By

³⁹ Diary entries for 22, 23 and 26 October 1942, *Palmer Papers*, NLA MS 1174/16/23.

⁴⁰ GC Bolton, "Herbert Vere Evatt", *ADB*, Vol 14 p 110.

⁴¹ KSP to Ric Throssell, 23 May and 30 May 1943; 2 Jan, 2 May and 25 August 1944, *Ric Throssell Papers*, NLA MS 8071/7/180-181.

⁴² Ric Throssell, *Wild Weeds and Windflowers: The Life and Letters of Katharine Susannah Pritchard*, Angus and Robertson, Sydney, 1975, p 116.

⁴³ Diary entry for 7 December 1942, *Palmer Papers*, NLA MS 1174/16/23.

⁴⁴ CJS to Nettie Palmer, Nov-Dec 1942, *Palmer Papers*, NLA MS 1174/1/6446. The following information is also taken from this letter.

leaving home at 8:30 in the morning she was able to get a lift into her office which cut out a long trip by tram and left her less tired in the evening. However, it meant that she could not continue with her habit of practising the piano for an hour before leaving for work which she found relaxing. On the other hand, leaving earlier also meant that she could avoid her neighbour, Chica Edgeworth, who had been wasting her time with continual requests for advice for which Christian could have charged 10/6 if provided formally in her office.

Christian received an unexpected visit from an old friend who had been a supporter of Neville Chamberlain, the British Prime Minister from 1937 to 1940. Her friend was then serving in the Coastal Squadron in England. Although Christian indicated that she had previously discussed him with Nettie, she does not name him in the letter and it has been impossible to identify him. Whoever he was, it seems she had had a crush on him but she was now over it. 'Funny', she mused, 'how you can sit and look at a face you'd have given a year of your life to see, and wept gallons because you didn't see it, three years ago.' He now supported Churchill and was 'prepared to admire the Russian job.' It seems he was much younger than Christian who was approaching her fifty-eighth birthday. While it is not clear that she is referring to him, Christian concludes that young people in the 1940s were no better than when she was young. '[T]hese young things who are so certain they had advanced planets ahead of all previous eras behave just the same way that as far as I can see, are a little more idiotic than any earlier crowd in my young life anyway.' Christian was hoping to be able to take a few days break over Christmas but she was not confident. While she and her staff were taking turns to staff the office, she thought her turn would probably be the longest as 'holiday time was the worst time for one's own holiday.'

On 18 December 1942, the Curtin Government lifted the ban on the Communist Party of Australia. The Party's attitude to the war had switched from being against the 'imperialist' war to whole-hearted support for the defeat of Hitler's regime after Germany had invaded Russia on 22 June 1941. Membership of the CPA soared which was attributed to the party's change of attitude to the war effort. For a brief period Communism and Communists were acceptable.

In December 1943 Christian told Nettie that four more unions had sought the services of C Jollie Smith and Co.⁴⁵ She does not name them but the Building Workers' Industrial Union (BWIU), which is mentioned in a later letter, was probably one of them. The BWIU was another of the Communist-led unions. Christian also continued to handle compensation claims

⁴⁵ CJS to Nettie Palmer, 15 December [1943], *Palmer Papers*, NLA MS 1174/1/6460.

against the Commissioner for Railways.⁴⁶ Christian also told Nettie that ‘it is quite impossible to cope with the work except that now and then there is a Night Court to ease the situation.’⁴⁷ Night Courts were introduced by the Federal Attorney-General, Dr HV Evatt, to hear charges arising under the National Security regulations. In one case, Christian represented a number of strikers (strikes were banned under the regulations) who were charged before the Central Police Court ‘which needed 100 police to mind or so the authorities thought... There was not a crevice of room for one more policeman or one more striker.’ However, the prosecution withdrew ‘more or less ungracefully’ and there were no further cases of this type. She was also representing ‘unhappy aliens, who can’t distinguish between bunched carrots, carrots by the pound and the necessary percentage required for profits and cartage. They make an error of a halfpenny and the Inspectors are down on them... It makes you mad. For the one real case of profiteering and dishonesty which is caught there are dozens of these miseries.’⁴⁸ Christian was not the only critic of the administration of the prices regulations. There were numerous reports that the Inspectors exceeded their powers.⁴⁹

Studying sociology

Around this time Christian also became involved in the activities of the Australian Institute of Sociology. It was founded in June 1942 after a series of meetings of people who were interested in furthering the study of sociology.⁵⁰ The first President was anthropologist Professor Peter Elkin who, according to his biographer, had himself elected president.⁵¹ The objective was to promote the study of sociology and the collection and analysis of data which would facilitate this. The Honorary Secretary was Aileen Fitzpatrick⁵² and Dr Lloyd Ross was one of the members of the Council. Christian was the Honorary Treasurer and also convenor of the Committee on Family Relations. The other members of this Committee on Family Relations are listed as Mollie Jones, S F Fink and D I Martin. The Council and the committees met regularly and there were monthly meetings at which papers were read and discussed.⁵³

⁴⁶ “Barrett v The Commissioner for Railways”, *Worker’s Compensation Reports (WCR)*, Vol 17, 1943, pp46-49; “Shanahan v The Commissioner for Railways”, *SR (NSW)*, Vol 45, 194, pp 344-347; “Johnston v The Commissioner for Railways”, *SR (NSW)*, Vol 44, 194, pp 169-172.

⁴⁷ CJS to Nettie Palmer, 15 December [1943], *Palmer Papers*, NLA MS 1174/1/6460.

⁴⁸ CJS to Nettie Palmer, 15 December [1943], *Palmer Papers*, NLA MS 1174/1/6460.

⁴⁹ “SM criticizes evidence”, *SMH*, 19 November 1943, p 7.

⁵⁰ “Proceedings of the Institute”, *Social Horizons*, July 1945, p 97.

⁵¹ Tigger Wise, *The Self-made Anthropologist: A Life of A P Elkin*, George Allen and Unwin, Sydney, 1985, p 149

⁵² Aileen Fitzpatrick had previously been the Director of Board of Social Study and Training and had travelled to Europe and the USA to study social work practices. She resigned in 1940. Kerry Regan, “Aileen Fitzpatrick”, *ADB*, Vol 14, p 177.

⁵³ *Social Horizons*, July 1945, p 97.

The Institute produced a journal entitled *Social Horizons*, the first issue of which was published in 1943. The first volume featured an article by Professor Elkin on the need for sociological research in Australia. Other articles provided summaries of recent social research with the intention of stimulating further research and understanding. The article signed by Christian's committee was entitled 'The Family and the War'. The article is described as a preliminary report and shows all the signs of having been written by a committee under the constraints of needing to be approved by a council. Indeed, it is likely that Professor Elkin had a strong influence over the content of the whole journal for, as his biographer notes, 'Elkin had come to believe that his country possessed in him one of its finest scientific minds.'⁵⁴

'The Family and the War' provides a summary of research about the effects of the war on young children whose fathers had enlisted and whose mothers were working in industry, on teenagers who worked and earned high wages, and on marriage and divorce. It is probable that the committee which drafted the article based their views on responses to questionnaires 'dreamed up' by Professor Elkin whose method was to 'distribute [such questionnaires] to his team of mass observers, have them ask the questions to whom they would and have them send the answers back.'⁵⁵ Such a haphazard method of distributing survey forms would have produced flawed results because the structure of the sample was not rigorously controlled but this did not concern Elkin because the questionnaires were designed to support his campaign for more sociological research.

An old friend of Christian's - Teddy Brown - also turned up in 1943. Christian seems not to have been very impressed by his visit which lasted 'a good many' weeks. 'I see him when he calls in for lunch about twice a week but that is all.'⁵⁶ Teddy may have had marriage in mind⁵⁷ but whether he thought he could again take up his old relationship with Christian is not clear. He annoyed Christian by his refusal to say whether 'he was leaving that night or not.' If this was a tactic to gauge Christian's interest it failed. Discouraged by her cool response, he looked elsewhere and Christian saw very little of him in the last six weeks he remained in Sydney. In March 1944, Christian confirmed to Nettie that Teddy had married 'Mollie' and admitted that she had mixed feelings because 'Teddy has developed these last couple of years a very obstructive and destructive and sterile mind which would be maddening to live with and Mollie is always a constructive type of person.' Christian seems to have known Mollie well and she

⁵⁴ Wise, *op cit*, p 147.

⁵⁵ Wise, *op cit*, p 149.

⁵⁶ CJS to Nettie Palmer, 15 December [1943], *Palmer Papers*, NLA MS 1174/1/6460.

⁵⁷ Teddy Brown appears to have been previously married. In her 1931 diary, Nettie refers to Teddy Brown and his wife coming to lunch. Entry for June 30, 1931. *Palmer Papers*, NLA MS 1174/16/14.

may have been Mollie Jones from the Institute of Sociology. Mollie had also met Nettie but Christian denied Nettie's inference that Mollie 'was a shadow of me. I think she talked about me to you because she knew we had been friends for so long.'⁵⁸

The end of the year also brought another letter from Nettie with news that Hilda Esson had provided a favourable report on Christian's health. Christian responded that she was 'glad Hilda gave a decent account of me. It was not first hand for I did not see her but I must have impressed either Glen or Katharine with a greater degree of robustness than formerly.'⁵⁹ Indeed, Christian and Hilda had not met since the dispute over Hilda's father's will nearly thirty years earlier. Christian also seems to have reacted over-enthusiastically to news that a Testimonial Fund was being established for Maurice Blackburn who had been defeated at the Federal election in August.⁶⁰ On Christmas Eve and Christmas Day she had canvassed the Sydney legal and industrial world for donations only to find that 'there had been some sort of appeal out a couple of months ago to which they had all given small amounts as a sort of gesture. I, of course, had no idea that it was all the same appeal.' Christian was discomfited by her misunderstanding and, perhaps to relieve her embarrassment, she suggested to Nettie 'that your committee send around a further set of requests based on the further circumstances.'

'A half dead horse trying to crawl with its load up a never ending mountain'

Early in 1944 Christian was hard-pressed in the office. Her typist had left and gone to America 'to see some life different from the variety with CJS and Co.'⁶¹ Christian bemoaned her loss because not only did her legal practice depend on having a good typist, 'she was one of the best typists in town.' The departure of the typist was followed by the arrival of the auditors. Christian had to do the books herself for the first time because the person who usually did them was not available. It was 'a formidable job... and I have to tackle them – books that should have been finalised last June.' Then the law vacation ended and 'cases began to tumble into the lists.' She had to cut everything else out of her life – 'any sort of social life and political life have all gone out the window' – in order to cope.

Her mood was more despondent than it had been two years earlier and she began to question her decision to study law rather than music, a decision she attributed to her 'unhappy parent'. She

⁵⁸ CJS to Nettie Palmer, 12 March 1944, *Palmer Papers*, NLA MS 1174/1/6519.

⁵⁹ CJS to Nettie Palmer, 30 December 1943, *Palmer Papers*, NLA MS 1174/1/6464. The following information is derived from this letter.

⁶⁰ See Susan Blackburn Abayasekera "Maurice McCrae Blackburn", *ADB* Vol 7, p 312.

⁶¹ CJS to Nettie Palmer, 12 March 1944, *Palmer Papers*, NLA MS 1174/1/6519.

felt that she would 'die in a job I hate without ever playing anything decently.' While she conceded that the 'law has been more lucrative and more secure' it was a theme she was to return to more often as the years went by. Playing the piano was her main source of solace and relaxation during these years. When things were grim she would 'go and practice the piano and try and make out what Mr Beethoven and Mr Debussy were thinking about.'⁶² On her birthday in March 1944 - she turned fifty-nine - she had dinner with Katharine who cooked her 'a sumptuous repast.' Christian was 'inveighing against early marriage, say[ing] that her practice in the divorce court satisfied her that there is nothing in the idea that early marriages make for decent partnerships. Half the divorces or more are due to lack of mental compatibility.'⁶³ Later in the year Katharine spent a day with Christian at Camp Cove. Katharine had hoped that it would be hot enough to swim but it was cold and raining. However, she had 'quite a nice time with music and yarnning and loafing generally.'⁶⁴

During 1944 Christian handled four more workers compensation cases against the Commissioner for Railways.⁶⁵ While workers compensation cases must have become quite tediously routine there were other types of cases to provide variety. In November, Christian briefed Simon Isaacs on behalf of John Moss and Cornelius Bowen, President and Secretary respectively of the NSW branch of the Australian Workers' Union, who sought an injunction in the NSW Industrial Court in an attempt to prevent the Central Executive of the Union from interfering with the operation of the NSW Branch and from dismissing certain members of the NSW Branch Executive. This action was taken after similar action in the Supreme Court had failed. However, the Industrial Court ruled that it could not properly grant the injunction against a decision by the Supreme Court.⁶⁶ The Central Executive of the AWU then expelled eight members of the NSW Branch executive.⁶⁷ This action would create further work for Christian.

Towards the end of 1944, Communist and writer Jean Devanny consulted Christian about obtaining a divorce on the grounds of desertion. However, Christian advised her that this would

⁶² CJS to Nettie Palmer, 17 June 1945, *Palmer Papers*, NLA MS 1174/1/6783.

⁶³ KSP to Ric Throssell, 19 March 1944, *Ric Throssell Papers*, NLA MS 8071/7/181.

⁶⁴ KSP to Ric Throssell, 29 October 1944, *Ric Throssell Papers*, NLA MS 8071/7/181.

⁶⁵ "Lamey v Commissioner for Railways", *Worker's Compensation Reports*, Vol 18 (1944), pp105-108; "Downie v The Commissioner for Railways", *Workers' Compensation Reports*, Vol 18 (1944), pp177-178; "Cowie v The Commissioner for Railways", *Workers' Compensation Reports*, Vol 18 (1944), pp 173-175; "Johnston v The Commissioner for Railways", *SR (NSW)*, Vol 44, 194, pp 169-172.

⁶⁶ Moss and Bowen v Australian Workers' Union and others, *NSW Industrial Reports*, Vol 43 (1944), pp 601-611.

⁶⁷ "AWU Expulsions Will Intensify Struggle for Democracy!", *Tribune*, 30 November 1944, p 6. See also Mark Hearn and Harry Knowles, *One Big Union: A History of the Australian Workers' Union 1886-1994*, Cambridge University Press, Melbourne, 1996, pp 200-202.

not be possible because, on several occasions, Jean had been the partner who had left. Jean wanted her husband Hal, who was living with a married woman, to provide grounds for adultery but he refused to consider it.⁶⁸ Jean accused her husband's lover of selfishness. On the other hand, it is possible that, even if he had co-operated, they would not have obtained a favourable decision as there was a strong legislative prohibition on collusion between the partners in applications for divorce.

By January 1945, the pressures of the office had eased. A new articled clerk had been employed who was 'articling most cheerfully' even though his employment with C Jollie Smith and Co was more precarious than his previous job. The bank balance was still causing concern and was 'gazed at anxiously every few days.' However, there was potentially lucrative work in the offing – four writs for £10,000 for libel had been issued in the previous seven days but two writs for £10,000 had also been served on Christian's clients.⁶⁹ In March, when she flew to Melbourne and spent what Nettie described as 'an astonishing day' with her old school friend, Christian explained how she had nearly had to close down in 1944 because of lack of skilled staff but that her new articled clerk was 'a young, ambitious returned soldier who wanted to be a barrister and she's on velvet at last.' Nettie was impressed by Christian's courage and thought she was 'more realistic.'⁷⁰ Just three days later Christian turned sixty and Nettie 'sent tea.'⁷¹ Christian celebrated her birthday by going out to dinner with Katharine and Aileen Fitzpatrick. Afterwards they went to see the Namatjira exhibition.⁷²

Christian was also working on the second volume of the Australian Institute of Sociology journal *Social Horizons* which was published in July 1945. Publication had been delayed because of the paper shortage and also because Christian was responsible for several of the articles but could not give them any attention while her office was understaffed. The advent of the new articled clerk meant that 'I have got up for air and things will be better for a while.' In January, the new volume of *Social Horizons*, with a reproduction of one of Namatjira's paintings on the cover, was 'due to merge from the printer at any moment.' However, publication was further delayed due to a controversy involving Christian.

⁶⁸ Carole Ferrier, *Jean Devanny: Romantic Revolutionary*, MUP, 1999, pp 224-225.

⁶⁹ CJS to Nettie Palmer, dated Jan 1944 but internal evidence – the reference to writs - indicates 1945, *Palmer Papers*, NLA MS 1174/1/6469. One of the writs for £10,000 appears to be related to a case heard in March 1947.

⁷⁰ Nettie Palmer, Diary entry, 12 March 1945, *Palmer Papers*, NLA MS 1174/16/25.

⁷¹ Entry for 15 March 1945.

⁷² KSP to Ric Throssell, undated but probably 17 March 1945, *Ric Throssell Papers*, NLA MS 8071/7/181.

The row seems to have been over an address to the third annual meeting of the Australian Institute of Sociology in April 1945 by the new President, Kenneth Henderson,⁷³ entitled ‘Is Class War Still Necessary?’⁷⁴ In his address, Henderson questioned the relevance of the Marxist concept of class war in the middle of the twentieth century. He argued that the necessity for war between the proletariat and the owners of capital had been made obsolete by the changes that had occurred over the previous one hundred years. He argued that the class war had largely been won and that further progress would be achieved through cooperation and the spirit of fraternity.⁷⁵ Responding to a letter from Nettie, Christian wrote that she was not surprised to have heard from her.

I did expect that the Henderson performance might goad you into an explosion. It isn't often that I find myself among the great... And when I do, to behave so badly that the only explanation that Aileen [Fitzpatrick] could find was that the CP exercised a real terrorism after all and that freedom of speech was not allowed to any of its adherents, sympathisers or supporters.⁷⁶

She told Nettie that ‘mental integrity and intellectual honesty of thinking or reasoning did matter and that I simply could not face up to shoddiness of that sort... and added to that is the queer idea of freedom of speech which shelters shoddy thought [and] muddles the whole thing.’ Christian was told that the journal would be further delayed because it would have to be reset in order to remove her name from the bottom of her article. However, this appears not to have happened as in the published journal the ‘Report of the Committee on Family and Community’ has Christian’s name, as convenor of the committee, attached. Christian hoped that after the journal was published ‘criticism will come from some quarters recognisable as sound and the whole Institute would have to shoulder responsibility for the views of their President.’⁷⁷ The outcome seems to have been the demise of the Institute. While the July 1945 issue of *Social Horizons* refers to publication of the Report of the Committee on Educational Sociology in a future edition,⁷⁸ there were no further issues of the journal.⁷⁹

Christian also referred to another controversy in her June 1945 letter to Nettie. ‘My remarks were confirmed by Beasley’s outburst. Can you imagine a Communist [word unclear] by

⁷³ Kenneth Henderson was a Protestant clergyman, Director of Special Talks at the ABC. Tim Rowse, *Australian Liberalism and National Character*, Kibble Books, Melbourne, 1978, p 169.

⁷⁴ It was Rowse, *op. cit.*, which alerted me to this possible explanation.

⁷⁵ Kenneth Henderson, “Is Class War Really Necessary?”, *Social Horizons*, July 1945, pp 5-9.

⁷⁶ CJS to Nettie Palmer, 17 June 1945, *Palmer Papers*, NLA MS 1174/1/6783.

⁷⁷ CJS to Nettie Palmer, 17 June 1945, *Palmer Papers*, NLA MS 1174/1/6783.

⁷⁸ On p 98.

⁷⁹ Only two issues – 1943 and 1945 – are recorded by the National Library of Australia and the Mitchell Library.

Beasley with Healy, Thornton and Wells sitting in a row looking at him... and all Beasley can say is ‘who will you vote for? Menzies?’”⁸⁰ This appears to refer to the debate between Ernie Thornton, National Secretary of the Federated Ironworkers, and Jack Beasley, the acting Federal Attorney-General, over the White Australia Policy. In early June, Ernie Thornton had criticised the White Australia Policy in an address to the FIA National Conference.⁸¹ Beasley responded that Thornton’s speech ‘displayed a basic non-Australianism’ and that Thornton was ‘following the lines of the Communist Party to which he belongs [in his] attempts to white-ant the very policy which ensures Australia meeting the stresses and strains of this war as one homogeneous community resolute in maintaining its own way of life.’⁸² Beasley followed this with an attack on Thornton and the Communist Party at the State Annual Conference of the ALP on the weekend of 16-17 June in which he referred to Thornton’s claim that ‘if the Government did not look out, the workers would withdraw their support’ by asking ‘Who would those workers vote for? Would they vote for Mr Menzies?’⁸³

In March 1945, she briefed George Weir, another NSW Labor lawyer,⁸⁴ on behalf of the New South Wales Fruit Shopkeepers’ Association before the NSW Industrial Commission in a straightforward application for a variation of the *Shop Assistants, Confectioners, & C (Metropolitan) Award*.⁸⁵ It was unusual for Christian to act on behalf of an employer organisation but it may have been members of this organisation whom she had defended in 1943 against charges under the Federal Government’s war-time price regulations. This was followed by another successful compensation claim against the Commissioner for Railways.⁸⁶

By June 1945 Christian was feeling better. After a particularly gruelling six months from October 1944 to March 1945 things had improved. Consequently, ‘I haven’t felt so much like a half dead horse trying to crawl with its load up a never ending mountain... and I used to many a time wonder if I’d ever wake up in the morning.’⁸⁷ It was still hard work although there were some compensations. Clive Evatt became acting Chief Secretary when the Premier, William McKell, left on an overseas trip and the Chief Secretary, John Baddeley, became acting

⁸⁰ CJS to Nettie Palmer, 17 June 1945, *Palmer Papers*, NLA MS 1174/1/6783.

