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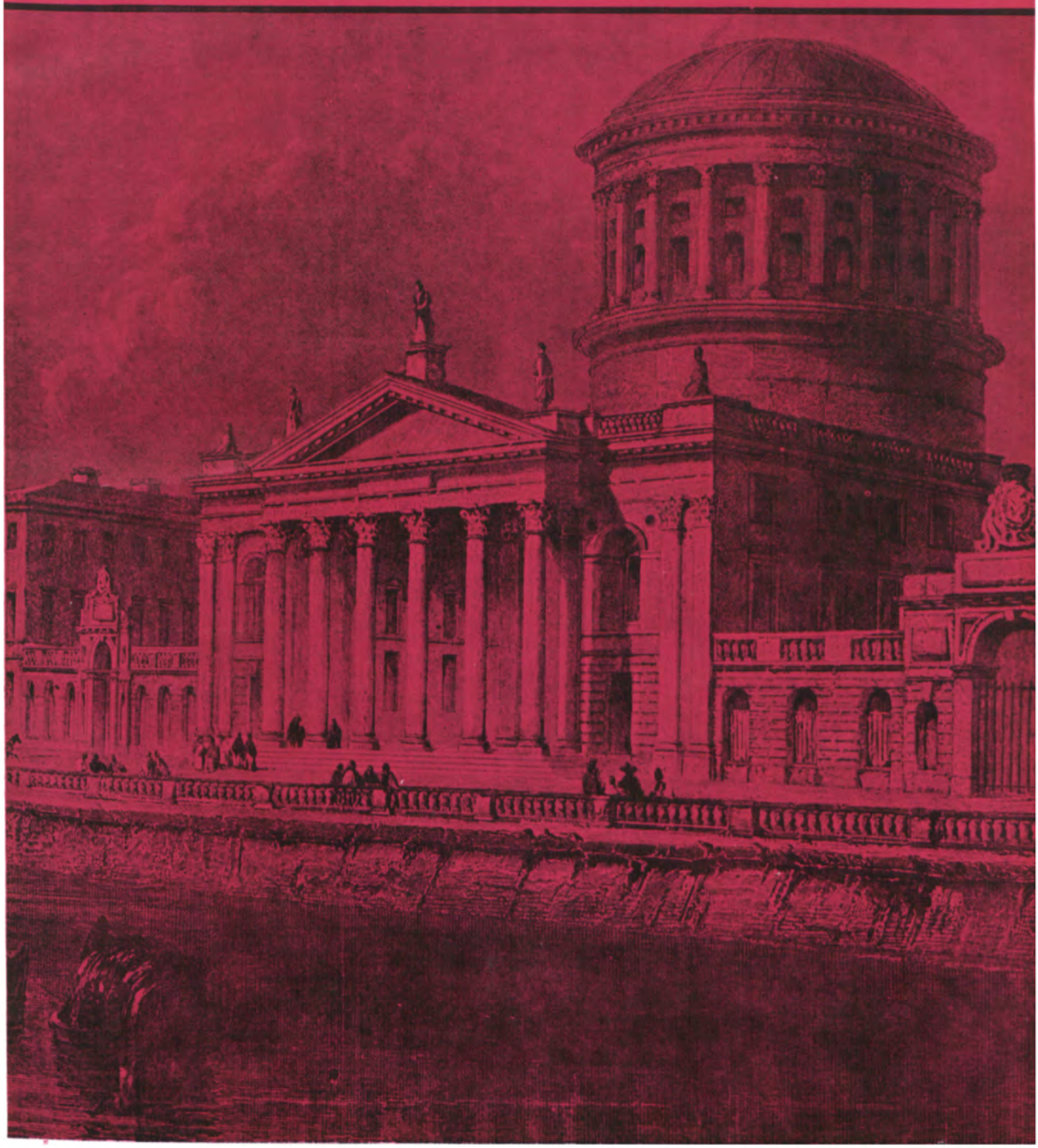

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THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

JANUARY 1973
Vol. 67 No. 1

Contents

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EDITORIAL

Judicial Changes

We congratulate the Hon. William O'Brien Fitzgerald upon his appointment as Chief Justice and President of the Supreme Court. Mr. Justice Fitzgerald had been in his day, the leading Common Law advocate at the Bar, and as a Judge, distinguished himself by many trenchant dissenting judgements on a number of issues. We feel sure that the great esteem and affection with which Chief Justice O Dalaigh is regarded by all, will set a distinguished headline which we are confident the new Chief Justice will emulate. We also congratulate Mr. Justice Griffin upon his promotion to the Supreme Court, and Mr. Sean Gannon, Senior Counsel, upon his elevation to the High Court.

The result of these appointments will perhaps make the Supreme Court more conservative in its judgments, and seemingly may tend to decide that legislation passed by the Oireachtas since 1938, will generally be deemed constitutionally valid. It would seem that the activist school, led by many outstanding judgments of Chief Justice O Dalaigh and Mr. Justice Walsh and ably supported by Mr. Justice Budd appears to have ended for the time being. It will be recalled that the activist school purports to give wide liberal construction to Statutes which respects the intention of the parties rather than to stress a narrow literal construction of the words. But we can also espect as always, some outstanding judgments in Common Law and Equity from our Supreme Court. However, we should also remember the words of Mr. Justice O'Byrne, in delivering the unanimous judgment of the Supreme Court in *Sullivan v Robinson*—(1954) I.R. 174—namely that —"A Constitution is to be liberally construed, so as to carry into effect the intentions of the people as embodied therein." If the Constitution is to be thus construed, it is submitted that the principle is all the more applicable to Statutes.

The Referenda

Even though half the electorate did not bother to exercise the franchise, the result of the two referendums held on 7th December 1972, were predictable. As all political parties supported the proposition that those who had attained 18 years of age should henceforth exercise their right to vote at parliamentary and presidential elections, it was inevitable that the Fourth Amendment to the Constitution Bill, 1972 giving effect to this, should be passed by a four-fifths majority of the voters. In the same way all political parties supported the proposition that mention in Article 44 of the Constitution of "the special position of the Catholic Church as the guardian of the faith professed by the majority of the citizens", and the listing of other denominations shiuld be deleted, on the ground that neither the Catholic Church nor any other denomination secured any special constitutional guarantees as a result of this mention; this was achieved by four-fifths of the voting majority approving of the Fifth Amendment to the Constitution Bill 1972. It is more questionable whether this Constitutional amendment will have any effect upon securing the acquiescence of the Protestants in Northern Ireland—even the most liberal ones. We must doubtless wait for the perfect Constitution which the all-party Committee is supposed to produce.

Statutory Instruments Relating to European Community Law

Several Statutory Instruments have been made which, as from 1 January 1973 introduce changes into Irish Law as a result of Ireland entering the European Community. It is proposed to print the more important ones in full in subsequent issues of the *Gazette,* and to give short particulars of the others.

Correction

In the Editorial in the December *Gazette,* in quoting Section 2 of the Offences against the State (Amendment) Act 1972, it was stated, that a Guard had a right to demand the person's knowledge of the offence; this is incorrect, as the Section only entitles the Guard to demand from a person an account of his recent movements. The error is regretted.

THE SOCIETY

Preceedings of the Council

November 23rd, 1972. The President in the chair, also present Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Nicholas S. Hughes, Thomas Jackson Junior, John B. Jermyn, Francis J. Lanigan, John Maher, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, Senator J. J. Nash, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Thomas V. O'Connor, William A. Osborne, Peter E. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Robert McD. Taylor, and Ralph J. Walker.

The following was among the business transacted.

Publication of popular legal handbook

A member is the author of a book *You and the Law* which was published in September 1972. Arising out of the publication of the book he was asked to appear on a sponsored programme on RTE for interview in connection with matters dealt with in the publication. Due to ill health he has been obliged to discontinue practice. In the opinion of the Council there is no professional objection to publication of the book or to members' appearing on the RTE programme.

Administration of Estates. Secret Assets. Privilege

X died intestate in Ireland in 1970 and was survived by his widow and brothers and sisters. For many years X and his wife were estranged. The deceased's widow resides in the U.S.A. The deceased's only asset was a sum of approximately £1,500 on deposit in the Bank of Ireland. The widow was aware that there was money in the bank but does not know its whereabouts. The widow is probably entitled to the money in the bank. Members were consulted by Y a brother of the deceased and members and Y both know the bank holding the accounts. Y instructed members to submit the following proposal to the widow.

1. She should agree to share the money in the bank with Y and Y would then take the necessary steps to obtain a release of the money.
2. The widow should execute a power of attorney enabling Y to obtain letters of administration.

Member believes that the widow would agree to these proposals for the reason that failing agreement she would be unable to ascertain the whereabouts of the bank account. Members required a direction as to whether it would be proper to act for their client in the matter outlined above.

The committee which reported and whose report was adopted by the Council were unanimous in stating that it would be improper for member to act in the manner suggested and directed the Secretary to write immediately informing him of this fact.

The committee were divided on the question as to whether it would be proper for members to inform the bank confidentially of the death of the deceased and the existence and address of the widow without the wife's instructions having regard to the fact that any communications between Y and members were on a solicitor and client basis. There is authority for the proposition that communications between solicitor and client relative to the commission or furtherance of a crime or fraud do not fall within the professional privilege and this exception applies as well where the solicitor is ignorant of criminal or fraudulent purpose for which his advice is sought as where the solicitor is a conspirator with the client (*R. v. Cox and Railton*, 14 OBD 153).

Will—direction to employ solicitor—attestation

A member acted for a client who is executrix and universal legatee of a will of a deceased husband. The will contains a codicil drawn by the solicitor who prepared the will directing the administratrix to instruct him to take out probate and to administer the estate. The solicitor himself was one of the witnesses to the codicil. The Council on a report from a committee were of the opinion that the direction in the codicil to employ the particular solicitor is void on two grounds. One it was witnessed by the solicitor himself. Two according to Cordery, 6th edition, page 83, a direction in a will that trustees are to appoint a particular solicitor does not give them any right to be so employed longer than the trustees choose.

Sale of registered land part subject to equity note

The Council on a report from a committee decided to republish the statement in the Society's Gazette, May 1971, page 3, to be printed in the February Gazette.

REGISTERED LAND ONE SALE
WITH SEVERAL TITLES
(Reprinted from May 1971 Gazette)

Members wrote to the Society stating that he acted for a client in the sale of property comprised in three separate folios in the Irish Land Commission. The examiner in the Land Commission had directed that the facts be submitted to the Society for a ruling as to the correct basis of charging costs. The greater portion of the lands are comprised in a folio which is subect to equities. The equity note can be cancelled only after investigating the pre-registration title. The smaller part is comprised in two folios in one of which there is no equity note and in the other of which the equity note can be cancelled under the thirty year registration rule i.e. Rule 33 L.R.R. 1966. The Council considered Opinion C 38 and C 40 in the Society's Handbook and also opinion published in the November 1969 Gazette, page 54. The Council decided to revoke the decision published in the November 1969 Gazette. They are of opinion that where the title to register land is comprised in several folios the solicitor for the purchaser is entitled to treat each folio separately and should apportion the purchase price between the several folios and the same proportion as the rateable valuation for the purpose of ascertaining the costs.

The Annual General Meeting

The President took the chair at 2.30 p.m. on Thursday 23 November 1972 in the Library of Solicitor's Building.

The notice convening the meeting and the minutes of the ordinary general meeting held on 18th May 1972 were deemed read and the minutes were confirmed and signed.

The Secretary read the report of the Scruitineers of the ballot of the Council for the year 1972/73.

REPORT OF THE SCRUTINEERS OF THE BALLOT

BALLOT FOR THE COUNCIL 1972-1973

A meeting of the scrutineers appointed at the Ordinary General Meeting of the Society held on 18th May 1972 together with the ex-officio scrutineers was held on 24th October 1972 at 1 o'clock. Nominations for ordinary membership of the Council were received from 34 candidates all of which were declared valid and the scrutineers directed that their names be placed on the ballot paper.

The following candidates were duly nominated as provincial delegates in accordance with bye-law 29(a) of the Society and were returned unopposed.

Ulster ..... John C. O'Carroll
Munster ... Dermot G. O'Donovan (Jnr.)
Leinster ..... Christopher Hogan
Connaught ..... Patrick J. McEllin

A meeting of the scrutineers was held on Thursday 16th November 1972 at 11 o'clock. The poll was conducted from 11 a.m. until 1 p.m. and the scrutiny was subsequently held. The result of the ballot was as follows.

636 envelopes containing ballot papers were received from members. The valid poll was 636.

The following candidates received the number of votes placed after their names: Patrick Noonan (473); Eunan McCarron (470); John Carrigan (458); Mrs. Moya Quinlan (458); Patrick C. Moore (451); William A. Osborne (439); Anthony E. Collins (434); Francis J. Lanigan (432); James W. O'Donovan (431); Brendan A. McGrath 428); Bruce St. J. Blake (426); Walter Beatty (424); Gerald Hickey (417); Robert McD. Taylor, 414); Peter D. M. Prentice 413); Joseph L. Dundon (409); Senator J. J. Nash (408); Ralph J. Walker (408); James R. C. Green (395); Laurence Cullen (393); Thomas V. O'Connor (393); William B. Allen (391); Thomas J. Fitzpatrick (389); John Maher (382); Peter E. O'Connell (377); George A. Nolan (363); Gerard M. Doyle (359); David R. Pigot (348); Patrick McEntee (346); John B. Jermyn (345); Michael P. Houlihan, 336).

The foregoing candidates were returned as ordinary members of the Council for the year 1972/1973. The following candidates also received the number of votes placed after their names: Patrick F. O'Donnell (334); Norman T. J. Spendlove (312); Frank O'Mahony (277(.

The President declared the result of the ballot in accordance with the scrutineers' report.

On the motion of Mr. Prentice seconded by Mr. John O'Carroll the audited accounts and balance sheets for the year ended 30th April 1972 circulated with the agenda were adopted. The President signed the accounts.

On the motion of Mr. Prentice seconded by Mr. John O'Carroll, Messrs Cooper Brothers & Co. were reappointed as auditors to the Society.

The President moved the adoption of the Report of the Council for the year 1972 and addressed the meeting as follows:

Ladies and Gentlemen,

You have all, no doubt, read the annual report of the Council for the year 1972 which was circulated with the agenda for this meeting. This report gives a comprehensive summary of the work of the Society during the year and while I feel there is little to add to it I should like to deal with certain topics in somewhat greater detail.

Education

If our system of legal education is such that at the end of their term of apprenticeship our Law Students are mere technicians and nothing more, then we have failed in the duty we owe Society by not equipping our students with the training and discipline that would give us men and women skilled not only in their professional knowledge but also equipped with minds trained to think independently and so form their own judgments; trained to evaluate what should be accepted and what should be rejected out of hand; trained not to swallow hook, line and sinker every assertion by Public or Local Authorities that what they propose must necessarily be for the public good; trained to protect the rights and interests of the private citizen against encroachment by the State; trained to appreciate the defects and injustices of the Society we live in, and trained not to be content to sit back and leave to his fellow men the righting of every wrong. That is the whole man; that is the "Man for all Seasons". But this is not the sort of man we are turning out under our present system of legal education. Ever since 1961 when we placed our recommendations before the Commission on Higher Education, my predecessors in office have pressed for the implementation of these recommendations. The Ormrod Report which in its conclusions and recommendations was almost a photocopy of our own, came out almost two years ago, and although that Report seemed to commend itself to our Minister for Justice, we still have no progress to report. Surely it is within the competence of the Departments of Education and Justice to prescribe that the Law Society shall be entitled to refuse to admit any student to our Law School until he has first acquired a University Law Degree, or a Degree in some other discipline. Freed from the responsibility of providing lectures in academic subjects, our Society could devote its

resources to the giving of adequate training in the day-to-day practice of the Law so that, after a period of two years spent on this, the student could enter into one year's apprenticeship with a Master where he would complete his legal training. As a result of recent representations to the Minister on this subject, I had hoped that by to-day I would have received from him some intimation that after thirteen years of waiting, the end we are hoping for was at last in sight, but disappointment faces me at the end of my year as it did my twelve predecessors in office.

The Minister for Justice appears to be anxious to see a joint law school set-up where, after their academic training in the Law had been completed at a University, intending barristers and solicitors might receive their practical legal training, thus ensuring that the limited resources which are at our command and that of the Society of Kings Inn were not dissipated, as they are at present, on the provision of two separate and distinct law schools. Our Society has no quarrel with this proposal, but if for any reason outside our control it proves incapable of being implemented, we must continue to urge upon the Minister the urgent necessity of meeting the needs of the students intended for our branch of the Profession without waiting for a solution that to him may seem ideal.

In 1962 the number of Indentures of apprenticeship registered was 42. In the current year that number has grown to 137. Difficulties are being experienced by intending apprentices in finding masters willing to accept them, and the Court of Examiners is bending backwards to ease this problem by interpreting very liberally the Society's regulations governing the taking of apprentices. While we have steadfastly refused to place any limitation on the number seeking to enter our Profession, we cannot ignore the cry emanating from our Universities that the number applying to take lectures in the faculty of Law has now reached such frightening proportions that they feel some measure of limitaion is necessary. Limitation by means of a fixed quota has been suggested but if separate quotas have to be fixed for those intending to take a law degree and those who do not, our Society is likely to be faced with the unenviable prospect of being asked to fill by nomination the quota fixed for the latter. We in this Society cannot solve the problem of overcrowding in our Universities, but at least let us make it clear to the public that if a limitation has to be imposed on the number seeking admission to the faculty of Law, the fault is not that of this Society.

Trying to take an objective view of the Law Society, particularly when one is a Council member, is rather like trying to take an objective view of oneself, but judging by the lack of compliments we receive from our colleagues in the profession, it is obvious that the image projected by our Society is not a happy one. The Council consists of thirty-one ordinary members, eight extraordinary members and three Provincial delegates, giving a total of forty-two members on our Council, and one is impelled to ask the question: Can such a Body, meeting once a month, effectively cope with the ever-inreasing and complex work of our Society? There are now no less than eleven committees of the Council —including the E.E.C. Committee set-up during the past twelve months—dealing with the work of our Society. These committees also meet only once a month and their decisions, as handed down to our Secretary, are brought for ratification before the next meeting of the Council. All too frequently, a bare quorum of members is available for these meetings, resulting in decisions being reached which later prove unacceptable to the Council. In saying this, I do not wish to be taken as denigrating the work done by the members of these Committees, all of whom are voluntarily giving up their valuable time for the benefit of the profession generally, but one wonders if the numbers on these committees could not be increased and elected by the general body of members as the Council is at present, leaving to the members of these elected Committees the job of electing a much smaller Council; whether all these Committees should meet on a day other than the same day as the Council itself; whether each Chairman should not have the sole responsibility of putting forward his Committee's decisions for ratification before this smaller Council that would meet perhaps twice a month, and whether there is some method of dealing with members' questions, other than the present one, which usurps too much of the Council's valuable time at its monthly meeting.

What I have suggested would undoubtedly throw a heavy burden on to the shoulders of each of the eleven Chairmen, but it might help to relieve the bottle-neck of paper work with which the Council and its Committees are at present choked. To ensure that our Secretariat is working efficiently must be one of the prime objects of our Society for we cannot afford to have it said that the services which the Society has undertaken to provide its members with are not being operated satisfactorily, or that there is undue delay in dealing with matters about which the public or our own members write to us. These thoughts occurring to me during my year of office, I felt the time was ripe for somebody outside the Society itself to take a good look at the whole structure of the Society, including the Council, its Committees and the Secretariat. For that reason the Policy Committee, with the Council's approval, recently decided to call upon the services of a Business Consultant to advise us on these problems, and with his assistance, we are hoping to give the Society a new look, a look that will be more acceptable to the profession as a whole and that will give to our colleagues and to the Public the sort of service that they are entitled to expect from this Society.

E.E.C.—Delays in explaining laws

With just over a month to go before we become full members of the European Economic Community, it is alarming to find that despite the pressure brought to bear upon the appropriate Government Departments, we still have only a vague idea of the extent to which our own domestic laws will be affected by Community laws and regulations. In a letter which I received from the Department of Foreign Affairs last August I was told that the probable effects of Community legislation on Irish legislation were being examined by Government Departments as a continuing study; that the interpretation of evolving Community law was a factor in this Study; that lists had been prepared which would serve as appendices to an explanatory memorandum which it was proposed to circulate shortly, and that these lists set out the secondary legislation of the Communities which would be in force here on the 1st January next and the more important Irish enactments which would thereby be affected. In my reply I pointed out that if these lists were silent as to the effect this secondary legislation would have on our own National legislation, buth the Public and our Profession would

be entirely at sea; that all law was continuously evolving nothing could be done before the 1st January seemed to me to be avoiding the issue. Last month I was sent the explanatory memorandum to which was attached a list of the secondary legislation of the European Community comprising some 123 pages of Regulations and Directives and an Appendix of some 4 pages giving a list of the principal enactments of Irish legislation affected thereby. Some of these give the relevant sections of the existing Acts affected, but give no clue whatever as to where the amending provisions of the Community are to be found. In other cases, as in the Land Act of 1963, we are baldly told this Act is affected by Community provisions regarding right of establishment in land in certain limited cases. So all you have to do is to wade through the 123 pages of regulations and directives until you find what you hope is the relevant one and then come to our library here and satisfy yourself that that is the actual regulation and the only one affecting our own laws on the subject. In my address to you last May I expressed the hope that we would not find ourselves on the 1st January next groping blindly in a muddle of conflicting laws and regulations. Our application to join the Community was made a very long time ago and one would think that our Government would have had ample opportunity in the intervening years to study and, on our entry, to publish in precise detail the effect that the legislation enacted to date by the Community would have on our own domestic laws. That has not been done and the Government must accept responsibility for the muddle of conflicting laws and regulations—that I hoped would not occur—but which I now fear is inevitable for both the Public and our profession on the 1st January next.

Library of European Community Law

Orignally, we thought that the status of a Depository Library might be conferred on us by the Commission, but it now seems reasonably certain that that status will be reserved for the National Library—where all E.E.C. publications would be received. But what will be needed by all those concerned with the practice and teaching of the law is one central library where would be housed *not* alone the laws directives and regulations of the European Community but also its law reports and all text-books and other material relative to Community law. In addition, facilities would have to be available to enable those seeking to know the domestic laws of our eight partners to lay their hands on it. To provide adequate accommodation for such a library is a major problem; to provide trained personnel to process, catalogue and adequately staff this library is another, but the cost involved is the biggest headache of all. Talks have recently taken place between representatives of this Society, the Bar and the Universities with a view to dealing with this problem and expert advice is now being sought as to the number and cost of the books that would basically be required to start this library. With that information at our command, it will be up to us, the Bar and the Universities to see if from their joint resources the cost involved can be met. It would seem to me however that either the Department of Justice or the Department of Foreign Affairs or both may eventually have to make a large contribution to the cost of equipping and maintaining this central law library unless the teaching and functioning of the law in this country is not to be gravely impaired.

Lectures on Community Law

Meanwhile, the Society has arranged with Dr. Alfred Gleiss and Dr. Helm of Stuttgart to lecture to our members at the end of January next on a Survey of the Law of Restrictive Practices within the E.E.C., the control of Company mergers, and the manner in which patents and trade marks are operated under Community Law governing restrictive practices. Both men are eminent in their respective subjects and it is hoped that as many of our members who can do so will avail of the opportunity being afforded to them to learn something about Laws that will be as relevant to us next January as the Prices (Amendment) Act is to us to-day.

In the development of future Community Law, our Country must play an active part. Existing Community legislation we may have to accept, but we cannot afford to adopt a passive role in the years ahead unless we are prepared to see what is good in our Common Law gradually eroded by the Civil Law prevailing in all but one of the Community Countries. We too, have something to contribute, and it is time that we woke up to the fact. For far too long, we, as a Nation, have been bedevilled by the thought that any Nation bigger than ourselves must necessarily be able to think better, work better and possess a structure of Society superior in all respects to our own. What we need is a speedy realization of the fact that while we have a lot to learn from our new partners, they, too, can learn something from us, but the benefits that may accrue from any such reciprocity cannot and will not be achieved unless we decide now that the role we intend to play in the Common Market is going to be worthwhile and constructive and not one of mere passive acceptance.

Law Reform

With so many difficult and pressing problems to cope with, we admit it is not an easy matter for the Minister for Justice or his Department to find time to devise the necessary legislation that will bring up to date the many aspects of our Law which are badly in need of reform. One of the most urgent of these is that which relates to deprived and neglected children. Too often has our attention been drawn to the fundamental rights of children as guaranteed not only by our own Constitution, but also by the United Nations Declaration of 1959. Psychologists, Psychiatrists and dedicated Social Workers, all concerned with individual, family and social stresses and breakdowns, have repeatedly warned us that unless the child in its formative years experiences the security, love and care that a stable home, accompanied by adequate educational facilities, provide, a confident and responsible adult is unlikely to emerge. And yet we find that in 1970 the Irish Society for the Prevention of Cruelty to Children dealt with almost 2,000 cases, involving some 6,500 children, half of whom were classified under the heading of "neglect". Two years earlier, we find over 1,000 illegitimate children being adopted under the provisions of our Adoption Act, while in the same year, over 2,000 children were committed to our Industrial Schools by parents, guardians or the Local Health Authorities or committed to these Schools through the Courts for

vaious offences, and it is estimated that another 2,500 are under supervision at home for delinquency. The numbers of State departments and other Bodies dealing with these children, all of whom can safely be classified as "deprived", is far too many. The Department of Health, the Department of Education and the Department of Justice, between them take responsibility for reformatories, industrial schools, children's homes, the probation service, the special prison for juveniles and the Juvenile liason scheme of the Gardai, while voluntary Bodies like the Adoption Societies and the Society for Prevention of Cruelty to Children do their share in the provision of adoptive parents and in trying to keep a broken home together. Could anybody but a lunatic suggest that in this tortuous way we are realistic in coping with this problem of our deprived children; could anybody but a fool suggest that with all these Services so inextricably interrelated, immediate action is not needed in the joint spheres of overall planning and legal reform under the aegis of one responsible Minister and department.

Planning and Development Legislation

Another important subject requiring legal reform without delay is our planning and development legislation. Proposed amendments have been submitted by An Taisce, the Dublin Civic Group and other Bdoes and they have recently paid our Society the compliment of asking us to consider them. Too many gaps exist in our existing legislation through which those with little or no regard for the beauty of our countryside or the dignity of our cities can all too easily wriggle, and the manner in which these gaps can be plugged is surely a job that should be happily undertaken by our Society, and I have no hesitation in recommending to your newly elected Council that this is a matter that should be placed high on its list of priorities.

The Provincial Solicitors' Association has recently drawn my attention to another matter which, though of relatively small importance, does need to be changed. I refer to the provision in the Superior Courts Rules which makes it incumbent on any Solicitor who seeks to have a High Court Action remitted for hearing to the High Court on Circuit in a particular area to bring a Motion to remit therefor. Surely it should be sufficient for the purpose to lodge a simple form of Consent, signed by both the Plaintiff's and Defendant's Solicitors, in the Central Office of the High Court and have the case remitted without incurring the unnecessary expense that the present system entails.

Kings Hospital

Members are constantly enquiring as to what is happening about Kings Hospital, and all I can do at the moment is to resort to the use of one of our well-known modern cliches, and say: "Negotiations at the moment are at a delicate stage". Members may however be assured that if the Society decides to dispose of the property, any liability incurred to date is likely to be amply covered. If, on the other hand, the Society should decide to move into Kings Hospital, they will ensure, before doing so, that the new building will be fully adapted to the Society's needs, and that the cost of such adaptation and of the future running costs of Kings Hospital will be within the Society's resources and will not entail the imposition of any levy on our members.

