

IN MEMORIAM

Recently Mr Justice Alberto Magri, B.Litt., LL.D., passed away at the age of seventy one.

Mr Justice Magri was a man of many parts — leading criminal and civil lawyer, man of letters, philanthropist, member of the legislative assembly during the first spell of Malta's self-government.

His leading characteristic, whether in his pleadings or in his judgements was his extensive and intricate knowledge of the interpretation of the law given by our Courts from time to time. Not that he was unduly tied to precedent for he did not hesitate to depart from the beaten track where he felt that it was necessary to do so. In this respect one cannot but animadvert to the development of the Maltese theory of the dual personality of the State in his hands. As he found the doctrine, the function of the Court was merely that of seeing whether, when an action was alleged to be *iure imperii*, it was actually *iure imperii* and whether it had been discharged by the competent organ in accordance with the formalities, procedures and conditions prescribed by the law. Having found that the Court's function was exhausted and it could not go into the merits to see whether, and if so what damages had been caused by the State to other parties.

In two judgements (*Xuereb vs Micallef*, XXXVII, ii, 753 and *Apap Bologna vs Borg Olivier* noe XLII, ii, 93), both

by Dr. W. Ph. Gullia LL.D., B.A., B.Sc.,
Ph.C., M.A. (Admin.) Manchester),
D.P.A. (Lond.)

of which did not reach H.M. Court of Appeal, obviously because Government had acquiesced in his findings, he established the principle that even in matters *iure imperii* the State must make good damages caused to the citizen out of homage to the Civil Law principle, which did not distinguish between personalities, that "Every person shall be liable for the damage which occurs through his fault." (s. 1074, Chr. 23). It is noteworthy that the Italian Courts are currently grappling with this notion of *neminem laedere* as manifested in the field of executive discretion where the control of technical advice is concerned.

However, one cannot just dismiss the late Mr Justice Alberto Magri on the basis of his practice of the law. For as long as one can remember he was an outstanding gentleman who manifested true christian qualities. Suffice it to remember that for a very long time indeed he was Chairman of the Valletta section of the St Vincent de Paule Society and that after his retirement from the Bench he voluntarily gave free legal advice to the poor who sought his advice.