⁸¹ “Attack on White Australia Policy”, *SMH*, 5 June 1945, p 5.

⁸² “Reply to Mr Thornton”, *SMH*, 7 June 1945, p 4.

⁸³ “Labour warned by Mr Beasley”, *SMH*, 18 June 1945, p 4.

⁸⁴ After graduating in law from the University of Sydney and being admitted to the bar in 1926 he worked as a clerk in the NSW public service. In 1939, he resigned from the public service to practice at the bar. He was elected for the seat of Dulwich Hill in the May 1941 State election. H Radi, et al, *op cit.*, p 290.

⁸⁵ ‘*In re Shop Assistants, Confectioners, & C (Metropolitan) Conciliation Committee*’, *NSW Industrial Reports*, Vol 44, (1945), pp 41-46.

⁸⁶ “McMahon v The Commissioner for Railways”, *Workers’ Compensation Reports*, Vol 20, (1946), pp 62-68.

⁸⁷ CJS to Nettie Palmer, 17 June 1945, *Palmer Papers*, NLA MS 1174/1/6783.

Premier.⁸⁸ Christian took delight in visiting Evatt in his office because he had a gramophone and records to which she could listen blissfully while waiting for him to complete some legal task. 'Needless to say when I go down with a Replication to be drafted or some such highly technical job for a KC, I usually emerge with my head in the clouds.'

In October, Christian travelled to Melbourne and spent a day with Nettie.⁸⁹ Nettie thought that Christian was much better – she was energetic and absorbed in her trades union cases. However, Nettie noted that she was 'suffering from her father's form of working all the time.' A particular source of worry was that Christian's landlord at Camp Cove was contemplating redevelopment of the site with 'shoddy, unsafe cliff flats.' Christian was faced with a move from the home which had offered solitude and peace in difficult times. In a letter to Nettie in 1946, Christian said that her neighbour Chica Edgeworth had been given notice to quit and that she expected hers any day.⁹⁰ Although the 'absolute solitude... had saved her sanity the last two years, she thought that she would 'sell everything and not bother with a house if the blow comes.' She had secured a room in a friend's house at Mosman as a precaution but 'one room in a friend's house will certainly hasten my decrepitude mentally and physically.' She was annoyed by the fact that returned soldiers could 'demand houses to themselves' and felt that civilians would be 'forced to occupy the camps and barracks where the soldiers were housed during the war.' She thought she had suffered as much as they had. In the event, Christian remained at Camp Cove for another decade.

Post-war signs of rising anti-communism

Late in 1945, the Chifley Government established an inquiry into the stevedoring industry. Judge AW Foster was appointed to conduct the inquiry. As solicitor for the Waterside Workers' Federation, Christian attended the hearing when its secretary, Jim Healy, was being questioned. Foster invited her to sit at the bar table. There were several Melbourne barristers present and one, Reynolds, 'galloped up [to Christian] with hand outstretched. Delighted to meet you again. Don't you remember me. I was in your father's logic classes you know. You were a bit ahead of me.' However, after listening to Reynolds during the hearing she was glad that 'the Parent didn't live long enough to see how his students had forgotten all the logic he had tried to get into their silly heads.' Healy was cross-examined for three days, and asked

⁸⁸ Christopher Cunneen, *op cit.*, p170.

⁸⁹ Nettie Palmer, Diary entry, 24 October 1945, *Palmer Papers*, NLA MS 1174/16/25.

⁹⁰ CJS to Nettie Palmer, July? 1946, *Palmer Papers*, NLA MS 1174/1/7012-7016.

‘everything in the world relevant and irrelevant about Communism.’ Christian ‘protested now and again and Foster usually upheld me but nothing could stop Reynolds and Scholl.’ Reynolds suggested to Foster that Healy and Christian ‘should draft an entirely new act to replace the Stevedoring Industry Commission Act and regulations.’ Foster agreed and ‘so we found ourselves pushed into a tremendous job.’ They worked through the legal holidays to the end of January 1946 to complete the task.⁹¹

In the meantime, Christian also handled a lengthy libel case on behalf of the Communist newspaper, *Tribune*. Tom Dougherty, the Federal Secretary of the Australian Workers’ Union sued *Tribune* over an article which accused Dougherty of being dictatorial and undemocratic and of helping employers reduce wages. This was part of a long-running battle, beginning in 1944, between Dougherty and the NSW Branch of the AWU over Dougherty’s attempt to reconstruct the NSW branch and purge it of its Communist officials. The libel case came before Mr Justice Street in the Supreme Court and a jury of four on 4 December 1945. The case was complex as there were multiple defendants including all members of the central Committee of the CPA as proprietors of *Tribune*: namely JB Miles, LL Sharkey, EJ Docker, EW Campbell, H Wells, Phyllis Johnson, N Jeffery, LH Gould, J Simpson, J Healy, EV Elliot, EJ Rowe, JR Hughes and CR Walker. Christian told Nettie that ‘I was instructing for 12 defendants and Sweeney for 6 and we had 3 barristers who did not know the difference between the AWU, ALP, ARU or ABC. After a week’s drilling they did a great job.’⁹²

It is possible that Christian was unable to engage her usual barristers, who had experience in the industrial jurisdiction, in this case. Sir Richard Kirby’s biographer cites a case in which Christian persuaded him to take a brief on behalf of a disgruntled member of the AWU because ‘she had been unable to persuade any of the usual Arbitration Court counsel to take Hall’s brief as the AWU was extremely powerful and a lucrative source of work for barristers.’⁹³ When Kirby did accept the brief he was told he should not expect any future AWU work. Tom Dougherty’s barristers were Miller, McClemens and Stevens whom Christian had previously briefed on many occasions. In this case Neville Jenkyn and Simon Isaacs were briefed by Christian and Jack Sweeney on behalf of their clients.⁹⁴ Christian described what followed.

⁹¹ *Ibid.*

⁹² CJS to Nettie Palmer, July? 1946, *Palmer Papers*, NLA MS 1174/1/7012-7016.

⁹³ Blanche D’Alpulget, *Mediator: A Biography of Sir Richard Kirby*, MUP, 1977, p 43.

⁹⁴ “Dougherty v Chandler and Others”, *NSW State Reports*, Vol 46, pp 370-379.

After eight days of solid going, the Jury, duly reflecting the daily anti-communist propaganda in the press, gave them a verdict of £1,500 against us. No-one in town would believe it. There hasn't been a verdict for libel for a sum like that in the history of libel! In this town anyhow where libel actions whip around like playing cards at poker schools.

They decided to appeal which meant that Christian had to find security for costs and was helped by a *Tribune* appeal for funds.⁹⁵ The appeal, heard in March 1946, took the form of a motion for a new trial. The result was a partial victory for the *Tribune* in that the matter of damages was resubmitted for a new trial.⁹⁶ Dougherty appealed to the High Court against the decision to retry the issue of damages but his application was dismissed.⁹⁷ The retrial on the question of damages did not proceed until July 1946 when, after a rehearing lasting four days, the award for damages was halved to £750.⁹⁸

Christian invited Katharine to spend Christmas 1945 with her at Camp Cove but Katharine refused because Christian had not invited her son's friend, Bea, as well. Katharine told Ric that 'it's because Christian likes to have me "all to herself"... but I would have liked Bea to have a few days by the sea and it is so lovely and peaceful chez Christian.'⁹⁹ However, it may have been that Christian did not feel up to entertaining an almost stranger during a brief rest period. As it was, January 1946 was 'a month of the most terrific work I've ever put in – chiefly about things I had never heard of in my life!'¹⁰⁰ Katharine did spend a day at Camp Cove in February. Again she was 'hoping for a bathe... [but] of course, it rained last night and drizzled coldly all day' so she just loafed on the veranda. In the afternoon Christian played 'the Beethoven Italian Sonata... and the Debussy "Cathedrals England"... then Debussy's "Garden in the Rain"'¹⁰¹

During 1946, Christian handled ten uncontested divorce cases and two cases in her other core business, workers compensation. Over the next few years industrial cases and cases involving intra-union disputes would outnumber compensation cases. The struggle for control of the

⁹⁵ "£100 for Fund", *Tribune*, 18 December 1945, p1; "Beat Reaction by Aiding Communists' Appeal Fund", *Tribune*, 21 December 1945, p 4.

⁹⁶ "Dougherty v Chandler and Others", *NSW State Reports*, Vol 46, pp 370-379.

⁹⁷ "'Tribune' Libel Damages", *SMH*, 12 April 1946, p 5.

⁹⁸ "Libel Verdict Halved", *SMH*, 30 July 1946, p 4.

⁹⁹ KSP to Ric Throssell, Xmas Eve 1945, *Ric Throssell Papers*, NLA MS 8071/7/182.

¹⁰⁰ CJS to Nettie Palmer, July? 1946, *Palmer Papers*, NLA MS 1174/1/7012-7016.

¹⁰¹ KSP to Ric Throssell, 17 February 1946, *Ric Throssell Papers*, NLA MS 8071/7/183. "Cathedrals England" is probably the piano prelude *La Cathédrale engloutie* and "Garden in the Rain" is probably *Jardins sous la pluie*, the concluding movement of *Estampes* (Images), a group of three descriptive pieces. (Milton Cross and David Ewen, *Encyclopedia of the Great Composers and their Music*, Doubleday and Co, New York, Revised Edition, 1962, pp 202-203.)

NSW branch of the AWU produced further litigation in August. When the members of the NSW Branch executive had failed in a Supreme Court application to prevent Dougherty taking control of the branch in September 1944, costs were awarded against them but they had failed to pay. The national executive of the AWU then filed a bankruptcy petition in the Federal Court of Bankruptcy against the former secretary of the NSW Branch of the AWU, Con Bowen, which was dismissed. The national executive of the AWU then appealed to the High Court against the dismissal of the bankruptcy action. Christian briefed Garfield Barwick and Simon Isaacs to appear on behalf of Bowen in the High Court proceedings. By a majority, four-one, the Full Bench of the High Court dismissed the appeal by the AWU and costs were awarded against the union.¹⁰²

The remainder of 1946 was taken up by a variety of cases. In September, Christian briefed Jack Sweeney on behalf of the NSW branch of Building Workers' Industrial Union in a successful appeal against a decision by the President of the Industrial Commission of NSW to award coverage of particular tasks to the United Bridge and Wharf Carpenter's Union.¹⁰³ In October, she briefed Simon Isaacs to appear in the Supreme Court before Mr Justice Herron and a jury on behalf of a railway ganger, William Kenny, who successfully sued the Secretary of the Railway Operatives Employees' Union, Dennis Kilmartin for slander.¹⁰⁴

A case in the District Court demonstrated Christian's ongoing support from members of the Communist Party. Her client, John Kosovich, the Yugoslav consul in Sydney, was objecting to the restoration of an action to the hearing list. However, the District Court Judge upheld the application and restored the case to the lists.¹⁰⁵ The background to this case relates to the struggle between the former Yugoslav monarchy and the Communists for control of Yugoslavia after the end of the war which divided the Yugoslav community in Australia. Kosovich had been appointed Yugoslav consul in Sydney by Marshal Tito to replace Mikulicic Rodd who had been appointed by the Royal Yugoslav Government-in-exile in London. Kosovich was sued for libel by Branislav Andrejevich, former president of the Yugoslav Club, over an article in the newspaper *Napredak* which called him a traitor. Christian briefed Neville Jenkyn and Jack Sweeney to appear in the Supreme Court on behalf of Kosovich. Garfield Barwick was the opposing counsel. Counsel for Kosovich argued that evidence that Andrejevich had spoken

¹⁰² "Australian Workers' Union and others v Bowen", *Commonwealth Law Reports*, Vol 72 (1945-46), pp 575-594; "Judgment for Bowen: AWU Appeal Fails", *Tribune*, 27 August 1946, p 6.

¹⁰³ "*In re* Dispute between the United Bridge and Wharf Carpenters' Union of New South Wales and the Metropolitan meat Industry Commissioner", *NSW Industrial Arbitration Reports*, Vol 45 (1946), pp 481-486.

¹⁰⁴ "Damages for Slander", *SMH*, 2 October 1946, p 5.

¹⁰⁵ "O'Hanlon v Kosovich and Others", *NSW Weekly Notes*, Vol 63, pp264-265.

strongly against Marshal Tito proved that he was a traitor. Barwick responded that Yugoslav Communists in Australia called Andreyevich a traitor because he would not accept their creed. The jury accepted Andreyevich's defence and he was awarded damages of £1,000. In a separate case Rodd, the former consul, also sued Kosovich for libel.¹⁰⁶ Further litigation against Kosovich would be heard in 1947.

In August, Nettie again passed through Sydney on her way through to Queensland. She had arranged to meet Christian for dinner but Christian's secretary phoned to say that 'she had ptomaine',¹⁰⁷ – presumably an exaggerated reference to a gastric upset. On her return trip from Queensland in early November, Nettie had lunch with Christian and arranged to visit at Camp Cove on the following weekend.¹⁰⁸ When she arrived she found Christian 'basking asleep in a midriff costume on the front verandah, exhausted after a long week.' They had a long talk about union people and struggles. Nettie thought that Christian had 'built herself a courageous life and has undertaken more and more responsibilities.' Christian's practice 'now included Jack Sweeney's with ten people on the premises.'¹⁰⁹ Christian had plans to acquire a junior partner to help with the workload. Nettie noted Christian's 'complex relations with unions and the party.' The next day, while Nettie was up early to wash some clothes, 'Christian woke late after having taken a sleeping draft to make sure of weekend rest' as she had to leave home every day at 8 am to catch a lift to work. Nettie thought that Christian's home was a lovely place to live when Christian had time for it.¹¹⁰ Nettie left Camp Cove about 6 pm on Sunday but two days she later met Christian for lunch with Aileen Fitzpatrick at a Chinese restaurant.¹¹¹ The following day, Nettie was back in Christian's office and they went out for coffee. Nettie noted that Christian's office was 'crammed with detail.'¹¹²

Towards the end of November, Christian briefed counsel to appear on behalf of the Waterside Workers Federation in the High Court. The Stevedoring Industry Commission had issued an order incorporating all the existing waterfront awards of the Commonwealth Court of Conciliation and Arbitration which included provision for paid annual leave for casual workers to which the employers objected. Several stevedoring employers sought an injunction

¹⁰⁶ "Yugoslavs in Libel case", *SMH*, 17 October 1946, p 7; "Yugoslav Libel Defence Move Rejected", *SMH*, 18 October, 1946, p 7, "'Libel was Political' Counsel's Claim", *SMH*, 19 October 1946, p 4; "Slav Consul arrested by Sheriff", *SMH*, 27 November 1946, p5.

¹⁰⁷ Diary entry for 1 August 1946, *Palmer Papers*, NLA MS 1174/16/25A.

¹⁰⁸ Diary entry for 7 November 1946, *Palmer Papers*, NLA MS 1174/16/25A.

¹⁰⁹ Sweeney had been admitted as a barrister and had to give up his solicitor's practice.

¹¹⁰ Diary entries for 9 and 10 November 1946, *Palmer Papers*, NLA MS 1174/16/25A.

¹¹¹ Diary entry for 12 November, *Palmer Papers*, NLA MS 1174/16/25A.

¹¹² Diary entry for 13 November, *Palmer Papers*, NLA MS 1174/16/25A.

restraining the Stevedoring Industry Commission from implementing the order, arguing that the order was invalid because it was beyond the defence powers of the Commonwealth more than a year after the end of the war. On 4 December, Mr Justice Williams granted the injunction.¹¹³ The WWF called a nationwide strike on 11 December to protest against the High Court's decision.¹¹⁴

While the dispute continued, Christian handled a case in the Supreme Court on behalf of a colleague, Basil Hill, who had been called to show cause why he should not be struck off the solicitor's roll. Hill had already been suspended for not having kept proper accounts as required by the Legal Practitioners Act. There were two further charges against Hill. He was firstly charged with professional misconduct in handling a divorce case in that he had prepared correspondence between the parties to a restitution suit to be used as evidence in court and had sworn a false affidavit for the petitioner to swear to the effect that the letters had been sent and received through the post. The second charge involved the sale of his practice and his false declaration regarding encumbrances on the practice. The Court ruled that Hill should be struck off for professional misconduct.¹¹⁵

In the following week, Christian briefed Jack Sweeney to appear in the NSW Industrial Court on behalf of three members of the NSW Branch of the Transport Workers Union who had been expelled. The expelled men argued that the expulsion was arbitrary and capricious and was carried out for the purpose removing the applicants from the union because of their opposition to union policy and other matters. Sweeney argued on behalf of the men that, under the rules, the Branch Committee of Management did not have power to deal with the charges against the applicants nor to expel them from the union. Mr Justice Ferguson agreed and granted the application to overturn the expulsions.¹¹⁶

Unexciting routine

The unexciting routine of 1945 and 1946 continued through 1947 and 1948. The judges in divorce sat throughout the legal vacation to deal with the backlog in uncontested divorce cases

¹¹³ "Waterside Order Challenged", *SMH*, 29 November 1946, p 9; "Wharf Powers", 29 November 1946, p 9; "Wharf Powers", *SMH*, 5 December 1946, p 18.

¹¹⁴ "Wharf Stoppage Tomorrow", *SMH*, 10 December 1946, p1.

¹¹⁵ "Solicitor Struck Off Rolls Over Divorce Case", *SMH*, 14 December 1946, p 14. Laurence Maher has advised that Christian was also charged with professional misconduct in the 1940s which she overcame. However, I have been unable to obtain any further details.

¹¹⁶ "Watson and others v NSW Branch of the Transport Workers Union of Australia and Others", *NSW Industrial Reports*, Vol 45 (1946), pp 802-813.

of which two were handled by Christian.¹¹⁷ There was an unsuccessful appeal by John Kosovich against the Court's decision to award damages to Branislav Andreyevich.¹¹⁸ A further libel claim against Kosovich by his cousin, George Banovich, was also upheld.¹¹⁹ Another libel claim by Nikola Marich was settled out of court in April when Kosovich withdrew his defence of alleged truth, public benefit and fair comment.¹²⁰ In addition, there were two workers' compensation cases, the defence of a claim for damages for non-performance of a building contract,¹²¹ a number of routine industrial award cases involving the NSW branch of the Operative Painters and Decorators' Union of Australia¹²² and the NSW branch of the Building Workers Industrial Union,¹²³ and the unsuccessful defence of an appeal brought by her client's employer against a decision by the Chief Industrial Magistrate to award her client £96/15/8 for wages underpaid over a period of twelve months.¹²⁴ In March, Christian briefed counsel to appear on behalf of her client Paul Austin who was President of the NSW branch of the Australian Railways Union in an unsuccessful claim for libel against the Secretary of the National Union of Railwaymen.¹²⁵ At the end of July she briefed counsel to appear in the High Court in an appeal by the Federated Ironworkers Union against a decision of the Commonwealth Court of Conciliation and Arbitration to disallow portions of two rules of the union. However, the case was withdrawn after the High Court ruled that there was no right of appeal to the High Court against decisions of the Conciliation and Arbitration Court with respect to the disallowance of union rules.¹²⁶

In October, the long delayed hearing of the application for reinstatement by the expelled members of the NSW Branch of the AWU came before the Chief Judge, Mr Justice Kelly, in the Arbitration Court. Simon Isaacs, briefed by Christian, argued that the former members of the NSW Branch had been denied natural justice. Mr Justice Kelly ruled that the expelled members had not been given a hearing of the charges against them in accordance with the

¹¹⁷ *SMH*, 25 January 1947, p 8 and 30 January 1947, p 7.

¹¹⁸ "Andreyevitch v Kosovich and Publicity Press (1938) Pty Ltd", *NSW Weekly Notes*, Vol 64 (1947), pp 46-51. This report contains a detailed description of the background to the case.

¹¹⁹ "Cousins Fight Libel Suit", *SMH*, 15 April 1947, p 5.

¹²⁰ "Libel Action Settled", *SMH*, 22 April 1947, p 15.

¹²¹ "Page Simonds and Another", *NSW Weekly Notes*, Vol 64 (1947), pp 12-15.

¹²² "*In re Painters, &c Award, In re Government Railways (Building Trades) Conciliation Committee*", *NSW Industrial Reports*, Vol 46 (1947), pp 75-78.