I would like to conclude with an expression of my sincere appreciation of the services given by my two vice-presidents and members of the Council during the year and also the secretariat and staff of the Society. Without this support I could not have discharged the duties of my office and I would like to take this opportunity of placing on record my sincere appreciation of everyone who has helped me in carrying out what has proved to be an onerous task. We are very sorry to lose the services of Mr. Finnegan who has notified us he is leaving at the end of the year, and we wish him every success in the future.

The motion was seconded by Mr. T. V. O'Connor.

Discussion

A discussion followed in which Messrs Crivon, Buckley, McCarron, O'Beirn, T. C. G. O'Mahony and Carroll Moran participated.

Amongst the points raised were:

Mr. Crivon deprecated any easing of restrictions in regard to apprentices on the ground that they had no practical experience when they qualified, and he was against admitting those who were not fully trained. The Society should press for more urgent law reform, and it was essential that the costs of litigation should be kept up with the cost of living.

The President, in reply, stated he was opposed to a closed shop for apprentices, and that there was undue delay on the part of statutory bodies in recommending increases in costs.

Mr. John Buckley was pleased to note that it was not proposed to continue to lecture to apprentices in this hall, where the acoustics were unsatisfactory. He asked whether it would be possible to separate the registration functions of the Society from its other functions.

Mr. T. C. Gerard O'Mahony mentioned Auditor's Certificates and EEC Regulations; the President pointed out that these regulations would shortly be available in the Library.

Mr. Carroll Moran suggested that Latin could henceforth be dispensed with as a subject in the Preliminary Examination.

The President replied to the various points raised. The motion for the adoption of the report was put to the meeting and carried unanimously.

Thursday 29th November 1973 was appointed as the date of the next Annual General Meeting.

Mr. Buckley then moved that the senior vice-President take the chair. Mr. T. V. O'Connor took the chair and Mr. Buckley proposed a vote of thanks to the President for his distinguished services to the Society during his year of office. Mr. O'Connor, vice-Preident, associated himself with the motion which was then put to the meeting and carried with acclamation.

Presentation of Certificates

In the unavoidable absence of the President, Mr. T. V. O'Connor, Senior Vice-President, presided at a ceremony in which 54 new solicitors received their certificates. This ceremony was held in the Library of Solicitors Buildings on Thursday, 7th December 1972 at 4 p.m. In the course of his speech, Mr. O'Connor quoted the 11 rules of practice which Lord Russell of Killowen advised his son to adopt when he qualified. He also suggested that the new solicitors should become members of the Society, of their local Bar Associations and of the Solicitors Benevolent Association. Mr. O'Connor did not advise them to start practice on their own until they had acquired experience, and advised them to consult Mr. Plunkett or a senior colleague in case of difficulties; he also advised them to read the Gazette every month.

Mr. O'Connor then presented certificates to the following solicitors:

David K. Anderson "Altomor", Foxrock, Co. Dublin. Michael C. P. Barker, B.C.L., (N.U.I.), "Dongen", Larchfield, Clonskeagh, Dublin14. Patrick C. Carroll, B.C.L., LL.B. (N.U.I.), "Water Lodge", Dundalk, Co. Louth. Maurice J. P. Cassidy, B.C.L. (N.U.I.), 91, Howth Road, Co. Dublin. Raymond Cassidy, 39, S Laurence Road, Chapelizod, Dublin 4. Niall B. Clancy, B.C.L., LL.B. (N.U.I.), 94, Goatstown Road, Dublin 4. John J. Coffey, B.A. (N.U.I.), Glenlara, St. Michael St., Co. Tipperary. D.onal Corrigan, B.C.L. (N.U.I.), 6, St. Agnes Road, Walkinstown, Dublin 12. David S. Cresswell, Lynton, Dalkey Ave., Dalkey, Co. Dublin. Finbarr J. Crowley, "Bru Bride", 60, The Stiles Road, Clontarf, Dublin 3. William E. Crowley, B.C.L. (N.U.I.), Market St., Killorglin, Co. Kerry. Hugh Cunnian, B.C.L. (N.U.I.), "St. Martin's", Granite Hall, Dunlaoghaire, Co. Dublin. Joseph D. Curran, 33, Grattan Square, Dungarvan, Co. Waterford. John J. Daly, B.C.L. (N.U.I.), "Swarthmore", Douglas Road, Cork. John W. T. Deane, B.C.L. (N.U.I.), "Myrtus", Beaumont Drive, Ballintemple, Co. Cork. Lewis C. Doyle, B.C.L. (N.U.I.), 3, Ashdale Road, Highfield Park, Galway.

Thomas A. Fitzpatrick, Villa Maria, Cootehill, Co. Cavan. John P. Feran, Termonfeckin, Co. Louth. Drlan J. Gallagher, B.C.L. (N.U.I.), Teeling St., Tubbercurry, Co. Sligo. John Glackin, B.C.L. (N.U.I.), 10, Seafield Avenue, Clontarf, Dublin 3. Bernard L. Gaughran, B.C.L. (N.U.I.), 18 Park St., Dundalk, Co. Louth. Garaldine Heffernan, B.C.L. (N.U.I.), "Killaster", Saval Park Road, Dalkey, Co. Dublin. Brendan Hill, B.C.L. (N.U.I.), Clonea Road, Dungarvan, Co. Waterford. Joan Keane, 1, San Antonio Terrace, Salthill, Co. Galway. John F. Kearney, Oldcastle, Co. Meath. Ciaran Keyes, B.A. (N.U.I.), 7, St. Mary's Road, Galway. Francis D. Lanigan, B.A. (Mod), (T.C.D.), Centaur St., Carlow. Cyril J. Lavelle, B.C.L. (N.U.I.), 52, Balally Drive, Dundrum, Co. Dublin.

Vivian C. Matthews, "Woodcote", Redesdale Road, Stillorgan, Co. Dublin. Raymond G. Moran, B.C.L. (N.U.I.), 178, Howth Rd., Clontarf Dublin 3. Declan M. B. Moylan, B.C.L. (N.U.I.), 31, Ailesbury Park, Dublin 4. Noel McDonald, Appian Way, Ranelagn, Dublin 6. Ellen McPhillips, B.C.L., Dip. Eur. Law (N.U.I.), 8, Laburnum Road, Clonskeagh, Dublin 14. Patick C. J. Neligan, B.C.L. (N.U.I.), Ballyheigue, Tralee, Co. Kerry. Eamonn Michael O'Beirne, Quinsboro Road, Bray, Co. Wicklow. Eamon P. O'Brien, B.C.L. (N.U.I.), Merlin, Portland Place, Greystones, Co. Wicklow. Michael O'Connell, B.C.L. (N.U.I.), Lake View, Blackrock, Co. Cork. Patrick J. O'Connor, B.C.L. (N.U.I.), Main St., Roscrea, Co. Tipperary. Patrick J. O'Flynn, Rock House, Fethard, Co. Tipperary. Anne P. O'Grady, B.C.L. (N.U.I.), "Ossory Lodge", Ballygihen Avenue, Sandycove, Co. Dublin.

Mary H. O'Meara, B.C.L. (N.U.I.), "Melrose", Nenagh, Co. Tipperary. Charles F. O'Neill, B.C.L. (.U.I.), 37, Oaklands Drive, Rathgar, Dublin 6. Finbar B. O'Neill, B.C.L. (N.U.I.), 409, Griffith Avenue, Glasnevin, Dublin 9. Vincent M. O'Reilly, 3, Church View, Navan, Co. Meath. Andrew O'Rorke, B.C.L. (N.U.I.), 16 Mather Rd., South, Mt. Merrion, Co. Dublin. John O'Shea, F.R.C.S.I., 17, Bushy Park Road, Rathgar, Dublin 6. John J. M. Power, B.C.L. (N.U.I.), Springfield, Kilmallock, Co. Limerick. John J. Quinn, Rossan, Battery Road, Co. Longford. Richard G. d'Esterre Roberts, B.C.L. (N.U.I.), Glenbrook, Passage West, Co. Cork. Brendan Steen, Rath Cottage, Dundalk, Co. Louth. Mary Tracey, B.A. (N.U.I.), 76 Marlborough St., Derry.

Special Awards were made as follows :

The **Guinness & Mahon Prize 1972** was awarded to George Wright, 17, Market St., Monaghan.

The **Patrick O'Connor Memorial Prize 1972** was awarded to Mrs. Rosalind E. Hanna, B.A., 38, Bayside Walk, Sutton, Co. Dublin.

The New President and Vice Presidents

The new President: Mr. T. V. O'Connor.

The New President

Mr. T. V. O'Connor, Solicitor and Coroner, Swinford, Co. Mayo, has been elected President of the Incorporated Law Society of Ireland for 1973.

Vice-Presidents

Mr. Peter Prentice, Senior Partner of Messrs Matheson, Ormsby and Prentice, Solicitors, Dublin, has been appointed Senior Vice-President, and **Mr. Thomas Fitzpatrick, T.D.,** Solicitor, Cavan, has been appointed Junior Vice-President.

Committees of the Council 1973

(1) Finance, Library and Publications
Gerald Hickey, *Chairman,* Walter Beatty, Eunan McCarron, Senator J. J. Nash, George A. Nolan, W. A. Osborne, Ralph J. Walker.

(2) Parliamentary
Senator J. J. Nash, *Chairman,* W. B. Allen, Thomas J. Fitzpatrick, John B. Jermyn, Francis J. Lanigan, Patrick McEntee, Patrick Noonan, Peter E. O'Connell, Robert McD. Taylor.

(3) Privileges
John B. Jermyn, *Chairman,* W. B. Allen, Bruce St. J. Blake, John Carrigan, Joseph L. Dundon, Michael P. Houlihan, Thomas Jackson, Francis Lanigan, Gerald J. Moloney, Brian J. Murphy, George A. Nolan, John C. O'Carroll, Rory O'Connor.

(4) Court Offices and Costs
Peter E. O'Connell, *Chairman,* John K. Coakley, Christopher Hogan, Nicholas S. Hughes, Donal King, Patrick J. McEllin, Patrick McEntee, Patrick C. Moore, Senator J. J. Nash, Dermot G. O'Donovan, William A. Osborne, Robert McD. Taylor.

(5) Court of Examiners
Joseph L. Dundon, *Chairman,* James R. C. Green, Eunan McCarron, John Maher, David R. Pigot.

(6) Public Relations and Services
Eunan McCarronn, *Chairman,* Bruce St. J. Blake, John Carrigan, Joseph L. Dundon, James R. C. Green, Michael P. Houlihan, Brendan A. McGrath.

(7) E.E.C. Committee
John B. Jermyn, *Chairman,* Bruce St. J. Blake, John Temple-Lang, Brendan A. McGrath.

(8) Registrars and Compensation Fund
James R. C. Green, *Chairman,* Walter Beatty, John F. Buckley, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Brendan A. McGrath, James W. O'Donovan, David R. Pigot, Mrs. Moya Quinlan.

The President, Vice-Presidents and immediate Past-Presidents are members, *ex-officio,* of all committees except the Registrars and the Compensation Fund.

Arthur Cox Foundation Reception

The Arthur Cox Foundation and the Incorporated Law Society of Ireland's non press reception held in the Shelbourne Hotel, Dublin, at 5 p.m. on 11th December 1972 to launch a new legal textbook, *Irish Cases on the Law of Evidence,* by Professor J. S. R. Cole of Trinity College, Dublin. The Cox Foundation and the Incorporated Law Society of Ireland are formulating a publications programme for the benefit of practitioners, students and others interested in Irish Law.

The Arthur Cox Foundation was set up under the chairmanship of the Honourable Mr. Justice Kenny to commemorate the late Arthur Cox, a distinguished member of the solicitors' profession who—on his retirement—studied for the Priesthood and was ordained. He died in June 1965 after a car accident while on missionary work in Zambia.

The Funds of the Foundation, subscribed by his fellow legal practioners, chartered accountants and other bodies are to be used to finance the publication of books on Irish Law and Professor J. S. R. Cole's work *Irish Cases on the Law of Evidence* is the first of these series. Another book is in preparation by John Wylie, of Queen's University, Belfast on Irish Land Law.

The publication of these works is being undertaken in conjunction with the publications sub-committee of the Incorporated Law Society of Ireland of which the chairman is Mr. Walter Beatty.

The attendance at the reception included Mr. James W. O'Donovan, President of the Incorporated Law Society of Ireland, representatives from the Law Society, Professor Heuston from Trinity College and the publishers, The Mercier Press.

Professor John Sydney Richard Cole

Professor Cole was educated at Cork Grammar School; Methodist College, Belfast; and Trinity College Dublin. When studying for the Bar at King's Inns, Dublin, he was Victoria Prizeman.

He spent some time with the Colonial Education Service in Mauritius and Nigeria before joining the Colonial Legal Service which took him to Niieria, Bahamas. Somaliland, Tanganyika and the Sudan. He retired as Minister for Legal Affairs and Attorney General, Tanzania.

In 1966 he was appointed Reid Professor of Criminal and Constitutional Law and the Law of Evidence at T.C.D.; six years later he was appointed Senior Lecturer in Law.

With W. N. Denison he is the author of *Tanganyika, its Constitution and Laws, 1964*; he was also responsble for the *Index Guide to the Laws of the Sudan.*

Irish Cases on the Law of Evidence is published by the Mercier Press, Cork at £3.50.

The President, Mr. O'Donovan, introduced the book and Professor Heuston commended it to the legal profession.

Authentication of Notarial Documents in the United States

The Society has been informed by the Department of External Affairs that in some cases Irish solicitors instruct their clients in the United States to execute documents before Notaries Public and then to send or bring them to the nearest Irish Consul for legalisation of the Notary's signature and seal. The Consul General has pointed out that it is not the practice of Irish Consular Offices in the United States to legalise the signatures and seals of Notaries Public practising in the various States of the Union and accordingly an instruction in the form mentioned sometimes causes delay and occasionally extra expense when the client is required to make a journey to one of the Consular Offices concerned.

The American practice is to require the signature and seal of a Notary Public practising in the United States to be authenticated by the certificate of the County Clerk within whose area the Notary is practising. Only when this certificate is affixed to the document witnessed by the Notary can it be legalised by an Irish Consular Officer. It would be a great saving of time and trouble to the clients of Irish solicitors if they could be informed of this requirement.

As an alternative to the above arrangement it is pointed out that Irish Diplomatic and Consular offices are, under the Commissioners for Oaths (Diplomatic and Consular) Acts 1931 authorised to do notarial acts and that it is accordingly open to any solicitor desiring to have a document authenticated abroad to arrange for its direct authentication. Where such officers are asked to perform such services they are required under the Commissioners for Oaths (Diplomatic and Consular) Fees Regulations 1934 to charge the prescribed fees therefor.

Council Recommendation—Copy Documents

It used to be the practice when handing over title deeds for completion to deliver at the same time to the purchaser copies of the documents of title in the vendor's possession. This practice has fallen into disuse to some extent which is a great pity. It is found in dealing with such cases that a tremendous amount of unnecessary copying of documents results by reason of the non production of the copy documents of title which must have been with the title deeds at some stage.

In the majority of cases where property has changed hands on numerous occasions down the years one sometimes finds no copy documents among the original documents submitted for investigation. This causes an amount of unnecessary copying of documents in subsequent sales. The Society recommends that the copy documents of title should always be kept with the originals whether they are handed back to the client or lodged in banks or with building societies. This would mean that in subsequent sales the solicitor acting for the vendor would have at his disposal a set of title deeds already copied thus saving a lot of unnecessary time and expenditure.

STATUTORY INSTRUMENTS

Rules of the Superior Courts (No. 1) 1972
S.I. No. 300/1972

(1) In Appendix W, the amounts of costs specified for the several items in Parts I, V, VI, and VII shall be increased by twenty per cent in relation to business done after these Rules have come into operation.

(2) These Rules shall be construed together with the Rules of the Superior Courts, and may be cited as the Rules of the Superior Courts (No. 1), 1972.

Explanatory Note

These Rules, which come into operation on 5th December, 1972, provide for an increase in certain costs prescribed in Appendix W (as amended) to the Rules of the Superior Courts (S.I. No. 72 of 1962). The costs affected are those specified in Part 1 (Institution of Proceedings, etc.), Part V (Bankruptcy), Part VI (Appeals from Circuit Court) and Part CII (Fees Payable to Commissioners for Oaths). The Minister for Industry and Commerce has, under section 2(2)(a) of the Prices (Amendment) Act, 1972, consented to the exercise by the rule-making authority (the Superior Courts Rules Committee with the concurrence of the Minister for Justice) of their statutory powers to determine the costs dealt with in the Rules.

S.I. No. 322/1972
The Circuit Court Rules (No. 3) 1972

On 19 December 1972 the Minister for Justice concurred in the making of the Circuit Court Rules (No. 3) 1972, which provide for revised scales of solicitors' charges in the Circuit Court. The Rules, which will come into operation on 1 January 1973, cover the increased jurisdiction of the Circuit Court under the Courts Act 1971.

Although the Rules made by the Circuit Court Rules Committee are dated 17 November 1972, they were not submitted for the Minister's signature until 18 December 1972.

Copies of the new Rules are available from the Government Publications Sale Office or through any bookseller. The price is 12½p plus postage.

These Rules, which come into operation on 1 January 1973, provide for revised scales of solicitors' costs in the Circuit Court. The scales of costs set out in Schedule 1 to the Rules replace the scales of solicitors' costs set out in Schedule I to the Circuit Court Rules, 1971 (S.I. No. 41 of 1971). The new scales cover the increased jurisdiction of the Circuit Court under the Courts Act, 1971 (No. 36 of 1971). The new Rules also revoke the Circuit Court Rules (No. 2), 1972 (S.I. No. 189 of 1972) and repeat the provisions contained therein. The Minister for Industry and Commerce has, under section 2 (2) (*a*) of the Prices (Amendment) Act, 1972, consented to the exercise by the rule-making authority (the Circuit Court Rules Committee with the concurrence of the Minister for Justice) of their statutory powers to determine the costs dealt with in the Rules.

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the differences in English and Irish statute law.
All dates relate to dates reported in *The Times* newspaper.

Arbitration

[Judgment delivered November 28]

Factors to be considered by the Court when exercising discretion whether or not to order an arbitration Tribunal to state an award in the form of a special case were listed by Mr. Justice Kerr in a reserved judgment in open court after arguments in chambers.

Halfdan Greig & Co. A/S v Sterling Coal & Navigation Corp. & another; 5/12/72; Q.B.D.

Crime

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Willis and Mr. Justice Talbot.

Croydon Juvenile Court justices were justified in ordering Croydon Corporation to pay fines imposed on a child in the corporation's care and control and living at a home which the corporation owned and ran. The fines were imposed under section 55 of the Children and Young Persons Act, 1933, in respect of offences committed by the child.

Reg. v Croydon Juvenile Court Justices; 5/12/72; Q.B.D.

Before Lord Widgery, the Lord Chief Justice, Lord Justice Megawe and Mr. Justice Talbot.

The Court held that taking two bottles of whisky from a display stand in a supermarket and placing them with an intent to steal in a shopping bag was "appropriation" within section 1 (1) of the Theft Act, 1968.

Reg. v McPherson and Others; 28/11/1972; C.A.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Melford Stevenson and Mr. Justice Brabin.

When the Court of Appeal orders the examination of witnesses under section 23 (4) of the Criminal Appeal Act, 1968, the principle to be applied is that the examination should take place in open court unless the examiner thinks that the ends of justice will not be served by sitting in open court. The examiner has a discretion to hear the witnesses in private, and the discretion is to be exercised where the ends of justice would not be served by a sitting in open court.

Reg. v Stafford; Reg. v Luvaglio; 14/11/1972; C.A.

Damages

Before Judge Stabb (sitting as a Deputy Judge of the Queen's Bench Division).

The owners of three terraced cottages, of which one was demolished by a lorry, were held not to be entitled to damages for the cost of their reinstatement since they had previously formed thei ntention of demolishing them as and when the opportunity presented itself.

Hole & Son (Sayers Common) Ltd. & Another v Harrisons of Thurnscoe Ltd., and Others; 23/11/72. Q.B.D.

Evidence

Before Mr. Justice Megarry.

[Judgment delivered November 13]

Expert valuers' evidence is not exempt from the hearsay rule, his Lordship said when giving judgment on an application by the plaintiffs, English Exporters (London) Ltd., of Baker Street, W, for a new tenancy (and at what rent) of their premises from their landlords, Eldonwall Ltd., also of Baker Street, and on an application by Eldonwall that an interim rent be determined.

English Exporters (London) Ltd. v Edlsonwall Ltd.; 16/11/72; Ch.D.

Before Lord Morris of Borth-y-Gest, Viscount Dilhorne, Lord Pearson, Lord Diplock and Lord Cross of Chelsea.

The evidence of an unsworn child admitted pursuant to section 38 (1) of the Children and Young Persons Act, 1933 can amount to corroboration of evidence given on oath by another child (a complainant).

Director of Public Prosecutions v Hester; 22/11/1972; House of Lords.

Nationality

A British protected person who went to Palestine before 1948 and became an Israeli national when Israel became independent on May 16, 1948, did not have a dual nationality so as to be both an Israeli national and a British national.

Medins v Whimster; 29/11/72; C.A.

Negligence

Before Lord Justice Sachs, Lord Justice Karminski and Lord Justice Lawton.

[Judgments delivered November 24]

The duty of a highway authority under section 44 of the Highways Act, 1959, is reasonably to maintain and repair it so that it is free of danger to all who use it in a way normally to be expected of them, taking into account the traffic normally to be expected on it. The authority cannot expect all drivers to be model drivers.

Rider v Rider and Another; 28/11/72; C.A.

Before Lord Justice Davies, Lord Justice Karminski and Lord Justice Lawton.

The Post Office won an appeal from an award of £13,647 damages, by Mr. Justice O'Connor last March, to the administrators of the estate of Mr. Norman Brian Westwood, a Post Office technician, who died after falling through a trap door of the lift room at Hackney telephone exchange when working there on November 7, 1969.

Lord Justice Lawton, in a reserved judgment, said that the Post Office had submitted that however much they might have been to blame for the physical condition which was the immediate cause of the accident, they were not liable to pay the plaintiffs damages because when the accident happened Mr. Westwood was a trespasser.

Westwood and Another v The Post Office; 23/11/1972; C.A.

Before Lord Reid, Lord Wilberforce, Lord Simon, Lord Kilbrandon and Lord Salmon.

A workman who contracted dermatitis after working only three days in new and worse conditions won his right to claim damages from his employers, the National Coal Board. The House of Lords decided that the board's failure to provide adequate washing facilities materially contributed to the risk of a disease about which medical science was not yet fully informed.

McGhee v National Coal Board; 15/11/72; House of Lords.

Social Welfare

Before Mr. Justice Bean.

A football club was held not to be liable to pay national insurance and industrial injury contributions in respect of a player who could not play football after being injured even though he was quite capable of doing other work at the time.

Chesterfield Football Club v Secretary of State for Social Services; 1/12/72; Q.B.D.

Statute of Limitation

Before Lord Denning, the Master of the Rolls, Lord Justice Megaw and Mr. Justice Brabin.

Estate agents who sold a house in 1961 when the foundations had already been covered up were held not entitled to rely on the Limitation Act, 1939, as a defence to an action the purchaser began in 1969, because they had known at the date of the sale that the foundations put in were unsound since the site was an old chalk pit which had been filled in as a rubbish dump. The Court held that the purchaser's right of action was not time-barred as it had been concealed by "fraud" consisting of reckless conduct by the defendants, within the meaning given to "fraud" in section 26 (b) of the 1939 Act in the decided cases.

King v Victor Parsons & Co.; 16/11/1972; C.A.

UNREPORTED IRISH CASES

Plaintiff, injured by factory machine, entitled to higher apportionment and to higher general damages.

(1) The plaintiff, a baker, was injured in his right hand while feeding dough into a dough weighing machine in the bakery in November 1968. The trial was held before Pringle J. and a jury in November 1970. The jury attributed 60% of the fault to the employer, and 40% to the plaintiff. A total sum of £3,226 damages was awarded—made up as follows: £1,126 special damages to date of trial:—£1,700 special damages for the future:—and £400 general damages.

(2) The plaintiff appeals on the following grounds:

(a) There was no evidence upon which the jury could have found the plaintiff negligent.

(b) The apportionment of fault, in attributing 40% of fault to the plaintiff, was disproportionate.

(c) The damages are so low as to be unrealistic.

(3) The employer was negligent in profiding an unsteady stool for support in the operation instead of a gangway, but the whole system of work carried great dangers for the operative, as the machine was never intended to push dough into it by hand. There was also sufficient evidence to find the plaintiff negligent.

(4) As regards apportionment, the blameworthiness of the employer was much greater than that of the plaintiff, for the plaintiff was carrying out a dangerous operation exactly as he had been directed to do by the employer. Accordingly the 40% apportionment of fault attributed to the plaintiff was disproportionate, and a much greater degree of fault should be attirubted to the employer.

There is no dispute about the £1,126 special damages. The £1,700 special damages was made up for the most part of loss of future earnings, which meant an approximate diminution of £2 per week for the rest of plaintiff's life. As most baking processes in Dublin were fully mechanised, the plaintiff would have no difficulty in securing employment; accordingly the figure of £1,700 should not be disturbed. The figure of £400 was so disproportionately low that it should be set aside. The plaintiff's right hand had been permanently damaged, and no cognizance had been taken of this constant handicap to a 38 years old plaintiff.

Accordingly the appeal should be allowed on the question of apportionment. The highest degree of fault attributable to the plaintiff should be 20% and thus the proportion attributable to the employer should be 80%. The appeal should also be allowed on the question of general damages, which should be increased from £400 to £1,000. So held unanimously by the Supreme Court. (Separate judgments by the Chief Justice and Walsh J., Budd J. concurring.)

[Guckian v. Cully; Supreme Court; unreported; 9th March 1972.]

Judge should not withdraw case from jury on the grouid that there is no evidence to find the defendant negligent.

Plaintiff claims damages for ngligence for the death of her son, as a result of a collision between a motor cycle which he was driving and the rear of defendant's motor lorry. This accident occurred in Kells in May 1969 in the dark on a wet stormy night. The deceased's brother was the owner of the motor cycle and rode with him as a pillion passenger. A guard who saw the accident said that the motor cyclist was driving and had taken steps to pass out the unlighted lorry, but came in contact with the rear of it, and fell.

At the close to the case for the plaintiff, Pringle J. on the sole evidence of the Guard, withdrew the case from the jury on the ground that there was no evidence upon which the jury could find that the defendant was guilty of negligence. The majority of the Supreme Court (O'Dalaigh C.J. and Walsh J., McLoughlin J. Dissenting) held, following Lavery J.'s judgment in *Pettigrew v. Farrell* (unreported, 1st March 1950) that it was not necessary for the plaintiff to show that the defendant must be guilty of negligence, it is sufficient to show this was a probability. The credibility of the witnesses, and the weight to be given to their evidence are essentially matters for the jury. Accordingly the Supreme Court directed a new trial.

[Reilly v. Garvey; Supreme Court; unreported judgement of Walsh J.; 12th May 1972.]

Conditional Order of prohibition granted so that matter can be argued fully.

