should be regarded by the English courts as conclusive, being a judgment 'on the
merits.' Given the fact that the Commission was only allowed to fish in a small area of the
muddy pool that is 'substance and procedure' in private international law, their
efforts are commendable. By recognising that there is no preordained dividing
line between the two concepts it has evaded the automaton-like application of
the *lex fori* to actions in which a foreign limitation is in question. It could be
argued, however, that it has replaced such an approach with one that necessitates
the mechanical application of the *lex causae*, leaving little room to manoeuvre
other than astride the 'unruly horse.' Indeed, it may be advantageous to keep the
process of classification as flexible as possible. Nevertheless, faced with either a
simple certain rule which can be followed in nearly all cases without causing
injustice, or a more complicated one which could result in forum shopping and
conflict with the E.E.C. convention,\(^3\) who can blame the Commission for opting
for the former approach? It is unfortunate, however, that the limited terms of
reference given to the Commission did not allow it to look generally at 'substance
and procedure' in private international law, and to examine the many problems
in this area.\(^5\) A limited investigation can only result in limited reform.

S. P. Broome*

\(^3\) At present, when a judgment is given in a foreign country on the basis of a limitation, it is not regarded as being given
'on the merits' and is thus not recognised by the English courts: *Harris v Quine* (1869) L.R.4 Q.B.655; *Black-Claussen

\(^4\) Which, the Commission argues in paras. 45-47, would be the effect of a reclassification of English statutes of limitation
coupled with the application of the 'foreign court's interpretation' test to foreign statutes.

\(^5\) In particular, the problems caused by the notorious decision in *Leroux v Brown* (1852) 12 C.B.801, a decision which is
"repugnant to the principles upon which English private international law is founded" - Cheshire and North, supra
n.21 at 692.


**The Sanctity of a Jury's Deliberations**

Jurors, it is said, being overawed by the proceedings, are by and large
susceptible to argument presented by counsel in court. Newspapers, it is
known, have a keen scent when it comes to unearthing a good story. When a
juror, having recently fulfilled his public duty, meets a professionally
competent journalist, the former's susceptibility to argument may be carried
over into agreeing to divulge to that journalist certain matters discussed by
him and his colleagues in the jury room. In these circumstances, would the
publication of such a disclosure amount to a contempt of court in that it
interfered with the due administration of justice? This was the problem facing
the Divisional Court in the recent case of *A-G v. The New Statesman & National Publishing Co. Ltd.*,\(^1\) where the defendants published an article entitled ‘Thorpe’s Trial: How the jury saw it.’ This article was based on an interview between two New Statesman journalists and a juror at the trial. The matters discussed in the piece dealt with the weight which had been accorded to certain well-publicised pieces of evidence, the length of time it took to reach a decision and matters concerning the practicalities of sitting on a jury. Park J., who gave the judgement of the Divisional Court, concluded that “... it is not possible to contend that every case of post trial activity of the kind with which we are concerned must necessarily amount to a contempt.

Looking at this case as a whole, we have come to the conclusion that the article in the ‘New Statesman’ does not justify the title of contempt of court.”\(^2\)

This decision raises a number of issues on the position of jurors and newspapers in the arena of contempt which are worthy of discussion. The existing law is far from clear in any of the several guises that contempt of court may take.\(^3\) However, one may say that as a general proposition the dictum of Lord Diplock in *A-G v. Leveller Magazine Ltd* succinctly states the present position:

“Although criminal contempts of court may take a variety of forms, they all share a common characteristic: they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself which is flouted by contempt of Court, not the individual court or judge who is attempting to administer it.”

But this dictum is subject to modification since the administration of justice is a broad concept. In particular, it incorporates the principle of ‘prejudicing a fair trial’ which deals with contempts arising prior to the jury’s verdict in the case before it. In this narrower field, the courts now adopt the rule laid down by Lord Reid in the House of Lords in *A-G v. Times Newspapers Ltd.*,\(^5\) viz: is the conduct complained of likely to create a ‘real risk’ of prejudicing the fairness of the trial.

\(^{1}\) (1980) 2 WLR 246.
\(^{2}\) Ibid at 253. The judgement was read by Lord Waity: [ ].
\(^{4}\) (1979) A.C. 440, 449.