¹²³ "*In re Steel Works Employees (Broken Hill Proprietary Company Ltd) Award (No 2)*", *NSW Industrial Reports*, Vol 46 (1947), pp 239-261; "*In re Wire Netting Makers, &c (Rylands Brothers (Aust) Proprietary Ltd Award)*", *In re, Clerks (Rylands Brothers (Aust) Proprietary Ltd Award)*, *NSW Industrial Reports*, Vol 46 (1947), pp 305-319; "*In re Carpenters and Joiners and Bricklayers Construction (State) Award*", *NSW Industrial Reports*, Vol 46 (1947), pp 651-668; "*In re Carpenters and Joiners and Bricklayers Construction (State) Award*", *NSW Industrial Reports*, Vol 47 (1948), pp 731-733.

¹²⁴ "Scott v Atkins", *NSW Industrial Reports*, Vol 46 (1947), pp 396-400.

¹²⁵ "Libel Action fails", *SMH*, 5 March 1947, p 9.

¹²⁶ "Appeal Dismissed", *SMH*, 30 July 1947, p 6.

principles of natural justice. He therefore declared that the expulsions were invalid and that, in his opinion, there were no proper grounds for the charges of misconduct which led to their expulsion. He ordered the AWU national executive to accept and treat the men as still being members of the union.¹²⁷

Nettie visited Christian twice in 1947. On 5 July, on her way to Queensland, Nettie had lunch with her daughters, who were living in Sydney, and Christian, who gave Helen Palmer advice about protest leaflets.¹²⁸ Nettie visited again in November and they went out for lunch. Nettie noted that Christian was very tense and ill 'though not preoccupied with her state.'¹²⁹ A few days later Nettie rang Christian's office and was told to meet her outside the Mitchell Library at 2.30pm. They walked in the Botanic Gardens and talked. Christian was very ill. She had collapsed on the way home the previous week and was going home again on doctor's orders. However, she was 'anxious first about Glen [Fox?] who is to meet her in her office.' Christian's personal funds were very low though she was still able to cover her office overheads. She was concerned about her future as she was performing a great deal of unpaid work for unions and individuals as part of providing a service.¹³⁰

A month later Christian visited Nettie in Melbourne and they had lunch together. Nettie observed that Christian seemed preoccupied by extra expenses apart from her usual heavy overheads. A client, who was short of money, had left her a typewriter valued at £35 but it needed mending so she would not recover the full amount by selling it.¹³¹ Nettie responded by offering to buy the typewriter for her brother.¹³² Christian was suffering from pleurisy but ignored it. She had many other anxieties and was particularly concerned about financial difficulties over the legal vacation.¹³³ There had been few successful cases during 1947 and there would be few again in 1948.

Christian's first case in 1948 was heard in April when she briefed Garfield Barwick and Arthur Knight to appear on behalf of her client, O'Sullivan, who had been convicted by a magistrate in June 1947 of having knowingly taken part in an illegal assembly. After his conviction, O'Sullivan unsuccessfully appealed to the Court of Quarter Sessions after which appealed to the

¹²⁷ "Dougherty 'Vain' KC Submits", *Tribune*, 18 October 1947, p 1; "Expulsions from AWU Invalid, Says Judge", *Tribune*, 29 November 1947, p 8.

¹²⁸ Diary entry for 5 July 1947, *Palmer Papers*, NLA MS 1174/16/27...

¹²⁹ Diary entry for 6 November 1947, *Palmer Papers*, NLA MS 1174/16/27.

¹³⁰ Diary entry for 11 November 1947, *Palmer Papers*, NLA MS 1174/16/27.

¹³¹ Diary entry for 8 December 1947, *Palmer Papers*, NLA MS 1174/16/27.

¹³² Diary entry for 9 December 1947, *Palmer Papers*, NLA MS 1174/16/27.

¹³³ Diary entry for 15 December 1947, *Palmer Papers*, NLA MS 1174/16/27.

Supreme Court. The latter appeal was heard on 30 April 1948. The Full Bench of the Supreme Court dismissed O'Sullivan's appeal and remitted the case to the Court of Petty Sessions.¹³⁴ This appears to be the case Christian was referring to in a letter to Nettie in July. She was ill with a cold and feeling very miserable but she could not take any time off.

I am taking every medicine I can lay my hands on for tomorrow is very heavy, starting with important conferences at nine, at ten Court with a bunch of cases arising out of the Domain trouble...which involved 15 men on charges of every description about a year ago and which is at last on trial after various appeals, adjournments and so on all these months.¹³⁵

Christian bemoaned the fact that she got 'conflicting and silly instructions in this sort of political case... which would involve me in incurring hundreds of pounds in exes and fees and costs which blandly I am told to take.' She refused to take such instructions and sought an adjournment from the Court while she conferred with her clients then 'finally go ahead with my own ideas and hope for the best.' She found such conflicts 'wearing'. She was hoping to be able to take a holiday on Stradbroke Island off the Queensland coast near Brisbane. However, 'I can't possibly leave this town during July and v. possibly August. When September comes if all has been surmounted I look forward to that very nice spot.' There is no evidence that Christian ever did make it to Stradbroke Island for her holiday. Perhaps escaping to an island far from the pressures of work was just a dream.

Christian was now in her early sixties and beginning to think about handing over the business to 'some bright intelligent young man. But who is he?' Whoever he was he would have to be someone who was accepted and trusted by 'Healy and the WW Federation, Thornton and the Ironworkers, Barclay and the Building Workers not to mention the [Communist] Party.' Although there were some in Sydney who would have jumped at the chance of taking over her business Christian thought that she would have to return 'after about one month...or be sued for misrepresentation if I had taken money for the sale of the business.' She believed that hers was the kind of business which could be valued at £100 or £10,000 depending on the personnel. She had examined several options but 'Max Julius [a Communist barrister¹³⁶] of Brisbane is hopeless; also several ignorant idiots of this town.' She had 'flirted a little' with Ted Laurie of Melbourne but finally decided against him. She concluded that Elliot Johnson of Adelaide was

¹³⁴ "R v O'Sullivan, *NSW State Reports*, Vol 48 (1948), pp 400-404.

¹³⁵ CJS to Nettie Palmer, Sunday July 5, *Palmer Papers*, NLA MS 1174/1/10246. This letter appears near the end of the correspondence series because the year is not given. On the basis of this and other evidence in the letter I have determined that it must have been written in 1948.

¹³⁶ John McGuire, "Max Nordau Julius", *ADB*, Vol 14, p 593.

the most suitable and she was working to persuade him to take over, 'then I would find a hollow log and go to sleep for a long time.'

Jack Sweeney had had a heart attack in Melbourne and was brought back to Sydney on a stretcher. Christian was collecting outstanding accounts on his behalf but she was not 'prepared to conduct cases in that jurisdiction now.' This additional burden was compounded by the departure of her partner, Bruce Holcombe who had had a breakdown. It is not clear when he commenced work with C Jollie Smith and Co but Christian had discussed taking on a junior partner with Nettie in November 1946. Holcombe was a returned soldier who had graduated in law in 1947 and was admitted to the bar on 24 November 1947. Christian thought he 'really is utterly unstable as so many of the war generation seem to be.' She employed another lad who had begged her to take him on and promised to stay for two years but he 'lasted exactly two weeks.'

Christian was also busy handling divorce, compensation and industrial cases. There was a huge upsurge in the number of divorce cases causing lengthy delays in hearings because of a lack of judges. At the end of 1948 there was a carry over of two thousand cases.¹³⁷ That Christian continued to have a busy divorce practice is confirmed in her July 1948 letter to Nettie where she referred to 'hysterical women getting divorced who don't and never will know their own minds and change them every couple of days.' They demanded lengthy conferences to discuss every detail of their cases. This resulted in Christian being financially out-of-pocket because 'you don't charge for that sort of thing but it is wearing even if you could charge.'

In May 1948, there was an unsuccessful claim on behalf of a casual railway porter who sought further compensation from the Commissioner for Railways.¹³⁸ In the following month a case being heard in Newcastle, in which Christian was the solicitor for the respondent, was struck out because of non-appearance of the applicants.¹³⁹ In July, an application for a new award by the Australian Foremen Stevedores Association¹⁴⁰ was followed by an unsuccessful appeal to the Full Bench of the NSW Industrial Commission by an employer against an award by the Chief Industrial Magistrate of holiday pay to Christian's client.¹⁴¹ In December, Christian briefed Jack Sweeney on behalf of Max Thomas, a member of the Printing Industry Employees

¹³⁷ "Court Clogged by Huge list of Divorce Cases", *Sunday Herald*, 30 January 1949, p 4.

¹³⁸ "Whitefield v Commissioner for Railways", *NSW Workers' Compensation Reports*, Vol 22 (1948), pp 61-63.

¹³⁹ "State Dockyard NSW Government Engineering and Shipbuilding Undertaking v Smith", *NSW Workers' Compensation Reports*, Vol 22 (1948), pp 69-71.

¹⁴⁰ "In re Stevedores' Foremen &c (Port Jackson, &c) Award", *NSW Industrial Reports*, Vol 47 (1948), pp 315-337

¹⁴¹ Keane v Barratt, *NSW Industrial Reports*, Vol 47 (1948), pp 338-344.

Union (NSW Branch), who sought a ruling that part of the union's rules which required a nominee for election to a official position to sign a declaration that he did not have any political affiliations that were opposed to the platform of the official Federal and State Labor parties. A Full Bench of the Industrial Commission decided that its power to amend a union's rules was limited to those which improperly excluded any person who was otherwise qualified to be a member of that union and the application was dismissed.¹⁴²

The anti-Communist crusade gathers pace

The year 1949 saw a mounting anti-communist crusade. In January, the leader of the Opposition, Robert Menzies, announced that Communism would be an issue in the federal election due later that year and that, if the Liberal Party won government, legislation to ban the Communist Party of Australia would be introduced.¹⁴³ In March 1949, the Chifley Government charged Lance Sharkey, General Secretary of the Communist Party of Australia, with sedition over a statement he made about the welcome that would be given to Soviet troops if they entered Australia in pursuit of aggressors. 'Sedition' is a generic term covering the offences of uttering seditious words, publishing or printing a seditious libel, undertaking a seditious enterprise and seditious conspiracy. The charge of sedition was often employed in attempts to stifle unpopular political opinions.¹⁴⁴ Sharkey was convicted and sentenced to three years at hard labour, which was reduced on appeal to eighteen months.¹⁴⁵ Sharkey's defence was handled by Harold Rich¹⁴⁶ who appears to have replaced Christian around this time as the preferred solicitor for the CPA. A note on Christian's security file, dated October 1952, records that an informer advised an intelligence agent that 'Miss Jollie Smith is not a solicitor for the Communist Party of Australia... if you want to look for the party solicitor you need go no further than Harold Rich.'¹⁴⁷ Rich had been admitted to practice as a solicitor on 16 November 1945 and had an office at 185 Elizabeth Street,¹⁴⁸ the same building in which Christian's office was located.

¹⁴² "Thomas v Printing Industry Employees Union, New South Wales Branch", *NSW Industrial Reports*, Vol 47 (1948), pp 877-883.

¹⁴³ Frank Cain and Frank Farrell, "Menzies War on the Communist Party", in A Curthoys and J Merritt (eds) *Australia's First Cold War 1945-1953*, Allen and Unwin, Sydney, 1984, Vol 1, p 112

¹⁴⁴ Laurence W Maher, "The Use and Abuse of Sedition", *Sydney Law Review*, Vol 14, September 1992, footnote p 267, p 288.

¹⁴⁵ *Ibid.*, pp 301-302.

¹⁴⁶ "In Court Today: Sharkey Case", *SMH*, 28 March 1949, p 1.

¹⁴⁷ Miss Christian Jollie Smith, NAA 6119/90/2852.

¹⁴⁸ *NSW Law Almanac*.

The Communist Party and its members came under further scrutiny after Cecil Sharpley's revelations about the party in the Melbourne *Herald* in April 1949. The Victorian Government established a Royal Commission to inquire into Sharpley's claims. When Nettie was again in Sydney on her way to Queensland towards the end of May she had lunch with Christian at a Chinese café in George Street. They discussed Cecil Sharpley's revelations. Nettie recorded that Christian was 'emphatic that Sharpley is rather a tool of the ALP than the Liberals but then why did the *Herald* use him?' Nettie noted that Christian was 'very exhausted and worried.'¹⁴⁹

A number of compensation cases occupied Christian's attention through 1949,¹⁵⁰ but the main field of litigation concerned the Communist-led unions. In mid-May the Federal Government decided to revoke the appointments of Jim Healy and Ted Roach, general secretary and assistant secretary of the Waterside Workers' Federation respectively, to the Stevedoring Industry Commission on the grounds that they had refused to give a undertaking to co-operate with the Commission in its decisions. The Chairman of the Commission, Mr Justice Kirby, had sought the undertaking after they had supported a waterfront strike against the gaoling of L J ('Jack') McPhillips, assistant general secretary of the Federated Ironworkers' Union. The Government's action was interpreted as a further challenge to the Communist Party.¹⁵¹

On 27 June, the coal miners went on strike. Two days later the Federal Government enacted the *National Emergency (Coal Strike) Act 1949* to prevent unions from using any of their funds to support the striking miners. On the same day, the WWF, the FIA, the Amalgamated Engineering Union (AEU) and the Miners' Federation withdrew large sums of money from their bank accounts. On Saturday 2 July, in an emergency sitting of the Commonwealth Court of Conciliation and Arbitration, the Federal Government successfully sought an injunction restraining the unions from spending the withdrawn money. Representatives of the unions involved were ordered to appear before the Arbitration Court. Simon Isaacs¹⁵² appeared on behalf of the WWF and foreshadowed an appeal to the High Court. Counsel for the Miners' Federation and FIA supported the WWF. Counsel for the AEU gave an undertaking that the money would not be used in contravention of the Act. Counsel for all four unions then

¹⁴⁹ Diary Entry 26 May 1949, *Palmer Papers*, NLA MS 1174/16/29.

¹⁵⁰ "Rutherford v A C Saxton and Sons Pty Ltd", *NSW Workers' Compensation Reports*, Vol 23 (1949), pp 98-102; "Anderson v Liddy and Another", *SMH*, 17 May 1949, p 9 and 24 May 1949, p 9; "Great Northern Wool Dumping and Stevedoring Co Ltd v Flanagan", *NSW Workers' Compensation Reports*, Vol 23 (1949)

¹⁵¹ "Wharf Leaders Must Go", *SMH*, 13 May 1949, p1.

¹⁵² Probably on instructions from CJS who was the solicitor for the WWF. The Commonwealth Arbitration Reports do not name the instructing solicitor.

withdrew from the proceedings. Chief Judge Kelly proceeded to hear evidence but the union leaders refused to answer when questioned.¹⁵³

The next day, while proceedings continued in the Arbitration Court, Christian briefed counsel on behalf of the FIA, the Australian Coal and Shale Employees' [known as the Miners'] Federation and the Amalgamated Engineering Union to seek an order from the High Court restraining the Arbitration Court from proceeding further with the applications made by the Federal Government but the High Court dismissed the applications. Meanwhile, Chief Judge Kelly ordered the unions, except the AEU which had been able to prove that the funds withdrawn were for normal expenses, to pay the amounts withdrawn into Court.¹⁵⁴ When the union leaders refused to obey, they were sentenced to fines and imprisonment for terms up to twelve months for contempt of court.¹⁵⁵ On 21 July, Simon Isaacs appeared in the High Court in an application by the gaoled officials of the WWF, FIA and Miners' Federation for writ of prohibition against the enforcement of the fines and sentences. However, the High Court rejected the application.¹⁵⁶ Christian described these frenetic days in a letter to Nettie.

Haven't written before for obvious reasons. When you are in the middle of a spinning top you don't hear much noise certainly but you don't seem to exist outside the top – so much for that and now that 5 miners leaders, Jackie McPhillips [FIA], and even Ted Roach and Jim Healy [both WWF] are in gaol this frightfully cold day and you can do nothing about it.¹⁵⁷

Christian wrote this letter while she 'was having a holiday, a precious 48 hours on top of a weekend. It is glorious and was necessary.'

On 28 July the Federal Government sent troops into the NSW coalfields and they began working the open cuts on 1 August. Without their leaders and without funds to support them

¹⁵³ "Court Application on Union Funds", *SMH*, 5 July 1949, p 4; Tom Sheridan, *Division of Labour: Industrial Relations in the Chifley Years, 1945-1949*, OUP Australia, 1989, p 291-292.

¹⁵⁴ "The King v Taylor; Ex parte the Federated Ironworkers Association of Australia; The King v the Commonwealth; Ex parte the Australian Coal and Shale Employees Federation; The King v the Commonwealth; Ex parte the Amalgamated Engineering Union (Australian Section)", *Commonwealth Law Reports*, Vol 79 (1949), pp 333-340; "High Court Application by Three Unions", *SMH*, 6 July 1949, p 4; "Court Moves in Strike Crisis", *SMH*, 7 July 1949, p 4; Tom Sheridan *op cit*, p 292-293.

¹⁵⁵ "Case Against Miners Adjourned", *SMH*, 9 July 1949, p 4; "Law Must Prevail, Says Judge", *SMH*, 12 July 1949, p 4; Tom Sheridan, *op cit*, p 293.

¹⁵⁶ "High Court Appeals Fail", *SMH*, 22 July 1949, p 4.

¹⁵⁷ CJS to Nettie Palmer July 1949, *Palmer Papers*, NLA MS 1174/1/7439. Note that this letter appears in the sequence as 1948 but the reference to the gaoling of the miners' leaders and McPhillips, Roach and Healy means that it must have been written in July 1949.

the miners' united front began to disintegrate and the miners' returned to work on 15 August.¹⁵⁸ On 23 August, Christian briefed Simon Isaacs to appear on behalf of the gaoled members of the WWF and the FIA in an application to the Full Bench of the Arbitration Court for their release. The men apologised for their contempt of court and expressed regret for their behaviour. The next day, the Court agreed that their contempt had been purchased and released them on condition that each contribute £25 towards the costs of committal.¹⁵⁹

Tensions were also rising in the Federated Ironworkers' Union.¹⁶⁰ Since 1941, there had been conflict between the Communist national leadership of the FIA and its Balmain Branch. As the union's founding branch, Balmain had a long history of acting independently of the national executive and was the only branch which was not controlled by Communists. At the beginning of 1943 the Communists were rebuffed in the election for official positions in Balmain Branch but they were successful at the next election held towards the end of 1943. Although the Communists had succeeded in gaining control of the Branch resistance to their rule continued. Opposition to Communist control of the Balmain Branch was centred around two men – Nick Origlass who was employed at Mort's Dock and Laurie Short at Cockatoo Dock. The Communists again won all official positions in the Balmain Branch in the elections held at the end of 1944 amid suspicions that the ballot had been rigged. The bitter battle for control of the Balmain branch would continue for another two and a half years.

Laurie Short had been elected to the position of ironworkers delegate at Cockatoo Dock in January 1945 and in mid-1946 he was elected secretary of the combined union Works Committee which was made up of delegates of the twenty one unions which were represented in the dockyards.¹⁶¹ As secretary of the Works Committee, Short worked to solve any problems arising in the dockyards. However, in June 1946 the FIA National Council ordered Short, Origlass and several of their supporters to cease acting as union officials. When they ignored the order they were expelled from the union. Nevertheless, they continued to work as officials. In a deal brokered by the Secretary of the ACTU, Albert Monk, Short and his colleagues were reinstated as members of the FIA on condition that they accepted the merger of the Balmain Branch with two other branches to form the Sydney Metropolitan Branch of the FIA. This did

¹⁵⁸ Tom Sheridan, *op cit*, p 292.

¹⁵⁹ "Union men Seek Gaol Release", *SMH*, 24 August 1949, p 5; "Release of Eight Union Leaders", *SMH*, 25 August 1949, p 2.

¹⁶⁰ The following summary is derived from Daphne Gollan, "The Balmain Ironworkers' Strike of 1945 – Part 1", *Labour History*, Vol 22, May 1972, pp 23-41 and Part 2, *Labour History*, Vol 23, November 1972, pp 62-73.

¹⁶¹ This and the following information has been drawn from Susanna Short, *Laurie Short: A Political Life*, Allen and Unwin, 1992, Chapters 7 and 8.

not mean that Short gave up his opposition to the FIA National Executive. By the end of 1948 Short had become strongly anti-Communist. He joined the ALP and, in early 1949, the ALP Industrial groups. In the autumn of 1949, Short began a campaign to remove the Communist controlled executive of the FIA.