The prosecutrix was convicted in June 1970 under the Malicious Damage Act 1961, and sentenced to 2 months imprisonment by District Justice O'Huadhaigh. By error this was entered in the charge sheet as 3 months imprisonment.

The prosecutrix obtained a conditional order of certioari in July 1970 and in February 1971, the President made the conditional order absolute but subject to certain dicta, as to the duty of the District Justice to correct the entry, which were subsequently found *obiter* by the Supreme Court. The Supreme Court found consequently that there was no appealable matter before it.

When the matter came before the District Justice, he intimated he was going to amend the charge sheet. The prosecutrix objected to this, and sought an order of prohibition in the High Court, which the President refused. It was then submitted to the Supreme Court that an order had on its face could not be amended. Accordingly a conditional order of prohibition was granted so that the matter can be fully argued in the High Court. So held by the Supreme Court (O'Dalaigh C. J., Walsh and Fitzgerald J. J.) per the Chief Justice.

[State (DeBurca) v. District Justice O'Huadhaigh; Supreme Court; unreported; 25th April 1972.]

Security guard injured by steel doors in factory. Defendants' appeal allowed.

(1) The plaintiff was the security officer of Messrs. Fry-Cadbury's substantial factory in Coolock employed by Securicor. While patroling the factory in the dark on the night of 31st July 1967 with an Alsation dog, the plaintiff was injured when two steel door-plates, (5x3 ft.) weighing 450 lbs. each, which were lying

together vertically against the wall of the fitter's shop, fell outwards, and struck the plaintiff. He was unable to return to work for twelve months.

(2) After a trial before Butler J., the jury assessed damages for £8,307 and judgment was given for the amount against the defendant in July 1970.

(3) The defendants, in appealing, contended :

(1) That the accident could not have been foreseen by the defendants, and that the case should therefore have been withdrawn from the jury.

(2) That the findings of the jury subsequently mentioned were without evidence :

(a) That the steel plates were an unusual danger for the plaintiff, an invitee.

(b) That the defendants should have been aware of this danger.

(c) That the plaintiff was not guilty of contributory negligence in allowing the dog to go behind the plates.

(3) That the judge misdirected the jury in stating that they could have regard to the fact that the company's foreman had not considered the steel doors to be dangerous, and therefore the plaintiff was entitled to come to the same conclusion.

(4) That the damages awarded are excessive.

There was evidence that the plaintiff and defendant's staff had passed these steel doors many times previously, and that they had not been dangerous. The only technical witness for the defendant was the senior foreman, who confirmed the steel plates had been in position at least one year before the accident. He was not responsible for inspecting the plates. The majority of the Court held that the plaintiff was negligent in allowing the dog to go behind the plates because, unless some force was applied to the plates, there was no danger of their falling outwards. The Judge was not correct in refusing to withdraw the plaintiff's case from the jury. The defendants were sued as occupiers of the premises on which the plaintiff was injured. Accordingly their duty was to warn the plaintiff of any unusual dangers known to them. But the intrusion of the dog in knocking down the steel plates was not an unusual danger. The judge had misdirected himself on this issue.

Accordingly the majority of the Supreme Court (Fitzgerald and McLoughlin J. J.) allowed the appeal and dismissed the plaintiff's action. The Chief Justice, dissenting, would have ordered a new trial.

[Reidy v. Fry-Cadbury Ltd.; Supreme Court; unreported; 12th May 1972.]

Is it lawful to impose a sentence of penal servitude following upon the expiration of a sentence of imprisonment.

(1) The applicant contends that two sentences of 3 years Penal Servitude imposed on him by the President in the Central Criminal Court in July, 1970 are unlawful because they were to commence from the expiration of a sid months sentence imposed on him at the same time in respect of a separate offence.

(2) On 12th October 1972, Murnaghan J., directed the Governor of Portlaoise Prison to certify in writing the grounds of detention of the applicant.

(3) The applicant was not present at the hearings before Finlay J. on 23rd and 30th October 1972, when State Counsel satisfied the Court that, though the six months sentence had expried, the remaining sentence was lawful.

(4) It is clear from statutory law, that, if an order for a substituted sentence of penal servitude is made, it would not be valid if it were passed prior to the passing of sentence, but this does not prevent a sentence of penal servitude from dating in the future, as decided by *Castro v. R*, 6AC. Furthermore Section 20 of the Criminal Law (Ireland) Act 1828 sanctions this procedure.

[The State (Jones) v. Governor of Portlaoise Prison; Finlay J.; unreported; 6th November 1972.]

Dismissal of Busman Violation of Constitutional Rights

The Supreme Court (O'Dalaigh, C.J., Walsh and Budd, J.J.) held that the dismissal of a Dublin bus conductor by C.I.E. on October 29, 1960, was a violation of his constitutional rights.

The Court upheld an appeal by John Meskell, Crumlin, against an order of Teevan, J., dismissing an action in which he had sought a declaration that his dismissal had been effected for the purpose of wrongfully coercing him to undertake at all times to be a member of one of the designated trade unions and was a denial and violation of and an unlawful interference with his rights under the Constitution. He had also claimed damages.

The Supreme Court referred the case back to the High Court for a trial on the question of damages.

Mr. Justice Walsh, delivering the judgment of the Court, said that at all times Mr. Meskell had been a member in good standing of a trade union. When he joined the company, trade union membership was not an obligatory term of his employment. He had been a conductor for 15 years. As from 1958 trade union membership was made a condition of employment with the company.

During the following years, complaints were made by trade unions that some of their members in C.I.E. had been falling into arrears with union dues and the other members resented working with them. Mr. Meskell was one of those who expressed this resentment. Eventually an agreement was reached between the unions and the company under which all workers in the particular section—about 3,000—would be dismissed and offered new contracts of employment. An additional condition was that each worker would bind hmself to be a member of a union.

Mr. Meskell refused to accept this arrangement. All the employees, with two exceptions, appeared to accept the arrangement. It appeared that on principle Mr. Meskell had no intention of signing such a form under duress. When the matter had been discussed at a meeting of the Workers' Union of Ireland, a majority voted in favour of adopting the new procedure, but Mr. Meskell had abstained on the grounds that the proposal was a violation of the individual's freedom of choice.

Conspiracy issue

Mr. Meskell had also sought a declaration that his dismissal was in pursuance of a conspiracy and a combination between the company, the I.T.G.W.U., the Workers' Union of Ireland and other bodies for the purpose of wrongfully coercing him to become a member of one of the unions. The company had denied that his dismissal had been effected for any of the reasons alleged.

Mr. Justice Walsh held that Mr. Meskell was entitled to a declaration that his dismissal was a denial and violation of, and an unlawful interference with his

constitutional rights and that the agreement between the unions concerned and the company to procure or cause his dismissal was an actionable conspiracy because the means employed constituted a breach or infringement of his constitutional rights. In his view, Mr. Meskell was entitled to such damages as might, on inquiry, be proved to have been sustained by him Article 40 of the Constitution guaranteed the right to form associations or unions and he was of opinion that this guarantee also carried with it the implicit guarantee of the right of disassociation.

"In my opinion the High Court order should be set aside," he added.

(*Irish Independent*, 20 December, 1972).

Case will not be Remitted to Circuit Court if Plaintiff thought entitled to more than £600

The plaintiff, a schoolboy of 15, was cleaning out sawdust in defendant's factory in July 1968 while employed there temporarily during summer holidays. He was in the vicinity of an unguaurded edge of a very sharp saw and he suffered a 2 inch transverse laceration on his right hand. He was brought to hospital, and a plaster cast was applied to the hand, which was removed eight weeks later. The statement of claim, delivered in January 1970, set out the injuries sustained in detail. The defendants issued a notice of motion in November 1970 that the action be remitted to the Dublin Circuit Court, on the ground that, on the medical evidence, no jury would award more than £600 damages. The motion to remit was heard by Murnaghan J. in December 1970, who granted it. The full Supreme Court, per Fitzgerald J, considered in detail the medical evidence submitted by the plaintiff and the defendants, and came to the conclusion that a jury could award more than £600 damages. The appeal was consequently allowed and Murnaghan, J's decision was reversed unanimously.

[Maycock v Legg Bros. Ltd.; Supreme Court; unreported, 10th March, 1972]

Solicitor's Seminar on Family Law in Waterford

The fifteenth Seminar organised jointly by the Society of Young Solicitors and the Provincial Solicitors Association on the topic of Family Law, was held in the spacious grounds and pleasant surroundings of the Ardree Hotel, Waterford, on Saturday 4th and Sunday 5th November 1972, and attracted an attendance of more than 200 members.

FAMILY LAW

On Saturday morning, 4th November, **Mr. Robert Barr S.C.,** delivered a lecture on "Family Law in the High Court in the Irish Republic". He stated that there had been recently a frightening increase in husband and wife litigation after the breakdown of Marriage, particularly in guardianship of infant application; there are now 2 or 3 guardianship applications in every Master's list; this appears to be due to the fact that traditional standards are crumbling fast, and, but for the prohibition of divorce, matrimonial proceedings would be increased.

Let us first consider *Matrimonial Legislation.* The following are the fundamental requirements of a legal marriage:

(1) The parties must be of sound mind

(2) They must freely consent to the marriage

(3) Each party must be unmarried at the time of marriage

(4) Each party must be of a marriageable age—i.e. 16 years under the Marriages Bill 1972.

(5) The parties must not be related to each other within the prohibited degrees of consanguinity or affinity—otherwise the marriage is void.

If a party alleges that he or she was married by mistake, provided there was no reality of consent, then the marriage would be void.

But an adopted child within Irish Law is not deemed to be within the prohibited degree of consanguinity with the adopted parent. The consent of the parents, or, if not available, of the Court must be obtained to the marriage of all parties under 21 years of age. Catholic marriages are regulated by the law of that Church, but, in the case of the Church of Ireland and the Presbyterian Church, the 1844 Act preserves the prior granting of authorised licenses.

Nullity:

If anyone alleges that his or her marriage contract did not fulfill the aforementioned fundamental requirements, such a party should proceed in the High Court for a Declaration of Nullity, which can be obtained when the marriage is void or voidable on grounds of (a) want of age; (b) previous marriage; (c) unsoundness of mind; (d) impotency or wilful refusal to consumate; (e) fraud; (f) duress. A decree of nullity is the only legal remedy which allows the party to re-marry. The leading Irish case relating to impotency and non-consummation is *McM v McM* and *Mck v McK* (1936) I.R. Nullity may be pronounced if the wife refuses a medical inspection, and the Court is satisfied that the marriage was never consummated *E.M. v. S.M.* 77 I LTR (1943). Desertion is not an answer to a suit for restutition of conjugal rights—*Dunne v Dunne* (1947) I.R. For a case of fraud and fear, see *Griffith v Griffith* (1944) I.R. Impotency need not be physical, but can be psychological *Van D. v O.K.*—1960 unreported; but in such a case, medical inspectors usually examine the parties and send reports to the Master.

Judicial separation:

Article 41 of the Constitution relating to the protection of marriage is then quoted. If there is no case for nullity, the only remedy available is *judicial separation—divorce a mensa et thoro*—which can only be obtained on the grounds of adultery, physucal or mental cruelty, or unnatural practices. Collusion, condonation and connivance are bars to a decree of separation—such as continuous co-habitation after

adultery. Acts of adultery must be substantial, persistent and extending over a significant period, and can be mental as well as physical, such as constantly humiliating the innocent spouse in public. A wife who obtains a decree of separation may then apply to a Judge for permanent alimony and can apply to increase the amount from time to time. In a separation suit, the husband is often obliged to pay the costs of both sides. It is therefore common that such a suit is compromised by providing for a negotiated *Deed of Separation.* But even in this case, in view of the constant fall in the value of money, it would be unwise to provide for definite payments of alimony, but rather for periodical reviews, which, in the event of disagreement, could be determined by an independent expert, or alternately determine it according to the cost of living index figure. The legal right share to which each spouse is entitled to under the Succession Act 1965 should also be considered. The old *dum-casta* clause is now becoming less acceptable. Normally, if the parties become reconciled and co-habit again the separation deed will cease to have effect. An action for restitution of conjugal rights is rare nowadays—see *Daly v Daly*—unreported 1969.

Gaurdianship of infants:

At Common Law, the father of a legitimate child had the paramount right to its control and custody. The Guardianship of Infants Act 1886, and the Custody of Children Act 1891, established that, in guardianship proceedings, the first and permanent consideration wa the infant's welfare. Subject to this, the father had a natural right to the custody of his legitimate child. But, by the 1886 Act, the mother as well as the father could apply for the child's custody. If the claims of parents for custody are conflicting, the Courts should have regard to the wishes of each party, and to the conduct of the parents. Article 41 as to the rights of the family in the Constitution is then quoted, as is also Article 42 relating to education. Following the Supreme Court decision in *Tilson v Tilson*—(1951) I.R., the Guardianship of Infants Act 1964 was passed, which re-enacted that the welfare of the infant is the first and paramount consideration. Unfortunately matrimonial disputes are often an intense, emotional and subjective form of human conflict, and it is often difficult for the Court to determine what is best for the children; sometimes for instance, it may be better for the more guilty party to obtain custody—but the Court does its best to do justice to both parties. In *Butler v Butler* (1970) The Supreme Court held that Orders under the 1964 Act were interlocutory in nature and reviewable at any time; in fact Kenny J. subsequently in 1972, reviewed the Supreme Court order as to custody made in that case. Guardianship proceedings consequently tend to encourage warning parents to revise the litigation. The 1964 Act also provided that the father and mother of an infant shall be guardians of the infant jointly, and must be consulted jointly on all important matters concerning upbringing, welfare and education. Either parent may appoint a testamentary guardian to stand in his or her shoes after his death, who can act together with the surviving parent if agreement is reached, otherwise an application is made to the Court. Section 11 relates to Court applications. Any parent or guardian may apply to the Court for directions regarding the welfare of the infant, which the Court may grant subject to payment of maintenance. In the light of Pope Paul's recent decree there may henceforth be disagreement regarding the religious upbringing and education of children. By Section 18, in the case of a judicial separation, the Court may declare the parent by reason of whose misconduct the decree was made, to be a person unfit to have the custody of the children. If a judicial separation is contemplated and there are subsequent proceedings relating to the guardianship of the children, it is usual to have the two proceedings tried by the same Judge. But guardianship proceedings are not concerned with matrimonial wrongdoing, and the Court would award the custody of very young children to a guilty mother. Terms relating to the custody of children in separation agreements may subsequently be changed by the Court.

Guardianship procedure:

The applications for guardianship proceedings must be made by Special Summons supported by affidavit. This affidavit is often of inordinate length setting out chapter and verse for the unhappy history of the marriage. The defendant then files a replying affidavit of great length dealing with various allegations, and often adding counter-allegations. The judge then directs a plenary hearing. But it is important to refer to all major incidents if the party does not wish to be subsequently criticised by the judge. This would be unnecessary if guardianship actions were commenced by Plenary Summons, followed by statement of claim, Defence and Reply.

There is also an unfortunate tendency on both sides to call psychiatrists as to the effect of the broken marriage upon the children. Normally the psychiatrist only meets the parent who instructs him, and has no knowledge of the other, and thus his opinion cannot be complete, and can lead to conflicting psychiatric evidence. It is unwise to submit children to psychiatric examination unless they are mentally disturbed. Most judges consider that, unless they are mature, it is unwise to interview the children, as it may cause the children to take sides in disputes between their parents, and that the parent having custody of the children at the time of the trial will brainwash them. A sensitive child may be subjected to a traumatic experience if interviewed—and compelled to take sides in the dispute, although he may love both parents, and this could be harmful psychologically.

Criminal conversation:

This is an action in tort, by a husband against a third party who has committed adultery with the wife of the plaintiff. In the Southern case, although there was substantial evidence that the plaintiff's marriage had been unhappy long before the advent of the defendant, and the morality of the plaintiff was seriously attacked, the jury nevertheless assessed damages at £12,000. In the other Donegal case, the plaintiff was an innocent looking man, whose wife had been enticed away from him by the blandishments of a powerful and influential local figure. The plaintiff's case ran well, and, at the end of it, the action was settled for £3,000 odd. There is an appeal pending in the first case in the Supreme Court.

Senator Professor Mary Robinson lectured on Saturday afternoon, 4th November, on two distinct subjects—The Status of Children under the Adoption Acts of 1952 and of 1964—and—The Recognition and Enforcement of Foreign Divorce Decrees. Professor

Robinson said that for a long time, Family Law had not been taken seriously in Ireland as a subject in the University Course in Law, but this was now being remedied in Trinity College and in University College, Dublin; she then gave particulars of the extensive course in this subject in Trinity College.

The Irish Adoption Acts:

As regards legal adoption, Ireland was very slow to make provision for it. Legal Adoption had been introduced in England and Wales in 1926, in Northern Ireland in 1929, and in Scotland in 1930. In the Republic, eventually an organisation called the Adoption Society (Ireland) was formed in 1948, but, owing to ecclesiastical pressure, there was some delay in introducing legislation, on the ground that the right of the natural mother and child should be respected..

In 1952, the Government, having received the tacit approval of the Hierarchy, decided to introduce an Adoption Bill. This provided for the setting up of an Adoption Board with a Chairman with legal training, and six voluntary lay members. The Board may in suitable cases make adoption orders, but the child to be adopted must be illegitimate or an orphan, and be between the ages of 6 months and 7 years. The applicants must be a married couple or a widow of the same religion as the child and his parents, but in the event of a mixed marriage with a Catholic, no adoption can take place; they must be suitable and of good moral character. When adopted, the child will have the same status and property rights as if it were legitimate, and consequently the natural guardian loses all parental rights. The Adoption Act 1964 makes minor amendments, and provides for the adoption of legitimate children, and the Board can in limited circumstances extend the time for applying for an adoption order. In the case of an application by a married couple, the application will be granted only if they have been married for at least 3 years, and are over 25 years of age.

Adoption case law:

As to case law, *The State (C.A.) v. The Adoption Board*—(1957) I.J.R. decided to quash an application for adoption where the husband was unaware that his wife had made the application. In *Re J. An Infant* (1966) I.R. the natural mother had subsequently married the putative father, after the child had been adopted, and successfully applied to the High Court to have custody of the child on the ground that the child had been legitimated by subsequent marriage, and that they were consequently a "Family" within the Constitution. In the *State (Nicolaou) v. The Adoption Board*—(1966) I.R.—the Supreme Court upheld the constitutionality of the Adoption Act 1952 insofar as the Board had refused the application of a putative Cypriot father to have custody of his daughter, not to refuse to make an adoption order without hearing him; the Supreme Court stated that the applicant had no natural personal right in respect of the child, which seems very stringent, and is in complete contrast with the recognition of the rights of a natural father in the British Guardianship of Minors Act 1971.

There has been great pressure urged for reform in Adoption law—in fact a Private Members Bill was introduced in 1971 and was printed as the Adoption Bill 1972. On the second reading debate in July 1972, the Minister for Justice stated that the Government would introduce a similar Bill before the end of 1972, but this has not yet been forthcoming. What is really required is a Special Committee to be set up by the Government to survey the whole working of the adoption procedure in Ireland; up to now, only minimal statistics are available.

Adoption reforms:

The present legislation on the subject in Northern Ireland is the Adoption Act of 1950, under which many useful regulations were issued. But the Irish Adoption Board has no statutory authority to issue regulations. In 1969, the Irish Adoption Board submitted to the Minister, some suggested amendments to the Act; but for some obscurantist reason, Mr. Moran, the then Minister, rejected it and the proposed amendments. In England, there have been a great many important surveys on adoption, including the Guide to Adoption Practice published by the Advisory Council on Child care in 1970, known as the Houghton Report. There has been an unfortunate failure in the Republic to appreciate the importance of adoption as part of Social Legslation.

Specific proposals for reform:

Nowadays, sociologists like Father Good have come to realise that adoption should be primarily a process for finding a home and family for the homeless children. At present, the legislation is allegedly child-centred inasmuch as the welfare of the child is the first and paramount consideration but in fact it is mother-centred, inasmuch as the dominant idea in the Act is that the child is the property of the mother, and, short of killing or physically maltreating it, she can do just what she likes with it. If the mother wishes within the statutory period to get the child back, there are no safeguards provided for the child's welfare. It is proposed to amend Section 5 by extending the age under which children can be adopted from 7 to 18 years, and not to confine them to illegitimates and orphans. Section 6 could be amended by the provision that, if the mother of a child unreasonably with-holds her consent to an adoption order, then the Board could dispense with such consent and issue the order. In fact, the President of the High Court had thus held in April if the mother disappeared and could no longer be found.

Under Section 8 of the proposed 1971 Bill, the Adoption Board can send out optional recommendations to the Adoption Societies, if unsatisfactory, the Board, can cancel their registration. No provision has been made for a "Case Committee" of 3 persons to study the case which is standard practice in England and Northern Ireland. If the Board refuses to grant an Adoption Order, then the local authority must take custody of the child under the Children's Acts, but in practice the local authorities leave the child with the unsuitable adoptors for a long time. It is also time in accordance with the present Minister's undertaking that adoptors who have contracted a mixed marriage with a Catholic should not be deprived of the facilities to adopt. It would also be necessary to amend the form of the Catholic Baptismal Certificate, which refers specifically to "Adopters" and to the date of the Adoption order.

Effect of foreign divorce:

The whole problem had been considered by Kenny J. *in Caffin Decd :—Bank of Ireland v. Caffin*—(1971) I.R. 123. The first difficulty was to construe Article

41, Section 3, Subsection 3, of the Constitution. The question first arose in *Mayo—Perrott's case*—(1958) I.R. where a wife had been granted a divorce decree and costs in England. Her former husband came to live in Ireland, and she tried unsuccessfully to sue him in the Republic for unpaid costs. Although the Supreme Court decision was unanimous, Kingsmill Moore J., nevertheless stated that Irish Courts had recognised foreign divorces, where the parties were domiciled in the jurisdiction of the Court, as laid down by the *Le Mesurier* case—(1895)A.C.—and this had not changed under either the Irish Constitutions of 1922 or of 1937. In the *Caffin* case, the testator had married his first wife, in London and subsequently divorced her on the ground of desertion in 1956 in England; they had no children. He then married his second wife in a Registry office in Dublin; and were domiciled in Ireland until his death in 1970 : they also had no children. The second wife elected to take he half-share under the Succession Act 1970, and Kenny J. helt that, under the *Le Mesurier principle, she* was entitled to do so. Finally the lecturer analysed James O'Reilly's article in *The Irish Jurist* on "The recognition of Foreign Divorces". Whether residence is a good basis for the recognition of a foreign divorce has not yet been decided in Ireland—nor has the validity of a Northern Ireland divorce granted there been decided.

Rights to maintenance:

District Justice Herman Good, delivered a lecture on "The Rights of a Deserted Spouse to Maintenance" on Sunday morning, 5th November. He said that the Married Women (Maintenance in Case of Desertion) Act had been introduced in 1886. This had fixed the maximum sum payable at £4 per week, irrespective of the number of children. Under the Courts Act 1971, the wife may now apply for a sum of £15 weekly, plus a maximum weekly sum of £5 per child. An application can now be made to a higher Court if the husband is wealthy. The mother of an illegitimate child may now apply for the payment of £4 weekly (formerly £1) by the putative father. Even under the Courts Act 1971, it is still difficult to enforce payment against a recalcitrant husband. If the wife applies to commit the husband to prison, he is then likely to lose his good job. The District Court does not know at the moment how much a husband earns, this should be made known to the Court, so that portion of his salary could be attached to make weekly payments to his wife. If the husband leaves Ireland and goes to England, one cannot institute proceedings in respect of an Irish Court Order to recover maintenance and arrears; if there are children, the husband can be brought back to Ireland on a charge of neglecting his children, but otherwise nothing can be done.

Breakdown of family life due to drugs:

There has been an increasing tendency in Ireland to the breakdown of family life due to such causes as —poverty, unemployment, cruelty, violence, incompatibility, frustration, parental attitude and lack of discipline in children. The influence of religion is continuously decreasing and a religious revival is necessary. Unfortunately, an important factor is drugs; people have appeared before the Justice with fingers amputated due to the use of heroin. The problem is growing ever more serious, and the drug squad could not possibly cope. Up to then, 160 persons had been charged, but this is only a small beginning. Drug addiction goes to the root of family life, and probation officers must try to save the marriage. Justice Delap alone had 40 cases to deal with—this problem is increasing, and there are many cases of drunkenness. In theory, children's allowances are given to help supplement the income, but there is an unfortuunate tendency to commonly deposit the allowance book as security for a loan to moneylenders—which is an offence. There are some regular women drunkards, some of whom have more than 100 convictions.

In reply to the Minister for Justice, who suggested that religion should have nothing to do with politics, the lecturer said that if we did not have the anchor of religion, there was no future for society without belief.

A heroin addict is not cured by being sent to prison. They are sick, and need treatment in a special place—they are not strictly criminals.

Minister's speech:

The Minister for Justice, Mr. Desmond O'Malley, T.D., said that one of the most important powers contained in the Courts Act 1971, was the increase in jurisdiction granted to the District Court and the Circuit Court. It was however disappointing to note that to a large extent the High Court was still the forum for accident cases; he considered that the trouble entailed and the costs incolved did not warrant that the cases should be taken in Dublin. At the moment, he was working on a Court Officers Bill which would deal primarily with the powers of District Probate Officers, and the modernisation and extension of the lunacy laws. He also wishes to enact the recommendations of the Committee on Court Practice and Procedure extending the jurisdiction of the Master of the High Court and reduce the functions of the jury in civil courts as far as possible. The present Circuit Court jurisdiction may have to be further extended.

He frankly admitted that there had been no law reform legislation in the two and a half years since he became Minister, but said that he had to take away law reform officers to deal with security measures, as he had spent 90 per cent of his time in acting as Minister of the Interior.

The Charities Bill 1971 had been introduced in the Senate, and he hoped it would be law early in the New Year. As regards the problem of deserted wives, he had tried, with the co-operation of the Lord Chancellor's Office, to get the British authorities to draft a bill for the enforcement of civil and commercial judgments, which is already law in the Community. There will be no difficulty in enforcing these judgments after our entry into the Community on 1st January, 1973. As regards drugs, a Misuse of Drugs Bill will be published shortly, in which the Minister will have power to transfer a drug addict from prison to hospital. A psychiatrist will be first called in, and the transfer will take place on his recommendation to the Central Mental Hospital in Dundrum or to Grangegorman. It is important that the offender should be kept in a place where he cannot get drugs. Some parents of addicts were impressed with the improvements they had undergone in prison. The programme of prison rehabilitation had been retarded by the destruction of Mountjoy. But the Probation Service was being greatly improved, and he hoped to appoint 35 Probation Officers spread throughout the country soon.

Dr. Paul E. McQuaid, M.R.C.P.I., delivered a lecture on Sunday afternoon, 5th November, on the subject of "Reform in the Law relating to Children from an outsider's point of view". He first quoted the United Nations Declaration on the Rights of the Child 1959 and then some of the objectives contained in Article 45 of the Constitution called "Directive Principles of Social Principles", which in principle are not cognizable by the Courts. On the principle that "The child is the father of man", it was stressed that the problems surrounding childhood in each individual case will inevitably influence the child when growing up. The lecturer than mentioned the grim *McClure* case, in which a Catholic Director of Marks and Spencer and his wife, had adopted three girls who were triplets in January 1969. In August 1971, a letter from the Eastern Health Board stated the mother wanted to see them, and alleged that the parents (the mother meanwhile having married the putative father) were in a sound financial position. The children were brought to Dublin by the adoptive parents and the parents brought them back to England by a trick. Here the children were starved and neglected in a disgraceful way to the extent that one of them died from ill-treatment, within three weeks. The adoptive parents asked, for the return of the children who were in a pitiful condition, and they returned there on the 7th October 1971, after many formalities had been completed. The character of the children had however completely changed in the meantime, they were deeply shocked, and required heavy sedation, but have gradually made progress under the care of the lecturer since then. The adoptive parents have been very calm and steadfast throughout. The real parents, named McClure, were tried at Winchester Crown Court in January 1972 for persistent neglect and cruel ill-treatment of the 3 children, and for manslaughter of the child who died. The real father was eventually jailed for 5 years, and the mother was placed on 3 years probation, provided that she submitted to 12 months treatment in a hospital.