On the evening of 3 August 1949 Laurie Short was bashed by unknown assailants when he and some of his workmates entered the Ironworkers building at 188 George Street, Sydney. With the assistance of one of his colleagues, Short managed to get away. Although police were quickly on the scene the assailants escaped. The FIA newspaper, *Labor News*, dismissed the report of Short's bashing as fake and published a cartoon depicting Short being supported by the 'forces of reaction' in his campaign for union office. Short promptly sued Ernie Thornton, as publisher of *Labor News*, for libel claiming £400 damages. As solicitor for the FIA, Christian briefed M W (Mick) McKeon to appear on behalf of Thornton. Laurie Short's libel action came before the District Court on 14 November. Thornton's defence was that of privilege, claiming that the statements in the article complained of were true and for the public benefit. The jury disagreed and awarded Short £300 and £300 costs. However, the union withheld payment of the costs and Short was obliged to use the £300 awarded for damages to pay his legal fees.¹⁶² Apart from an unsuccessful compensation claim against the Commissioner for Railways¹⁶³ most of the other cases Christian dealt with during the last six months of 1949 were routine industrial cases.¹⁶⁴

On 10 December, the Labor Government was defeated in the Federal election. During the campaign Robert Menzies had promised to outlaw the Communist Party of Australia. His government's attempt to do so during 1950 would provide further work for Christian.

¹⁶² Short, *op cit.*, pp 113-115.

¹⁶³ "Guinan v Commissioner for Railways", *Workers' Compensation Reports*, Vol 23 (1949), pp 135-139.

¹⁶⁴ "In Re Railway Officers (South Maitland Railways Pty Ltd) Award", *NSW Industrial Arbitration Reports*, Vol 48 (1949), pp383-385; "In Re Government Railways (Building Trades) Award", *NSW Industrial Arbitration Reports*, Vol 48 (1949), pp 559-562; "In re Carpenters and Joiners and bricklayer, Mixed Enterprises (State) and Carpenters and Joiners and Bricklayers, Construction (State) Awards", *NSW Industrial Arbitration Reports*, Vol 48 (1949), pp 807-814; "In re Government Road Transport and Tramways (Building Trades) Award", *NSW Industrial Arbitration Reports*, Vol 48 (1949), pp 857- 859; "The King v Portus and Another; Ex Parte Federated Clerks Union of Australia", *Commonwealth Law Reports*, Vol 79 (1949), pp 428-441.

Chapter 8: Coping with the crusade against Communism – 1950-1963

A three-pronged attack

The years from 1950 to 1955 marked an intense period of anti-Communist activity which some historians have called a ‘crusade’.¹ The new federal government, led by Robert Menzies, achieved victory in 1949 on the back of a commitment to ban the Communist Party of Australia. When work began on preparing the Communist Party Dissolution Bill, it became apparent that identifying members of the CPA would be difficult, so the Government decided to follow the provisions of the Commonwealth Crimes Act which reversed the onus of proof - a person who had been declared to be a member of the CPA would be obliged to prove that s/he was not. The legal difficulties meant that legislation to dissolve the CPA and its fraternal organisations was not introduced into Parliament until the end of April 1950.²

Meanwhile, the struggle against Communist dominance in the Federated Ironworkers of Australia entered a new phase in early February when Laurie Short applied to the Commonwealth Court of Conciliation and Arbitration for an inquiry into the election of the National President, Senior National Vice-President, National Secretary and Assistant National Secretary of the FIA and into the election of officers of the Sydney Branch of the union. In late 1949 Communists had won all National positions, with Ernie Thornton defeating Short for National Secretary by 1,678 votes.³ Thornton tried to persuade Short to withdraw his application and submit his complaint to a committee made up of rank and file union members to be nominated by Short. Short refused.⁴ The Industrial Registrar granted Short’s application for an inquiry on 9 June. A few weeks afterwards, Thornton resigned from the position of National Secretary to take up a position with the World Federation of Trades Unions in Peking. The National Council proposed to hold new election to fill the vacancy. Short thereupon sought an injunction to restrain the union from conducting a new election for National Secretary while the inquiry into the 1949 election was going on but his application was refused. Jack McPhillips, who had acted as National Secretary during Thornton’s

¹ Clem Lloyd, “Evatt, Menzies, Latham and the Anti-Communist Crusade”, in Elsa Atkins and Brett Evans, *Seeing Red: The Communist Party Dissolution Act and Referendum 1951*, Evatt Foundation, 1992.

² Frank Cain and Frank Farrell, “Menzies War on the Communist Party, 1949-1951”, in Ann Curthoys and John Merritt (eds), *Australia’s First Cold War 1945-1953*, Vol 1, Allen and Unwin, Sydney, pp 109-124.

³ “In the matter of the Conciliation and Arbitration Act and of the Federated Ironworkers’ Association of Australia (Sydney Metropolitan Branch) and of the Federated Ironworkers’ Association of Australia, *Commonwealth Arbitration Reports*, Vol 73 (1951-52), p 27, 45.

⁴ Susanna Short, *Laurie Short: A Political Life*, Allen and Unwin, 1992, p 118.

absences, defeated Short for the position. Short also challenged this result.⁵ Christian was the legal adviser to the Communist FIA executive during the legal struggle which followed. She briefed Simon Isaacs and Fred Paterson for the hearing of Laurie Short's challenge to the validity of the 1949 elections.⁶ Short's barristers were Eric Miller and John Kerr, both of whom Christian had briefed in the past. Short alleged that 4,000 ballot papers were forged and deliberately falsified.⁷ The hearing was adjourned when Short also challenged the outcome of the 1950 elections.⁸

Christian was also engaged by the FIA and several other Communist-led unions in the campaign against the Communist Party Dissolution Bill. On 4 May, Nettie Palmer noted in her diary that Christian was in Melbourne to discuss the Communist Party Dissolution Bill 'with several lawyers and others'. Christian visited Nettie 'for a yarn.' Christian had turned sixty-five in March and Nettie recorded that Christian was 'looking pretty well and very well-dressed and in charge of the world.' However, she was anxious about many of her clients who were Communists. Christian also met Brian Fitzgerald, the Secretary of the ACCL, to discuss the legislation on 6 May. On the same day, Nettie received a phone call from Sydney Johnson who asked if she could meet him for lunch. Nettie did not tell him that Christian was in Melbourne because it was 'too ironic.' Nettie and Sydney met for lunch at Myer's cafeteria on 8 May. They discussed Sydney's longstanding passion – land reform – as well as his new business, a tree nursery at Yarra Junction, a small village in the Yarra River Valley north-east of Melbourne. Sydney indicated that he was worried about Christian because of her foundation membership of the Communist Party and complained about her refusal to answer his letters. Nettie noted that he was a 'remarkable man for seventy.'⁹ Many years later, after his death, Christian explained why she did not answer Sydney's letters. 'I found him difficult to write to. The past is too past, and anyhow there was no contact at all for so many years there just seemed nothing to say.'¹⁰

In early March, Christian appeared in the Commonwealth Court of Conciliation and Arbitration on behalf of the WWF whose Brisbane members were refusing to obey a court order. The Brisbane branch of the WWF had been campaigning for 'rotation of hatches' in

⁵ Short, *op cit.*, pp 120-121, 124.

⁶ "In the matter of the Conciliation and Arbitration Act and of the Federated Ironworkers' Association of Australia (Sydney Metropolitan Branch) and of the Federated Ironworkers' Association of Australia, *Commonwealth Arbitration Reports*, Vol 73 (1951-52), p 28.

⁷ "Grave Charges on Ironworkers Poll", *SMH*, 30 August 1950, p 5.

⁸ "Challenge to 1950 Ironworkers' Ballot", *SMH*, 21 June 1951, p 5.

⁹ Diary entries for 4, 6 and 8 May 1950, *Palmer Papers*, NLA MS 1174/16/30.

¹⁰ CJS to Nettie Palmer, 14 August 1961, *Aileen Palmer Papers*, NLA MS 6759, Box 3, Folder 25.

order to prevent employers from allocating the dirty and obnoxious cargoes to its militant members.¹¹ At the request of counsel for the Stevedoring Industry Board, Mr Justice Kirby made an order suspending the payment of attendance money to the Brisbane waterside workers' until they agreed to obey the court order. Christian informed Kirby that the WWF intended to challenge the Court's jurisdiction to make such an order.¹² This was the first skirmish in the Federal Government's war against the Communist-led WWF which would occupy much of Christian's time over the next few years.

Christian briefed counsel in two unsuccessful appeal cases before the Supreme Court in late March,¹³ and in May,¹⁴ then in mid-August, she briefed Fred Paterson¹⁵ on behalf William Burns, the publisher of *Tribune*, who was charged with having published seditious words regarding the Korean War. The charges against Burns involved an article in which he accused the United States, Britain and Australia of 'flagrant violation of the UN Charter,' called for the withdrawal of Australian troops and supported the Seamen's Union in its opposition to the Korean War. When counsel for the prosecution attempted to tender a certificate by the Minister for External Affairs regarding the facts of the Korean War, Paterson's objection was upheld.¹⁶ Paterson contended that the content of the articles was no more than vigorous political criticism but the Magistrate convicted Burns and sentenced him to nine months imprisonment. An appeal was immediately announced and bail was fixed at £500 with a similar surety.¹⁷

On 18 October, while the Communist Party Dissolution Bill was still before the Senate, Harold Rich and Christian Jollie Smith announced that the Communist Party and ten unions planned to challenge the validity of the Bill as soon as it had been proclaimed. It was a lawyers' feast. Four legal firms and twelve barristers including Communists Fred Paterson, Max Julius and Ted Laurie were involved. Christian briefed counsel on behalf of the Sheet Metal Workers' and Tinsmiths' Union, the Waterside Workers' Federation, the Federated

¹¹ Tom Sheridan, *Australia's Own Cold War: The Waterfront Under Menzies*, Melbourne University Press, 2006, p 94

¹² "Judge Tells Wharf Strikers: "Go Back Or No Pay", *SMH*, 2 March 1950, p 6.

¹³ "Ex parte Watkins; Re Birnie and Another", *NSW Weekly Notes*, 31 May 1950, pp 92-94.

¹⁴ "Newcastle District Fishermen's Cooperative v Neal", *NSW State Reports*, Vol 50 (1950), pp 237-247.

¹⁵ Paterson had lost his seat in the Queensland Parliament in April 1950 after his electorate of Bowen was abolished and he unsuccessfully contested a new electorate. At the time Paterson was based in Brisbane but at Easter 1952, Paterson and his family would move permanently to Sydney. Ross Fitzgerald, *Fred Paterson: The Peoples Champion*, UQP, 1997, p 213, 219.

¹⁶ "'Tribune' Articles Basis of Sedition Charges", *SMH*, 11 August 1950, p 5; "'Tribune' Articles on Korea Called "Political Criticism"', *SMH*, 12 August 1950, p 5.

¹⁷ "'Tribune' Publisher to Appeal Against Sentence for Sedition", *SMH*, 16 August 1950, p 5.

Ironworkers Association and the Federated Clerks' Union, NSW Branch.¹⁸ Two days later, within hours of legislation receiving the Governor-General's assent, writs were filed in the High Court Seeking to restrain the Commonwealth from implementing the Communist Party Dissolution Act.¹⁹ The next day, Mr Justice Dixon issued orders permitting the Government to seize books, documents or records but not allowing action against organisations and individuals.²⁰ The hearing commenced before the Full High Court on 14 November. In a controversial move, Dr Evatt appeared on behalf of the WWF.²¹ After 23 hearing days the Court reserved its judgement which was not handed down until 9 March 1951.

William Burns's appeal against his conviction for sedition began in the District Court on 13 November. Fred Paterson was again briefed by Christian to appear on behalf of Burns. Much of the first day's hearing was taken up with a debate about whether Australia was at war with Korea. Judge Berne insisted that the Government provide a definitive statement regarding whether the country was at war and its legal status. He adjourned the hearing to enable the prosecution to procure the information he requested but, on 17 November, the Commonwealth applied to the Supreme Court for an order restraining Judge Berne from further hearing the appeal.²² In February 1951 the Court directed that another judge be appointed to hear the appeal.²³ In addition to these cases, five compensation cases also required Christian's attention through 1950 but only a two were successful.²⁴ In December, Christian briefed Jack Sweeney to appear in the NSW Industrial Court on behalf of Actors' Equity Australia in the development of a new award.²⁵

The year 1951 began with contempt proceedings against Ted Roach, assistant general secretary of the WWF, who was acting as general secretary while Jim Healy was overseas. The proceedings followed an undertaking by Roach in December that waterside workers who were on strike at Mackay would return to work but they had not done so. The strike was

¹⁸ "Reds Fight New Act", *SMH*, 19 October 1950, p 1.

¹⁹ "Anti-Reds Bill Challenge", *SMH*, 21 October 1950, p 4.

²⁰ "Anti-Red Act Case Adjourned", *SMH*, 26 October 1950, p 5.

²¹ "Defence Power Red Act's Basis", *SMH*, 15 November 1950, p 4.

²² "Sedition Case Appeal", *SMH*, 14 November 1950, p 4; "Judge Berne's Case Adjourned", *SMH*, 30 November 1950, p 6; NAA A432, Item 1963/632 "WF Burns prosecution under Crimes Act S24D, seditious statement Korean War.

²³ "Supreme Court Orders Judge Berne Not to Hear Burns's Appeal", *SMH*, 13 February 1951, p 7

²⁴ "Edwards v Commissioner for Railways", *Workers' Compensation Reports*, Vol 24 (1950) pp5-9; "McMaster v the Commissioner for Railways", *NSW Workers' Compensation Reports*, Vol 24 (1950) pp 122-131; "Small v Scale, Trading as Saratoga Crisps", *NSW Workers' Compensation Reports*, Vol 24 (1950), pp 113-117; "Engineer Loses Action For Damages", *SMH*, 9 November 1950, p 9; "McConnell v Otis Elevator Pty Ltd", *NSW Workers' Compensation Reports*, Vol 24 (1950), pp 200-202.

²⁵ "In Re Actors, &c, Commercial Broadcasting (State) Award", *NSW Industrial Arbitration Reports*, Vol 49 (1950) pp 659-678.

holding up the loading of sugar cane for transport to the mills.²⁶ On 4 January, a summons was issued by Mr Justice Kirby ordering Roach to appear before the Arbitration Court to answer a charge of contempt of court.²⁷ Christian briefed Simon Isaacs and Fred Paterson to appear on behalf of Roach. On 28 February, after several adjournments,²⁸ the Full Bench of the Arbitration Court proceeded to hear the evidence against Roach.²⁹ He was convicted and sentenced to twelve months imprisonment in Long Bay Gaol. Roach appealed to the High Court but his application was dismissed.³⁰ Tom Sheridan argues that Roach's treatment indicated a strong anti-Communist bias among the members of the Arbitration Court bench.³¹

Almost immediately after the proceedings against Roach had been finalised, the Federal Council of the WWF was challenged by one of its own members. The Council had suspended Vernon Alford, the Vice-President of the Melbourne Branch and editor of the *Watersider*, for having accused Jim Healy of being a Communist and working for Communist ends. The Melbourne branch was controlled by the Anti-Communist 'industrial groups' and Alford himself was a grouper.³² Alford's challenge came before the Arbitration Court on 14 February. Christian briefed Simon Isaacs on behalf of the WWF Federal Council and Healy. The Arbitration Court issued an order restraining the Council from exercising its powers as a council until it lifted Alford's suspension.³³

On 9 March, the High Court made its momentous decision to disallow the Communist Party Dissolution Act by the six to one majority. Only the Chief Justice, Sir John Latham, upheld the validity of the legislation. The Prime Minister, Mr Menzies, declared 'that this is not the end of the fight against Communism; it is merely the beginning.'³⁴ There was a double dissolution of Parliament and an election on 28 April. In the election campaign Menzies stressed the dangers of Communism and Communist influence in the trade unions. In response to the High Court's rejection of the use of the defence power to justify the Communist Party Dissolution Bill, he specifically requested a mandate for a Defence Preparations Bill. The Menzies Government was returned with a majority in both houses. On

²⁶ "Judge Critical of Failure to End Wharf Strike", *SMH*, 4 January 1951, p 5.

²⁷ "Contempt Summons For Official Of Waterside Union", *SMH*, 5 January 1951, p 3.

²⁸ "Jurisdiction Query in Roach Case", *SMH*, 12 January 1951, p 4; "Union Leader May Face New Charge", *SMH*, 31 January, 1951, p 4.

²⁹ "Challenge to Jurisdiction", *SMH*, 1 March 1951, p 4.

³⁰ "High Court Upholds Conviction of Roach", *SMH*, 9 March 1951, p 3, "Conviction to Stand", *SMH*, 11 May 1951, p 3.

³¹ Tom Sheridan, "Australia's Own Cold war", *op cit.*, pp 114-115

³² *Ibid.*, pp 121-122.

³³ "Watersiders' Council Deprived of Power", *SMH*, 15 February, 1951, p 4,

³⁴ "Anti-Red Act Held Invalid", *SMH*, 10 March 1951, p 1.

5 July, Menzies introduced the Constitution Alteration (Powers to deal with Communism) Bill into Parliament. The referendum was set down for 17 September.³⁵

Meanwhile, in early April, Burns' appeal against his conviction for sedition finally began before a new judge. Christian briefed Fred Paterson to appear on behalf of Burns. Paterson used the High Court's decision on the Communist Party Dissolution Act to argue that Australia was not at war in Korea and that content of the *Tribune* article, on which Burns had been convicted, could not have been seditious. However, the judge upheld the conviction but reduced his sentence by three months because of the delay in hearing his appeal.³⁶ Paterson asked the judge to refer the question of the legality of the Government's decision to send troops to Korea to the NSW Court of Criminal Appeal but Christian later informed the Commonwealth Deputy Crown Solicitor that they would not proceed with this case and signalled their intention to appeal to the High Court but no further action was taken.³⁷ The aftermath of this case was a prolonged negotiation with the Attorney-Generals' Department over payment of cost associated with the aborted appeal commenced by Judge Berne. Christian claimed £80 in settlement of her costs but the Attorney-Generals' Department was only prepared to pay £52/10/-. Christian's claim provides an insight into the detailed background work a solicitor undertook in preparing for a case – taking instructions from a client, taking statements and collecting supporting evidence, copying statements and preparing documents for the Court, drafting letters, briefing counsel, attending conferences and attending court – all of which, she claimed, took up fifty-five hours of her time.³⁸

Interspersed with these high profile cases Christian continued to be occupied by more mundane worker's compensation and industrial matters.³⁹

Unions in the spotlight

In late May, Prime Minister Menzies announced that the Commonwealth would move to prosecute the leaders of the WWF and Seamen's Union for their part in encouraging a black ban on New Zealand ships in sympathy with New Zealand waterside workers who were on

³⁵ Frank Cain and Frank Farrell, "Menzies War on the Communist Party, 1949-1951", *op cit*, pp 124-128.

³⁶ "Witnesses Confused", *SMH*, 5 April 1951, p 5; "Anti-Red Act Quoted in Plea", *SMH*, 6 April 1951, p 5; "Conviction for Sedition Upheld", *SMH*, 7 April 1951, p 5.

³⁷ NAA A432, Item 1963/632 "WF Burns prosecution under Crimes Act S24D, seditious statement Korean War".

³⁸ *Ibid.*

³⁹ "Miles v Tooth and Co Ltd", *NSW Workers' Compensation Reports*, Vol 25 (1951), pp 82-84; "In Re Plumbers and Gasfitters (State) Award (No 1)", *NSW Industrial Arbitration Reports*, Vol 50 (1951), pp 138-154.

strike. The WWF and Seamen's Union premises were raided.⁴⁰ Four summonses were issued against Jim Healy for offences under the Crimes Act.⁴¹ Several days later the Government announced that it would amend the Crimes Act to bring the Communist Party within the provisions of unlawful associations.⁴² Christian must have experienced a sense of déjà vu when she heard this news. The day after this announcement, Healy appeared to answer his summons. As solicitor for the WWF Christian briefed Simon Isaacs and Laurence Gruzman to appear on Healy's behalf. Isaacs sought an adjournment in order to study documents which had been seized in the raid on the WWF offices which was granted. Wharf labourers and seamen walked off the job in Sydney in protest against the charges.⁴³ On 8 June, the Government responded by commencing action in the Arbitration Court to have the WWF deregistered. Simon Isaacs was also briefed to appear on behalf of the WWF in these proceedings.⁴⁴

On 14 June, Christian initiated contempt of court proceedings in the Supreme Court against *The Sydney Morning Herald* on behalf of Jim Healy. In her affidavit she alleged that editorials published on 9 and 11 June tended to prejudice a fair trial for Healy.⁴⁵ Simon Isaacs and Laurence Gruzman were briefed to appear on behalf of Healy when the matter was heard in the Supreme Court on 21 June. Counsel for *The Sydney Morning Herald* were not required to respond because the Court ruled that the articles constituted comment and criticism of the prevailing conditions on the wharves and their impact on the community. The Chief Justice, Sir Laurence Street, said that 'in the light of the circumstances and even assuming that there is a possibility of prejudice to Healy, this is a case where it is felt that the intervention of the Court is not required.' Costs were awarded against Healy.⁴⁶

Meanwhile the battle for control of the FIA was bubbling along. On 28 May, the national conference of the FIA expelled Laurence Short from the union. Short applied to the Arbitration Court for an order calling on the national conference to show cause why his expulsion should not be declared null and void⁴⁷ which was heard on 25 June. Simon Isaacs and Fred Patterson were again briefed by Christian on behalf of the FIA. Short's solicitor,

⁴⁰ "Red Leaders to be Prosecuted", *SMH*, 29 May 1951, p 1.