Adoption orders:

As regards Adoption Orders by the Board, 1343 such orders were made in 1968, and, as there are 6 inspectors in the Republic, this gave them a load of 224 cases each. There are 24 not recognised homes in Ireland which contain 700 children. There are 36 schools officially approved by the Minister for Education where homeless children can be placed; 26 of these are registered as "Industrial Schools" run by religious orders.

The lecturer suggests the following reforms in the Adoption Law :

(a) The period in which a mother can give legal evidence of consent for adoption, should be reduced from six months to three months.

(b) A procedure should be adopted by which the Board can act if the mother cannot be found.

(c) Procedures should be provided for the adoption of legitimate but abandoned children.

(d) Provision should be made for properly equipped and staffed Adoption centres.

(e) It should be mandatory to undertake a case history and to provide requisite psychiatric facilities for the unmarried mother before the placement of the child.

(f) At present, the Adoption Board visits the child in the care of prospective adoptive parents *after* placement. Provision should be made for a visit to the prospective parents by a properly trained and erperienced caseworker *before* placement.

(g) Legislation preventing the adoption of children of mixed religions should be replaced.

The lecturer then referred to his work in Philadelphia and mentioned that the Children's Aid Society of Pennsylvania had published in 3 vols. a work entitled "A follow up of Adoption—Post Placement Functioning of Adoptive Children". The lecturer also mentioned Father Good's article on "Legal Adoption in Ireland" which appeared in "Child Adoption". The lecturer pointed out that, although great strides had been made in health legislation, it was not possible under the Mental Treatment Acts, to make provision for compulsory treatment of those who are mentally ill, unless the application is made by the child's parent or guardian. Under various statutes, there is no unitary age at which a child legally passes into the status of adulthood; the ages of 14, 16 and 18 are mentioned in different laws, this should be remedied.

About one-third of the population—900,000—are children under 16 years of age, and it is not surprising that many of these have emotional problems. Unfortunately the Government works through a number of departments which disorganizes the work. In 1970, the Irish Society for the Prevention of Cruelty to Children, dealt with 1923 cases, comprising 6684 children, of whom more than half were "neglect" cases. Out of the 1343 cases adopted in 1968, only 40 were non-Catholic, 118 were adopted by relatives, and 1055 through Local Adoption Centres. In 1968-69, 463 children of both sexes were placed in Industrial Schools and a further 97 had been placed there by parents. The lecturer then referred to his article on "problem Children and their Families" in the Summer 1971 issue of "Studies", as well as the Reports of the Working Party on Drug Abuse of 1971, and the Report of the Commission on Mental Illness of 1966.

Delinquency:

Any child who behaves anti-socially is potentially delinquent, and particulars can be obtained from the annual Garda Commissioner's Reports. It is essential that children should be properly assessed before being sent to an Industrial School. Following assessment, suitable counselling guidance and educational replacement can be arranged by a Child Psychiatric Team. The special squad of police, alled "Juvenile Liaison Officers" perform valuable preventive social service, by counselling in stress and crisis situation, but they would require more training in modern methods of counselling. More Probation Officers are required, and fortunately this personnel is being increased.

There are big changes happening in society, such as the entry into the Common Market, and the vast economic and financial restructuring of the country. But the only way social legislation can be changed is by Dail enactment, and it is up to the members of this Society to prepare the way by spelling out the urgency of some of these social problems; this legislation should allow for radical alteration in our system in matters affecting personality development and mental health.

CORRESPONDENCE

Knights of Malta,
The Chancellery,
St. John's House,
32 Clyde Road,
Dublin 4.
24th Nov., 1972.

The Secretary,
Incorporated Law Society,
Dublin.

Dear Sir,

I should be very grateful for your assistance in the matter set out below.

In 1965 this Association received a promise from an anonymous donor (conveyed through the International Commission of this Order against Leprosy) for the payment of the sum of £2,000 to endow the training of two Sisters of the Medical Missionaries of Mary, for service in a leprosy settlement in Africa.

The first payment of £1,000 was made to us through the medium of an Irish Solicitor sometime between June and November, 1965, and was passed on by us to the Mother General of the Medical Missionaries of Mary, Lourdes Hospital, Drogheda. This covered the training of one Sister.

Subsequently the second Sister was trained and the Medical Missionaries now ask us to pay the second instalment of their costs, in fact amounting to £1,155.

Unfortunately we have no record of the firm of Solicitors who made us the first payment and are anxious to get in touch with them so that the second instalment promised might be paid.

I am advised that a notice in your Journal which is read by all Solicitors in Ireland, might render this possible.

In short would you be good enough to insert a notice in your Journal to reach the eyes of the Solicitor in question, requesting that he should either:

(a) identify the original donor to ourselves, or
(b) get in touch with his client, the donor, with a view to obtaining payment of the second instalment as promised.

Yours faithfully,

Pierce Synnott, K.M., C.B., *Chancellor*

ESTATE DUTY ACCOUNTABILITY

M. K. O'Connor, Esq.,
Assistant Secretary Revenue,
Estate Duty Office,
St. Stephen's Green,
Dublin 2.

11 September 1972

Dear Mr. O'Connor,

Section 8(4) of the Finance Act 1894 enacted that where property passes on the death of a deceased and his executor is not accountable for the estate duty in respect of such property every person to whom such property so passes for any beneficial interest in possession and also to the extent of the property actually received or disposed of by him every ... other person to whom any interest in the property so passing or the management thereof is at any time vested ... in possession by alienation or other derivative title shall be accountable for estate duty on the property.

Section 32 of the Finance Act 1971 amended Section 8(4) of the Finance Act 1894 by deletion of the words "and his executor is not accountable for the estate duty in respect of such property". It appears that the intention of the amendment was to bring effectively within the tax net property over which the deceased had a general power of appointment and which might not come into the possession of the trustees. In such cases as the law stood it was thought that the trustees of the property so appointed would not be accountable for the estate duty because the executor, although not in possession of the property was so accountable.

It appears that the effect of the amendment made by Section 32 of the Finance Act 1971 in Section 8(4) of the Finance Act 1894 is that on every sale of property by personal representatives the purchaser is put on enquiry as to payment of death duties and this includes sale of leasehold properties in which such enquiries have never arisen in the past. This is an extremely serious consequence of the amendment and it is thought that it was not the intention of the Act. If on every sale of leasehold property the purchaser must apply for a certificate of discharge of death duties there would be an accumulation of work in youur office, additional work in solicitors' offices and accumulation of arrears and delay in the closing of sales.

The Council view this matter with the greatest concern and I was directed to take it up with you and to ask you to receive a deputation from the Council to discuss it. The Council take the view that the Act should be amended at the next opportunity and in the meantime an administrative direction should be issued which will avoid the necessity of applying for certificates of discharge from death duties on sales of leasehold property by personal representatives in the course of the administration.

The Council also take the view that having regard to the effect of recent legislation, whereby all real and leasehold property now vests in the personal representatives, sales of all such property by the personal representative in the course of the administration should not require investigation by the purchaser of the death duty position. Liability for duty should attach to the purchase money and the personal representative should be solely accountable. This would merely be a logical extension of the previous position as it affected leasehold property.

The Council would be obliged to hear from you on this matter at your earliest convenience.

Yours sincerely,

Eric A. Plunkett.

Office of The Revenue Commissioners,
Estate Duty Branch,
72-76 St. Stephen's Green, S.,
30th October 1972.

E. A. Plunkett, Esq.,
Secretary,

Dear Sir,

I regret that it has taken me so long to reply to your

letter of September 11th, 1972 and hope you will accept, in explanation, that the delay was due entirely to pressure of other business. At the outset I agree that section 33 of the Finance Act, 1972, produces the effect to which you refer in relation to sales of leasehold properties by personal representatives "in the course of administration". It cannot be agreed that this was an unforeseen consequence of the section. In so far as any speculation as to the "intention of the Act" may be relevant it is reasonable to assume that the protection of the revenue from estate duty may have been the principal object of the Oireachtas in this particular instance. The section in question does not alter the primary incidence or accountability for duty, nor does it create a charge for duty which did not already exist; it enlarges the power of the Revenue Commissioners to recover duty from persons who have derived property on a death where formerly the personal representative was alone accountable.

The general rule as to incidence of estate duty is that, apart from any express direction by a testator or settlor to the contrary, the duty must ultimately be borne by the beneficiaries of the property charged in rateable proportion to their interests in such property. (Finance Act, 1894, sections 8(4), 9(4) and 14(1); Berry v. Gaukroger (1903) 2 Ch. 116; In re Owens (1941) Ch. 17). To this rule there is one notable exception. Apart from an express direction, the estate duty in respect of a deceased's free personal property in the State (including leasehold property) is borne by the residuary legatee. (In the case of an intestacy, the duty is borne rateably by all the statutory next of kin). It is only in relation to the personal estate which vests in the executor *as such,* that is, the personal estate within the jurisdiction, to which the Irish Grant applies, that the estate duty is a testamentary expense; it is not a charge on the property subject to duty, but a testamentary expense recoverable, like other administration expenses, primarily out of the residuary estate. The Finance Acts contain no provision enabling the executor to recover a rateable part of the duty on free personal estate from each beneficiary.

Personal property may pass on a death under various headings. Free personal estate situate outside the State passes under the will or intestacy of the deceased; personalty may pass by express trust, by parol trust, by survivor-ship, by nomination or by many other titles on a death; personal estate may be deemed to pass on a death through being the subject matter of a gift, by being property purchased or provided by the deceased or by being within any other category of property deemed to pass on death. In all these cases the estate duty is a charge on the property over which the deceased had, and exercised by will, a general power of appointment, vests in the executor and is available for the payment of the debts of the deceased; In *O'Grady v. Wilmot,* (1916) 2 A.C. 231, the House of Lords held that it did not vest in the executor "as such" and that the estate duty thereon was not a testamentary expense payable out of the residuary estate but was a charge on the appointed property itself. Leasehold property is "personal property" in all the categories referred to above. It will therefore be seen that the only leasehold property which does not bear its own proportion of the duty chargeable on a death is "free" leasehold property situate in the State and subject to the Irish Grant of Probate or Letters of Administration. In relation to the sale of leaseholds passing or deemed to pass on a death under any other title, the estate duty is a charge and a prudent purchaser should require a Certificate of Discharge from Death Duties if it appears from the title that a claim for duty may have arisen.

Section 8(3) of the Finance Act, 1894, makes the executor "accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death." It will be noted that this provision covers a much wider range of property than the free personal estate situate in the State and passing under the will of the deceased. Section 8(4) of that Act (as unamended) provides that accountability for duty in respect of *all property, where the executor is not accountable,* falls on trustees, beneficiaries, alienees "or other person in whom any interest in the property ... is at any time vested." The amendment of section 8(4) of the Finance Act, 1894, effected by section 33 of the Finance Act, 1971, enables the Commissioners to recover duty from beneficiaries and others in any case in which the executor was formerly the sole person accountable. Cases have occurred, for example, in which executors sold leasehold properties and distributed the proceeds without regard to claims for estate duty in respect of such properties. Cases have also occurred in which foreign executors sold leaseholds situate in the State in respect of which claims for duty were outstanding and the Commissioners had no means of enforcing their claims. The amending section is therefore an important Revenue safeguard and to abandon it would restore the situation in which serious loss of duty could emerge.

Estate Duty on real estate passing on a death, under any title whatsoever, is a charge thereon. To this extent, real property is equated with all other personal property *other than* the personal estate within the jurisdiction of an Irish Grant. As already pointed out, leaseholds subject to an Irish Grant are in an anomalous position. To remove the charge from real estate would create a further anomaly rather than be a "logical extension" of the existing position. In view of their statutory obligation to protect the revenue, the Commissioners could not agree to any proposal which would have the effect of lessening their powers to recover death duties where claims to such duties have arisen.

In relation to the issue of Certificates of Discharge from Death Duties I might point out that no prudent Solicitor should complete the winding up of an estate without obtaining a Certificate. An executor is entitled to this protection in his own interest. It should therefore be assumed that Certificates would be applied for in all cases before an estate is finally distributed. I might also point out that sales of leasehold properties by personal representatives "in due course of administration" cannot be completed until a Grant has issued. There is normally, therefore, a time-lag between the agreement for sale and the final closing of the sale. If a Certificate is applied for in good time, I see no reason why it should not be available before the closing date. Nor do I see any difficulty in the executor indemnifying the purchaser in respect of any claims for duty which might affect a leasehold property. After all, the Revenue Commissioners were, in effect, providing such an indemnity up to the date of the passing of the Finance Act, 1971.

On this question of the issue of Certificates might I enlist your help in easing a burden which we have to bear far too frequently? Very regularly we get applicatioss for certificates accompanied by a letter which

indicates that the certificate is required "to close a sale next week". This is particularly the case in connection with sales to the Land Commission. One of the first Requisitions of the Land Commissioner Examiner is for a letter from this Office that there are no outstanding charges for Death Duties affecting the lands being sold. In a surprisingly large number of cases, this letter is applied for with the statement that the case is before the Examiner for final allocation "next week". In all these cases it is clear that a certificate is required from the start but the application for the certificate is not made in sufficient time to have the matter properly investigated. We do our best to meet the deadline in these cases but consider it unfair, in our present circumstances, that other applications must be left unanswered in order to facilitate the applicants who do not apply in good time. I would be grateful if you could give some publicity in your Gazette, or otherwise, to this problem, to ensure that, in those cases in which the Solicitor having carriage must be aware that a certificate will be required before closing a sale or before Final Allocation, the application for the certificate will not be postponed until the eleventh hour.

Yours sincerely,
M. K. O'Connor (*Assistant Secretary*)

M. K. O'Connor, Esq.,
Assistant Secretary,
Estate Duty Branch,

7th November 1972

Dear Mr. O'Connor,

Thank you for your letter of November 30th. Reduced to its essentials it now appears from your letter that every case in which leasehold property is sold by a personal representative in the course of administration of an estate the purchaser must obtain before closing a certificate of discharge from death duties on the property purchased. This imposes a very serious burden on the solicitors' profession and I fear that these certificates will not become readily available from the Estate Duty Office during the month or six weeks which elapse between the date of contract and completion of a sale. The change effected by Section 32 of the Finance Act 1971 will necessitate a very considerable alteration in conveyancing practice and I fear will be the cause of considerable delay. Solicitors will be called upon to give undertakings to obtain certificates of discharge of death duties which they are naturally reluctant to do as these undertakings add to the administrative burden in solicitors' offices.

The Council would again press the Revenue Commissioners to restore the law to its condition previous to the enactment of the Finance Act 1971 even if they are not prepared to go the whole length of making estate duty a charge on all purchase monies both of real and personal property in exoneration of a purchaser for value.

In considering changes of the Revenue Law the Council submit that account should be taken not alone of the interest to the Revenue but its effect upon the commercial community and purchasers and sales of property. The inconvenience and expense occasioned by change intended to protect the Revenue may be outweighed by other factors of the kind mentioned above. The Council regret the enactment of Section 32 of the Finance Act 1971 and hope that the Commissioners will give this matter their further favourable consideration. After all legislation is intended to be in the interests of the general public and statutory enactments which complicate the law and place obstacles in the way of speedy completion of commercial transactions cannot achieve this purpose.

The Council would appreciate the information as to the number of applications received for certificates of discharge from death duties during an average month and the time which will be taken to deal with such applications. We are aware that there is considerable delay in the Estate Duty Office at the present time due to shortage of staff and we are not optimistic that the change recently made and which has now been brought to the attention of the profession will not cause further delay.

Yours sincerely,

Eric A. Plunkett

Shilling Will is a forgery

Miss Penny Brahms, the model, heard an Old Bailey jury rule yesterday that a will leaving her a shilling and four photographs of herself was a forgery. She was in court when the jury brought in verdicts of guilty on all the charges brought against Shelagh Macintosh (22) a teacher, and Eric Alba-Teran (51) an investment banker.

Both were found to have forged the will of Miss Brahms's former husband, Mr. Clive Raphael, with intent to defraud Mr. Raphael, aged 31, who died in an air crash in France last year.

Both were also found to have conspired together—and with a barrister, Mr Ronald Shulman—to pervert the course of justice by seeking through false affidavits in the High Court to prove Mr. Rapheal had made a will.

Mr. Shulman, formerly of Westminster, was said during the trial to have fled to South America.

Mr. Alba-Teran on his own was convicted of obtaining Mr. Raphael's Rolls-Royce by means of a forged letter of authority, knowing it to be forged.

The Common Serjeant, Judge Mervyn Griffith-Jones, said he would pass sentence today.

The jury returned after 4 hours to announce that it had found Mr. Alba-Teran guilty of the charge which he faced alone, but had failed to agree on the other two counts.

The Judge then gave directions as to majority verdicts, and the jury retired again. It returned just over an hour later to give its decision.

Miss Macintosh of Walton-on-Thames, and Mr. Alba-Teran, of Chelsea, both pleaded not guilty to all charges when the trial began on October 23rd.

Mr. John Buzzard, prosecuting, said during the trial it seemed clear Mr. Raphael had made no will and that his estate—valued in court at £500,000—would go to his young widow, Penny Brahms.

—*Guardian,* 15th November 1972

THE REGISTER

DUBLIN SOLICITODS BAR ASSOCIATION

More than 200 members and guests attended the Annual Dinner of the Association which was held in the Old Jury's Hotel, Dame Street, Dublin on Satruday, 9th December 1972. For the first time, lady guests were admitted to this function; up to this, only lady solicitors could attend. Mr. Maurice Kenny, President of the Association, received the guests, and subsequently proposed the toast of "Our Guests". The Hon. Cearbhall O'Dalaigh, Chief Justice, responded to this toast. Later Judge Peter O'Malley proposed the toast of "The Association" to which Mr. John Buckley replied. Effective musical contributions were made by Mr. W. Blood-Smyth, and it was a most enjoyable function.

It is understood that members of the Association will meet members of the Belfast Solicitors Association later this month.

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the Schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publicaton of ths notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Dated this 30th day of Janutry 1973.

D. L. McALLISTER
Registrar of Titles.

Central Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: John Burke; Folio No.: 3942; Lands: Clogher; County: Cork; Area: 92a. 2r. 39p.

(2) Registered Owner: Margaret Cullen and Eileen Cullen; Folio No.: 1603; Lands: Drinan; County: Dublin; Area: 26a.

(3) Registered Owner: Olive Coyle; Folio No.: 5605; Lands: Part of the lands of Rush in the Barony of Balrothery East; County: Dublin; Area: 0a. 8r. 16p.
2r. 30p.

(4) Registered Owner: David Smiddy; Folio No.: 30685; Lands: Mountuniacke; County: Cork; Area: 55a. 3r. 17p.

(5) Registered Owner: Peter Cullen; Folio No.: 4188; Lands: Munakill; County: Leitrim; Area: 44a. 0r. 0p.

ADVERTISEMENT

Dublin Solicitor in general practice with long experience would consider partnership, joint amalgamation or accept consultancy. Box No. B301.

NOTICES

Malcomson & Law, Solicitors, are, from 1st January 1973, amalgamating their practice with that of Wm. Fry & Sons at 13/14 Lower Mount Street, Dublin 2, with whom Mr. Stephen E. Law will continue to practise.

Ambrose Steen & Son wish to announce that as and from Monday, 8th January 1973, they will carry on practice as: Steen O'Reilly & Company. The parters will be Barry Steen, Brendan Steen and Vincent O'Reilly. The address and telephone number will remain Trimgate Street, Navan, Co. Meath, 21254 and 21874/5/6.

OBITUARY

Mr. H. V. Lynam died on 20th December 1972. Mr. Lynam was admitted in Hilary Term 1950 and practised at 12/13 Eustace Street, Dublin.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

FEBRUARY 1973
Vol. 67 No. 2

Contents

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EDITORIAL

The Limits of the Law of Evidence

The Law of Evidence has been devised specifically to enable an accused to defend himself to the best of his ability. There is little to be said for those who, when charged with a criminal offence, deliberately decide either not to recognise the Court or not to defend themselves. There is still less to be said for an accused who, having been convicted of an arms charge in Northern Ireland without defending himself, threatened the Judge with a subsequent trial as a war criminal, because he had been sentenced to long terms of imprisonment; as is shown by the fact that a book was thrown in Court by a convict at Mr. Justice O'Keeffe, it is probable that these contemptible and mischievous tactics may well be extended to the Courts here. There is nothing to be said for those who maim or kill political and religious opponents, who cause damage to property anywhere by bombing it, or who transport cars across the Border in order to cause explosions and loss of life within the Republic. These circumstances have apparently compelled the State to take stronger emergency measures. They have been criticised by Senator Robinson in this issue on the ground that it would have been sufficient to bring in legislation of strictly limited duration instead of a statute which is likely to remain in force permanently unless repealed.

THE SOCIETY

Proceedings of the Council

December 14th 1972. Mr. O'Donovan and afterwards Mr. O'Connor in the chair. Also present Messrs. W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, John Maher, Gerald J. Moloney, Eunan McCarron, Brendan A. McGrath, Senator J. J. Nash, George A. Nolan, John C. O'Carroll, Peter E. O'Connell, William A. Osborne, Peter D. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

Election of President and Vice Presidents

Mr. Thomas Valentine O'Connor, B.A., LL.B. was elected President of the Society and Messrs. Peter D. M. Prentice and Thomas J. Fitzpatrick were elected Vice-Presidents for the year 1972/'73.

Blackhall Place

The Secretary in reply to a question stated that he had written to the Civil Defence Committee of the Dublin Corporation agreeing to permit Blackhall Place to be used for housing refugees if the need arises subject to the execution of any documents of indemnity required by the Society's solicitors. He had been informed by the Civil Defence Officer of the Dublin Corporation that the need might arise in connection with the present situation in Northern Ireland.

Circuit Court Costs

The Secretary reported that he had been informed by the Circuit Court Rules Committee that costs had been made bringing in solicitors' scales of costs without reference to counsels' fees and that these rules had been or would shortly be signed by the Minister for Justice.

E.E.C.

Federation Internationale Pour le Droit Européen (FIDE). It was decided that the Society should approve in principle of the formation of an Irish Branch of FIDE which members of the Society could join in a private capacity.

Attestation of documents by Peace Commissioners

The Secretary stated that he had been in communication with the Revenue Commissioners seeking their agreement to change the law to permit revenue documents for death duty purposes to be attested by peace commissioners instead of commissioners for oaths. The request was made on the ground of the inconvenience to the public caused by the difficulty in obtaining commissioners for oaths in certain parts of the country at short notice and reasonable accessibility. He said that he had received an unfavourable reply from the Revenue Commissioners. It was decided that representations should be made to the appropriate Government Department seeking a change in the law at the first opportunity to enable a solicitor acting in a matter to attest an affidavit sworn by his own client.

Schedule 2 costs

Mr. Osborne and the Secretary made a report on a visit to London where they interviewed members of the staff of the English Law Society and witnessed the taxation of a Schedule 2 bill in a non-contentious matter by one of the Taxing Masters.

JANUARY 11th

The President in the Chair also present Messrs. W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Nicholas S. Hughes, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, John Maher, Patrick C. Moore, Patrick J. McEllin, Patrick McEntee, Senator J. J. Nash, George A. Nolan, John C. O'Carroll, Peter E. O'Connell, Dermot G. O'Donovan, James W. O'Donovan, Peter D. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Robert McD. Taylor.

The following was among the business transacted.

E.E.C.

Report of the work done in connection with the E.E.C. to date was submitted.

Solicitors in local authority acting for a subsidiary body

A county solicitor made an application for a waiver to enable him to act for an Urban District Council at a fixed salary. The Council, having considered the reviews of the local bar association decided that the permission should be refused. A waiver for this purpose is necessary under paragraph 8 of the Professional Practice Regulations.

Liability for foreign agent's charges

On a report from a committee the Council decided to inform a member that he was personally responsible for the costs of English solicitors whom he engated to act on clients' business.

Defaulting bookmaker

The Council on a report from a committee stated that there is no objection to a member acting on the instructions of a client opposing the renewal of a bookmaker's licence on the ground that the bookmaker defaulted in payment of a gaming debt.

Liability for money held where no client can be identified

The Council advised the member to make an application for payment into Court out of a Trustee Act. If this procedure is not available proceedings may be instituted via the Attorney General.

Hotel licences and bar licences

It was decided to insert a note in the Gazette drawing the attention of members to the danger arising from confusion of these licences on the occasion of a sale and purchase.

Direct registration by way of assent in the Land Registry

Members have enquired whether any directions have been given on the question of improper assents. They pointed out that it is possible to have an assent lodged in the Land Registry having one of the next-of-kin register it as the owner of property of a deceased although he may not be beneficially entitled. The Council on a report from a committee stated that such a procedure would be improper on the part of the solicitor.

Costs in contentious matters

A member wrote to the Society pointing out the risk taken by solicitors in contentious matter which may be unsuccessful. It was pointed out that in the ordinary case a solicitor incurs liability for medical fees, counsel's fees, court fees, etc., and in these circumstances it was suggested that he should be entitled to a commission on the amount of the judgment for taking the risk in the event of success. The Council stated that they were not in favour of this suggestion.

Title to make lease

Opinion P.2 (2) states that it is the professional duty of a solicitor acting for vendor and purchaser or lessor and lessee to see that the pruchaser or lessee receives a proper marketable title or if the purchaser or lessee has not professional advice to inform him that his interests are not protected so that he can seek professional advice if he desires. A development lease at a rent of £10,000 per annum with payments for services and seven year revisions was granted by a major insurance company for a term of thirty-five years to a developer. The developer now proposes to grant a lease to the tenant. On preparation of the draft sub-lease the solicitor for the tenant raised requisitions asking the lessor to establish the title in the earlier lease of 1969 and raising other requisitions on matters subsequent to the grant of the 1969 lease. The requisitions were returned with a statement that it is not the practice to answer such requisitions and that in the experience of the solicitors acting they are never raised. The Council on a report from a committee took the view that a solicitor failing to raise requisitions and failing to provide for them in a contract could be guilty of negligence. In the particular circumstances of the case the failure of the vendor's solicitors to consider amendments to the contract to allow requisitions to be raised could be an infringement of Opinion P.2 (2).

LAW DIRECTORY AND DIARY 1973

It had been hoped that the Directory and Diary would be mailed to members on January 1 but this proved impossible due to delay in getting certain advertisements.

The Directory and Diary has now been issued and members will note that the Diary section is carried down to include February 1974, so that entries can be carried forward to next year.

SOLICITORS 'ANNUAL WEEKEND RETREAT 1973

This Retreat will take place at the Jesuit House of Retreats, Milltown Park, Dublin, during the weekend Saturday, 10th March (9 p.m.) to Monday, 12th March (8.30 a.m.). (If preferred those attending may leave when Retreat ends on Sunday evening.)

For reservations apply to: John B. McCann, Wakefield House, York Road, Dun Laoghaire, Co. Dublin.

UNREPORTED IRISH CASES

Appeal against public control of Tara dismissed. Law relating to national monuments clarified.

In a reserved judgment, the Supreme Court dismissed an appeal brought by Mrs. Marie E. Tormey, of Castletown House, Tara, Co. Meath, who had sought an injunction to prevent the Commissioners of Public Works from taking over a certain part of a 112 acre farm at Tara for the purpose of excavations.

Her action, in which she sought the injunction in the High Court was dismissed by Mr. Justice McLoughlin in 1968 with no order as to costs. The Supreme Court also made no order as to costs, the Chief Justice Mr. Justice O Dalaigh) stating that this was a case of very considerable importance for the Commissioners and he hoped it had helped to clarify the law.

The Chief Justice, who delivered the unanimous judgment of the court, said that under the National Monuments' Act, 1930, the Commissioners for Public Works might, with the consent of the Minister for Finance, acquire compulsorily or by agreement "any national monument which they consider it expedient to acquire."

Among the ancient monuments to which the Ancient Monuments' Protection Act, 1882, applied, was "the earth works on the Hill of Tara."

The predecessor of Mrs. Tormey in title to the property, Rebecca Bobbet, by deed dated November 21st, 1908. availed of a provision under the Act to constitute the Commissioners guardians of the ancient monument of which she was owner. The earthworks, which were situated within a 57 acre area of the 112 acre farm, were the subject matter of the Commissioners' notice to treat on May 25th, 1967. Mrs. Tormey, while naturally desirous of retaining the whole area for grazing, had confined her objection in the High Court. in effect, to the acquisition of a 10-acre field, and however one interpreted the extent of the claim she made in the course of the evidence in the High Court, her counsel in the Supreme Court did not seek to contest the Commissioners' acquisition except in respect of this field.

The Chief Justice said it had been submitted on behalf of Mrs. Tormey that it was not enough to show that a national monument was likely to exist in the 10-acre field, and there was no power under the Town and Country Planning Act, 1947. to acquire land on that basis. It had also been submitted that if facilities for archaeological excavation were to be contemplated, then express powers, as to the powers of prospecting, which were to be found in the Minerals' Development Act. 1940. should have found a place under the National Monuments' Act, 1930. Moreover. the Hill of Taa. it was urged. was not itself a national monument.

The Chief Justice said that counsel for the Commissioners had argued that the burden of the evidence showed the importance of the whole site and that the Hill of Tara could not be chopped up. The previous owner, it had been submitted, had in the guardianship deed, voluntarily chosen the boundaries of the area which the commissioners were now seeking to acquire and in doing so had acknowledged it to be a national monument.

On the evidence he would be prepared to hold that, even viewed narrowly, the 10-acre field had sufficient archaeological features to warrant its inclusion in the notice to treat which was the necessary preliminary to acquisition.

The Act also authorised the Commissioners to acquire such additional land as was needed for the preservation of the amenities of the site. In his view, counsel for the Commissioners was right in submitting that the Hill of Tara was properly to be regarded as a single unified site and not a series of separate archaeological monuments. On that basis the acquisition of the 10-acre field to preserve the amenities of the Hill of Tara was well warranted.

The Chief Justice added : "It will not, I hope, be out of place to call attention to the fact that this is not the first time that a land owner was disturbed at Tara. One of the archaeological sites at Tara is traditionally known as Cormac's house; it lies within Rath na Riogh."

Tradition was that Cormac built the great vallum surrounding Rath na Riogh on land belonging to Odran who protested loudly when Cormac began to stake out his work. When the king came to take possession of the house, Odran set his back against the door to prevent the king from entering. The king turned his wrath away with the softest answer conceivable : he promised to compensate him by paying him his own weight in silver, daily rations for a household of nine for as long as the king should live, and land of equivalent value elsewhere.

"Today, Cormac's successors, the Commissioners of Public Works, must pay compensation for extending themselves at Tara (rightly as I hold), just as Cormac did."

The Chief Justice added when the commissioners came to negotiate terms of compensation with the dispossessed owner, they might bear in mind that while they did not command royal wealth, or unlimited discretion a niggardly spirit was foreign to the genius and tradition of Cormac Mac Airt, Tara's greatest king.

When Mr. Richard Cooke, S.C., applied for the costs of the appeal, the Chief Justice said it was a case of very considerable importance for the Commissioners and he had hoped it had helped to clarify the law.

The Chief Justice said there would be no order as to costs.

[Tormey v. Commissioners of Public Works; Supreme Court; unreported; 22 December 1972.]

Union's right to refuse transfer Constitutional.

A union which withheld its consent to the transfer of one of its members to another union was held by the Supreme Court not to have infringed in any way the constitutional right of the worker concerned.

In a reserved judgment the Court held that the National Union of Vehicle Builders, and the chairman and secretary of the Dublin branch of the union, in deciding to exercise such rights as they had under an agreement entered into with the Irish Congress of Trade Unions had not infringed the constitutional right of Laurence Murphy, a Dublin motor assembly worker, of Drimnagh.

The Union was appealing against a decision of Mr. Justice Murnaghan in the High Court in which he held that the refusal of the Union to grant Mr. Murphy a

transfer to the Irish Transport and General Workers' Union was an infringement of his constitutional rights.

Mr. Justice Walsh, who delivered the unanimous judgment, said the union was a British-based one but was the holder of a negotiation licence granted under Part II of the Trade Union Act, 1941, and affiliated to the Irish Congress of Trade Unions.

Mr. Murphy became a member of the National Union of Vehicle Builders in 1958 when employed in Lincoln and Nolans' motor assembly business. He afterwards worked for Motor Manufacturers' Ltd., at Naas Road, Dublin, and the N.U.V.B. was the only one catering for workers in that industry employed by Motor Manufacturers Ltd.

In March or April 1970, Mr. Murphy and a number of fellow-workers applied for membership of the Marine Port and General Workers' Union being dissatisfied with the N.U.V.B. for reasons which did not affect the decision in this appeal.

On inquiry, the Marine Port and General Workers' Union was told by the N.U.V.B. that there was an objection to the transfer on the grounds that they catered sufficiently for Mr. Murphy and his fellow-workers but if there was any bona fide reason why the men should wish to join the other union they would be prepared to have another look at the matter. In the result, the M.P.G.W.U. did not accept the application of Mr. Murphy and the others for membership.

Mr. Justice Walsh said that in May, 1970, Mr. Murphy and 144 fellow-workers applied to the I.T.G.W.U. for membership. This union notified the N.U.V.B., who replied advising that they were objecting to their members being accepted into the I.T.G.W.U. pointing out that these members had already been declined membership of the Marine Port and General Workers' Union.

After further correspondence the applicants said the reason they wanted to transfer was because they wished to become members of an Irish-based trade union. This was not accepted as a valid reason by the N.U.V.B. who continued to object.

On June 16th, 1970, the general secretary of the I.T.G.W.U. wrote to the defendant union stating that it was proposed to accept the applications on the grounds that no reasonable grounds had been put forward to sustain the defendant union's objection. The Irish organiser of the latter union then asked the executive council of the Irish Congress of Trade Unions to intervene and the matter was ultimately referred to its disputes committee which came to the conclusion that the decision of the I.T.G.W.U. to enrol the men against the objection of the N.U.V.B. was "contrary to good trade union practice."

They recommended that the men be transferred back to the defendant union. The disputes' committee also noted that from the evidence available the acceptance of transfers in any circumstances in the motor assembly industry, without consent, did not appear to have been the practice. It was clear however, that the disputes' committee was also of opinion that the requirements of good trade union practice was in itself sufficient to give a decision in favour of the defendant union.

They also recommended that the latter union should waive any question of imposing fines or disciplinary action. In the result the I.T.G.W.U. accepted this finding and transferred the members back to the defendant union.

On November 20th, 1970, the general secretary of the I.T.G.W.U. wrote to the Irish organiser of the defendant union stating that in view of the fact that the circumstances surrounding Motor Manufacturers Ltd. case had now altered they trusted it would be in order to have these transfers to the I.T.G.W.U. effected.

The defendant union replied on November 23rd stating that in view of the fact that the I.T.G.W.U. had notified Congress of its acceptance of the Disputes' Committee's findings, no member of their union employed by Motor Manufacturers would be released to join any other union.

No repudiation of Disputes Committee

Mr. Justice Walsh said the I.T.G.W.U. did not repudiate its acceptance of the findings of the Disputes' Committee and it was quite clear that it would not accept these men into membership unless the defendant union gave its consent or was held by the Courts to be wrongfully with-holding consent.

The constitutional right relied on by Mr. Murphy was set out in Article 40, section 6, subsection 1 (iii) which was the right of citizens to form associations and unions.

It was claimed that the refusal of the defendant union to consent to Mr. Murphy joining the other union was an unconstitutional interference with his guaranteed rights and amounted to coercion in that, without such consent, if the I.T.G.W.U. were to accept him they would be liable to expulsion from Congress because of a breach of the Constitution of Congress.

It was submitted on behalf of Mr. Murphy that the defendant union was in effect able to achieve what part 3 of the Trade Union Act, 1941, was held to be unable to achieve—to compel him to remain a member of their union.

Mr. Justice Walsh said he agreed with Murnaghan J. who had held that before it could be established that a person might agree to surrender or waive a right guaranteed by the Constitution it would have to be shown that he had a clear knowledge of what he was doing and with that knowledge deliberately and freely decided to make such surrender or waiver. On the facts in this case it was abundantly clear that no such situation had ever been brought to the notice of Mr. Murphy.

No constitutional right to choose union

Mr. Justice Walsh said that in the ordinary sense there was no constitutional right to join the union of one's choice. The constitutional guarantee was the guarantee to form associations or unions, but in ordinary circumstances before a person could join a union or association already in existence he must be entitled to do so either by law or by the rules of that association or union, or by the consent of its members.

Mr. Justice Walsh went on : "In my view, the present action is misconceived and the appeal should be allowed." The I.T.G.W.U., he said, was obviously quite willing to accept Mr. Murphy into membership—but only provided they obtained the consent of the defendant union.

In taking the men into their union originally without that consent, the I.T.G.W.U. was exercising a right which they were free to exercise and if such exercise constituted a breach of the terms of their affiliation to the Congress, it was for the I.T.G.W.U. to decide whether they would accept the membership of Mr. Murphy and jeopardise their affiliation with the Congress, or elect to value their affiliation greater than their desire to accept Mr. Murphy into membership.

In the event they chose the latter course. It was true that if they had chosen the former course, and by reason of such decision they were to lose their affiliation to Congress, the union might suffer thereby. Insofar as the Constitution of Congress was the result of an agreement freely entered into by the I.T.G.W.U. with the other affiliated unions, they chose to limit their own sovereignty by agreeing to the provisions in the Constitution.

They had decided to abide by that agreement rather than to accept Mr. Murphy into membership in breach of it. "Therefore, in the final analysis, the real barrier to the plaintiff's failure to obtain entry to the I.T.G.W.U. is the decision of that union to abide by its agreement."

Mr. Justice Walsh said that the defendant union in refusing to give its consent was also observing the terms of the Constitution of the Congress.

Mr. Justice Walsh said the net question was whether the defendants could be forced to consent to the plaintiff's joining the I.T.G.W.U. on the grounds that their refusal to give such consent amounted to an infringement of the plaintiff's constitutional right to form associations and unions.

"In my view the answer must be in the negative." Even if the rules of the defendant union had contained provisions relating to cesser of membership and even if the court were to consider itself free to write into it the words "such consent not to be unreasonably withheld" nothing in the circumstances of the case would warrant the court in holding that the consent was unreasonably withheld.

The real and effective barrier to Mr. Murphy's entry into the I.T.G.W.U. was the decision of that union not to take him without the consent of the defendant union. In the circumstances the defendants, in deciding to exercise such rights as they had under the same agreement, could not be held to have in any way infringed the constitutional right of Mr. Murphy.

Accordingly the appeal was allowed, and Murnaghan J. was reversed.

(*Irish Independent*, 20/12/1972.)

[Murphy v. N.U.V.B.; Supreme Court; unreported; 19 December 1972.]

Application refused in case involving Bookmaker. Declaration sought that certificate of personal fitness is null and void.

In the High Court in Dublin Mr. Justice Kenny refused an application on behalf of two Bray (Co. Wicklow) men to delete certain pleadings made in a defence by a Dublin bookmaker to an action arising out of a transaction at the bookmaker's office in Bray on May 15th. 1971.

The plaintiffs are James Moran and Patrick Kinsella, both labourers, and both of Connolly Square. They are suing Superintendent Matthew-Sills, and Mrs. Dorothy Power. trading as Richard Power of Palmerston Road, Dublin.

In the pending action they are seeking a declaration that the purported certificate of personal fitness to hold a bookmakers' licence, given by Superintendent Sills to Mrs. Power, is null and void.

They claim that on that date in question Mrs. Power accepted a bet from them in respect of certain horse races to be run at various meetings in England that afternoon. The bets consisted of 10 doubles at 25p, 10 trebles at 25p, one accumulator of 25p in respect of five horses and three doubles at £1 and one treble at £2 in respect of three horses.

Each of the horses won, they claim, and Mrs. Power became liable to them in the sum of £31,721. In spite of repeated applications, Mrs. Power refused to pay them the money.

Despite the objections of the plaintiffs to the granting of a certificate of personal fitness, Superintendent Sills renewed the certificate following an application by her on November 7th, 1971.

The plaintiffs seek a declaration that this certificate is null and void, and they also seek an injunction restraining Mrs. Power from receiving such certificate.

In the course of her defence Mrs. Power pleads that, insofar as these proceedings have been commenced and continued for the purpose of attempting to force her to pay to the plaintiffs the sum of £31,721, they constitute an abuse of the process of the court and are a contempt of court.

Mrs. Power also pleaded that the proceedings were not maintainable, being against public policy, and claiming that the monies alleged to be due on foot of the alleged betting transaction were not revoverable in law.

The plaintiffs asked that both the paragraphs in the defence be struck out.

Mrs. Power, in her defence, also pleads that the claim does not disclose any cause of action against her. She denies having accepted the bets or that she became liable to the plaintiffs for the sum mentioned. If any sum were due (which she denies) she pleads that, because of a limit operated by her and well known to the plaintiffs, the maximum amount recoverable on bets of the kind detailed was £2,400.

Mr. Noel Peart, S.C., for the plaintiffs, said that they were both motions to strike out certain paragraphs from the two defences on the grounds that they were vexatious and prejudicial. There was no claim in the action that the defendants, or either of them, pay any sums of money to the plaintiffs. In fact, he submitted that it was clear that no court could make an order for the payment of any money other than a sum for costs to the plaintiffs.

Mr. Peart said that, in the first motion, the defendant had put in a paragraph in which it was alleged that these proceedings were not maintainable, being against public policy, and claiming that monies alleged to be due on foot of an alleged betting transaction were not revoverable in law. The proceedings, however, did not ask the court to deal with the payment of any sum on foot of any betting transaction.

In the second motion Mrs. Power had entered a defence claiming that, insofar as these proceedings had been commenced and continued for the purpose of attempting to force her to pay to the plaintiffs the sum of £31,721, they constituted an abuse of the process of the court and were a contempt of court.

"These proceedings may be vexatious," he said. "A punter who is not paid by a welching bookmaker is entitled to be vexatious, but he is not entitled to claim any sum of money, and these proceedings do not seek payment of any money. They are not commenced or are they continued for the purpose of forcing the defendant to pay £31,721, but they are being commenced and continued for the purpose of depriving Mrs. Power of her bookmakers' licence."

Counsel on behalf of both defendants submitted that the defence pleadings were proper and that the full facts would have to be known by the court before the issue could be determined.

Mr. Justice Kenny said that it was a very unusual and interesting action.

(*The Irish Times,* 12/12/1972.)

[Moran and Kinsella v. Matthew-Sills and Power.]

Court award for sacking upheld.

A limited appeal against the award of £9,694 damages and costs to Douglas William Victor Glover, the former production and technical director of Lincoln and Nolan Ltd., was dismissed by a two-to-one majority in the Supreme Court.

Mr. Glover, formerly of Kilcoole, Co. Wicklow, had brought the proceedings against his employers for wrongful dismissal.

Mr. Glover had sued B.L.N. Ltd., Lincoln and Nolan Ltd., Lincoln and Nolan (Sales) Ltd., and Irish Motor Factors Ltd., Lower Baggot St., Dublin, claiming damages for wrongful dismissal and breach of contract.

The High Court trial had lasted 22 days and Mr. Justice Kenny was told that Mr. Glover had joined Lincoln and Nolan in 1957 and had been dismissed in June, 1966, following a report to the board of B.L.N. Ltd., by Mr. G. C. V. Brittain, executive vice-chairman of B.L.N., which was formed following the amalgamation of Lincoln and Nolan and Brittain (Dublin) Ltd.

Mr. Justice Kenny found that, while Mr. Glover had been guilty of serious misconduct and neglect, the decision of the board to dismiss him without a hearing was contrary to the principles of natural justice.

Yesterday, in the Supreme Court, Mr. Justice Walsh, in his judgment, dismissed the limited appeal, a decision with which Chief Justice Cearbhall O Dalaigh agreed. A dissenting judgment was delivered by Mr. Justice Fitzgerald.

It was stated then, on behalf of the parties, that it had been agreed by B.L.N. that, if they lost this limited appeal, the matter would go no further. Accordingly, the Court affirmed Mr. Justice Kenny's order.

(*Irish Independent,* 19/12/1972.)

[Glover v. B.L.N. Ltd.; Supreme Court; unreported; 19 December 1972.]

Appeal fails in harbour deaths case.

An accident at Galway docks on January 11th, 1967, when six people returning from a wedding reception at Salthill lost their lives when their car was driven into the docks, was recalled in the Supreme Court.

In a reserved judgment, the court dismissed an appeal by Galway Harbour Commissioners against a decision of Mr. Justice Butler in the High Court awarding Mrs. Bridget Walsh, Gort, Co. Galway, a total of £6,000 damages and costs on her own behalf and that of her dependants.

She had sued the Harbour Commissioners arising out of the death of her husband, Mr. John Walsh, the driver of the car, alleging that the Commissioners had been negligent.

It was stated in the High Court that Mr. Walsh had been attending a wedding reception at Salthill and was returning home in the evening darkness when he apparently lost his way while taking a short-cut through the docks area.

Mr. Justice Butler found that both Mr. Walsh and the Harbour Commissioners had been 50 per cent each at fault for the accident and assessed total damages at £6,000, entering judgment for Mrs. Walsh and her dependants for a total of £3,000 and costs on this basis. The Harbour Commissioners appealed against this finding.

In his judgment Chief Justice O Dalaigh said that 50 per cent was the least the trial judge could have imposed on the Commissioners and said they had been fortunate not to have been called upon to shoulder a heavier share of the burden. Mr. Justice Walsh agreed with the Chief Justice's judgment.

In a dissenting judgment, Mr. Justice Fitzgerald said that Mr. Walsh was the author of the accident which had been caused by his failure to keep a proper lookout. The trial judge should have acceded to the application of the Commissioners to non-suit Mrs. Walsh.

[Walsh v. Galway Harbour Commissioners; Supreme Court; unreported; 19 December 1972.]

Place of detention does not exist under Children's Acts so bench decision wrong—Prison order invalid.

In the High Court, Dublin, yesterday, Mr. Justice Finlay held that a youth could not have been held in a place of detention provided by the Children's Act, 1908, as directed by District Justice Breathnach on last November 16th for the most fundamental reason of all—that no such place existed.

He held that orders made by District Justice Breathnach in the Children's Court sentencing the youth to a months' imprisonment because "the defendant was of so unruly a character that he could not be detained in a place of detention in safety" were invalid.

The youth had challenged the validity of the district justice's order and on last November 24th Mr. Justice Finlay directed the Governor of Mountjoy Prison to certify the grounds of the youth's detention and he admitted him to bail.

Yesterday Mr. Justice Finlay made an order quashing five orders made by the district justice relating to the imprisonment of the youth and discharged the applicant from his bail recognisance.

In a reserved judgment, Mr. Justice Finlay said it had been admitted in earlier proceedings that the applicant was a "young person" within the meaning of the Children's Act, 1908. He had appeared before the District Court charged with assault with intent to rob and with assault causing actual bodily harm. He had been remanded in custody by District Justice Kennedy to Mountjoy Prison until November 14th, by an order which certified that he was of so unruly a character that he could not be detained in a place of detention in safety. On November 14th he was further remanded in custody to St. Laurence's, Finglas West, until November 16th.

St. Laurence's, said Mr. Justice Finlay, was a place of detention for the purpose of detaining young persons on remand but not for the purpose of detention after sentence. On November 16th, the youth had pleaded guilty before District Justice Breathnach in the Children's Court and was sentenced to one month's imprisonment.

No express evidence, said Mr. Justice Finlay, had been adduced before District Justice Breathnach as to unruliness of character on the part of the youth, but the District Justice had before him the certificate issued by District Justice Kennedy.

Mr. Justice Finlay said: "The last very important fact which was established before me was that there was not on November 16th, 1972, nor has there been since then a place of detention provided under Section 108 of the Children's Act, 1908, for the Dublin Metropolitan District, the purpose of which was the detention of young persons after sentence."

The legality of the applicant's detention and the

validity of the orders made were challenged on two grounds (1) that there was no evidence before District Jstice Breathnach which would entitle him to conclude that the youth was of unruly character and (2) that sinc there was no place under the Act for the detention on last November 16th, the district justice could not on that date validly certify that he was of so unruly character that he could not be detained in such a place.

Section 102 (3) of the Children's Act, said Mr. Justice Finlay, provided that a young person shall not be sentenced to imprisonment for an offence or committed to prison in default of payment of a fine, damages or costs unless the Court certified that the young person was of so unruly a character that he could not be detained in a place of detention provided under that part of the Act, or that he was of so depraved a character that he was not a fit person to be so detained.

Mr. Justice Finlay said he was not concerned with the weight of evidence on which the District Justice decided that the youth was of unruly character, nor with the correctness of that decision. He could only be concerned with the question: "Was there any evidence before him on which he could reach such a decision?" He took the view that the nature of the crimes was of itself some evidence on which such a decision could be reached. It was probable, though he did not need expressly so to decide, that District Justice Breathnach was, in addition, entitled to rely on the certificate previously issued by District Justice Kennedy. He therefore rejected the argument that the order was bad for a total want of evidence of the character of the applicant.

If, however, the certificate issued by the District Justice required any consideration of the character of the applicant related to a specific place of detention, it seemed to him impossible for the district justice to have reached a judicial decision on that issue when no such place of detention existed. In the circumstances he held that the District Justice could not decide, and therefore could not validly certify, that the applicant was of so unruly a character that he could not with safety, or as a practical matter, be detained in a place of detention provided under the Act.

"In short, my decision is that it is impossible to certify that a person by reason of the nature of his character, is incapable of being detained in a specified place when no such place exists," he said.

The youth was allowed his costs.

(*The Irish Times,* 13 January 1973.)

[The State (Hanley) v. District Justice Breathnach and Governor of Mountjoy (Finlay J.); unreported; 12 January 1973.]

£400 damages for wrongful arrest—Solicitor held for five weeks.

A Belfast solicitor, Mr. Oliver J. Kelly (26) was awarded £400 damages in the Ulster High Court on Thursday for wrongful arrest and false imprisonment.

The award was made against Mr. Brian Faulkner, former Premier, who was at that time also Minister of Home Affairs; against the Ministry of Home Affairs; the Police Authority; the Chief Constable of the R.U.C., Sir Graham Shillington; and against the British Ministry of Defence.

The decision will affect many other similar cases, and there are at least 400 claims for damages and false arrest and wrongful imprisonment which could come before the courts.

Thursday's award to Mr. Kelly was made by Mr. Justice Gibson, as compensation for the period of five weeks during which the applicant was detained in Crumlin Road prison.

The judge rejected Mr. Kelly's claim for damages for his subsequent internment from September 14th, 1971, giving his opinion that the internment was lawful.

Mr. Justice Gibson granted a stay of execution of the order for payment of compensation for the Crumlin Road prison detention for six weeks, to enable the Crown to consider an appeal.

Holding that the internment from September 14th, 1971, was lawful, as all the objections raised to the validity of the internment order were without substance, the judge said that the applicant's remedy against the defendants lay in damages for his arrest and unlawful detention in Crumlin Road prison for about five weeks.

Mr. Kelly had claimed damages—examplary damages —on the grounds that the conduct of the defendants, being servants of the Crown, was oppressive, arbitrary, or unconstitutional.

The judge, however, said that he thought it appropriate to award exemplary damages against persons filling public positions only where they had acted, not just illegally, but also deliberately or recklessly or with malice.

In his opinion, exemplary damages ought to be reserved to punish the "insolence of office."

In the present case, however, the judge held that the illegality consisted in the defendants failing to specify the regulation or the suspicion which impelled the arrest. Each arresting officer had acted successively in good faith and without any conscious or obvious infringement of the plaintiff's rights, or of the law.

Mr. Justice Gibson said that the arrest of a citizen without a warrant was a matter which excited the anxious scrutiny of courts at any time, and perhaps particularly so when it was claimed to have been done under legislation conferring such wide-ranging powers. It did not follow, however, that the unusual character of the jurisdiction under which the arrest was made involved the award of exemplary damages on any basis which would not be justified where less fundamental rights were involved, or in which a more normal procedure had been overstepped.

He therefore rejected the claim for exemplary damages.

The judge said that Mr. Kelly had not suffered any fiancial loss during the five weeks of unlawful captivity and his studies were not seriously impeded, judging by the fact that later, while still in custody, he was enabled to sit for his final professional examinations as a solicitor, which he passed.

The judge said that, accepting that there were grounds upon which Mr. Kelly could have been validly arrested, it followed that there was no reason for thinking that he was confined in the company of people whose political views were inimical to his own, and, indeed, he had not claimed any particular source of distress on that account.

On the other hand, Mr. Justice Gibson went on, he was taking into account the fact that Mr. Kelly had been arrested in the middle of the night, the vexation and perhaps humiliation of the circumstances of his arrest in the presence of his recently reunited family, and the interrogation and the frustration and depriva-

(*continued on page* 36)

ENGLISH CURRENT LAW DIGEST

In reading these cases note should be taken of the differences in English and Irish statute law.
All dates relate to dates reported in *The Times* newspaper.

Auctioneer

Before Lord Denning, the Master of the Rolls, Lord Justice Karminski and Lord Justice Buckley.

An auctioneer, both under the common law since 1788 and under conditions for car auction sales in common use, was held to have a lien on goods auctioned and can sue the purchaser in his own name for the whole purchase price, even though the auctioneer has already received enough by way of deposit to cover his own commission and charges.

Chelmsford Auctions Ltd. v. Poole; C.A.; 20/12/1972.

Banking

Before Sir John Donaldson, President, Mr. R. Davies and Mr. H. Roberts.

When banks are faced with a writ of sequestration against assets in a client's account they are bound to give the commissioners of sequestration the desired information and make the required payment from the client's account, even against the client's wishes and in spite of the confidence inherent in the banker-client relationship. A bank would be acting unreasonably in future if it required the sequestrators to obtain a specific order from the court to enforce the payment.

Eckman & others v. Midland Bank and Another; National Industrial Relations Board; 7/12/72.