⁴¹ "Healy charged by summons", *SMH*, 30 May 1951, p 1. Further details of the dispute and the Federal Government's reaction are in Tom Sheridan, "Australia's Own Cold War", *op. cit.*, pp 123-129.

⁴² "Crimes Act to be Strengthened", *SMH*, 5 June 1951, p 1.

⁴³ "Red Unions Stage Protests", *SMH*, 6 June 1951, p 1; "Healy Case Adjourned", *SMH*, 6 June 1951, p 4.

⁴⁴ " "Bombshell" for Wharfmen", *SMH*, 9 June 1951, p 1.

⁴⁵ "Contempt Charge", *SMH*, 15 June 1951, p 5.

⁴⁶ "Contempt Charge against "Herald" Dismissed", *SMH*, 22 June 1951, p 4.

⁴⁷ "Union Chief expelled", *SMH*, 6 June 1951, p 2; "Union Has To Justify Expulsion", *SMH*, 12 June 1951, p 3

who was now James McClelland⁴⁸, briefed Clarrie Martin (at that time NSW Attorney-General) and John Kerr for Short. The Court upheld Short's application.⁴⁹ The hearing of Short's challenge to the 1950 election of office-bearers for the Federated Ironworkers' Association commenced in the Arbitration Court before Mr Justice Dunphy on 20 June. Evidence of forged votes was again the basis of the challenge.⁵⁰ After examining some ballot papers and hearing evidence from a handwriting expert, Dunphy adjourned his inquiry into the 1950 election until after he had dealt with the challenge to the 1949 election.⁵¹

The case against Jim Healy over the ban in New Zealand ships resumed on 6 June. Simon Isaacs, for the defence, argued that Healy was only doing his job as union secretary in following the orders of the WWF national council and that all those who had voted in favour of the resolution were equally responsible for the ban. On 19 July, Healy was convicted on all four charges and sentenced to six weeks imprisonment, to be served concurrently, on two charges and fined him £100 on the remaining two charges.⁵² Isaacs gave notice that Healy would appeal against his conviction.⁵³

In June 1951, the leader of the federal ALP Parliamentary party, Ben Chifley, died and Dr H V Evatt was elected to replace him. In the campaign for the federal referendum to give Commonwealth government power to ban the Communist party, Evatt campaigned vigorously in support of a 'No' vote. At the beginning of the referendum campaign many thought that a 'Yes' vote was a foregone conclusion but Evatt convinced enough people that the scope of the proposed power was broader than had been admitted and could be used against anybody, not just Communists. The Communist Party itself threw substantial financial resources into campaigning for a 'No' vote. On 17 September, the people rejected the referendum by a small majority of less than half a per cent of the votes cast.⁵⁴ The focus of the anti-Communist crusade then shifted to gaining control of the communist-led unions.

⁴⁸ Later Senator James McClelland and a Minister in the Whitlam Government. Short and McClelland had been friends since 1940. McClelland had completed a law degree at Sydney University under a scheme for returned servicemen and had graduated in early 1951. James McClelland, *Stirring the Possum*, Penguin Books, 1988, pp 40, 72. McClelland replaced Short's usual solicitor, Cecil O'Dea due to the latter's absence overseas. Short, *op cit.*, p 127.

⁴⁹ "Court Move to Make Expulsion Null and Void", *SMH*, 26 June 1951, p 3; "Union Has Case to Answer on Expulsion", *SMH*, 27 June 1951, p 4; "Expulsion invalid", *SMH*, 30 June 1951, p 3. Susanna Short, *op cit.*, p 128.

⁵⁰ "Challenge to the 1950 Ironworkers' Ballot", *SMH*, 21 June 1951, p 5.

⁵¹ "Ballots In Union: 1949 Inquiry First", *SMH*, 23 June 1943, p 10.

⁵² "Healy Hearing: ban on Ships", *SMH*, 7 June 1951, p 9; "Healy Case: 'Blow at Freedom of Speech, KC Says'", *SMH*, 5 July 1951, p 5; "Decision is reserved on Healy", *SMH*, 9 July 1951 p 9; "'Encouraged' Ship Ban", *SMH*, 20 July 1951, p 5.

⁵³ "Wharf Strike May End Today", *SMH*, 20 July 1951, p 3.

⁵⁴ Frank Cain and Frank Farrell, "Menzies War on the Communist Party, 1949-1951", *op cit.*, pp 128-134.

The long drawn-out inquiry into the conduct of the 1949 elections for office bearers in the FIA, resumed in September.⁵⁵ Meanwhile, the 1951 election of office-bearers was imminent. To ensure a clean election the ALP Industrial Group in the FIA petitioned the Arbitration Court to have the election supervised by the Court which was granted.⁵⁶ Short, a candidate for secretary of the Sydney Branch of the union, successfully sought an Arbitration Court order preventing the incumbent executive from spending any union funds on campaigning for re-election. Christian briefed Simon Isaacs to appear on behalf of the FIA in this action.⁵⁷ In the following week, Isaacs claimed that Short had committed contempt of court in circulating a letter commenting on the conduct of the 1949 election and on the attitude the incumbent executive towards Short. The Court required evidence that the letter was genuine before it would consider Isaac's application for an order calling on Short to show cause why he should not be dealt with for contempt of court.⁵⁸ Another application to the Arbitration Court sought to restrain the Communist officials of the FIA from interfering with the conduct of the election. Christian briefed Simon Isaacs and Ted Laurie on behalf of the FIA.⁵⁹ Towards the end of September another case involving an expelled WWF unionist, Arthur Freeman, was heard by the Arbitration Court. Christian again briefed Simon Isaacs and Fred Paterson to appear on behalf of the WWF. The Court upheld Freeman's application and ordered that he be reinstated.⁶⁰

The inquiry into the 1949 FIA election continued through October and November.⁶¹ At the end of November, after an inquiry lasting sixteen months, Mr Justice Dunphy ruled that there was 'forgery, fraud and irregularities on a grand scale in the 1949 election' for both the national and the NSW Branch executives and ordered new elections for national president, vice-president and assistant secretary. Short was declared elected as national secretary as from 1 January 1950.⁶² However, Short's struggle was not yet over as he was not given an office and some members suggested that steps would be taken to remove him from office.⁶³ He had not long to wait. On 14 December, a special National Conference of the FIA, on the

⁵⁵ "Court Acts For Next Union Poll", *SMH*, 28 September 1951, p 3.

⁵⁶ "Ballot in Secret", *SMH*, 22 September 1951, p 4; "Court Acts For Next Union Poll", *SMH*, 28 September 1951, p 3.

⁵⁷ "Court Bars Use Of Union Funds For Election", *SMH*, 12 October 1951, p 3.

⁵⁸ "Union Counsel Alleges Contempt", *SMH*, 24 October 1951, p 5.

⁵⁹ "Telegram Brings Attack By Judges", *SMH*, 1 November 1951, p 5.

⁶⁰ "Watersider Alleges Vendetta", *SMH*, 29 September 1951, p 4; "Watersider Must be Reinstated", *SMH*, 1 October 1951, p 8.

⁶¹ "Story Of Marks On Ballot Papers", *SMH*, 6 October 1951, p 6; "Officials Filled-in Unionists' Ballot Papers", *SMH*, 22 November 1951, p 8.

⁶² "Forgery in Ballot", *SMH*, 30 November 1951, p1.

⁶³ "Short May Be Removed", *SMH*, 1 December 1951, p 4; Short, *op cit.*, pp 147-150.

recommendation of the National Council, reappointed Jock McKay, Patrick McHenry and Jack McPhillips to their positions as national president, vice-president and assistant secretary respectively, and removed Short from his position of national secretary. Short appealed to the Arbitration Court which ordered the FIA to show cause why its decisions should not be declared null and void and to cease recognising McKay, McHenry and McPhillips as national president, vice-president and assistant secretary.⁶⁴ On 24 December, the Arbitration Court declared that the National Council meeting was against the rules and the decisions of the special national conference were invalid.

The Communist leadership of the FIA was not about to comply with the Arbitration Court's rulings.⁶⁵ On 28 December, the seven State councillors of the FIA called on Short to resign and re-appointed Mackay, McHenry and McPhillips. On the same day, Short took control of the Union's funds and requested the Commonwealth Bank not to recognise cheques signed by the former officials. The bank granted the request but reversed it several days later on the application of Mackay, McHenry and McPhillips. Mackay, McHenry and McPhillips then successfully applied to the Equity Division of the NSW Supreme Court for leave to serve notice on Short of their intention to apply for an injunction restraining him from interfering in the management of the union. Short avoided representatives of C Jollie Smith and Co who called on him at his home to serve papers requiring him to appear in the Equity Court. He then hid at the home of his solicitor, James McClelland, while barristers Eric Miller and John Kerr appeared in the Arbitration Court on Short's behalf in a successful application for an order calling on Mackay, McHenry and McPhillips to show cause why the court should not declare invalid the decisions made by the National Council on 28 December. Short also obtained an order restraining Mackay, McHenry and McPhillips from signing cheques on the FIA account. After consulting union delegates, Short called a National Conference for mid January 1952.

When the FIA national conference convened in Sydney on 14 January the anti-Communists held a bare majority. Mackay took the chair, warning delegates not to interfere with the decisions of 28 December. When Short moved a contrary motion which had majority support the Communist delegates walked out together with Mackay, McHenry and McPhillips. They again took action in the Equity Division of the NSW Supreme Court to have the conference declared illegal and its decisions invalid and sought an injunction to have

⁶⁴ "Ironworkers Defy Court", *SMH*, 15 December 1951, p 1. "Judge Acts in Short Dispute", *SMH*, 16 December 1951, p4.

⁶⁵ The following account is derived from Short, *op cit.*, pp 156-164.

Short restrained from interfering with them in the performance of their duties.⁶⁶ Christian briefed Simon Isaacs and G T Sullivan on behalf of McKay, McHenry and McPhillips. Counsel for Short argued that union funds were being wasted and illegally used to finance the litigation. In cross-examination, McPhillips admitted that he had signed a cheque for £340 in favour of C Jollie Smith and Co but that he had consulted other members of the council before he had signed it.⁶⁷ Short's supporters at the National Conference continued to meet and on the last day a motion by Short, that the services of C Jollie Smith and Co no longer be retained by the union and replaced by Boyland, McClelland and Co, was passed unanimously.⁶⁸ Short then took action in the District Court to recover the £340 paid to C Jollie Smith and Co.⁶⁹

According to his biographer, Short had decided months before that if he became FIA national secretary that he would give the lucrative union work to James McClelland who had acted for Short in his legal challenges to the continuing incumbency of the Communist national officials. He was relatively young, only thirty-five, talented and energetic and he was just starting out in a profession where connections, which he lacked, were important in gaining work.⁷⁰ On the basis of this support, McClelland was able to establish what was to become one of the largest personal injury practices in Sydney, specialising on workers' compensation and common law negligence actions.⁷¹ These had been the cornerstone of Christian's practice but after the FIA's decision Christian handled only a few workers' compensation cases.

Twelve months later Christian described the impact of the loss of this work on her legal practice in a letter to Nettie. 'Unions are deciding that the controls must change, so as to be in the fashion, and when the controls do change, the first thing the new bunch do, of course, is to write to me and turf me out good and proper.'⁷² The consequent loss of business affected her ability to meet her overhead costs. In a legal practice, 'the smallest little thing means employment... and if you have enough work to do you find you are working to pay the salaries of the people whom it is essential you employ.' She was envious of her friend, Humphrey Bishop, who often gave her a lift to work. He was a singing teacher 'and he knows just how much he must make to live and he makes just that.' He did not need to

⁶⁶ "Conference of Union Challenged", *SMH*, 17 January 1952, p 5; Short, *op cit.*, p 158-159.

⁶⁷ "KC Alleges Waste of Iron Union Funds", *SMH*, 18 January 1952, p 4.

⁶⁸ Short, *op cit.*, p 161.

⁶⁹ "Legal Costs Claimed", *SMH*, 24 January 1952, p 5.

⁷⁰ Short, *op cit.*, p 151; James McClelland, *op cit.*, p 81.

⁷¹ McClelland, *op cit.*, pp 82-84.

⁷² CJS to Nettie Palmer, 30 March 1953, *Palmer Papers*, NLA MS 1174/1/8312.

employ anybody or even need a typewriter. Whereas, she had to employ a typist or a stenographer, a filing clerk, a common law clerk, a conveyancing clerk, a probate clerk, all of whom 'have to be paid about £14 each and the union says that there must be no part-time and that if they do even one hour a week they must be paid the lot.'⁷³ While Christian thus had anxious moments, so did McClelland as he recalled in his autobiography: 'As my practice grew so did my staff and my outgoings generally. I needed to make more and more money just to keep the show on the road.'⁷⁴

Short's challenge to the validity of the decisions by the national conference was upheld, his position as national secretary confirmed as were the decisions of the national conference which removed McKay, McHenry and McPhillips from office.⁷⁵ The final act in this saga was announced on 8 March. In the elections for national president, vice-president and assistant secretary, the candidates from the ALP Industrial Group were successful by a two to one majority. The ALP Industrial Group also achieved a majority in the national conference. After fifteen years, the Communists had lost control of the FIA.⁷⁶

In January, while the struggle for control of the FIA was still in progress, Christian acted for Henry Chew, a member of the Amalgamated Hospitals, Homes and Laboratories Employees' Association of New South Wales. Chew had issued a summons against the Returning Officer of the Union to show cause why the outcome of the election for office bearers should not be upheld and the Returning Officer restrained from holding another ballot. The State Council of the Union had ordered a new ballot because two members of the union had lodged their nominations by registered post on the closing date for receiving nominations but the nominations were not received by the Returning Officer until after that date. The Returning Officer had duly excluded the late nominations from being included in the ballot and proceeded with the conduct of the ballot. The President of the NSW Industrial Commission ruled that, as the intending nominees had failed to nominate within the time allowed them, the Returning Officer had acted strictly in accordance with the rules. The outcome of the election was valid and the State Council had no power to order a new ballot.⁷⁷

⁷³ *Ibid.*

⁷⁴ McClelland, *op cit.*, p 115.

⁷⁵ "Short Upheld by Court", *SMH*, 27 February 1952, p 4.

⁷⁶ "Reds Routed in Iron Union Election", *Sunday Herald*, 9 March 1952, p 3.

⁷⁷ "Chew v Amalgamated Hospitals, Homes and Laboratories Employees' Association of New South Wales", *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 1-4.

On 12 March, Christian briefed Fred Paterson to appear on behalf of the Seamen's Union before the Arbitration Court in an action brought by Austen Macdonald, a member of the ALP Industrial Group, who had been expelled from the union. The Union undertook to reinstate Macdonald's membership, do nothing to impede his employment and pay the costs of the proceedings.⁷⁸ Two days later she again briefed Fred Paterson on behalf of the Seamen's Union in an action brought against the union by another member of the ALP Industrial Group, William Webb. Webb called on the union to show cause why it should not be restrained from giving funds for the 'Youth Carnival of Peace and Friendship.' The union had levied its members ten shillings who were told that if they did not pay the levy they would be un-financial and could not take jobs on ships. The Union undertook to refund the amount of the levy to any member who applied for it.⁷⁹

The waterside workers again became the focus of attention in April. On 9 April, at an unauthorised stop-work meeting, waterside workers throughout Australia banned overtime until such time as they were paid higher margins. On 6 May, Christian briefed Simon Isaacs to appear on behalf of the WWF before the Arbitration Court in an application by the shipowners for an order for the WWF to lift its overtime ban.⁸⁰ On 8 May, the Arbitration Court ordered the WWF to observe their award, which required the working of 'reasonable overtime', and lift the ban.⁸¹ The WWF challenged the Arbitration Court's powers to direct the union to lift the ban in the High Court⁸² but the High Court ruled that the Arbitration Court's order to the WWF to lift its ban was valid. Notwithstanding this decision, the waterside workers in Sydney continued to refuse to work overtime. The Federal Government then began proceedings against WWF officials for contempt of court.⁸³ Christian again briefed Simon Isaacs. The Arbitration Court found that the WWF was guilty on two charges of contempt⁸⁴ and imposed a £500 fine⁸⁵ but the waterside workers voted in mass meetings to continue the ban.⁸⁶

Meanwhile, an inquiry into the 1950 election of Sydney representatives for the Federal Council of the WWF commenced in the Arbitration Court. The inquiry was sought by

⁷⁸ "Union readmits ALP Seaman", *SMH*, 13 March 1952, p 13..

⁷⁹ "Reds to Refund "Peace Carnival" Levy", *SMH*, 15 March 1952, p 5.

⁸⁰ "Overtime Ban causes Big Apple Loss", *SMH*, 7 May 1952, p 4.

⁸¹ "Union Ordered to Resume Overtime", *SMH*, 9 May 1952, p 4.

⁸² "Federal Move Intervention", *SMH*, 20 May 1952, p 1.

⁸³ "Watersiders Lose In High Court", *SMH*, 27 May 1952, p 1.

⁸⁴ "Contempt of Court: Wharf Union Guilty", *SMH*, 29 May 1952, p 1.

⁸⁵ "Waterside Union Fined £500", *SMH*, 3 June 1952, p 1.

⁸⁶ "Major Clash Looms On Margins", *SMH*, 5 June 1952, p 1.

members of the ALP Industrial Group who claimed that there were 638 illegal votes out of a total of 5,723 which they alleged prevented the ALP Industrial Group from obtaining a majority on the Federal Council. Christian briefed Simon Isaacs and Fred Paterson to appear on behalf of the WWF.⁸⁷ Christian also briefed Fred Paterson in another case brought before the Arbitration Court by a member of the Seamen's Union who had had his union membership suspended without any charges being laid. The Full Bench of the Arbitration Court upheld the seaman's application and ordered the Union to reinstate him and to refrain from doing anything to hinder him in enjoying his rights and privileges as a union member.⁸⁸

The hearing of Jim Healy's appeals against his conviction and fines on two charges of encouraging a boycott against New Zealand ships commenced before the Full Bench of the Arbitration Court on 4 June. Christian briefed Simon Isaacs and Laurence Gruzman to appear on behalf of Healy. However, the Court upheld both convictions and fines.⁸⁹ Healy also appealed in the NSW Quarter Sessions Appeals Court against his conviction and two six week gaol sentences for having hindered trade and commerce with another country. Christian also briefed Isaacs and Gruzman to appear on behalf of Healy in these proceedings. The Court upheld the conviction but substituted £100 fines for each of the gaol sentences.⁹⁰

Further proceedings in the battle for control of the FIA also took place in July. Laurence Short applied to the Arbitration Court for an order for costs against the former members of the FIA Executive. He submitted that the cost of the eighteen-month inquiry into the 1949 election had reduced the union's funds by £15,000. Simon Isaacs, briefed by Christian to appear on behalf of the former executive, argued that the costs of his clients were less than £5,000 and that the remainder was incurred by Short. Mr Justice Dunphy ordered that McPhillips, McHenry and McKay should pay the costs of the eighteen-month inquiry.⁹¹

Cases involving other unions also occupied Christian's time. In August and November, Christian briefed Jack Sweeney on behalf of the Hospital Employees' Association of New South Wales which had filed an application in the NSW Industrial Commission in February 1951 for a new award.⁹² On 7 November, Christian briefed Laurence Gruzman to appear on

⁸⁷ "Union Poll Fraud Is Alleged", *SMH*, 15 May 1952, p 5.

⁸⁸ "Union Ordered To Reinstate Member", *SMH*, 24 May 1952, p 4.

⁸⁹ "Appeal By Healy Over Fines", *SMH*, 5 June 1952, p 5; "Healy Loses Appeals", *SMH*, 28 June 1952, p 5.

⁹⁰ "Fines Instead of Gaol: Healy's Penalties Varied", *SMH*, 18 July 1952, p 5.

⁹¹ "Order for Costs in Ballot case", *SMH*, 25 July 1952, p 5.

⁹² "*In Re Hospital Employees (Metropolitan) Award*", *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 269-317; "*In Re Hospital Employees (Metropolitan) Award*", *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 587-599.

behalf of the Fire Brigade Employees' Union in defence of one of its members, Arthur Wiseman, had been charged with nine counts of indecency on boys and one case of assault with indecency on a woman.⁹³

Attack on the writers

In mid-1952 the anti-Communist crusade shifted to the writers in what has been referred to as 'the great literary witch-hunt of 1952.'⁹⁴ The debate erupted on 28 August in the House of Representatives during consideration of the Budget Estimates for 1952-1953. The Labor member for Yarra (Victoria), Stan Keon, claimed that awards made under the auspices of the Commonwealth Literary Fund (CLF) were mainly going to Communists. The Prime Minister and other parliamentary members spoke in defence of the CLF but the issue was taken up by W C Wentworth, the Liberal member for Mackellar (NSW) who claimed that a third of those who had received funding from the CLF were either Communists, in which he included Kylie Tennant, or fellow travellers, in which he included Dymphna Cusack, Vance Palmer and Florence Eldershaw.⁹⁵ The daily press took up the theme with gusto⁹⁶ and the witch-hunt was underway.