Certiorari

The Divisional Court refused an application for certiorari by Colin Hewitt, aged 20, of Compton Street, Derby, to quash an order made by Chesterfield justices sentencing him to an effective total of nine months' imprisonment for driving offences.

The Lord Chief Justice, who sat with Mr. Justice Ashworth and Mr. Justice Willis, said that section 107(3) of the Magistrates' Courts Act, 1952, imposed a mandatory duty on justices to state the reason why they considered that no sentence other than imprisonment was appropriate when sentencing a person under 21 but failure to do so did not affect the validity of the sentence passed.

Regina v. Chesterfield Justices Ex parte Hewitt; QBD; 12/12/1972.

Crime

Before Lord Justice Phillimore, Lord Justice Stephenson, Lord Justice Lawton, Mr. Justice Melford Stevenson and Mr. Justice Brabin.

[Judgment delivered December 15th]

A five-judge court held that the meaning of "dishonesty" in section 1(1) of the Theft Act, 1968, was a matter to be decided by a jury applying the current standards of ordinary decent people, and that a taking by an employee in breach of instructions but to which no moral obloquy could reasonably be attached was not stealing within section 1(1).

Regina v. Feeley; CA; 21/12/1972.

Before Lord Justice Edmund Davies, Mr. Justice Cantly and Mr. Justice Browne.

A man with a bad criminal record who was wrongly cross-examined about it by his co-accused on their joint trial for different offences lost an appeal against conviction because, the court held in an unprecedented case, no miscarriage of justice had occurred.

Regina v. Lovett; C.A.; 21/12/1972.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Willis and Mr. Justice Talbot.

A university student who, after eating one course of a meal in a Chinese restaurant, decided not to pay for it but waited until the waiter was out of the room before leaving the restaurant, did not practise a deception to evade payment of the debt.

Ray v. Sempers; Q.B.D.; 20/12/1972.

Before Lord Justice Lawton, Mr. Justice Melford Stevenson and Mr. Justice Brabin.

[Judgement delivered December 8th]

"Evidence" in rule 2 of the Judges' Rules, 1964, "As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person ... before putting ... any questions, or further questions ..." means evidence which shows the officer that he has the beginnings of a case against the suspect.

Regina v. Osborne and Regina v. Virtue; C.A.; 11/12/1972.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Willis.

If the Divisional Court were to allow a doctor's appeal from a mandatory 12 months' driving disqualification under section 5(1) of the Road Traffic Act, 1962, the door to a narrow escape route would be opened dangerously wide.

Holroyd v. Berry; Q.B.D.; 12/12/72.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Willis.

At committal proceedings the prosecution have a discretion not to call even a principal witness if a prima facie case can be shown from supporting evidence. The function of committal proceedings is to ensure that no one shall stand trial unless a prima facie case has been made out; they are not a rehearsal for the defence to try out cross-examination on prosecution witnesses with a view to using the result to advantage at trial.

Regina v. Epping and Harlow; Q.B.D.; 15/12/1972.

Evidence

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Willis and Mr. Justice Talbot.

[Judgment delivered December 5th]

There is no rule of law that justices must accept the evidence of a witness merely because it is not challenged, the Lord Chief Justice said when giving judgment on an appeal from Wallasey justices.

O'Connell v. Adams; Q.B.D.; 6/12/1972.

Redundancy

Before Sir Samuel Cooke, Mr. R. Boyfield and Mr. C. G. Robinson.

[Judgment delivered December 15th]

The mere facts that an employee for a short period worked hours similar to those which he had worked under his contract with a previous employer and accepted wages calculated on the old basis were not necessarily conclusive evidence that there had been an offer by conduct by the new employer to re-engage the employee on all the terms of the previous contract within the meaning of section 3 (2) (a) of the Redundancy Payments Act, 1965, or that he had accepted such an offer. Accordingly he had been dismissed for the purposes of redundancy payment.

Catin v. Botley Garages Ltd.; National Industrial Relations Court; 20/12/1972.

Before Sir Samuel Cooke, Mr. R. Boyfield and Professor T. L. Johnston.

An employee who was given notice of dismissal before the provisions of the Industrial Relations Act, 1971, giving a right to compensation for unfair dismissal came into force, but which expired after the Act had come into force, was held not to be entitled to compensation for unfair dismissal since his employment had been terminated forthwith by an agreement made with his employers during the period of notice prior to the Act.

Lees v. Arthur Greaves (Lees); National Industrial Relations Court; 14/12/1972.

Time

Before Lord Denning, the Master of the Rolls, Lord Justice Karminski and Mr. Justice Megarry.

[Judgments delivered December 14th]

Where an Act of Parliament prescribes a period of time for doing any act which can only be done if the offices of the court are open on the day when the period expires, and that day is a Saturday, Sunday, or other dies non, the time is to be extended until the next day on which the offices of the court are open. Mr. Justice Megarry said: "The difference

between three years and three years and a day cannot normally make much difference to a defendant; it may be disastrous to a plaintiff".

Pritman Kaur v. S. Russell & Sons Ltd.; C.A.; 12/12/1972.

Tax

Before Lord Justice Davies, Lord Justice Stamp and Lord Justice Orr.

[Judgment delivered November 9th]

The appropriate amount of tax to be deducted under the **Gourley** rule was considered by their Lordships when they allowed an appeal by the plaintiffs, Lyndale Fashion Manufacturers, of Margaret Street, W. from a decision of Judge Leslie at Bloomsbury and St. Marylebone County Court that £495 damages awarded to Mr. Max Rich, a travelling salesman employed on commission who was dismissed by them in September, 1967, should be reduced by £42 for income tax.

Lyndale Fashion Manufacturers v. Rich; 14/11/1972; C.A.

Before Mr. Justice Goff.

An allowance paid to a retiring partner by the continuing partners in a firm of chartered accountants was held not to be income immediately derived from the carrying on of the retiring partner's profession. His Lordship dismissed an appeal by Mr. Richard Graham Pegler from a decision of the general commissioners that earned income relief was not deductible for assessing the amount of tax payable on the allowance.

Pegler v. Abell; 15/11/72; Ch.D.

Trade Disputes

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Hodson, Lord Simon of Glaisdale and Lord Cross of Chelsea.

A demarcation dispute between the National Dock Labour Board and the British Steel Corporation was settled by the House of Lords when they decided how much of the work of moving iron ore from the holds of ships lying at the jetty in the newly constructed harbour at Port Talbot to the corporation's neighbouring stock yard was work which only registered dock workers could lawfully be employed to perform.

National Dock Labour Board v. British Steel Corporation; House of Lords; 13/12/1972.

Trade Descriptions Act

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Willis.

"Recklessiy" in section 14(1) of the Trade Descriptions Act, 1968, in relation to an advertisement means that the advertiser did not have regard to the truth or falsity of his advertisement even though it canot be shown that he was deliberately closing his eyes to the truth, or that he had any kind of dishonest mind. It is not necessary to prove that the staement was made with that degree of irresponsibility which is implied in the phrase "careless whether it be true or false."

MFI Warehouses Ltd. v. Nattrass; Q.B.D.; 22/12/1972.

EUROPEAN SECTION

E.E.C. Laws may force big policy changes on private Irish firms

One of the most serious and difficult legal problems facing Irish businessmen in the E.E.C. was whether Irish private companies were to be required to have a minimum paid up capital of £1,600, Mr. John Temple Lang, lecturer in Company Law in Trinity College told a meeting of the Chartered Institute of Secretaries in Dublin last night.

This would be necessary if the E.E.C. treated Irish public and private companies as the same type of legal body. Between one quarter and one half of all Irish companies would be affected.

Publication of Accounts

Another important change would be that all Irish private companies would be required to publish their accounts. This would mean that creditors and competitors could see how profitable Irish private companies are, and trade unions would be able to judge how far private companies could afford to meet claims for increased wages. Shareholders could compare the profitability of different private companies. A large number of takeovers of companies which were relatively unprofitable were likely to result from disclosure of these accounts, Mr. Temple Lang said.

In the longer term the E.E.C. was also likely to require larger companies to have a two-level management consisting of an executive and a supervisory board. Mr. Temple Lang, author of a book on the legal aspects of the E.E.C. for Ireland, said that part of the E.E.C. thinking was that the employees of the company concerned would appoint one third of the members of the supervisory board, who would take part in the management of the company. This would be in addition to works councils who, under the regulation on the proposed new European "federal" type of company would have a veto on decisions on the principles of recruitment, promotion and dismissal, principles and methods of pay, working hours and so on. The regulation would also require the works council in each "European" company to be consulted on closures, long term arrangements for co-operation with other companies, and other important changes in companies' activities.

Democratic Discus ion

Mr. Temple Lang said it was extremely important that all these changes should be thoroughly discussed in advance in Ireland. He suggested that it was essential that an Oireachtas committee on draft E.E.C. laws should be set up at once. It was deplorable, he said, that the Government had chosen to suit its own convenience by carrying out E.E.C. requirements by Ministerial order and not by legislation after proper democratic debate. Discussion of draft E.E.C. laws by lawyers and other experts on a technical level "was not a substitute for public democratic discussion."

(*The Irish Times*, 17/11/1972.)

The European Court of Justice

AN INTERVIEW WITH JUDGE DONNER
By TERRY COLTMAN

"If you say this whole thing is a *Constitution*," said Judge Donner of the European Court of Justice, as we sat at lunch in Luxembourg with a text of the Treaty of Rome on the table between us, "that also implies a certain freedom, not freedom, a certain direction in which you go. If it is a Constitution it should be a coherent system, a system that can continue to function, that should be effective, and that implies all sorts of things."

If on the other hand, he said, you considered it as a Statute, or an Act, and were called upon to construe it, you could at a certain point conclude that as a Statute it was ineffective because on some matter it was not explicit. It might be a pity that it would not work, but in construing an Act you could not go beyond its text.

"But," said the Judge, "if you say something is a Constitution, you imply it should work, and if there are all sorts of gaps in it and unclear things, they should be cleared up and the gaps should be filled up, because the thing is intended to work. I think it was Marshall who said that you should never forget it's a Constitution. By that he meant, always interpret it in such a way that it remains effective."

John Marshall was Chief Justice of the United States Supreme Court from 1801 to 1835, and the document he was concerned with was the Constitution of the U.S.A. And as to the Treaty of Rome, I asked Judge Donner, was he saying that this too was a Constitution to be interpreted?

That was so. It is only fair to say that in our previous conversation it was I who had indirectly introduced small comparisons with the U.S. Supreme Court, and not Judge Donner. But there is no doubt in my mind that the Treaty will be construed as a Constitution, and indeed already has been, and that the doctrine of Implied Powers may have as lively a run at the Luxembourg court as it had at Washington under Marshall.

Judge Donner is a Dutchman, and he is one of those rare men whose force of mind takes only five minutes to make itself very clear to an interlocutor. He was born at Rotterdam in 1918, the son of a barrister who became a judge. He comes of a family which has provided many ministers for the more strictly Calvinist of the two Dutch reformed churches, and when the time came for him to go to university he hesitated briefly before choosing law rather than theology.

By 1941 he was Doctor of Laws, and his father was in a German concentration camp. The young Donner declined on principle to sign a document saying he was of Aryan descent, and he had already been indiscreetly critical, in his doctoral thesis, of some tenets of National Socialist jurisprudence, so in 1943 he was invited to present himself at SS headquarters. He went underground that day.

In 1944 he was arrested and was being shipped to Germany when he escaped with 12 others by simply hiding in the attic of a school where they spent the night en route. He then turned journalist for a while, and then in 1945, at the end of the war, was straight away appointed Professor of Constitutional Law at the Free University of Amsterdam. He was 27.

He never became a barrister, though he did appear about 10 times to argue cases before an administrative court before which any graduate in law had right of audience. He never appeared in any criminal cases. Nor was he ever a Netherlands judge, though he did preside part-time over an administrative tribunal. In 1958, it being agreed that Holland should provide the first President of the court of the combined European Communities, Donner was appointed. He was 40. Now, having been for 14 years a member of the Court of the Six, he remains a member of the Court of the Nine.

First, I fished out an extraordinary cutting which was headlined "Innocent Until Proved Guilty—and Don't Let Europe Forget it," and appeared to think the Luxembourg court had an extensive criminal jurisdiction. The judge confirmed there was no real criminal jurisdiction. The nearest they got to it was that companies could be fined (as ICI was fined £20,000 for the price-fixing of aniline dyes). This would be administrative law on the Continent, though in America it would be dealt with by criminal, antitrust, laws.

And then, what about this reference under clause 177 of the Treaty? As I understood it, that clause said that any Court of any member state could refer a case to Luxembourg for a ruling on Community law. I ha exercised some ingenuity in concocting such a case, and wanted to ask the Judge if it would stand up. This was it:

An Englishman flies from Europe to Heathrow with a suitcase full of whisky which he does not declare. The customs arrest him and charge him with smuggling. Before the magistrates' court he pleads that there is no case to answer because a regulation of the Commission in Brussels has, say, declared that whisky is nondutiable. May the magistrates refer the case direct to Luxembourg, asking whether there is such a regulation, whether it is valid, and whether it applies in the case before it?

Judge Donner thought they could, and cited the case of the cows imported into Italy. At the border their owner was charged a fee for a veterinary examination. He claimed this was no more than a hidden customs duty, and therefore under the Treaty illegal. The Italian court in the first instance referred to Luxembourg, which ruled that if such veterinary fees were also charged in the interior, then they were properly veterinary fees and should stand, but that if they were charged only at the border, then, having the same effect as an import tax, they were illegal.

The direct reference of cases to Luxembourg, had been opposed by Lord Diplock and there had been some suggestion that lower English courts should first be obliged to refer to higher English courts. But would not any such restriction be itself a breach of the Treaty of Rome? Judge Donner thought it would be, but there was nothing to stop the Lord Chancellor from sending a circular to magistrates *advising* them not to refer. But as for himself, Judge Donner's preference is that reference should be completely free. In his experience, the lower the court the less inhibited it was in putting questions: the higher the court, the more its Judges sometimes thought they should know themselves.

If you glance through reports of cases decided by the European Court, it becomes obvious that most of its jurisdiction is administrative and financial and agri-

cultural. There are dyestuffs, tin cans, customs, ducks in transit, and monopolies. It seemed that the Court became constitutionally important when it addressed itself to the rights of individuals and the rights of institutions within the Community. And one of those cases is that of Fohrmann, decided in 1963, which indirectly, as I believe, helped to increase the powers of the European Parliament.

In the Treaty, the Parliament is required to meet annually on the second Tuesday in March. This one annual meeting was extended by the Parliament, by a sort of parliamentary fiction, from March to March. The Parliament met many times a year, maintaining that its meeting, at whatever season, was still only the original March meeting adjourned and then resumed. Fohrmann was one of two Luxembourg MPs, also members of the European Parliament, who were accused in a local court of libelling a third person. They pleaded parliamentary immunity, and it fell to the European court to decide whether at the time of the libel complained of, which was November, the Parliament was still in its March sitting. The court decided that, in law, it still was.

The Judge said Parliament had, anyway, already decided that it could sit all year round, and had based this assumption on the common usages of Parliament. It was not a new trick. But, I said, members of Parliament, at any rate, now quoted the Fohrmann decision as an authority, and it had certainly been taken as legal confirmation of earlier usage? Judge Donner said it had given them another argument for continuing what they did already. He was an old constitutional lawyer but he did think that some other decisions of the Court, on the free movement of goods and workers and so on, were just as important in establishing fundamental rights.

Now in the Treaty, Parliament is not called Parliament at all, but the "Assembly". In 1962 it decided to call itself Parliament, which was an important step.

The Parliament, said the judge, would submit that it would be better to ask what in the Treaty prevented them from changing their name. They supposed that as a Parliament they were meant to have parliamentary powers. The Court of Justice itself was called simply that in the Treaty, and had itself decided to take the name of Court of Justice of the European Communities.

I asked the Judge about individual freedom, and about a celebrated case in 1970 of a German pensioner and a pound of butter. The details do not matter. There was a glut of butter, to reduce which the Community decided to let some people buy the stuff cheaper, and issued tickets to pensioners and the like. The German, presenting his ticket, was asked for his name, which he refused. The case came to Luxembourg, which decided that it was all a piece of confusion over a bad translation of the original French regulation into German, but then, having decided what it was asked to decide, the court also handed down an *obiter dictum* on civil rights, which seemed unnecessary.

"Take the Treaty," said the judge, taking up the text. "What do you find in the Treaty itself?"

He found article 173, which requires the Court to guard against not only any infringement of the Treaty but also against any rules of law which should be observed in its application. Such rules of law might be unwritten, or part of the laws common to the Member States, and some of these rules of law related to Human Rights.

The judge turned to article 164, and this is a beauty, on which a whole jurisprudence could and no doubt will be founded. It simply says, "The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed."

"The law," said Judge Donner, "that doesn't mean only the text of the Treaty, but . . ."

Natural justice?—The judge said he hesitated to use this term (very much a term of Roman jurisprudence) to an Englishman. He would rather say the law common to the nine nations.

A sort of spirit of the law?—"The general principles common to their legal systems. And civil rights are one of those principles."

The Judge said he would not rely on a statement of intention alone, but if you went through the Treaty you could find all sorts of provisions for freedom of movement, and other benefits, all implemental of these general aims. And if you were ever in doubt about the interpretation of a clause, you should never forget that the text should always be read in the light of those aims.

Here, I asked the Judge about one clause which forbade members of the Commission when in office to engage in any other employment, gainful or ungainful. Would this prevent a Commissioner writing his memoirs? He thought not. "What is employment?" he asked. Writing memoirs was not employment.

Not if you took five years over it, like Churchill? Wasn't that employment?—"You will tell me it's rather formalistic, but he hadn't an employer." (Laughter).

But the Judge's liberal attitude to the powers of the Communities' Institutions, and the humanity of assuming that the Treaty was meant to be construed according to the tenets of Natural Law, would appear to suggest that the European Court, in acting in this way was really putting itself in some measure in the position of the Supreme Court of the U.S.A.?

He said, "In a certain way. But it's not only what the Supreme Court does. It's what every Judge does, only some of them are more frank about it than others."

But with a liberal interpretation of its own powers, the Court could expand itself as it wished? He thought that was a narrowly logical inference, but of course the Court was bound by common opinion about what the law should be, and how far the law should go. A Judge should not abuse his powers and become a sort of general social arbiter. "He should always have respect to one of the main principles of law—that's unwritten too—and that is the principle of judicial restraint."

(*The Guardian,* 3 January 1973.)

£400 damages for wrongful arrest (from page 32)

tion necessarily involved in prison life, with Mr. Kelly not knowing when or how its term would expire.

General damages in the case, the judge added, could not in his opinion be awarded on any straight-line basis of so much per day or per week, because the events of the first day or so were such as obviously to attract a greater sum than would be appropriate for a normal day later during Mr. Kelly's term of imprisonment.

(*The Irish Times,*)13th January 1973.)

[Kelly v. Faulkner and others.]

Statutory Instruments relating to European Communities

S.I. No. 332 of 1972

LAND ACT 1965 (Additional Categories of Qualified Persons) REGULATIONS 1972

Note

The effect of this order is to exclude from the provisions of Section 45 of the Land Act 1965 all those who benefit as a result of the European Community Directives mentioned in the Schedule.

EUROPEAN COMMUNITIES (Enforcement of Community Judgments) REGULATIONS 1972

S.I. No. 331 of 1972

I, Desmond O'Malley, Minister for Justice, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Enforcement of Community Judgments) Regulations, 1972.

Commencement

2. These Regulations shall come into operation on the 1st day of January, 1973.

Interpretation

3. In these Regulations—

"Community judgment" means any decision, judgment or order which is enforceable under or in accordance with Article 187 or 192 of the EEC Treaty, Article 18, 159 or 164 of the Euratom Treaty or Article 44 or 92 of the ECSC Treaty;

"enforcement order" has the meaning specified in Regulation 4(1) of these Regulations.

Making of enforcement orders by Master of the High Court

4(1) The Master of the High Court shall, upon application duly made by the person entitled to enforce a Community judgment, make an order (in these Regulations referred to as an enforcement order) for the enforcement of the Community judgment and shall append the order to it.

(2) Where a sum of money is payable under a Community judgment which is to be enforced, the enforcement order shall provide that the amount payable shall be such sum in the currency of the State as, on the basis of the rate of exchange prevailing at the date on which the Community judgment was originally given, is equivalent to the sum payable.

(3) Where it appears that a Community judgment under which a sum of money is payable has been partly satisfied at the date of the application for its enforcement, the enforcement order shall be made only in respect of the balance remaining payable at that date.

(4) Where, after the date on which an enforcement order has been appended to a Community judgment under which a sum of money is payable, it is shown that at that date the judgment had been partly or wholly satisfied, the Master shall vary or cancel his order accordingly with effect from that date.

Effect of enforcement order

5. A Community judgment to which an enforcement order has been appended shall, for all purposes of execution, be of the same force and effect, and proceedings may be taken on the judgment, and any sum payable under the judgment shall carry interest, as if the judgment had been a judgment or order given or made by the High Court on the date on which the enforcement order is appended thereto.

Suspension of enforcement of Community judgments

6. An order of the Court of Justice of the European Communities suspending enforcement of a Community judgment shall operate to suspend enforcement of that judgment for the period and on the conditions, if any, stated in the order.

Restriction of section 9 of the Enforcement of Court Orders Act, 1940

7. The powers of the Minister for Justice under section 9 of the Enforcement of Court Orders Act, 1940 (No. 23 of 1940), shall not be exercisable in respect of the enforcement of a Community judgment. (This Section allows the Minister for Justice to release persons from prison for non-payment of money.)

Restriction of section 23 of the Criminal Justice Act, 1951

8. Section 23 of the Criminal Justice Act, 1951 (No. 2 of 1951), shall not apply to a Community judgment. (This section relates to the commutation and remission by the Government or the Minister for Justice of any punishment, forfeiture or disqualification.)

Given under my Official Seal, this 21st day of December, 1972.

Desmond O'Malley, *Minister for Justice*

(Obtainable from Government Publications Sale Office, Dublin 1, for 2½p plus postage.)

European Communities (Judicial Notice and Documentary Evidence) Regulations, 1972

S.I. No. 341 of 1972

I, Desmond O'Malley, Minister for Justice, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Judicial Notice and Documentary Evidence) Regulations, 1972.

2. These Regulations shall come into operation on the 1st day of January, 1973.

3. In these Regulations—

"the European Court" means the Court of Justice of the European Communities;

"The Official Journal" means the Official Journal of the European Communities;

"the Official Publications Office" means *L'Office des publications officielles des Communautés Européennes;*

"the Treaties" means the treaties governing the European Communities.

4. Judicial notice shall be taken of the Treaties, of the Official Journal and of any decision of, or expression of opinion by, the European Court on any question in respect of which that Court has jurisdiction.

5. *Prima facie* evidence of the Treaties may be given in all courts and in all legal proceedings by the production of a copy printed under the superintendence or

authority of and published by the Stationery Office or the Official Publications Office.

6. *Prima facie* evidence of any act adopted by an institution of the European Communities, any judgment or order of the European Court, any document in the custody of an institution of the European Communities, or any entry in or extract from such a document, may be given in all courts and in all legal proceedings—

(a) by the production of a copy certified by an official of that institution; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate;

(b) where the document is in the custody of a Minister of State, by the production of a copy certified on behalf of the Minister to be true by an officer of the Minister generally or specially authorised in that behalf; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate, or of his authority to do so, or of the document being in the custody of the Minister;

(c) by the production of a copy printed under the superintendence or authority of and published by the Stationery Office or the Official Publications Office.

7. *Prima facie* evidence of any act adopted by an institution of the European Communities which is published in the Official Journal may be given in all courts and in all legal proceedings by the production of a copy of the Official Journal purporting to contain such act.

8. Every copy of any of the Treaties, any act adopted by an institution of the European Communities, any judgment or order of the European Court, any document in the custody of an institution of the European Commnities, or any entry in or extract from such a document, which purports to be published by the Statonery Office or by the Official Publications Office or to be published by the authority of the Stationery Office or the Official Publications Office shall, until the contrary is proved, be presumed to have been printed under the superintendence and authority of and to have been published by the Stationery Office or by the Official Publications Office, as the case may be.

Given under my Official Seal, this 29th day of December, 1972.

Desmond O'Malley, *Minister for Justice*

(Obtainable from Government Publications Sales Office, Dublin 1 for 2½p plus postage.)

European Communities (Aliens) Regulations, 1972

S.I. No. 333/1972

These Regulations confer rights of entry and residence on certain categories of persons who are nationals of member States of the European Communities. They are based on Directives EEC 64/220, EEC 64/221 and EEC 68/360 issued by the Council of the Communities but take account of the special transitional provision in regard to free movement of workers that has been made in favour of this country in the Treaty of Accession to the Communities. These Regulations are obtainable from the Government Publications Sale Office, Dublin 1, for 5p plus postage.

EUROPEAN COMMUNITIES REGULATIONS

S.I. No. 334/1972

The effect of these Regulations is to make certain changes in Customs procedures necessitated by membership of the European Communities.

The Regulations come into operation on the 1st January 1973.

Published by the Stationery Office, Dublin. 5p.

EUROPEAN COMMUNITIES REGULATIONS 1972

S.I. No. 329 of 1972

These Regulations are designed to enable payments to be made from the Central Fund which are necessitated by Ireland's membership of the European Communities and to provide for receipt of moneys arising out of membership.

Published by the Stationery Office, Dublin, 2p.

The Offences Against the State (Amendment) Act, 1972

By SENATOR MARY T. W. ROBINSON, Reid Professor of Law, Trinity College, Dublin

This Act, one of the most controversial pieces of legislation in recent years, had a swift passage through both Houses of the Oireachtas because of the influence of external factors. Normally the Bill would have taken some weeks or perhaps months to pass through the committee and report stages, during which amendments would have been put forward and argued and there would have been time for the consideration of these amendments at the next stage. The passage of the Bill through the Dail is too well known to merit description here but it may be interesting to give a brief account of the debate in the Senate. Senators were informed by telegram at 8.00 a.m. on the morning of Saturday 2nd December 1972 that the Cathaoirleach had summoned Seanad Eireann under the powers conferred on him by standing order 18(2) "to consider the

Offences against the State (Amendment) Bill". The Senate met at 3.00 o'clock that afternoon to consider the Bill and also a motion for early signature by the President under Article 25 of the Constitution.

The Minister for Justice, Mr. O'Malley introduced the Bill as follows:

"Having regard to last night's explosions in the city of Dublin I have no doubt that this House will decide to pass the Bill, and quickly. It would be regrettable if any members of the House were to regard the Bill as a drastic measure which had to be accepted by them only because the events of last night had, so to speak, left them no choice. It would be unfortunate, as well as being quite wrong, if Members felt that in agreeing to pass the Bill quickly under pressure of events they were agreeing to sacrifice any fundamental legal principles. I want to assure the House that that is not so. It is not so despite assertions to the contrary by people who should know better and despite similar assertions by people who know better but who choose to say otherwise."

As the Minister spoke, those senators who wished to propose amendments were busy trying to scribble them down in time to have them typed and circulated by the end of the second reading. Instead of having at least a fortnight before the committee stage and probably a further week before the report stage it was obvious that we were to be allotted a matter of hours in which to consider this important and vital piece of legislation. Meanwhile, I moved an Amendment, seconded by Senator Horgan, as follows:

"That Seanad Eireann declines to give a Second Reading to the Bill on the ground that it is an inappropriate procedure to deal with urgent legislation having regard to the terms of Article 24 of the Constitution."