T Inglis Moore, a member of the CLF Advisory Board, wrote to the *Sydney Morning Herald* in defence of the CLF, providing further factual information about the recipients of awards and charging Keon and Wentworth with misrepresentation.⁹⁷ On the following day the *Sydney Morning Herald* published Wentworth's response in which he referred to 'Katharine Susannah Prichard (alias Mrs Throssell [sic]).'⁹⁸ Christian wrote to Katharine informing her of Wentworth's letter and advising her that the reference to 'alias Mrs Throssell' was actionable. Katharine told her son, Ric Throssell, that she felt that such damaging statements should be stopped although 'it's worried me a lot to make the decision; but my mind wd not let me off the responsibility involved.'⁹⁹ Katharine believed that Christian had written for a correction and an apology and she hoped that would be the end of the matter.¹⁰⁰

⁹³ "Charges Against Fireman", *SMH*, 30 August 1952, p 5.

⁹⁴ Allan Ashbolt, "The Great Literary Witch-hunt of 1952", in Curthoys and Merritt (eds), *op cit*, pp 153-182.

⁹⁵ Commonwealth of Australia, Parliamentary Debates (CPD), Vol 218, pp 717- 719, 723-724, 726-728.

⁹⁶ " "Red" Authors and Professors", *SMH*, 29 August 1952, p 4; "MPs New Attack on Literary Fund", *SMH*, 3 September 1952, p 3; "Authors" Fund: Clash in Parlt.", *Daily Telegraph*, 5 September 1952, p 5.

⁹⁷ The letter was published on 9 September.

⁹⁸ "Literary Fund Awards", *SMH*, 10 September, 1952, p 2.

⁹⁹ KSP to Ric Throssell, 14 September 1952, *Ric Throssell Papers*, NLA MS 8071/7/188.

¹⁰⁰ KSP to Ric Throssell, 20 September 1952, *Ric Throssell Papers*, NLA MS 8071/7/188.

However, on 26 September, Christian issued a writ on behalf of Katharine alleging libel against John Fairfax and Sons Pty Ltd and W C Wentworth and claiming £10,000 in damages.¹⁰¹ On 5 October, Katharine commented to her son that ‘you will have seen that the DT has announced my billet-doux for WC. Haven’t heard yet what repercussions. Only hoping I won’t have to go to Sydney.’¹⁰² Katharine was suffering from hypertension and heart problems which were not helped by the stress caused by the long delay before the matter could be heard. On 30 November, Katharine told her son that ‘CJ says that the case may not come on for a year or two.’¹⁰³ Such a long expected delay was a consequence of congestion in the Supreme Court in NSW, with cases and appeals experiencing long waiting times before they could be heard.¹⁰⁴

In the meantime, compensation¹⁰⁵ and industrial cases¹⁰⁶ kept Christian busy. On 12 November, Austen Macdonald, who had successfully applied for reinstatement in the Seamen’s Union in March, began proceedings for damages in the District Court against the secretary of the Sydney branch of the Union, Bernard Smith, and the Vigilance Officer, Robert Webster. Macdonald claimed that Smith and Webster had illegally prevented him from obtaining work and falsely represented that he was not a member of the union. Christian briefed Simon Isaacs and Colman Wall to appear on behalf of Smith and Webster who denied the allegations but the jury decided in Macdonald’s favour and awarded him £1,000 damages.¹⁰⁷

At the beginning of 1953, Christian spent ten days at Heathmont, now an eastern suburb of Melbourne but then a distant village, with her cousin Campbell Hughston. Campbell met her in Swanston Street, Melbourne, and drove her to his home. She was terribly tired and looked

¹⁰¹ “Libel Writ By Novelist”, *Daily Telegraph*, 27 September 1952, p 8.

¹⁰² KSP to Ric Throssell, 5 October 1952, *Ric Throssell Papers*, NLA MS 8071/7/188.

¹⁰³ KSP to Ric Throssell, 30 November 1952, *Ric Throssell Papers*, NLA MS 8071/7/188.

¹⁰⁴ “Cases Pile up in this “most litigious State””, *Daily Telegraph*, 12 September 1952, p 8.

¹⁰⁵ “Fraser v Board of Fire Commissioners of New South Wales”, *Workers’ Compensation Reports*, Vol 26, (1952), pp 162-164.

¹⁰⁶ “*In re Government Railways (Building Trades) Award, Staff on Divisional Work (Other Than Duplication, Deviation and Construction Staff) – and Government Railways (Building Trades) Duplication, Deviation and Construction Staff Award*”, *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 502-505; “*In re Government Railways (Building Trades) Duplication, Deviation and Construction Staff and Government Road Transport and Tramways (Building Trades) Awards*”, *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 532-553; “*In re Government Railways (Building Trades) Duplication, Deviation and Construction Staff and Government Road Transport and Tramways (Building Trades) Awards*”, *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 532-553; “*The Board Of Fire Commissioners of New South Wales v Lambert*”, *NSW Industrial Arbitration Reports*, Vol 51 (1952), pp 643-646.

¹⁰⁷ “Seaman Claims He was Victim of Union Vendetta”, *SMH*, 13 November 1952, p 5; “Seaman in Court Tells of Threats”, *SMH*, 14 November 1952, p 4; Red Union Man Denies Ill-will Towards Seaman”, *SMH*, 15 November 1952, p 5; “Seaman’s Verdict Above Court Limit, Reduced”, *SMH*, 19 November 1952, p 7.

frightful. During her stay her cousin did not receive any visitors, allowing her to sleep. She did not even visit Nettie because she spent most of the time 'in bed or lying on the verandah.'¹⁰⁸ Things were not going well in her office. There was a feud between her secretary, 'a possessive and jealous kind of person', and her assistant who dealt with the divorce cases and did the filing. Her secretary was a good common law clerk, which were hard to obtain, and was therefore indispensable so Christian felt that she had to put up with the situation. In February, Katharine Prichard was in Sydney for consultations with Christian about her libel action. Because of Court congestion, an early listing seemed unlikely unless they could use Katharine's poor health to expedite matters. Christian advised Katharine to obtain medical evidence in support of her application for an early hearing. The doctor she saw agreed that the strain of waiting was affecting her health. Her blood pressure was very high and her cardiac condition was not good. They hoped for a hearing in June or July.¹⁰⁹

In 1953 Christian dealt with several challenges to union ballots. On 18 February, she briefed Jack Sweeney to appear in the NSW Industrial Commission on behalf of Newcastle Trades Hall Council and three of its officials. At issue was the validity of a meeting at which a new returning officer for the Trades Hall Council was elected. John Kerr was the barrister for the unions who initiated the proceedings. The Industrial Commission ruled that the meeting had not been validly convened and ordered that another meeting be called for the purpose of electing the returning officer. The meeting was held on 5 March and a ballot held but the outcome of this ballot was also challenged on the ground that the votes were falsely counted and fraudulently declared. Several unions, including the Federated Ironworkers' Union, applied for an inquiry into the conduct of the ballot by the Industrial Commission. The inquiry began in Newcastle on 9 April. Christian briefed Jack Sweeney on behalf of the Newcastle Trades Hall Council and Fred Paterson on behalf of the outgoing returning officer.¹¹⁰ Another challenge to the conduct of a ballot for executive positions was heard on 13 March. The former president of the Milk and Ice Carters' Employees' Union the union alleged that members elected to six of the positions had not been members for twelve months as required by the union's rules and asked the Commission to conduct an inquiry. Christian briefed Jack Sweeney to appear in the Industrial Relations Commission on behalf of the Union. The

¹⁰⁸ CJS to Nettie Palmer, 30 March 1953, *Palmer Papers*, NLA MS 1174/1/8312.

¹⁰⁹ KSP to Ric Throssell, 15 February 1953 and KSP to Ric Throssell, 20 February 1953, *Ric Throssell Papers*, NLA MS 8071/7/188.

¹¹⁰ "The Furnishing Trades Society of New South Wales and Others v Greater Newcastle Trades Hall Council and Others", *NSW Industrial Arbitration Reports*, Vol 52 (1953), pp 3-10.

hearing was adjourned until 13 April when the Commission upheld the complaint and ordered a new election to be conducted by the Industrial Registrar.¹¹¹

In addition to these cases, Christian briefed counsel in a successful claim by her client, a former cleaner in the railways, for an increased gratuity,¹¹² in proceedings by the Building Workers' Industrial Union, NSW Branch, and the Plumbers' and Gasfitters' Employees' Union of Australia before the NSW Industrial Commission,¹¹³ and on behalf of Henry Wiseman who had been charged with acts of indecency on seven Boy Scouts at French's Forest in August 1952. Wiseman pleaded an alibi. The hearing of evidence lasted nine days. However, the jury failed to agree on a verdict and Wiseman was remanded for re-trial.¹¹⁴

A murder in Melbourne

In early April came news of a shocking tragedy in Melbourne. On the morning of 8 April, Sydney Allan Johnson and his wife were found with stab wounds at their home at Kilsyth, in the foothills of the Dandenong Ranges, east of Melbourne. Their adopted son, aged nine, was found stabbed to death in his bed. Both Sydney and his wife were taken to hospital where Sydney was kept under police guard. Mrs Johnson later died of her injuries.¹¹⁵ On 29 April, Nettie noted in her diary that Christian had sent a cutting from a Sydney newspaper with the news of the tragedy. Christian asked 'what if...?'¹¹⁶ The question implies that Christian was wondering what might have happened if she had accepted when Sydney and Christian had considered the possibility of marriage back in 1912. There was an inquest and Sydney Johnson was committed for trial on two counts of murder.¹¹⁷ When the trial took place, on 20 July, Johnson pleaded not guilty. His defence counsel argued that he was legally insane at the time of the attacks. The Government Medical Officer and a psychiatrist gave evidence that Johnson suffered from melancholia¹¹⁸ and had had five severe attacks at the approximate ages of 20, 40, 48, 66 and 73. During each of these attacks he had contemplated suicide.

¹¹¹ "Union Election Inquiry Sought", *SMH*, 13 March 1953, p 5; "Order for New Union Poll", *SMH*, 14 April 1953, p 9; "In Re The Milk and Ice Carters and Dairymen's Employees" Union of New South Wales", *NSW Industrial Arbitration Reports*, Vol 52 (1953), pp 74-81.

¹¹² "Ex parte Gadd; re Winsor", *NSW State Reports*, Vol 53 (1953, pp 149-154.

¹¹³ "In re Government Road Transport and Tramways (Building Trades) Award", *NSW Industrial Arbitration Reports*, Vol 52 (1953), pp 38-42.

¹¹⁴ "Allegation of "Degrading Acts" by Man", *SMH*, 21 April 1953, p 5; "Assault on Seven Boys Denied", *SMH*, 24 April 1953, p 5; "Jury Fails to Agree", *SMH*, 1 May 1953, p 5.

¹¹⁵ "Kilsyth Pair "in danger", *Herald* (Melbourne), 9 April 1953, p 3; "Police guard on Vic. stab victim", *Daily Telegraph* (Sydney), 9 April 1953, p 12; "Boy Dead, Couple Stabbed", *SMH*, 9 April 1953, p 3. Nettie Palmer also noted the news in her diary.

¹¹⁶ Diary entry for 29 April 1953, *Palmer Papers*, NLA MS 1174/16/34.

¹¹⁷ "Man, 74, for trial on two murder charges", *Herald* (Melbourne), 25 May 1953, p 7.

¹¹⁸ Melancholia = mental illness marked by depression and ill-founded fears

Johnson was declared not guilty of murder on the grounds of insanity but he was to be detained in Pentridge Gaol during the Governor's pleasure.¹¹⁹

Katharine Prichard's libel case dragged on and she returned to Melbourne to await events. Christian wrote to her in July to say that an application for an early hearing had been submitted and she expected that it would be fixed for early August. However, when August came there was no sign of any action. Katharine began to despair that a date would ever be fixed.¹²⁰ In early August, Nettie passed through Sydney on her way to Queensland. She went to Christian's office and they went out for a Chinese meal and a talk. Christian's financial situation was deteriorating. She had been forced to move in with Chica Edgeworth, her next-door neighbour at Camp Cove. It was a makeshift solution which added to her anxieties. Christian was acting for Glen Fox in her petition for divorce from her husband, Len, but there were unspecified difficulties. She was also worried about Katharine's libel case.¹²¹ On her return journey in November, Nettie again had lunch with Christian at a Chinese café. Christian's financial situation had deteriorated further. She could not afford to hire the staff that she needed and was forced to do much of the work herself. There was little scope for relaxation because she did not have the time or the money 'for concerts or other bliss.' Her health was holding up but she suffered from constant fatigue.¹²²

Christian's practice appears to have been much reduced compared with previous years. In June, she briefed Laurence Gruzman to appear before the Crown Employees Appeal Board on behalf of Nurse Shirley Black in a successful appeal against her dismissal for allegedly ill-treating a patient at Morisset Mental Hospital.¹²³ In late August, Christian briefed counsel to appear in the Supreme Court on behalf of Constable Gordon Smith, who successfully sought custody of his two young daughters from his estranged wife.¹²⁴ There were also three cases on behalf of the Fire Brigade Employees' Union before the Industrial Relations Commission,¹²⁵ and a case on behalf of a waterside worker who appealed against the cancellation of his registration by the Australian Stevedoring Industry Board.¹²⁶

¹¹⁹ "Insane When he Killed Wife and Foster Son", *The Age*, 21 July 1953, p 5; "Man Found Insane", *SMH*, 21 July 1953, p 3; "Insanity plea in murder trial", *Herald* (Melbourne), 20 July 1953, p 3.

¹²⁰ KSP to Ric Throssell, 10 May, 24 May, 27 July, 8 August, 19 August 23 August 1953, *Ric Throssell Papers*, NLA MS 8071/7/188.

¹²¹ Diary entries for 5 and 6 August 1953, *Palmer Papers*, NLA MS 1174/16/34.

¹²² Diary entry for 9 November 1953, *Palmer Papers*, NLA MS 1174/16/34.

¹²³ "Mental Home Struggle", *SMH*, 25 June 1952, p 7.

¹²⁴ "Constable's Children "On Way To Depravity"", *SMH*, 28 August 1953, p 5.

¹²⁵ "*In re Fire Brigade Employees (State) Conciliation Committee*", *NSW Industrial Arbitration Reports*, Vol 52 (1953), pp 547-565; "*Board of Fire Commissioners of New South Wales v New South Wales Fire Brigade*

There is no evidence to suggest what Christian did over the Christmas-New Year holiday period. However, 1954 was to be a momentous year. The young Queen Elizabeth toured the country in February and March and she had hardly left on the next stage of her tour of the British Commonwealth, when Prime Minister Menzies announced the defection of the Soviet Russian diplomat, Vladimir Petrov. He established a Royal Commission to investigate Petrov's allegations about Russian espionage in Australia. The story of the Petrov affair and the Royal Commission has been told elsewhere¹²⁷ but Petrov pointed the finger at Katharine's son, Ric Throssell, who was then an officer in the Department of External Affairs. Christian was Ric's solicitor.

In mid-May, Nettie again called on Christian on her way through to Queensland and took her to lunch. Christian had spent the morning vainly trying to obtain passports for several people including Bob Gollan.¹²⁸ As early as 1952, the government had taken action to restrict the movement of Communist and Communist sympathisers. In April 1954, the Minister for Immigration, Harold Holt, announced that the government would not grant passports to anyone who wanted to travel to China for a union conference and in May the government acted to cancel the passport of Herbert Chandler, the editor of *Tribune*, who was already in Hong Kong on the way to the conference and withdrew the passports of five Australians who were planning to attend.¹²⁹

Most of 1954 was taken up with industrial and compensation cases. In March, Christian handled two cases in the NSW Industrial Commission, one on behalf of the Fire Brigade Employees' Union and the other on behalf of the Hospital Employees' Association of New South Wales.¹³⁰ In May, she briefed counsel on behalf of Stanley Hooker and the Actors' and Announcers' Equity Association in an application before the Chief Industrial Magistrate

Employees' Union", *NSW Industrial Arbitration Reports*, Vol 52 (1953), pp 622-639; "*In re new South Wales Fire Brigade Employees Union*", *NSW Industrial Arbitration Reports*, Vol 52 (1953), pp 640-641.

¹²⁶ "The Queen against The Commonwealth Court of Conciliation and Arbitration and Another; Ex Parte Ellis", *Commonwealth Law Reports*, Vol 90, pp 55-69.

¹²⁷ Robert Manne, *The Petrov Affair: Politics and Espionage*, Pergamon Australia, 1987; David Lowe, *Menzies and the 'Great World Struggle': Australia's Cold War 1948-1954*, UNSW Press, 1999, Ch 4; A W Martin, *Robert Menzies: A Life, Volume 2, 1944-1978*, MUP, 1999, Chs 9 and 10.

¹²⁸ Diary entry for 13 May 1954, *Palmer Papers*, NLA MS 1174/16/35.

¹²⁹ "Passport Ban on Peking Meeting", *SMH*, 15 April 1954, p 3; "Instruction Issued To Cancel Editor's Passport", *SMH*, 11 May 1954, p 7.

¹³⁰ "Board of Fire Commissioners of New South Wales v Lambert", *NSW Industrial Arbitration Reports*, Vol 53 (1954), pp 10-15, "*In re Laboratory Attendants, &c (State) Conciliation Committee*", *NSW Industrial Arbitration Reports*, Vol 53 (1954), pp 16-18.

for the recovery of wages.¹³¹ This case was followed by a successful appeal by the Board of Fire Commissioners of New South Wales against a Workers' Compensation Commission award of compensation to Christian's client, the widow of a fireman.¹³² Further proceedings in the NSW Industrial Court between the Board of Fire Commissioners and the Fire Brigade Employees' Union took place in August, September and November.¹³³

Meanwhile, during the debate in the House of Representatives on the Royal Commission on Espionage Bill on 12 August, Eddie Ward criticised what he described as a smear campaign by WC Wentworth against public servants and writers. In his speech he referred to the insulting manner in which Wentworth had referred to Katharine as 'alias Mrs Throssell.'¹³⁴ Katharine heard about the reference and wrote to Christian asking what could be done about it.¹³⁵ Katharine was keen to have her libel claim proceeded with as soon as possible. She was adamant that she 'couldn't let the twerp get away with reflections on my honour.'¹³⁶ Christian wrote in October to tell Katharine 'that the preliminaries have begun' and that she might have to travel to Sydney in December.¹³⁷ However, at the end of November Christian sent a telegram advising her that the case would not be heard this year.¹³⁸ In the Supreme Court on 14 December, Clive Evatt sought further details of the *Sydney Morning Herald's* defence of truth and public benefit. The judge, Mr Justice McClemens, ordered that the information requested be provided and that the case be listed for February.¹³⁹

Christian had written to Katharine saying that she would like to visit her at Christmas if her son and his family were not able to do so.¹⁴⁰ She had also told Nettie that she was planning to travel overseas.¹⁴¹ Perhaps she had intended to visit Katharine on her way as ships sailing to Europe from Sydney generally went via Melbourne and Fremantle. However, Christian's plans went awry. During Christmas week she fell and broke her arm in eight places and when, later, she was trying to reorganise her trip she ruptured a muscle in her leg and it

¹³¹ "Pay taken Back, says Actor", *SMH*, 1 June 1954, p 5; "Plan to Dodge Award for Actors", *SMH*, 1 July 1954, p 9. Oriel Gray refers to a similar dispute which occurred in 1944. Gray, *op cit.*, p 130.

¹³² "Board of Fire Commissioners of New South Wales v Fraser", *NSW State Reports*, Vol 55, pp 210-214.

¹³³ "Lambert v Board of Fire Commissioners of New South Wales", *NSW Industrial Arbitration Reports*, Vol 53, pp 268-269; "Lambert v Board of Fire Commissioners of New South Wales", *NSW Industrial Arbitration Reports*, Vol 53, pp 291-295 "In re Fire Brigade employees (State) Conciliation Committee, *NSW Industrial Arbitration Reports*, Vol 53, pp 453-495.

¹³⁴ *Commonwealth Parliamentary Debates*, Vol , pp 241.

¹³⁵ KSP to Ric Throssell, 15 August 1954, *Ric Throssell Papers*, NLA MS 8071/7/189.

¹³⁶ KSP to Ric Throssell, 29 August 1954, *Ric Throssell Papers*, NLA MS 8071/7/189.

¹³⁷ KSP to Ric Throssell, 19 October 1954, *Ric Throssell Papers*, NLA MS 8071/7/189.

¹³⁸ KSP to Ric Throssell, 30 November 1954, *Ric Throssell Papers*, NLA MS 8071/7/189.

¹³⁹ "Judge's Order in Claim By Authoress", *SMH*, 15 December 1954, p8.

¹⁴⁰ KSP to Ric Throssell, 5/8 December 1954, *Ric Throssell Papers*, NLA MS 8071/7/189.

¹⁴¹ CJS to Nettie Palmer [23] March 1955, *Palmer Papers*, NLA MS 1174/1/8680.

‘swelled up like a balloon.’¹⁴² She left her deposit with the agency because she had not entirely given up hope of being able to go but it seems that the opportunity never did arise.

The Royal Commission on Espionage

In February, Ric Throssell appeared as a witness before the Royal Commission on Espionage. In his autobiography, Ric recalled that Dr Evatt had wanted to represent him but he ‘knew that if Dr Evatt took my case at the Royal Commission it would get caught up in the whole political mess.’ Dr Evatt had already appeared before the Commission, on behalf of members of his staff, but he had clashed with the Commissioners and his leave to appear was withdrawn. Christian agreed with Ric and recommended Dr Louat, ‘a man of broad liberal views, with none of her association with Communist causes or with Evatt’s controversial personal involvement.’ Before proceedings began, Ric went to Dr Louat’s chambers with Christian whom he described as ‘careworn, warmly concerned, protective in her unobtrusive way.’¹⁴³ Christian was also concerned that Katharine’s libel case might be compromised by Ric’s appearance before the Commission.¹⁴⁴

Ric was questioned by the Royal Commissioners over several days. Counsel assisting the Commission, WJV Windeyer, made much of his contacts with people who were believed to be Communists and tried to get Ric to admit that he might have inadvertently revealed information that he had acquired in the course of his employment.¹⁴⁵ Katharine was furious about the line of questioning and the flimsiness of the evidence. She offered to do ‘anything I can do to make it clear that you were not involved in any of the ways suggested.’¹⁴⁶ The costs of appearing before the Commission were a heavy burden. Ric recalled that ‘it had cost a hundred pounds a day to meet the fees of our QC and his useless junior. Christian Jollie Smith had acted for us as a friend, but her costs also mounted. By the time the week in court was over, 600 pounds had gone and savings account was exhausted.’¹⁴⁷

On 8 February, Katharine’s libel case came before the Supreme Court but was adjourned on the application of her barrister, Clive Evatt, who sought further details of the defence of

¹⁴² *Ibid.*

¹⁴³ Ric Throssell, *My Father’s Son*, William Heinemann Australia, Melbourne, 1989, p 305.

¹⁴⁴ *Ibid.*, p 306.

¹⁴⁵ “Petrov Alleges External Affairs Dept. Leakage”, *SMH*, 2 February 1955, p 7; “Denials by External Affairs Man”, *SMH*, 3 February 1955, p 5; “External Dept. Woman was Suspect”, *SMH*, 4 February 1955, p 7; “Canberra Meeting with Red Denied”, *SMH*, 5 February 1955, p 6.

¹⁴⁶ KSP to Ric Throssell, 3 February 1955, *Ric Throssell Papers*, NLA MS 8071/7/191.

¹⁴⁷ Ric Throssell, *op cit.*, p 322.



Christian Jollie Smith (left) leaving the
Royal Commission on Espionage
(courtesy of the Australian Security Intelligence Organisation)

public benefit by *Sydney Morning Herald* and WC Wentworth.¹⁴⁸ Katharine travelled to Sydney in mid-March to be on hand. Christian went to see her after she arrived. Katharine noted that ‘she’s snowed under with work of course but needs a rest badly. She’s one of those staunch old friends of mine – who can be depended on always.’ Christian noted that ‘Katharine was looking better than I have seen her. Last time she was looking terribly old and ill but now much fresher with lots of energy.’¹⁴⁹ There was a preliminary hearing in Katharine’s case on 22 March but she was not required to be there.¹⁵⁰ The *Sydney Morning Herald* had applied to the Court for security of costs. This was an application to ensure that Katharine had sufficient financial resources to meet the newspaper’s costs should Katharine lose her case. In order to maximise the chances of a favourable outcome, Christian lodged an affidavit on Katharine’s behalf stating that she would be residing in New South Wales indefinitely to be near her family.¹⁵¹ The Prothonotary refused the *Sydney Morning Herald*’s application on the ground of special circumstances but the newspaper appealed against his decision.

On 23 March, Christian was in the High Court sitting behind her barrister, ‘in a sort of vacuum, no phones, no clients, no letters to be signed, no decisions to be made’, waiting for their case to be called. Christian, who had turned seventy on 15 March, whiled away the time by writing to Nettie to thank her for her birthday greetings and a book which Christian thought ‘looks most interesting and freshly written.’ Christian did not name the book in her letter but she refers to Nettie’s friendship with Bernard O’Dowd which suggests it may have been Nettie’s biography of O’Dowd which was published in 1954. It seems to have stimulated memories of the past.

Some of the early chapters take one back to that marvellous state of adolescence when the world was so full of a number of things and people all in a cloud of golden light and seen through the garden door, so to speak, [which] gave one an almost breathless expectant happiness of what was in that garden you were hoping to go into to live. Your friendship with Bernard O’Dowd placed you among the immortals for me then.¹⁵²

The case for which Christian was waiting was an application on behalf of the WWF for a writ of prohibition against an Arbitration Court judge to restrain him from further hearing an

¹⁴⁸ “New Move in Action Alleging Libel”, *SMH*, 9 February 1955, p 6.

¹⁴⁹ CJS to Nettie Palmer, [23] March 1955, *Palmer Papers*, NLA MS 1174/1/8680.

¹⁵⁰ KSP to Ric Throssell, Sunday [21 March 1955], *Ric Throssell Papers* NLA MS 8071/7/190.

¹⁵¹ KSP to Ric Throssell, 27 March 1955, *Ric Throssell Papers*, NLA MS 8071/7/190.

¹⁵² CJS to Nettie Palmer, [23] March 1955, *Palmer Papers*, NLA MS 1174/1/8680.

application by the Commonwealth Steamship Owners' Association and the Overseas Shipping Representatives' Association to vary an order made by the Stevedoring Industry Commission.¹⁵³ While Communists had been removed from office in many unions, the WWF was still led by the Communist Jim Healy and he retained confidence in Christian's legal services. A financial statement for the month ended 31 December 1955 records a payment of £580 to C Jollie Smith for legal and arbitration services.¹⁵⁴

The *Sydney Morning Herald's* appeal against the decision not to require Katharine to provide security of costs was heard on 7 April. The *Herald* won on the ground that, as Katharine was ordinarily resident in Western Australia, the rules required that security of costs be given unless special circumstances applied. Katharine had supplied no evidence of her financial position which could have supported her claim. The Prothonotary was therefore directed to determine the amount required and Katharine was ordered to provide security by 16 May.¹⁵⁵ Katharine was becoming impatient with the long-drawn out process and felt that her legal advisers 'seem to be taking things rather casually and wasting my time into the bargain.'¹⁵⁶ However, her feelings did not prevent Katharine from preparing a belated birthday dinner with champagne for Christian on 9 April. She prepared her celebrated 'Petit poulet mit asperge' dish in Christian's honour. It was voted a great success.¹⁵⁷

While they were waiting for the Prothonotary to make his decision, Christian handled another case on behalf of the NSW Fire Brigade Employees' Union.¹⁵⁸ In early May the Prothonotary finally decided that security of costs should be set at £2,500. The magnitude of the decision shocked Christian as it was greater than any previous decision. Katharine was also confounded by the decision regarding it as a 'nice state of things when one can't even defend oneself from a damaging statement unless so much money is put up for the hearing' and she was 'fed up with the dithering and waste of time.' The case was also affecting Katharine's blood pressure which was too high and the doctor insisted that she should have no further nervous strain.¹⁵⁹ As a result, Katharine decided to withdraw her writ. While she thought that

¹⁵³ "The Queen against His Honour Sydney Charles Greville Wright, A Judge of the Commonwealth Court of Conciliation and Arbitration, and Others; *Ex Parte* Waterside Workers' Federation of Australia", *Commonwealth Law Reports*, Vol 93, pp528 -545.

¹⁵⁴ "Financial Statement for the month ended 31 December 1955", *Papers of the Waterside Workers' Federation*, ML MS 1049, Box 1, Item 2.

¹⁵⁵ "Appeal By Paper Granted", *SMH*, 8 April 1955, p 5.

¹⁵⁶ KSP to Ric Throssell, 10 April 1955, *Ric Throssell Papers*, NLA MS 8071/7/190.

¹⁵⁷ *Ibid.*

¹⁵⁸ "Lambert v Board of Fire Brigade Commissioners", *NSW Industrial Arbitration Reports*, Vol 54 (1955), pp 207-209.

¹⁵⁹ KSP to Ric Throssell, 6 May 1955, *Ric Throssell Papers*, NLA MS 8071/7/190.

Christian did not bear her any ill will for having withdrawn, Katharine was quite critical of both Christian and Clive Evatt whom she thought had 'been very remiss' in their handling of her case and felt that she should be reproaching them. Katharine looked forward to being free of the whole business 'soon'¹⁶⁰ but the final scenes in the saga were not played out until February 1956. Meanwhile, Katharine returned to Perth.

In August, Christian briefed Fred Patterson and Ted Hill to appear in the NSW Industrial Commission on behalf of Ernie Thornton, the former General Secretary of the FIA. Thornton applied to the Full Bench of the Commission for an order calling on the NSW branch of the FIA to show cause why he should not be admitted as a member.¹⁶¹ Thornton had had difficulty in finding work since his return to Australia after working for the World Federation of Trades Unions in Peking. In February 1954, he had been dismissed from a job after working only one day¹⁶² and in March 1954 his application for re-admission to the union had been rejected. Hill argued that Thornton's long career as an ironworker qualified him for membership and that he had been given no explanation for the rejection of his application to rejoin the union.¹⁶³ In its decision, handed down on 23 December, the Full Bench concluded that Thornton had not satisfied them that he was a man of good character and dismissed his application.¹⁶⁴

Years of declining practice and health

The long drawn out saga of Katharine's libel action against the *Sydney Morning Herald* and WC Wentworth was finalised in early 1956. John Fairfax and Sons was awarded £700 in costs.¹⁶⁵ On 10 February a consent verdict was entered in favour of WC Wentworth but with no order as to costs.¹⁶⁶ The next day the *Sydney Morning Herald* published a letter by Wentworth in which he stated that he had did not believe that his original letter had implied any doubts about Katharine's marriage and that at no time had he questioned the validity of her marriage.¹⁶⁷ Katharine was relieved that the case was over though she begrudged having

¹⁶⁰ KSP to Ric Throssell, 17 May 1955, *Ric Throssell Papers*, NLA MS 8071/7/190.

¹⁶¹ "Thornton Seeking Re-entry To Union", *SMH*, 12 August 1955, p 7.

¹⁶² "One Day's Work for Mr Thornton", *SMH*, 17 February 1954, p 9.

¹⁶³ "Thornton's Evidence on Application", *SMH*, 13 August 1955, p 8.

¹⁶⁴ "Thornton Fails in Bid to Get Back Into Union", *SMH*, 24 December 1955, p 5; "Thornton v The Federated Ironworkers' Association, New South Wales Division, *NSW Industrial Arbitration Reports*, 1955, pp 1122-1146

¹⁶⁵ KSP to Ric Throssell, 22 January 1956, *Ric Throssell Papers*, NLA MS 8071/7/190.

¹⁶⁶ "Settlement of action", *SMH*, 11 February 1956, p 13.

¹⁶⁷ "Mrs Throssell", *SMH*, 11 February 1956, p 2..

to pay the *Sydney Morning Herald's* costs.¹⁶⁸ Clive Evatt returned her payment to him for his services and it is probable that Christian did not charge Katharine for hers. Katharine's dissatisfaction with her legal advisers meant that Christian did not hear from her for several years afterwards. However, in March 1959, Katharine sent her a note for her birthday 'to my amazement.. after years of silence and disapproval at something I did here in connection with her case. I thought it would please her but it didn't.'¹⁶⁹

There was only one other case reported in 1956 in which Christian was instructing solicitor, a further sign that her practice was waning.¹⁷⁰ However, Christian must have had other legal work to do on behalf of her clients because, in October 1959, she told Nettie that her time during the week was taken up 'with other people's doings. Letters, phones, cases, queries until like that silly phrase you do not know whether you are Arthur or Martha.'¹⁷¹ There were also other interests to take up her time. In February 1956, Jessie Street wrote to Mrs Pearl Gibbs about discussions she had had with Christian regarding the work of the Aboriginal-Australian Fellowship which was then being established.¹⁷² Christian was appointed honorary solicitor for the Fellowship and arranged for it to be registered as a charitable organisation.¹⁷³ Christian would also become involved in the campaign by Jessie Street and the Australian Council for Civil Liberties to improve the treatment of Aboriginal Australians and recognise them as citizens. On 1 March 1957, Brian Fitzpatrick informed Jessie Street that he had spoken to Christian about collecting data on Aboriginal administration in New South Wales.¹⁷⁴ The Australian Council for Civil Liberties had prepared a questionnaire to be completed for each State and the Northern Territory. By 11 March, the questionnaire had been completed by Christian and Bert Groves, president of the Aboriginal-Australian Fellowship.¹⁷⁵ The completed questionnaires formed the basis of the publication, *Report on Aborigines in Australia*, compiled by Jessie Street which was published in mid 1957. The report was a comprehensive compilation of the conditions of Aboriginal Australians and the State legislation governing them.¹⁷⁶

¹⁶⁸ KSP to Ric Throssell, 22 January 1956, *Ric Throssell Papers*, NLA MS 8071/7/190

¹⁶⁹ CJS to Nettie Palmer, Saturday, May 9 [no year, but May 9 was a Saturday in 1959], *Palmer Papers*, NLA MS 1174/1/10253.

¹⁷⁰ "Board of Fire Commissioners v Lambert, *NSW Industrial Arbitration Reports*, Vol 55 (1956), pp 238-243.

¹⁷¹ CJS to Nettie Palmer, 5 October 1959, *Palmer Papers*, NLA MS 1174/1/9197.

¹⁷² Jessie Street to Mrs Pearl Gibbs, 11 February 1956, *Jessie Street Papers*, NLA MS 2683/10/62.

¹⁷³ Marilyn Lake, *Faith: Faith Bandler, Gentle Activist*, Allen and Unwin, 2002, p 65.

¹⁷⁴ Brian Fitzpatrick to Jessie Street, 1 March 1957, *Jessie Street Papers*, NLA MS 2683/10/221.

¹⁷⁵ Jessie Street to Brian Fitzpatrick, 11 March 1957, *Brian Fitzpatrick Papers*, NLA MS 4965/1/5251.

¹⁷⁶ A copy is in the papers of Brian Fitzpatrick.

The next project to be launched by Jessie Street was a petition to the Commonwealth Parliament seeking a referendum to amend the Constitution and give the Commonwealth responsibility for Aboriginal affairs.¹⁷⁷ On a Saturday afternoon in March 1957, a meeting was held in Christian's office to discuss the proposed petition. Present at the meeting as well as Christian were Jessie Street, Bert Groves and Faith Bandler, a well-known campaigner for Aboriginal rights.¹⁷⁸ Christian was conscious that the task they were undertaking would be immense but Jessie emphatically replied that Faith and her people 'must never give in.'¹⁷⁹ Jessie and Christian began working on drafting the petition. Advice was sought from Brian Fitzpatrick and on 4 April 1957, Brian sent Jessie a copy of 'the slightly amended version' of the petition which he was forwarding to Christian.¹⁸⁰ The work on behalf of the Aboriginal-Australian Fellowship must have been a welcome change from the dreary routine of industrial cases but there were only four cases reported for 1957¹⁸¹ and 1958¹⁸², three of them on behalf of the Hospital Employees' Association of NSW. Another case involved a disputed long service leave claim. The New South Wales Government had passed a *Long Service Leave Act* in 1955 which must have provided a welcome new source of work for Christian's declining practice.

In July 1958, Nettie was again in Sydney on the way to Brisbane. She rang Christian who went to see her. Nettie recorded in her diary that Christian was 'pretty depressed now' and living at Drummoyne.¹⁸³ Just when Christian left Camp Cove and moved to Drummoyne is not clear but in an undated letter to Nettie's daughter Aileen, which appears to have been written after this visit of Nettie's¹⁸⁴, Christian says she had only been there 'for a few weeks after seven months in a dusty civilised suburb called Ashfield in a large, gangling old house that had so much unhappiness in it that the very walls told you about it...I had to go and was glad to leave.'¹⁸⁵ At the time of writing, Christian was in a bad temper 'in this new home of

¹⁷⁷ Marilyn Lake, *op cit.*, p 66.

¹⁷⁸ Faith Bandler and Len Fox (eds), *The Time was Ripe: A History of the Aboriginal-Australian Fellowship*, Alternative Publishing Co-operative Ltd, NSW, 1983, p 11; Marilyn Lake, *op cit.*, p 68.

¹⁷⁹ Faith Bandler and Len Fox (eds), *op cit.*, p 11.

¹⁸⁰ Brian Fitzpatrick to Jessie Street, 4 April 1957, *Jessie Street Papers*, NLA MS 2683/10/265.

¹⁸¹ "*In re Frank Tipping and the Western Suburbs District Ambulance Committee*", *NSW Industrial Arbitration Reports*, Vol 56 (1957) pp 123-124; "*Western Suburbs District Ambulance Committee v Tipping*", *NSW Industrial Arbitration Reports*, Vol 56 (1957), pp 273-282; "*WD & HO Will (Aust) Limited v Jamieson*", *NSW Industrial Arbitration Reports*, Vol 56 (1957), pp 547-554.

¹⁸² "*In re Public Hospital Employees (State) and Hospital Employees (Metropolitan) Conciliation Committees*", *NSW Industrial Arbitration Reports*, Vol 57 (1958), pp 153-156; "*In re Hospital Employees (Metropolitan) Award*", *NSW Industrial Arbitration Reports*, Vol 57 (1958), pp 498-502.

¹⁸³ Diary entry 4 July 1958, *Palmer Papers*, NLA MS 1174/16/41.

¹⁸⁴ She says in the letter "Nettie rang me on her way through and I saw Vance for one moment and Nettie for an hour or so."

¹⁸⁵ CJS to Aileen Palmer, *Aileen Palmer Papers*, nd, NLA MS 6759, Box 3, Folder 25.

mine' because she could not find things because of the 'numerous moves I have had in the past year.'

Christian described her house at 131 Henley Marine Drive as 'the ugliest of one-eyed snub nosed houses' with tiny rooms and 'the tiniest of gardens' but its redeeming feature was that 'it is right on the water, near a bridge that is just an iron cage by day but at night is a mass of lights.' The bridge to which she is referring appears to be the Iron Cove Bridge over which Victoria Road passes from Rozelle to Drummoyne. However, she missed the sound of waves 'in this quiet little backwater.' She chose the house after looking in streets that 'were dingy and horrid and within my means' and at places with 'ocean vistas which were marvellous and quite beyond my means.' She dreamed of finding something with an ocean frontage at Newport or Avalon 'if I can ever find someone to buy me out at a price that will keep me fed for the rest of my decrepitude.' She was apparently referring to the possible sale of her practice.

The depression noted by Nettie may have been due to Christian's dissatisfaction with her career as well as her housing difficulties. When Nettie passed through Sydney on her return journey in October, Christian did not see her because she was due in court but when the case was adjourned she was unable to contact Nettie. When, on 30 October, she wrote to Nettie to explain what had happened she referred back to their meeting in July and commented on 'how astounding you were – interested and on the beam in all sorts of things.' By contrast, 'I felt so flabby and watched and listened with amazement.' She thought her 'flabbiness' could be explained by having to earn her living for nearly twelve hours a day 'at work I've always detested and been bad at with no confidence in myself... [and being] too tired to enjoy the extras.'¹⁸⁶ In this letter Christian also asked Nettie if she ever saw Sydney Johnson. In 1957, Johnson had written a book, entitled *Pentridge Sketches*, about life in Pentridge Gaol. Nettie read the book but does not seem to have been impressed, commenting in her diary 'people inside are better because there are no women and no money (Normal life please copy...)'¹⁸⁷

In late January 1959, Christian visited her cousin, Mary Hughston, who lived at Heathmont in Melbourne's eastern suburbs. While she was there Christian visited Nettie for lunch and a long talk.¹⁸⁸ By May, her holiday 'seemed a distant oasis nearly covered in dust' as it was a heavy year. Christian was preparing to hand over old Supreme Court matters that had been

¹⁸⁶ CJS to Nettie Palmer, 30 October 1958, 30 October 1958, *Palmer Papers*, NLA MS 1174/1/9197.

¹⁸⁷ Diary entry for 1 July 1957, *Palmer Papers*, NLA MS 1174/16/40.