The reasons for invoking the procedure under Article 24 were that it seemed peculiarly appropriate in view of the importance of the legislation, the climate in which it had been debated in the Dail the night before and was being continued in the Senate, and the desire not to leave on the Statute books a permanent piece of legislation which had not received proper parliamentary scrutiny. Article 24 provides for the abridgement of the time for the Senate to consider legislation by allowing the Taoiseach—by a message in writing addressed to the President and to the Chairman of each House of Oireachtas—to state that "in the opinion of the Government the Bill is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international." In which case the time for the Senate to consider the Bill may be shortened as is deemed appropriate and the Bill passed in a matter of hours. The safeguard in using this constitutional procedure is that the Bill would remain in force only "for a period of ninety days from the date of its enactment and no longer unless, before the expiration of that period, both Houses shall have agreed that such law shall remain in force for a longer period, and the longer period so agreed upon shall have been specified in resolutions passed by both Houses.' Had the Government considered that there was a genuine emergency necessitating a swift passage of this Bill then the appropriate machinery was there to be used. As it was, they both got their cake and ate it, because the Bill was passed as though there was an emergency but without the safeguard of emergency legislation. The Bill passed all stages of the Senate at 1.30 a.m. on the Sunday morning. The Motion allowing the President to sign it immediately under the provisions of Article 25 was also passed and the President in fact signed the Bill later on that morning. In retrospect this may have been unduly hasty.

The Provisions of the Act

It is an amazingly short Bill, comprising six sections of which Sections 1 and 6 are definition and title sections and have no importance, leaving the real content in only four sections. Sections 2, 3, and 5 amend the Offences Against the State Act 1939. Section 4, as we shall see, does not purport in any way to amend or refer to the 1939 Act and is not confined to the question of illegal organisations but has much broader implications.

OFFENCES AGAINST THE STATE (AMENDMENT) BILL, 1972

Section 2

Power to question person found near place of commission of scheduled offence.

2.—Where a member of the Garda Siochana:

(a) has reasonable grounds for believing that an offence which is for the time being a scheduled offence for the purposes of Part V of the Act of 1939 is being or was committed at any place.

(b) has reasonable grounds for believing that any person whom he finds at or near the place at the time of the commission of the offence or soon afterwards knows, or knew at that time, of its commission, and

(c) informs the person of his belief as aforesaid.

the member may demand of the person his name and address and an account of his recent movements and, if the person fails or refuses to give the information or gives information that is false or misleading, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

Comment

The significance of this section is that it enables a member of the Garda Siochana to demand the name, address and an account of the recent movements of any person who happens to be in geographical proximity to where an offence may have or is believed to have been committed which is a scheduled offence under the 1939 Act. The person in question is not himself a suspect, because, if he were, the member of the Garda Siochana would have ample powers already to arrest that person. Failure to give such information, including an account of recent movements, is an offence for which a person may be liable to a fine or imprisonment. One of the criticisms made of this Section is that it appears to contravene the principle against self incrimination which has been very solidly upheld by the United States Courts. It is a fundamental principle of law that a person should not incriminate himself by his own words. But if the bystander questioned by the Gardai had in fact been robbing a nearby house, or in some other way engaging in conduct which was contrary to the law, it would seem as though he would have to give an account of this. For such purposes would that amount to a confession in law? It might also be embarrassing, as was mentioned on the floor of the Seanad, if a person had been

visiting a lady love unbeknown to his wife! There is no definition of "recent" and it is a matter of discretion whether the account is sufficient to satisfy the member of the Garda Siochana.

Section 3

Evidence of membership of unlawful organisation.

3(1) (a) Any statement made orally, in writing or otherwise, or any conduct, by an accused person implying or leading to a reasonable inference that he was at a material time a member of an unlawful organisation shall, in proceedings under section 21 of the Act of 1939, be evidence that he was then such a member.

(b) In paragraph (a) of this subsection "conduct" includes omission by the accused person to deny published reports that he was a member of an unlawful organi ation, but the fact of such denial shall not by itself be conclusive.

(2) Where an officer of the Garda Siochana, not below the rank of Chief Superintendent, in giving evidence in proceedings relating to an offence under the said section 21, states that he believes that the accused was at a material time a member of an unlawful organisation, the statement shall be evidence that he was then such a member.

(3) Subsection (2) of this section shall be in force whenever and for so long only as Part V of the Act of 1939 is in force.

Comment

Sub-section (1) (a) of this Section is designed to make it easier to prove membership of an unlawful organisation. This seems reasonable in the light of the Minister's statistics that from the 1st February 1972 until the date of the debate at the beginning of December there were thirty prosecutions and only three convictions for membership of the I.R.A., and a number of cases were not prosecuted because of lack of sufficient evidence under the old law.

However, when the word "conduct" in that sub-section is then defined to include omission by the accused person to deny published reports that he was a member of an unlawful organisation, and thus constitute evidence of membership of that organisation then I believe the section has gone further than was necessary or indeed tolerable in a society which is concerned about Civil Rights. Reading the section it does not refer to *future* published reports, and could therefore mean any newspaper comments linking persons with the I.R.A. in past years, or any books or broadcasts in which this was done. Senator Horgan moved an amendment to delete this extension of the normal meaning of the word conduct on two grounds: firstly that it interfered with a person's right to a fair trial by allowing as admissible evidence of published statements about him, and secondly because it interfered with the freedom of the press in reporting and therefore the public's right to information. "I should like to remind the house that freedom of the press is not an end in itself, it exists only in defence of people's rights to be informed. If it is generally noised abroad that a person is, or makes himself out to be, a member of an unlawful organisation and makes statements supposedly on behalf of such an unlawful organisation it is vital in the national interest that the people should know this."

Sub-section 2 of this Section was the provision which gave rise to the most alarm among those concerned for Civil Rights in that it would allow a Chief Superintendent to state his belief and have that belief admissible as evidence that a person was at a material time a member of an unlawful organisation. Much has been said about the shifting of the burden of proof in this provision in that it must cast a burden on the accused to negative the effect of the expression of such belief by a Chief Superintendent. There is nowhere a provision that the belief must be reasonable or that evidence to substantiate that belief must be forthcoming. It would be possible for a Chief Superintendent to state that "in the interests of the security of the state" he was claiming privilege as to his sources for this belief. Another point which emerged in the Senate debate was that this section was further aggravated by the method of appointment of Superintendents. Under the Garda Siochana Act of 1924 Superintendents and all ranks above Superintendent are appointed not by examination or interview and not by an independent police authority but by the Government. This contrasts with the method of appointment of senior police officers in Britain and Northern Ireland, where all such promotions are made by the appropriate police authority, except in the London Metropolitan Police area where the appointing authority is the Home Secretary. In other words the Court would be relying on the testimony of a small number of police officers who owe their appointment to the government of the day. This is not in any way a criticism of superintendents for the time being but of the powers contained in this statute which is a permanent part of our legislation.

Sub-section (3) of this section, which imposes an indirect time-limit on sub-section 2, was the only amendment in the Dail and the Bill did not undergo any amendment in the Senate. It provides that this section would only remain in force for as long as the part of the 1939 Act which enables the government to bring into play the Special Courts remains in force. Therefore, when the Government resolves that the Special Courts are no longer necessary then this section relating to the belief of a Superintendent of the Garda Siochana will also lapse for the time being. It will revive of course whenever the Special Courts are re-introduced by a declaration of the Government.

Section 4

Statements, meetings, etc., constituting interference with the course of justice.

(1) (a) Any public statement made orally, in writing or otherwise, or any meeting, procession or demonstration in public that constitutes an interference with the course of justice shall be unlawful.

(b) A statement, meeting, procession or demonstration shall be deemed to constitute an interference with the course of justice if it is intended, or is of such a character as to be likely, directly or indirectly to influence any court, person or authority concerned with the institution, conduct or defence of any civil or criminal proceedngs (including a party or witness) as to whether or how the proceedings should be instituted, conducted, continued or defended, or as to what should be their outcome.

(2) A person who makes any statement, or who organises, holds or takes part in any meeting, procession or demonstration, that is unlawful under this section shall be guilty of an offence and shall be liable:

(a) on summary conviction, to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

(b) on conviction on indictment, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding five years or to both such fine and such imprisonment.

(3) Nothing in this section shall affect the law as to contempt of court.

Comment

This Section is so broad in its terminology and in its implications that I believe that it is the most far reaching curtailment of Civil Rights contained in the legislation, particularly since it does not relate specifically to illegal organisations or to an attempt to "clamp down on the I.R.A." The Minister described this section in the debate as the creation of a statutory form of what was hitherto known as contempt of court but under sub-section 3—nothing in this section "shall affect the law as to contempt of court". Indeed the section goes far beyond the present law relating to contempt of court. Sub-section 1 defines the meaning of constituting "an interference with the course of justice" as including any statement, meeting, procession or demonstration likely directly or indirectly to influence the institution, conduct/or defence of any Civil or Criminal Proceedings as to whether or how the proceedings should be instituted, conducted, continued or defended or as to what should be their outcome. Some members of the legal profession who are reasonably outspoken on judgments of the courts might find themselves in breach of these provisions! Similarly any person who gathers near a crowd or follows upon a procession might find himself within the terms or subsection 2. There is no definition of "taking part" in a meeting, procession or demonstration and yet the penalties are very substantial amounting on indictment to a possible imprisonment for five years. It has been accepted in the United States that there must be a certainty in the law which would allow an individual to know whether by his conduct he would be committing a criminal offence. Statutes which do not comply with this in having a sufficient degree of certainty have been struck down as being unconstitutionally vague. This section would appear to be broad enough to allow a similar line of reasoning to be pursued before the Irish courts. It is not necessary for the person to have any specific *mens rea* to interfere with the course of justice if his statement is *likely* to influence a party to Civil Proceedings as to whether these should be instituted, conducted, continued or defended. If so this would be sufficient to be an interference to the course of justice. I wonder how many members of the legal profession reading this feel as confident as the Minister for Justice was that it only incapsulates in statutory form the hitherto well known offence of contempt of court?

Section 5

(5) The definition of "document" in section 2 of the Act of 1939 is hereby amended by the insertion ofter "advertisement' 'of the following:

"and also—

(a) Any map, plan, graph or drawing.

(b) any photograph.

(c) any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment of being reproduced therefrom, and

(d) any film, microfilm, negative, tape or other device in which one or more visual images are embodied (whether with or without sounds or other data) so as to be capable (as aforesaid) of being reproduced therefrom and a reproduction or still reproduction of the image or images embodied therein whether enlarged or not and whether with or without sounds or other data."

Comment

In his analysis in the Senate debate of this Section, Senator Horgan showed very effectively the danger of broad definition sections. This section refers back to the definition of "document" in the 1939 Act and the extended definition of "seditious document" in section 3 of that Act which provides "seditious document is a document in which words, abbreviations or symbols referable to a military body are used in referring to an unlawful organisation." And he continues: "By adding to the definition of 'document' the definition in paragraph (c) of this section we are adding a vast amount of material which is commonly available in this country at present to the category not only of document but of seditious document. There are numbers of ballad groups in this country who sing songs about or purporting to be about an organisation known as the I.R.A. Many of these ballad groups have cut records into which these songs are permanently inscribed and which are sold all over the country." He then goes on to show the implications for the balladeers, for the shops in which these records are sold and for those who happen to have these records in their possession. This may sound far fetched, but it is the duty of members of the Oireachtas to scrutinise legislation so that it does not emerge in a form which is ambiguous or far reaching or at certain points ridiculous.

Conclusion

This is an Act which provoked a very strong reaction when it was published. Various criticisms were made of its provisions, and it was described both here and in Britain as an usparallelled extension of governmental power and thereby a restriction on the rights and freedoms of the individual. None of these criticisms lost any validity when bombs went off in Dublin on Friday 1st December, but the Bill was law forty-eight hours later. There are lessons to be learned, political lessons about the strength of our institutions under pressure, from this sad and disheartening experience.

[*Editorial Note*: The views expressed in this contributed article are the personal views of the author; they are not the views of the Council, particularly when they impinge on the political sphere. The Editor is prepared to publish suitable comments justifying this legislation if submitted.]

Notice

Clement Mason, deceased, late of 55 Monkstown Road, Dun Laoire, Co. Dublin. Will any person having any knowledge of a will of the abovementioned deceased, who died on 2 January 1973, please communicate with: Messrs. Arthur Cox & Co., Solicitors, 42-3 St. Stephen's Green, Dublin 2.

A NEW SYSTEM OF JUVENILE COURTS IN SCOTLAND

by Diane Morgan

Robert Pearson is Reporter to one of the Scottish children's panels and he and his colleagues are the anchormen of a new system which has transferred the care of young people in difficulties from the Scottish courts to the community. The word "client" has taken on another shade of meaning as well. Pearson's clients are "juvenile delinquents" and their parents.

The Kilbrandon Committee, examining the way Scots law treated not only young offenders but children in need of care and protection and those beyond parental control, had found the juvenile court unsatisfactory. Its two functions—court of law, and specialised agency to help children in need—were irreconcilable.

Its report, published in 1964, expounded a fresh and informal approach, which was faithfully translated into law by the 1968 Social Work (Scotland) Act, Part III of the Act came into force on April 15, 1971, and since then, no child under 16 has been brought before a court unless he has committed a serious crime, such as murder.

Instead, information (from any source) on children who appear to be at risk is investigated by the reporter serving the appropriate local children's panel. At his own discretion he will decide if the child is in need of compulsory measures of care, and arrange for him to attend a children's hearing with his parents, on a weekday, an evening, or a Saturday morning.

If they wish, the family can bring along a representative, friend, neighbour, or teacher to help express their views. The reporter and a social worker, armed with background reports, will also be present at the hearing, but the ultimate decision on the best course for the child will be made by three members of the local children's panel. They are members of the public who have volunteered their services and undergone a mini-social work course.

The problem is discussed in a friendly, unhurried way—hence the need for ten or so comfortable chairs, a large table and a cheerful room. "We're getting more adept at putting the right questions to clients these days," one panel member, a university lecturer, said. "The children leave the room if they want to discuss anything that might shock or upset them, but they come back, and we arrive at a decision with everyone present. In fact the solution usually emerges during the discussion."

There is no statutory restriction on the conditions a hearing may impose. Rein can be given to flexible, varied decisions, tailored to suit the child's needs—helping the elderly attending evening classes, taking up a sport, attending a psychiatric clinic. Decisions have no time limit, at least until the child reaches 18. The guide line is simply that measures of care are continued as long as necessary, in the best interests of the child.

During this period, the hearing, and indeed the family, have a continuing right of review, to reappraise progress. The measures of care will be altered if the circumstances warrant it.

Each social work authority has its own children's panel, and ideally, its members should represent all sections of the community, the sole yardstick for appointment being a genuine interest in children, and absence of bias.

But the selection procedures, formulated by the children's panel advisory committees attached to each local authority, demand lengthy form filling, interviews and group discussions, and are loaded, however unwittingly, towards attracting confident, sympathetic articulate people. Subsequently, panel members have been dogged by a "middle-class" tag, and criticised as "socially distant from the majority of families with whom they are dealing."

"The fact is," Robert Munro, teacher and press agent to the Aberdeen City Panel, says, "several of our members have lived for many years in conditions of hardship and poverty, and some of us have lived in families which know only too painfully the problems of delinquency."

What are their young clients like? "Confused, rejected kids." Bill Knight, a panel member, says, "invariably with poor home backgrounds."

"Offences tend to outnumber the neglect cases," Robert Pearson says. "Our main group are boys in the 12-to-13 age group. Shop-lifting, shop-breaking, and truancy are fairly common. And next year, when the school-leaving age is raised, most of us are likely to be busier. Unsettled boys and girls are quite liable to get into trouble during their last years at school."

But each panel has its own specific problems. Glasgow is the busiest, hard-pressed by problems of violence and gang warfare. The city has 40 per cent of the national case load, and 90 panel members deal with about 130 cases each week.

In the far north Shelagh Dicks, chairman of the Shetland Panel, rejects the suggestion that young people of the islands are at the opposite end of the crime scale doing nothing more vicious than tossing fish boxes into Lerwick harbour.

"Shetland's economy is booming these days. It's become a sort of Shangri-la. But affluence brings its own problems—drugs, under-age drinking, more cars around to drive off and we have the additional problem of isolation."

But even after a year, it is possible to assess the hearing's advantages over the juvenile courts. There is more time, more information, cases are dealt with more quickly. Even in Glasgow the waiting time of six to nine months for the juvenile court has now been cut to five weeks or so. There is no question of a criminal record for a child under 16, nor does the hearing have to wait for a minimum age before intervening.

In Glasgow Fred Kennedy, the city's Reporter, finds parents generally willing to cooperate, ready to discuss their circumstances with the hearing. "I've had experience of the juvenile court, and there is a higher incidence of both parents attending hearings."

"An offence," the lecturer says, "is only the symptom of a deeper problem. We must probe below the surface and prescribe accordingly. As a result, we often arrive at different solutions for children who may have joined forces to commit the same offence."

Everyone concerned with hearings had a major criticism to make. Although the system is now treatment-orientated, there has been little evidence of an expansion of rehabilitative facilities, essential if transformation is to take place in fact as well as theory. Across Scotland came a plea for more resources—teenage psychiatric units; residential schools; small family group units; schools for maladjusted children.

No one is rash enough to predict a long-term success for the hearings. But it is a bold and adventurous social reform.

(*The Guardian*)

Free Legal Aid Advice Centres Report

DIVORCE PAID FOR BY STATE IS URGED

Divorce, paid for by the State—and other radical changes in matrimonial law—have been urged by lawyers and law students, who operate Free Legal Advice Centres in Dublin.

The recommendation is based on the experience of the students who have handled 650 cases concerning marriage break-up at seven centres in working-class areas.

They urged that the ground for divorce or a legal separation should be evidence by either party that the marriage had irretrievably broken down.

It calls for a complete divorce action with legal aid available for those in need of it and a simplified and inexpensive separation action, also with legal aid, for those who need it.

The FLAC report also calls for the setting up of a Family Welfare Council, headed by a Family Welfare Commissioner concerned with family and marital problems.

And it says "Any legislation embodying divorce provisions must buttress rather than undermine the stability of the institution of marriage.

"While reforming legislation must permit a dead marriage to have a decent burial it must also insure that it is not instrumental in producing the corpse and that every practical provision is made to try to reconcile the parties."

Mr. David Molony, the chairman of the FLAC council, said yesterday : "The bulk of our work has been with marital problems. We consider that divorce must be provided for and there is no point in our pretending that there is no such problem. Our work and experiences prove the problem exists."

The FLAC report says that 26 per cent of all the cases they completed concerned marital disputes and associated problems.

Views emanate from analysis of problems

The changes in the law on divorce, as well as maintenance of illegitimate children and children and the law, are contained in a paper put forward for discussion by a research team.

But the report emphasises that the views and recommendations expressed emanate from analysis of the problems encountered in the day to day running of the centres.

The report is sharply critical of the physical surroundings of the Children's Courts in Dublin and wants the age of criminal responsibility raised to 14 and two Children's Courts in the Metropolitan area nearer the larger residential areas.

The centres—situated in Mountjoy Square, Molesworth Street, Rialto, Ballyfermot, Crumlin, Ballymun and Monkstown—completed 1,383 cases up to July 31 this year.

The centres are manned by law students and has about 60 solicitors involved with its own panel of solicitors. Approximately 30 barristers also give their services free.

SEPARATION LAW INEQUITABLE

The present law concerning separation is inequitable and discriminatory, according to the FLAC report. It calls for the introduction of a simplified and inexpensive separation action with legal aid available for those in need of it.

The absence of legal aid together with the exorbitant costs involved in an action *a mensa et thoro* make it a "privilege" of the richer members of society and thus not available to the great majority of those who have need of it. In the light of our experiences, we believe that there must be made available an inexpensive form of separation action for which legal aid can be granted.

We suggest that the ground for a judicial separation or divorce should be proof by either party that the marriage has irretrievably broken down. We do not think that the above actions should only act as remedies available to an innocent spouse for a matrimonial wrong, e.g., only available where one party commits adultery or assaults the other.

We envisage the following as constituting evidence of irretrievable breakdown :

1. (a) The spouse has behaved in such a way that the the petitioner cannot reasonably be expected to live with him, or
   (b) the petitioner is unable to live with him due to the latter's desertion;
   (c) introduces an objective test, that is, is it reasonable to expect the petitioner to live with the respondent, having regard to the respondent's behaviour. This would cover the present matrimonial offence grounds for the decree *a mensa et thoro*;
   (d) here, proof would be necessary to show that the petitioner was unable to live with the respondent due to the respondents continued desertion.
2. (a) The spouses have lived apart for a continuous period of four years and consent to divorce. When both parties agree that their marriage has irretrievably broken down, divorce by consent is synonymous with irretrievable breakdown.
   (b) That the spouses have lived apart for a continuous period of five years and do not consent, but there is no hope of reconciliation.

Thus we recommend that if an innocent spouse were to be divorced against his/her will, there should be an absolute bar whereby the court would have a duty to refuse a decree unless it was satisfied that the proposals concerning property, pension and maintenance were equitable.

Where one spouse on religious grounds does not agree to the complete divorce that the other desires, she does not have to regard herself as free to remarry after the action has taken place. At the same time, the petitioner will be free to follow the dictates of his own conscience and remarry if he wishes.

3. Where one spouse has deserted the other and obtained a divorce in a foreign jurisdiction against the latter's will, the State should permit the deserted party to obtain a decree of divorce in Ireland.

4. Where a decree of judicial separation has previously been granted, in a subsequent petition for divorce, the court or tribunal should treat the previous decree as proof of the grounds on which it was granted.

Finally, before any decree could be granted, the tribunal must also be satisfied that there is not hope of reconciliation and that the breakdown is, in its eyes, irretrievable. When this stage has been reached the

responsibility will then fall on the tribunal to make a decision on such matters as custody of the children, maintenance, etc.

We recommend that the court or tribunal hearing the case have power to adjourn at any stage if it thinks there is a possibility of the parties becoming reconciled, though we find from our experiences that the estrangement of the parties will be far too deep at this stage for a reconciliation to be possible.

At the same time, so as to prevent people from rushing into and out of marriage without giving it a chance of being a successful union, we recommend that it be provided that no Petition for divorce or separation be entertained by the court during the first three years of marriage except in very exceptional cases.

We unequivocally recommend the setting up of a Family Welfare Council, headed by a Family Welfare Commissioner, staffed by trained and qualified social workers, to be known as family counsellors, who would be concerned only with family and marital problems.

They could work in cooperation with existing voluntary and statutory bodies, and organisations. The Council would establish Family Welfare Centres, and would be publicised as much as possible. The service would, of course, be confidential. On request, the Counsellors would call on families in need of support.

The first suggestion considered by us was the setting up of a family tribunal which would have two divisions. One would deal with juvenile matters and the other with all other family matters.

Either the tribunal would be presided over by a judge assisted by two family counsellors, or by a family counsellor (or two) assisted on matters of law by a barrister or solicitor of a sufficient number of years standing, known as the Judge Advocate.

Each tribunal would have power to make any of the decrees mentioned in the section on substantive law. In addition it would have the power to refer the parties to the Family Welfare Council if it thinks reconciliation possible.

As a matter of urgency it is recommended that instead of the above system, but only as an interim measure, family divisions be created in each of the present courts, the presiding judge being under legal obligations *vis-a-vis* reconciliation and family counsellors, or welfare officers in the present system.

ABOLISH THE JUVENILE COURTS

The abolition of the present system of juvenile courts and their replacement by locally based children's panels, with a right to appeal to the Juvenile Court, is called for in the FLAC report.

Immediate reforms recommended should provice that I, no child should be prosecuted for any offence except at the suit of the Attorney General and on his instructions (through the Office of the Chief State Solicitor).

2. The age of criminal responsibility should be increased to 14 years immediately. In the long term we would hope to see the introduction of the Scottish system of children's panels.

3. Greater use should be made of the so called "fit person" order. This should be extended in scope to include those institutions which already offert horough facilities for catering for the special needs of children. Locally based child care services and family welfare services should also be included. The scheme should cater for children of up to 17 years. In this way children whose special needs are not being best served by Industrial Schools and Reformatories within the present system would be brought within a beneficial system of care.

Long Term Reforms

A. The Repeal of the Children Act 1908 and the introduction of the following reforms :

1. The abolition of the present system of juvenile courts and their replacement by locally based children's panels, with a right of appeal to the Juvenile Court.

2. Reports on family and environmental factors to be made available in all cases.

3. No child should continue to be subject to a custodial sentence for any time longer than is necessary in his interest. No sentence should remain in force without review for a period extending beyond one year.

4. Where the child wishes to appeal, he should have three weeks within which to do so, and not 14 days as at present.

5. In the future, recognising the values of the CARE proposals, we would envisage the setting up of a system of panels of lay people to deal with children along the lines of those in operation in Scotland as a result of the recommendations of the Kilbrandon Committee. Such panels would have powers of ordering compulsory care or treatment, and would have continuing responsibility for the children brought before them, and would replace the existing system of Children's Courts.

We would suggest that an official to be known as a Reporter would be appointed to decide whether or not the circumstances warranted the bringing of the child before the panel. He would also organise the panels, arrange hearings, ensure the execution of decisions and their review at the appropriatet ime.

There should be but one Government department to deal with children's affairs, their education, training, mcare and welfare, formed by the merger of the three existing departments with responsibility over various spheres ... Health, Social Welfare and Justice ... and the organisations such as the I.S.P.C.C. concerned with children's welfare and special needs.

This department, to be known as the Child Welfare Department, would provide all necessary facilities. If this is not done, the present Government Department will continue to "pass the buck" as at present.

"SUBSIDISE CIVIL CASES"

It was not in the criminal sphere that the need for publicly subsidised legal aid was greatest but in the civil cases that such a need was acute, said Senator Professor Kelly, at a public meeting in a Dublin hotel last night, organised by the Free Legal Advice Centres.

Senator Kelly said that in the criminal sphere even before 1962 when the Criminal Justice (Legal Aid) Act was passed, it was a point of honour with the legal profession that no accused person should be left without defending counsel even if he was not able to pay the fee. In civil cases, however, the State offered no help at all to poor people.

"The Free Legal Advice Centres have now provided this assistance for the first time : yet another example of how in this country private goodwill and charity is expected to make up for the deficiencies of the social services, still inadequate to the needs of the poor, the ignorant, the handicapped and the delinquent, he said.

Over the last six or seven years, the Irish Courts, among a series of highly important and progressive judgments, had clearly established the individual's right

of access to the Courts as a personal constitutional right which could not be interfered with by the Oireachtas or the Executive.

It seemed to him that it was a short step from that to saying that everybody, rich or poor, was entitled to meet the legal system on level terms; and that if poverty and ignorance left someone not knowing his rights or unable to enforce them, society and the State had a positive duty to assist him and he in turn had a corresponding right to expect such assistance.

Better social benefits and expert information

Senator Kelly stressed that his comments were a long way from saying that the State should provide money in even greater quantities in order in effect to provide more and more fees for lawyers. On the contrary, a large proportion of the troubles which underprivileged people encountered were not really material for litigation and fat courtroom fees, but rather for the essentially social rather than legal intervention of the State.

That could be done by firstly providing better social benefits and assistance, and also by making available expert information or intervention about existing social services, or perhaps by a very simplified system of advice and arbitration. Certainly there were cases in which full-dress litigation might be unavoidable but those were a small minority.