¹⁸⁸ Nettie's diary, entries for 27 January and 5 February 1959, *Palmer Papers*, NLA MS 1174/16/42.

started two years previously and which were beginning to appear in the court lists at Newcastle, Wollongong and Sydney.¹⁸⁹ Christian had had a copy of Boris Pasternak's book, *Dr Zhivago*, sent out from London but she had not yet had the time or energy to read it. When she lived at Camp Cove the trip to her office by tram took an hour and she was able to keep up with all the books she wanted to. However, her bus trip from Drummoyne took only twelve minutes and did not provide much time for reading. It seems that Nettie had not responded to her query about Sydney Johnson as she again asked if she had heard anything of him.

Nettie must have communicated Christian's interest to Sydney because he wrote to her a few weeks after this letter was written. Christian had not had time to answer it when she next wrote to Nettie on 5 October, 'a holiday weekend so I have a few moments to myself.'¹⁹⁰ Although she thought that Sydney seemed to be content and to have no regrets, she was not very impressed with the contents of Sydney's letter.

His thinking stopped with Henry George as you once said but his personal values seem to have stopped too... He speaks of the damage society does to the young so that they are drawn into a purposeless destructive sort of atmosphere. They go from bad to worse. He speaks as if he is the only person who knows this... It is so trite and the neverending moan of the weak and the lazy.

She also remarks that she had 'befriended alcoholics all my life if I thought that they had a streak of ability and sometimes perhaps real genius but I have been beaten every time.' In the context of the letter it is not clear whether this remark applied to Sydney as well as 'little lying lawyers.'

Again there were only a few reported cases in 1959 and 1960 in which Christian was noted as the instructing solicitor all involving industrial matters in the NSW Industrial Commission. One case in 1959 involved a disputed long service leave claim¹⁹¹ and three cases on behalf of the Hospital Employees' Association of New South Wales involved award variations.¹⁹² Several cases in the NSW Industrial Commission during the first half of 1960 also involved

¹⁸⁹ CJS to Nettie Palmer, Saturday, May 9 [1959], *Palmer Papers*, NLA MS 1174/1/10253.

¹⁹⁰ CJS to Nettie Palmer, 5 October 1959, *Palmer Papers*, NLA MS 1174/1/9197.

¹⁹¹ "Cameron v During; Cameron v White; Cameron v McGee; Cameron v Gauvin", *NSW Industrial Arbitration Reports*, Vol 58 (1959), pp 142-144.

¹⁹² "In re Hospital Employees (Metropolitan) and Hospital Employees (State) Awards", *NSW Industrial Arbitration Reports*, Vol 58 (1959), pp 307-308; "In re Private Hospital Employees (State) Award", *NSW Industrial Arbitration Reports*, Vol 58 (1959), pp 513-522; "In re Hospital Employees (Metropolitan) and Hospital Employees (State) Awards", *NSW Industrial Arbitration Reports*, Vol 58 (1959), pp 566-642.

award variations.¹⁹³ Other cases involved the NSW Branch of the Building Workers' Industrial Union,¹⁹⁴ which was one of Christian's long-standing clients, and the NSW branch of Australasian Meat Industry Employees' Union.¹⁹⁵ She also briefed Jack Sweeney to appear in the Industrial Commission on behalf of the Public Service Association of New South Wales.¹⁹⁶

Christian appears to have been stricken by a severe heart attack during the winter of 1960. In a letter to Nettie in August 1961, she reported having seen Guido Barrachi once at a concert. He had approached her with outstretched arms and commented on how marvellous she looked. While she had been gratified by his compliment she said, 'that was before the heart performance, which added years and tiredness.'¹⁹⁷ In a further letter written in July 1962, she referred to the doctor's amazement that she was still alive, 'that he hadn't expected me to live more than 6 months after the first attack and here I am two years later.'¹⁹⁸ Perhaps returning the assistance that Christian had provided when he was ill, Jack Sweeney appeared in several award matters in the NSW Industrial Commission on behalf of her clients the Hospital Employees' Association of New South Wales,¹⁹⁹ the Building Workers' Industrial Union of Australia, New South Wales Branch,²⁰⁰ the Hotel, Club, Restaurant, Caterers, Tea Rooms and Boarding Houses Employees' Union of New South Wales,²⁰¹ the Federated Engine Drivers' and Firemen's Association of Australasia (Coast District),²⁰² and the Hospital Employees' Association of New South Wales.²⁰³

From mid-1960 onwards other solicitors' names began to appear as instructing for Christian's former clients. In May 1960, WC Taylor and Scott were reported as the solicitors for the

¹⁹³ "In re Carpenters and Joiners and bricklayers, Construction (State) Award and other Awards", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 1-13; "In re Plant, &c, Operators on Construction (State) Award and Another Award", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 14-16.

¹⁹⁴ "Whitehead v Building Workers Industrial Union, New South Wales Branch," *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 24-46.

¹⁹⁵ "In re Butchers, Wholesale (Cumberland award)", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 73-91.

¹⁹⁶ "In re Crown Employees (Scientific Officers – Department of Agriculture) Award", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 175-182.

¹⁹⁷ CJS to Nettie Palmer, 14 August 1961, *Aileen Palmer Papers*, NLA MS 6759, Box 3, Folder 25.

¹⁹⁸ CJS to Nettie Palmer, 29/31 July 1962, *Palmer Papers*, NLA MS 1174/1/9707.

¹⁹⁹ "In re Hospital Employees (Metropolitan) Award", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 411-433.

²⁰⁰ "In re Carpenters and Joiners and Bricklayers, Construction (State) Award", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 695-706.

²⁰¹ "In re Restaurant, & c, Employees (State) Award", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 499-500.

²⁰² "In re Demarcation – Hexham Coal Preparation Plant", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 501-515.

²⁰³ "In re Public Hospital Employees (State) and Hospital Employees (Metropolitan) Conciliation Committees", *NSW Industrial Arbitration Reports*, Vol 59 (1960), pp 530-548.

Building Workers Industrial Union, New South Wales Branch and in June DB Gruzman was noted as solicitor for the Fire Brigade Employees Union. In 1961 James McClelland was reported as solicitor for the Hospital Employees Association of New South Wales and the Transport Workers Union.²⁰⁴ In 1961 there was only one case in which Christian was reported as instructing solicitor.²⁰⁵

Sydney Johnson died in June 1961. Christian was unaware of his death until she received a copy of the August edition of *Progress*, sent to her by the secretary of the Henry George League in Victoria, which contained his obituary. Christian told Nettie that she was amused by the reference to her as being the source of Sydney's introduction to Henry George's ideas. Referring to that 'long ago world', she recalled how difficult it was to establish herself in Sydney where she had had no previous links. She feared that 'when I go to the morgue no-one will have the faintest idea who the old duck is or has been.' Christian was feeling lonely because she found 'galloping around very tiring so don't do much and find myself cut off from people who are my friends here.' She thought that the tiredness was probably a consequence 'of trying to keep on the interest of the office, and seeing mountains of people there – clients who absolutely refuse to be prised away.'

Towards the end of 1961, Christian was very ill again. On 14 November, she told Jessie Street that she had been very sick for a week, 'not being able to keep food down and not wanting to eat anyhow and coughing half the night.' She thought that she had picked up some kind of cold. She continued to struggle to the office because 'I'd rather come in and hang about there than stay at home in an empty house.' People told her she was mad to keep coming to the office but 'being alone under those circumstances would make one madder.'²⁰⁶ However, she was sicker than she thought and almost died. In a subsequent letter to Jessie Street she described her ordeal.

I had rather a bad time. Evidently the digitalis had gone into the heart which had decided not to keep going any more, and it needed another doctor in a hurry and myself nearly in a coma to persuade it to do its job again. I think I will manage better in the future. I hadn't been warned about the symptoms which I understand are quite recognisable if you know.²⁰⁷

²⁰⁴ *NSW Industrial Arbitration Reports*, Vols 59 (1960) and 60 (1961), passim.

²⁰⁵ "10A Challis Avenue Pty Ltd v Seddon", *NSW State Reports*,

²⁰⁶ CJS to Jessie Street, 14 November 1961, *Jessie Street Papers*, NLA MS 2683/10/757.

²⁰⁷ CJS to Jessie Street, 30 November 1961, *Jessie Street Papers*, NLA MS 2683/10/766.

By the end of November, she was back working a few hours a day at the office. At Jessie's request, Christian had been trying to determine whether the two sections in the Constitution were the only barriers to the advancement of Aboriginal rights. As a result of her illness she found it hard to concentrate and had difficulty in finding an answer to Jessie's query. In December, Christian admitted to Jessie Street that she still did not know whether the two sections of the Constitution which they had identified were the only ones which discriminated against Aborigines and that she 'was not at present qualified to find out. I am not a good enough constitutional lawyer.'²⁰⁸ Christian also noted that she was 'still a bit shaky' after her illness and found it difficult to concentrate.

In the last year of her life Christian often recalled her youth and compared her achievements with those of Nettie. She recalled Walter Murdoch's lectures from which she thought that Nettie had greatly profited 'carrying on the literary tradition so to speak. For you have fulfilled yourself so thoroughly, in writing and family and everything you have tackled.'²⁰⁹ She hoped that Nettie's second selection of 'fourteen years' would soon be finished.²¹⁰ She had also obtained Teddy Brown's last book which she thought was not as good as it might have been. She had toyed with the idea of going to London to spend a few months with her cousin [Mary?²¹¹] but it had been vetoed by her doctor so she was going to 'a beastly place called Morwell where Campbell and Edith live. However, her departure was postponed because of 'a case pending in which the Seamen's Union is involved and they won't hear of anyone else handling it.'

She had also seen and heard from old friends. Although Christian had not seen Katharine for five years Katharine had sent greetings for her birthday. However, Katharine's letter 'was full of regrets that 'time was running out' and that she would 'never see Sydney again.' Christian thought that Katharine should be so thrilled that several of her books were to be translated into Chinese that it 'would make her forget what age she is.' She had also heard of Maud Cameron 'who sees a lot of my cousin in London.' Christian had also seen her old school friend Gladys Hain earlier in the year and Gladys visited again at the end of July when 'we talked for an hour without stopping. It was all the time we had and we used it properly.'²¹² However, other friends had not been seen for months. Christian clearly needed

²⁰⁸ CJS to Jessie Street, 11 December 1961, *Jessie Street Papers*, NLA MS 2683/10/772.

²⁰⁹ CJS to Nettie Palmer, 15 March 1962, *Palmer Papers*, NLA MS 1174/1/9638.

²¹⁰ It was never published – the manuscript remains in the Palmer Papers.

²¹¹ There is no Victorian death record for Mary which suggests that it might have been she who lived in London and perhaps died there.

²¹² CJS to Nettie Palmer, 29/31 July 1962, *Palmer Papers*, NLA MS 1174/1/9707.

company. She was still attending the office on most days because 'I am a bit nervous about easing off. So many people who have had a regular job and regular ties go to bits when they needn't keep to the mill.' On weekends 'a horrible wave of boredom... comes around sometimes and is unnerving.' In August she told Nettie, who had gone to Drummoyne to see her, that 'I'm never at the cottage at Drummoyne except to sleep and feed the cats.'²¹³

She missed Nettie's visit because she was at an anti-nuclear demonstration but she arrived too late to see all the people she wanted to see. However, she sat at the table where copies of *Peace* and buttons were being sold so she saw as many as she could. Nettie had been on television in the programme 'Guest of Honour' but Christian had not seen it because she did not have a television set. She thought Nettie must have been delighted 'to hear of all the people whom one knew and who did so much we were trying to.' She regretted 'all the cutting off I did when I came here. It was terribly wrong and don't I know it now.' Walter Murdoch had told her that loneliness was one of the trials of old age which 'I found out long ago and one of the reasons was because I had cut the painter.' There was no possibility of returning to Melbourne to live because 'the family isn't there now except in a small flat.' Besides 'the money for the sale of this half practice won't finish for another two years so I might as well collect that. One of the conditions is that I am here when I am wanted.' While the firm that bought the practice did not want her around, the clients did.

In her last letter to Nettie, in August 1962,²¹⁴ Christian admitted to feeling depressed and losing the savour of things. She regretted that she had missed Nettie's visit because she had been at the peace demonstration. She would have preferred seeing Nettie than being with five thousand people 'who were echoing what I had been saying just as forcefully in the Twenties. In fact, with a crowd of 5,000 around us we would have had a revolution right off but never had more than a few hundred to listen to our words of revolutionary enthusiasm. Now I know it isn't around the corner. Then I was sure it was.' On the day she wrote this letter she had been given a lift to the office by Robin McDougall, who lived at Beecroft and could therefore pick her up on the way into the city. While she appreciated the lift she valued more the 'whiff of life which I shared and look back on with many nostalgic memories.' On Christmas Eve, 1962, Christian was admitted to the Mater Misericordiae Hospital where she died on 14 January 1963.²¹⁵

²¹³ CJS to Nettie Palmer, 8 August 1962, *Palmer Papers*, NLA MS 1174/1/9710.

²¹⁴ CJS to Nettie Palmer, 18 August 1962, *Palmer Papers*, NLA MS 1174/1/9718.

²¹⁵ "Woman Head of Law Firm Dies", *SMH*, 15 January 1963, p 14.

Epilogue

There was a private funeral.¹ The eulogy was delivered by Norman Jeffery, a long-term member of the Communist Party.² Jeffery looked upon her death as ‘a sad loss to the Australian Labor Movement and to the cause of democratic liberties.’ He also thought that she would ‘live in the thoughts of many and in the history of the Australian working class movement.’

Jeffery’s hopes were not to be realised. The first attempt to write a history of the Communist Party was made by James Normington Rawling. Rawling was himself a former member of the party who had been expelled in 1939. He subsequently became a fervent anti-communist. Rawling’s history was never published although there is a draft copy in his papers and in the papers of Guido Baracchi. His history clearly reflects his about-face by painting the founders of the party as largely a group of adventurers who sought power and self-aggrandisement. His treatment of Christian Jollie Smith is dismissive, describing her as ‘starry-eyed over what the revolutionaries were telling her’, ‘ready to devote to it [working class education] herself and her talents in a spirit of missionary consecration’, and who ‘veered from an old infatuation to a new’ in becoming a founding member of the CPA. Although Rawling apparently began his research before Smith’s death, there is no evidence that he contacted her. It is probably just as well that nothing was published in her lifetime because the tone of Rawling’s treatment of her may have caused her to seek a legal remedy.³

Early published histories of Australian communism and the wider labour movement paid little attention to Christian Jollie Smith. Smith is a footnote in Alistair Davidson’s history of the party published six years after her death and labour historians Robin Gollan and Ian Turner, who published in the 1970s, were entirely silent on the subject of Smith. By the 1980s, however, feminist historians were questioning the absence of women in the history of the radical left. Joyce Stevens and Joy Damousi redressed this omission in their studies of radical women, both including references to Christian Jollie Smith. In the 1980s several women, former members of the CPA, told of their own experiences within the party. Macintyre drew

¹ “Woman Head of Law Firm Dies”, *SMH*, 15 January 1963, p 14

² “Christian Jollie Smith – a tribute to her work”, *Communist Party Of Australia Papers*, ML MSS 5021 Box 83. An edited version of the eulogy was published as an obituary in *Tribune*, 16 January, 1963.

³ Stephen Holt, “The case of Jim Rawling, Ex-communist: Unworldliness Incarnate”, *Quadrant*, Vol 33, December 1989, pp 60-64; John Pomeroy, “The Apostasy of James Normington Rawling”, *Australian Journal of Politics and History*, Vol 37, No 1, 1991; *James Normington Rawling papers*, NBAC, ANU, N57/76; Guido Baracchi papers, NLA MS 5241.

on these sources in his history of the CPA. However, while Smith has been accorded her rightful place as a founder of the CPA, her ongoing role as a party administrator and legal advocate has been inadequately recognised. Legal historians have also largely ignored Smith. Now, more than forty years after her death, she has been largely forgotten. This thesis provides well-overdue recognition for a woman who lived an extraordinary and noteworthy life.

Appendix

Rev T J Smith's classification of nineteenth century writers

First class: Sir Walter Scott (1771-1832), Charles Dickens (1812-1870), William Makepeace Thackeray (1811-1863), George Meredith (1828-1909), George Eliot (1819-1880), Thomas Hardy (1840-1928).

Second class: Benjamin Disraeli (1804-1881), Anthony Trollope (1815-1882), Crawford,¹ Edward Bulwer-Lytton (1803-1873), Sir Walter Besant (1836-1901), Charles Lever (1806-1872).

Third class: Charles Kingsley (1819-1875), Charlotte Brontë (1816-55), Charles Reade (1814-84), R L Stevenson (1850-1894), Mrs Humphrey Ward (1851-1920), Jane Austen (1775-1817), Wilkie Collins (1824-1889).

Fourth class: Anthony Hope (1863-1933), Stanley Weyman (1855-1928), Henry Merriman (1862-1903), Gilbert or Joseph Parker,² Frederick Marryat (1792-1848), George Macdonald (1824-1905), R D Blackmore (1825-1900), Joseph Le Fanu (1814-1873), J M Barrie (1860-1937), Conan Doyle (1859-1930), Thomas Caine (1853-1931).

Fifth class: Mrs (Margaret) Oliphant (1828-1897), William Black (1841-1898), Mrs (Elizabeth) Gaskell (1810-1865), James Payn (1830-1898), William Ainsworth (1805-1882), William Norris (1847-1925), Christie Murray (1847-1907), Justin McCarthy (1830-1912), Miss M E Francis [Mary Blundell] (1859-1930), Sarah Tytler [Henrietta Keddie] (1827-1914).

Sixth class: Ouida [Marie Louise de la Ramée] (1839-1908), Israel Zangwill (1864-1926), Robert Buchanan (1841-1901), Marie Corelli (1855-1924), Sabine Baring-Gould (1834-1924), George Gissing (1857-1903), George Whyte-Melville (1821-1878), Whitefriars,³ H G Wells (1866-1946), F Anstey [Thomas Anstey Guthrie] (1856-1934).

Seventh class:

Women: Mrs Henry Wood (1814-1887), Miss (Mary Elizabeth) Braddon (1837-1915), Charlotte Yonge (1823-1901), Miss (Dinah Maria) Mulock [Mrs Craik] (1826-1887), Miss (Elizabeth) Charles (1828-1896), (Mrs) B M Croker, Edna Lyall [Ada Bayly] (1857-1903), Miss E D Gerard [actually two sisters] (1855-1915, 1849-1905), Mrs Margaret Wolfe Hungerford (1855-97), Mrs Hector Alexander (1825-1902)

Men: H Rider Haggard (1856-1925), Clarke Russel (1844-1911), James Grant (1822-1887), Frank Barrett Boldrewood,⁴ S R Crockett (1860-1914), Henry Hawley Smart (1833-1893), Edmund Yates (1831-1894), Grant Allen (1848-99), Robert Barr (1852-1892).

¹ Does not appear in Margaret Drabble (ed) *The Oxford Companion to English Literature*, Oxford University Press, 2000 or John Sutherland (ed) *The Longman Companion to Victorian Fiction*, Longman, 1988.

² Smith only provided the surname and there are two possible candidates.

³ Does not appear in *The Oxford Companion to English Literature* or *The Longman Companion to Victorian Fiction*.

⁴ Does not appear in *The Oxford Companion to English Literature* or *The Longman Companion to Victorian Fiction*.

Eighth class:

Women: Mrs (Eliza) Linton (1822-1898), Mrs (Lucy) Walford (1848-1915), Miss (Rosa) Carey (1840-1909), Annie S Swan [Mrs Burnett Smith] (1859-1943), Miss Amelia Barr (1831-1919).

Men: Guy Boothby (1867-1905), Thomas Pemberton (1849-1905), Joseph Hockings (1860-1937), Frank Barrett (1848-1926), G Mandeville Fenn (1831-1909), Benjamin Farjeon (1838-1903), Heyward.⁵

Ninth Class (one volume authors):

Samuel Warren (1807-1877), Joseph Shorthouse (1834-1903), George Du Maurier (1834-1896), Henry Kingsley (1830-1876), Olive Schreiner (1855-1920), Marcus Clarke (1846-1881), Henry Cockton (1807-1853), Laurence Oliphant (1829-1888), George Lawrence (1827-1876), John Galt (1779-1839), Miss (Fanny ?) Burney, (1752-1840).⁶

Tenth class (writers of short novels):

Rudyard Kipling (1865-1936), Q [Arthur Quiller Couch] (1863-1944), Ian McLaren [John Watson] (1850-1907), Maria Edgeworth (1768-1849), Mrs (Flora) Steel (1847-1929).

⁵ Does not appear in either *The Oxford Companion to English Literature* or *The Longman Companion to Victorian Fiction*.

⁶ Smith only refers to Miss Burney and Fanny is the only candidate but she is not usually regarded as a nineteenth century author as her *three* successful novels were published in the eighteenth century. (See *The Oxford Companion to English Literature*, p 152.

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