As far as help in making most of the existing social services was concerned, the Government had consistently refused to institute a system where a citizen's Advice Bureau and an Ombudsman for the reason—as the Taoiseach openly stated on a few occasions—that the existing army of Dail Deputies, Senators and Councillors were enough for the purpose.

"In other words, in order to preserve intact the degrading dependence of simple people on "benevolent intervention' by politicians so that they may get their rights."

The only system worthy of a free Republic was one in which people were given their rights without being asked for a vote in return, Senator Kelly said.

Deserted Wives and Financial Assistance

Irish family life is not the "bed of roses" it is made out to be, said Mr. William Duncan, a lecturer in Family Law at Trinity College. He revealed that in the first year after social assistance was introduced under the 1970 Social Welfare Act 2,800 wives had applied for financial assistance of whom 1,600 qualified.

This was only the "tip of the iceberg." Many deserted wives could not meet the stringent means test or satisfy the authorities on the desertion. To talk about the failure of Irish marriages was to talk about a growing social problem.

Mr. Duncan added that the trouble with the law at present was that it often provided no remedy where one was needed and where it did provide a remedy it was the wrong one and did more harm than good.

Of separation, he was critical of the grounds on which the High Court could nullify a marriage. They were, he said, narrower than those now accepted by the Catholic Church. Many people were obtaining separations—under the guise of guardianship actions which now ran at about one a day.

When a marriage broke up there often was disagreement over the custody of a child. When the issue came before the High Court the whole reason for the break-up emerged and the child, the centre of the action, felt responsible for the breakdown. This was damaging. The Court was providing matrimonial remedies through the back door.

What was required, Mr. Duncan suggested, was a thorough review of the role of the Courts and Irish family law. "The role of the legally-trained judge in the whole area of family law needs to be reassessed," he declared.

Mr. Sean MacBride, S.C., chairman, said it was a sad commentary on this country that there was no free legal aid available in the city until the emergence of FLAC.

STRONG RECOMMENDATIONS FOR FAMILY PROCEEDINGS IN CAMERA AND FOR LEGAL AID

A strong recommendation that all family proceedings be heard in camera is made in the F.L.A.C. report, which makes proposals for reform in our laws.

1. The High Court: The Petition procedure is cumbrous and anachronistic as pointed out heretofore. It is proposed that a new form of Special Summons be created in its stead, which could claim, in a single multiple Indorsement of Claim, all remedies sought (e.g., Custody of Children under the 1964 Act, a decree of judicial separation, and an order under the Married Women's Property Act 1882).

2. Privacy. It is recommended most strongly and unequivocally that all family proceedings be heard in camera.

3. Legal Aid: It is most strongly recommended that legal aid be available in all courts for family matters. It could be obtained in the same way as the present criminal legal aid is.

It is strongly recommended that all stamp duties be abolished for proceedings before courts involving family matters if a party is legally aided.

4. It is recommended that all interim orders be made on motion ex parte. If the judge considers it reasonable, he would have power to order the attendance of the Defendant.

5. It is strongly recommended that all court orders relating to money payments be enforcable through the serving of a Notice on the employer of the defaulting party compelling him to pay the money into Court as the husband earns it.

6. It is strongly recommended that the criminal District and Circuit courts sit in camera when dealing with family matters.

7. The same comments apply to enforcement in the District and Circuit Courts as apply to the High Court.

Within the present system these are the only practical reforms that can in any way alleviate an intolerable situation. We feel that even if all the above suggestions were implemented the situation would still be totally inadequate.

Present Statute Law: **Illegitimate Children (Affiliation Orders) Act 1930. Enforcement of Court Orders Act 1926 and 1940, Courts Act 1971.**

Recommendations:

1. In all places where the statute states a limit of time, raise that limit to 18 months.

2. The age to which the weekly sum should be continued should be raised to 18 years.

3. The section relating to evidence should be amended to allow an order to be granted once the Justice is satisfied on the direct evidence before him and such evidence is corroborated in some material particular.

4. The right of the press to be present and to report the proceedings should be abolished.

5. All the assets of the father should be made liable in default of payment of the weekly sum or of the lump sum.

6. Illegitimate children should have equal rights as legitimate children with regards to succession.

7. Penalties for non-disclosure of change of address should be raised to £50 and/or six months' imprisonment.

8. Legal aid should be available to both parties if requested.

9. Proper statistics should be recorded and be published annually.

Statutes: **Married Women (Maintenance in case of Desertion) Act, 1886. Courts Act, 1971.**

Recommendations:

1. Proper statistics to be recorded.
2. Custody of children to be provided for.
3. Some division of the property or at least secutity of tenure to be granted to the wife.
4. Attachment of income and other forms of assets.
5. Legal aid to be available to both parties.
6. The age of a child for which maintenance is obainable under this Order should be raised from 16 to 18 years.

One of the many case histories dealt with by FL.A.C.: Mrs. E. married E. when they were both very young. They had a child almost immediately. They lived with E.'s parents and E.'s six sisters. Mrs. E. did not get on well with his family. They disapproved of her, and kept fighting with her. On several occasions, they beat her up.

They told her that her husband's affairs were theirs, and not hers. They threatened her each time she suggested he get a job. (The family supported her husband, and kept him supplied with drink and cigarettes).

Mrs. E. left after a severe beating by her husband's sisters. She was forced to leave the child behind her. When she returned with a friend to collect the child, E. and one sister attacked her brutally again and she had to leave without the child.

The husband's family regard the child as theirs, and refuse to give her up to her mother. Apart from persuasion there is little the wife can do as she cannot afford the expense of initiating a High Court action.

DUBLIN SOLICITORS' BAR ASSOCIATION

FREE LEGAL AID ASSOCIATION

The Dublin Solicitors Bar Association which is the Liaison Body between the Profession and FLAC has received a request from FLAC for further volunteers from members of the Profession to act as Solicitors on FLAC's panel for attendance at Centres. Volunteers will be asked to attend at a Centre in the evenings for a period of about 2 hours to act as Adviser to the Students who interview the people attending the Centre. It is unlikely that a volunteer will be asked to attend more often than once in every two months at a Centre. In addition to attending at the Centres, members may, from time to time, be asked to take charge of cases which have originated in the Centre.

Members who are willing to join the FLAC panel are asked to send their names to Mr. Thomas Jackson, Junior, Orpen Franks & Co., 28 Burlington Road, Dublin 4.

The need for enlarging the panel is due, not merely to the establishment of further Centres, but also to the considerable increase in the volume of work which affects the existing Centres. The extent of the increase and other details regarding FLAC's activities may be gleaned from FLAC's first report which has just been published and is available from FLAC at Ozanam House 53 Mountjoy Square, Dublin 1. A subscription of not less than 25p is requested for each copy of the report. A summary of the Report appears in this issue.

MEETING WITH IRISH PERMANENT BUILDING SOCIETY

At a recent meeting of the Council it was agreed to ask the Council's Special Sub-Committee on Building Societies to seek an interview with the Managing Director of the Irish Permanent Building Society to discuss with him the large number of complaints which had been received from members in the Association's recent survey, with a view to reducing the average length of time taken to process cases and the number of cases in which delays occur.

Australian Law Books for Ireland

One hundred and twenty volumes of the Commonwealth Law Reports were presented to the Chief Justice, Mr. Justice O'Dalaigh, by the Australian Ambassador, Mr. K. G. Brennan, in the conference room of the Supreme Court yesterday.

The Ambassador said: "To the Irish judges who are continuing in the work of their illustrious predecessors, this working tool comes with the warm wishes of the Australian people and Government."

The ambassador said that the Commonwealth Law Reports recorded the important decisions of the High Court of Australia, which was the highest court in the country. Like the Supreme Court of Ireland, the High Court of Australia had both Constitutional and appellate jurisdiction and it was therefore hoped that all its works might have relevance for the work of the Supreme Court of Ireland.

He said it would not be possible to open these books without coming across Irish names among the judges and counsel. At one stage in the early days of the court, there were two Irish-born judges out of six: Mr. Justice Higgins, who was born in Newtownards and Sir Frank Gavan Duffy, who was born in Dublin.

Exacting Standards

The Ambassador also congratulated Mr. Justice Fitzgerald on his appointment as Chief Justice. "There are no more exacting standards to live up to than Irish standards; but they are being transferred from one pair of safe hands to another", he said.

Chief Justice O'Dalaigh asked the Ambassador to convey the court's thanks to his Government for this princely gift.

(*The Irish Times,* 22 December 1972.)

Non-availability of Civil Legal Aid Constitutional

Plaintiff, a former hackney owner, now unemployed, claimed that Sections 2-7 of the Criminal Justice (Legal Aid) Act 1962 are unconstitutional, inasmuch as they appear to be inconsistent with the Constitution and in particular with :

(a) Article 15, Section 4, which declares that the Oireachtais shall not enact any law which is in any way repugnant to the Constitution.

(b) Article 34, Section 3, Subsection 1—which declares that the Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions, whether of law or fact, civil or criminal.

(c) Article 40, Section 1—which declares that all citizens shall, as human persons, be held equal before the law.

(d) Article 40, Section 3—which declares that the the State guarantees in its laws to respect, and as far as possible and practicable by its laws to defend and vindicate the personal rights of the citizen.

(e) Article 45, which is not cognisable by the Courts. The plaintiff was advised he had a good cause of action in respect of a loss occasioned to him by the act or default of some defendants; he appears personally in this action, and could not finance the action.

O'Keeffe P. stated that under the Criminal Justice (Legal Aid) Act, 1962, the State had chosen to provide legal aid for persons charged with criminal offences. But a person contemplating civil proceedings is left wholly without legal aid from the State. The plaintiff has a legal right which has been infringed, but has not got the necessary means to vindicate that legal right. He looks to the State for assistance, and finds that none is forthcoming. However, according to O'Keeffe P., it is for the legislature to determine how the personal rights of the citizen are to be vindicated. The legislation confining legal aid to criminal cases does not fail to accept and acknowledge the equality of all citizens before the law. Consequently, although he sympathised with the plaintiff, he was copelled to dismiss his claim.

[O'Shaughnessy v. Attorney-General; O'Keeffe P.; unreported; 16 February 1971.]

Limited Places for Non-Graduate Apprentices in Law Faculties of Universities

The Council having been notified of a shortage of places in the law faculties of the universities particularly University College, Dublin, where it has been necessary to establish a quota of students for entry to the Law Degree Faculty and for non-degree entry for solicitors' apprentices it is therefore necessary to draw the attention of intending Apprentices and Headmasters of schools to the position which will obtain in 1973 and subsequent years if the number of applicants for University places exceeds the number of places available.

It is a prerequisite for entry for the Society's First and Second law examinations that the students who fail to obtain places in a university law faculty cannot be admitted to the Society's examinations.

The Society's entrance examination requirements are as follows :

1. A pass in the First Irish examination which is held in July each year.
2. A pass in the Society's Preliminary examination which is held in July each year or alternatively a pass in the open Public Matriculation of an Irish University (without recourse to the leaving certificate or other non-University examination). Essential subjects at the Society's Preliminary and for Matriculation purposes include English, Mathematics and Latin.
3. Students who satisfy the Society's Entrance examinations mentioned above and who obtain entry to the Law Faculty of an Irish university will qualify for admission as solicitors' apprentices but every student must before entering for the first Irish or Preliminary examination lodge a Petition and Memorial signed by himself and by the solicitor to whom he proposes to be apprenticed and must obtain the consent of the Society for entry into indentures of apprenticeship. Only when this condition has been satisfied will the student be eligible for the entrance examination in Irish.

As regards non-degree students places in the law faculty will be allocated in order of priority on a first come first served basis. This order will be determined by the order of priority of registration with the Society.

It is therefore essential for applicants in their own interest to comply with the above requirements and to register with the Society as soon as they are eligible. The University Authorities will have regard to the date of registration with the Society in allocating the limited number of available places for non-degree entry for solicitors' apprentices.

For the purpose of this memorandum Registration with the Society means lodgment of the Petition for permission to enter into indentures with the certificate of consent from a solicitor-master qualified to take an Apprentice with evidence of passing the First Irish examination and the Preliminary examination (or exemption from the latter).

An intending apprentice who has already graduated in Arts, Law or a Faculty deemed equivalent is exempt from the Society's Preliminary examination (but not from the examination in Irish).

Meeting of Examiners and of Law Students

The Liaison Committee arranged a meeting between students and examiners in the Library of the Law Society on Thursday 18 January 1973. Mr. Brian O'Reilly was in the chair.

The examiners present were: Mr. John Matthews, Conveyancing and Registration of Title; Mr. Michael O'Mahony, Criminal Law and Evidence, and Tort; Mr. T. C. Smyth, Real Property and Statutory Land Law.

The large number attending heard Mr. Smyth charge candidates for the Property Examination to keep their answers to the point of the questions on the paper. He advised candidates in the Land Law paper to read the questions very carefully, as he had found in the last examination some students had mis-interpreted at least one question on the paper.

Mr. Matthews reassured candidates that the examination in Conveyancing would be straightforward and that it would follow Mr. Buckley's course (as all candidates for next February's Conveyancing examination have attended Mr. Buckley's course only).

Mr. O'Mahony tendered some advice to First Year Students. He warned that the First Law was extremely hard, and the best thing to do was to read thoroughly the main books on the course. As regards Tort he advised them to read James on Tort, perhaps three times quickly and then read Salmond once to get a different slant. With respect to Criminal Law and Evidence, he said that "Nutshells" were fine provided the student used them *after* he knew what was in the text books.

The examiners very kindly answered questions put by the students.

Notice—Vacancies for Apprentices

Will any solicitor in any part of the Republic of Ireland who has a vacancy for an apprentice, please communicate urgently with the Secretary of the Incorporated Law Society.

Prize in Company Law

Allied Irish Banks Ltd. has offered to award an annual prize of £100 for the best paper on Company Law at the Society's Final Examination. The award has been accepted with gratitude by the Council of the Society. The prize will be awarded on the best paper at the examinations held in February and September each year. The Council has fixed a standard of 75% of the total marks as the minimum standard requisite for the award of the prize. The first award will be made in Autumn 1973.

Statutes of the Oireachtas, 1972

No.	*Title*	*Signed by President*
	(a) Constitutional Amendments	
	Third Amendment to the Constitution Act 1972 re E.E.C.	8 6 1972
	Fourth Amendment to the Constitution Act 1972—re Parliamentary Votes at 18	5 1 1973
	Fifth Amendment to the Constitution Act 1972—re Partial Deletion of Art. 44	5 1 1973
	(b) Public Acts	
1.	For Teóranta Act 1972	26 1 1972
2.	Garda Siochana Act 1972	29 2 1972
3.	Agricultural Credit Act 1972	21 3 1972
4.	Electoral (Amendment) Act 1972	29 3 1972
5.	Wireless Telegraphy Act 1972	3 4 1972
6.	Court Officers Act 1972	3 5 1972
7.	Prisons Act 1972	25 5 1972
8.	Restrictive Trade Practices (Electrical Trade Appliances) Confirmation of Orders Act 1972	13 6 1972
9.	Industrial Development Act 1972	13 6 1972
10.	Dangerous Substances Act 1972	14 6 1972
11.	Restrictive Practices Act 1972	20 6 1972
12.	Local Elections Act 1972	4 7 1972
13.	Rates on Agricultural Land (Relief) Act 1972	11 7 1972
14.	Local Loans Fund (Amendment) Act 1972	12 7 1972
15.	Social Welfare Act 1972	12 7 1972
16.	Immature Spirits (Restriction) Act 1972	12 7 1972
17.	Unit Trusts Act 1972	18 7 1972
18.	Restrictive Trade Practices (Confirmation of Motor Spirit order 1972) Act 1972	19 7 1972
19.	Finance Act 1972	24 7 1972
20.	Prices (Amendment) Act 1972	24 7 1972
21.	Ministerial and Parliamentary Offices Act 1972	24 7 1972
22.	Value-Added Tax Act 1972	24 7 1972
23.	Referendum (Amendment) Act 1972	19 11 1972
24.	Electricity Supply (Amendment) Act 1972	21 11 1972
25.	Births, Deaths and Marriages Registration Act 1972	29 11 1972
26.	Offences against the State Act 1972	3 12 1972
27.	European Communities Act 1972	6 12 1972
28.	Tourist Traffic Act 1972	6 12 1972
29.	Imposition of Duties (Confirmation of Orders) Act 1972	20 12 1972
30.	Marriages Act 1972	20 12 1972
31.	Appropriation Act 1972	26 12 1972
32.	County Management (Amendment Act) 1972	28 12 1972

Private Acts—None

Judge 'did not nod off'

An allegation that Mr. Justice Crichton fell asleep while hearing a murder trial was rejected by the Court of Appeal.

Counsel for two brothers convicted of murder asked for a new trial saying that the Judge had nodded off. He had been "manifestly asleep" during an important part of the trial, Mr. Oliver Martin, QC, claimed.

But the Lord Chief Justice, Lord Widgery, sitting with Lord Justice Phillimore and Mr. Justice Talbot, said the court could say with confidence that the Judge was not asleep. The Judge's summing-up had been "impeccable," Lord Widgery declared. So he must have been awake.

"A comparison of transcripts of the Judge's summing-up and the evidence given in the case, showed that Mr. Justice Crichton did not miss a point: He was definitely not asleep," the Lord Chief Justice added.

The court dismissed appeals by Keith Langham (20), and his brother, Alan David (22), against conviction at Lewes Assizes on November 29th.

The brothers, of Eastbourne, were jailed for life by Mr. Justice Crichton after they had been found guilty of murdering Mr. Levett at his home in Hastings, on June 26th last year. Mr. Levett had been stabbed 14 times.

During the hearing in London, Mr. Oliver Martin, QC, counsel for Keith Langham, read a sworn statement by Mr. David Chivers, a solicitor. Mr. Chivers contended that during a 15-minute period on the morning of the last day of the trial the Judge's eyes were shut, his head was nodding and he was manifestly asleep.

Mr. Chivers, a solicitor acting on behalf of the defence, alleged that that was during the examination in chief and cross-examination of the brother, Alan. He also alleged that after the lunchtime adjournment Mr. Justice Crichton fell asleep again.

Mr. Martin contended that it appeared to observers that the Judge was asleep and that that was an irregularity in the trial. "It is important that a trial look as if it is being conducted properly. Appearances do count."

Mr. Basil Wigoder, QC, counsel for Alan Langham, submitted that if it was upheld that the Judge had fallen asleep, the brothers should have a fresh trial.

(*The Guardian*)

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the Schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notificatio should state the grounds on which the certificate is being held.

Dated this 31st day of January 1973.

D. L. McALLISTER,
Registrar of Titles

Schedule

(1) Registered Owner: Charles Conlon; Folio No.: 171; Lands: Carrickaldragh; County: Monaghan; Area: 54a 3r 15p.

(2) Registered Limited Owner: Catherine Doherty; Folio No.: 189; Lands: Drumhamam; County: Monaghan; Area: 17a. 2r. 35p.

(3) Registered Owner: Daniel Gallagher; Folio No.: 420R; Lands: Ardnableask; Area: 6a. 2r. 18p.; Lands: Tawnawully Mountain; Area: 1/151st part of 5509 a. 3r. 32p.; Lands: Friarsbush; Area: 1/151st part of 3a. 1r. 17p.; Lands: Ardinawank; Area: 1/151st part of 8a. 0r. 3p.; Lands: Goladoo; Area: 1/151st part of 2a. 0r. 35p.; County: Donegal.

(4) Registered Owner: Catherine Gallagher; Folio No.: 520R; Lands: Ardnableask; Area: 2a. 2r. 22p; Lands: Tawnawully Mountain; Area: 1/151st part of 5509a. 3r. 32p.; Lands: Friarsbush; Area: 1/151st part of 3a. 1r. 17p.; Lands: Ardinawank; Area: 1/151st part of 8a. 0r. 3p.; Lands: Goladoo; Area: 1/151st part of 2a. 0r. 35p.; County: Donegal.

THE GAZETTE OF
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LAW SOCIETY
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EDITORIAL

Administrative Justice

Professor Carleton Allen, in his famous work, *Law and Orders,* has written a celebrated chapter on "The Public and the Executive" in which the role of the civil servant is examined. It is therein asserted that bureaucracy means government by highly-established administrators. The danger of bureaucrats exceeding their powers has since 1854 when the system was established, always existed in Britain. There have been about twelve Royal Commissions to examine the British Civil Service which we inherited. In theory the administrators consist of an elite who advise Ministers and are deemed to be the rigorous guardians of tradition and precedent. Appointments to this grade in theory are made in Ireland by an Interview Board on the recommendations of the Civil Service Commission, but the fact that many members of Interview Boards have resigned on the ground that their recommendations have not been adhered to, would appear to suggest that the alleged knowledge of Irish can be juggled to suit requirements. The decision of the Commissioners cannot be challenged, as they shelter behind privilege: in France, candidates who fail to obtain a government or university post, or those dissatisfied with planning appeals, can dispute the decision before the Conseil d'Etat. When appointed, the administrator is expected to give loyalty and discretion to the State. Cynics consider that the alleged benefits of the non-professional civil servant only exist inasmuch as defects are easy to hide; the main defects are over-devotion to precedent, anonymity, inaccessibility, lack of initiative and unwillingness to take responsibility. Red tape requires that everything must be reduced to rule and uniformity, whereas experience shows no two cases are exactly alike. There is also a tendency to swell bureaucracy which is wasteful, and then one may wait months for important decisions. But perhaps the greatest criticism is the striving for direct, though largely anonymous, personal power.

As Lord Hewitt has said: There is in existence a persistent and well-contrived system intended to produce, and in practice producing, a despotic power which at one and the same time places government departments above the sovereignty of the Constitution and of Parliament, and beyond the jurisdiction of the Courts. But it is here that where the professional civil servants —lawyers, doctors, engineers and architects—unlike their lay colleagues can express more freely their opinions in rendering a genuine professional service to the public. Much has been written about possible improvements in the system, but there is little doubt that if any progress is to be made, it will be necessary to establish an administrative tribunal consisting of lawyers and legally trained administrators who would be in a position to review and consider seriously the objections of the humble citizen without recourse to involved and expensive legal procedure; the fame of the French Conseil d'Etat in the impartial determination of administrative problems, should ensure the future success of such a tribunal in Ireland, if a similar simplified procedure were adopted here. The difficulty is that, it would seem to be necessary for such a permanent Court to be deemed to be a division of the High Court in order to conform with the Constitution.

THE SOCIETY

Proceedings of the Council

January 11th, 1973. The President in the chair, also present Messrs W. B. Allen, Bruce St. J. Blake, John F. Buckley, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, James R. C. Green, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J .Lanigan, Patrick C. Moore, Patrick McEntee, Brendan A. McGrath, Senator J. J. Nash, John C. O'Carroll, Peter E. O'Connell, Rory O'Connor, Thomas V. O'Connor, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

The following was among the business transacted.

FLAC

It was decided to refund to the Dublin Solicitors Bar Association the sum of £100 donated to FLAC.

Hotel licences and bar licences

Representations have been made by the Council to the Revenue Commissioners about the form of hotel licences which are identical in appearance with the ordinary public house seven-day licence. In a letter dated 16th August 1972 the Revenue Commissioners stated that it is proposed to include in the next reprint of the licence form a statement to the effect that the

form is used for both public houses and hotel licences and that the latter are subject to certain restrictions. The reprint will be brought into operation in 1973.

The Council have considered that this is not a satisfactory solution and that a different form of licence should be used in each case. In a letter dated October 31st the Revenue Commissioners stated that in their view the responsibility for ensuring that the licence granted is not a hotel licence does not rest with them. Further the records of the Revenue Commissioners are not always such as to allow the Commissioners to state with certainty which type of licence is involved. In the circumstances apart from the warning note which the Commissioners have indicated will be placed on the licence forms for hotels and public houses alike nothing further can be done. It was decided that the attention of members should be drawn to the danger arising from this position and that they should be warned to make the necessary enquiries.

"Improper" assents in the Land Registry

Members wrote as to whether any direction had been given on the question of improper assents whereby a personal representative may assent to a bequest or to a share in intestacy to a person other than the person legally entitled. The Land Registry authorities will not look at the will but will merely rely upon the grant of probate or administration and have regard to the personal representative as the person entitled to give the assent irrespective of the title of the beneficiary. The Council stated that it would be improper for a solicitor to be a party to a transaction which would result in a person other than the party legally entitled being registered as beneficial owner under an assent.

Society's Standard Conditions of Sale

Members wrote pointing out that they have always altered the Society's standard conditions by inserting the words "if from any cause other than the wilful default of the purchaser the sale shall not be completed etc." as they felt it unfair that the purchaser should have to pay interest where the delay in closing was not his fault. They suggest that their wording should be adopted as being fairer. The first matter has to some extent been dealt with by the amendment of the standard conditions of sale which will appear in the next edition whereby the word "wilful" has been deleted.

Undertakings

Members referred to the note at page 233 of the *Gazette* for September/October 1972 under the heading "Should a solicitor give an undertaking without an irrevocable retainer by the client?" and containing a suggested form of letter of retainer which would require an unconditional affirmative reply in writing from the client which would constitute the necessary authority. They suggested that the letter of authority should be amplified by the addition after the solicitor's signature of the words "I agree" with a space for the signature by the client. Clients are frequently slow to reply to letters but if all they have to do is sign their names and return the original letter it would be easier for them. The suggestion was noted and it was decided to bring it to the attention of members.

Lessor's title

On the granting of sub-leases for office development negotiated by a letting agent the solicitors for the proposed lessees raised requisitions asking the lessor to establish title in the earlier lease and raising other requisitions on matters subsequent to the grant of the lease the requisitions being returned with a statement that it is not the practice to answer such requistions and that in the experience of the solicitors acting for the developers they are never raised. The solicitors asked for the views of the Council. The Council took the view that a solicitor failing to raise requisitions and to provide for them in the contract could be guilty of negligence.

Affidavits of foreign law

The Superior Courts Rules Committee are considering the Society's suggestion that rules of Court be amended to allow affidavits by solicitors to be used as to English, Scottish and Northern Ireland law. The Rules Committee felt that it would be preferable if the Society's representatives on the committee were to write to the President of the High Court asking that in general it would be acceptable to him that the affidavit should be made by a solicitor and that if he were agreeable the matter could be dealt with by way of a practice direction. This is being done.

County Solicitor acting for Urban District Council

Application was received from the solicitor for a County Council for permission to act for an Urban District Council in the territory of the County Council on a fixed retainer of £400 per annum. The local Bar Association were consulted and recommended that a position of this nature should not be taken by a solicitor other than on a taxed costs basis. It was decided that the waiver should be refused.

Gaming debt default of bookmaker

On a report from a committee the Council decided that where a bookmaker had defaulted in payment of a bet on the result of a football final there would be no professional objection to a solicitor acting for the claimant objecting to the renewal of the bookmaker's licence and representing the objector on any supplemental hearing.

Dealings with clients' money where a client cannot be traced

A member took over a case from the office of a solicitor now deceased. It involved a collection of rents from four tenants on behalf of an estate. The present solicitor has no information as to the title of the property, how the tenants hold, who is entitled to the first mortgage interest or the name and address of the person entitled to one of the beneficial interests or how the interest arises. They have approximately £356 in hands. Some of the tenants are paying small rents, other tenants have defaulted in payment. It was decided that the only course open to members would be to pay the monies into Court under the Trustee Acts.

Abortive mortgage transaction—costs

Members acted for the purchaser of a dwelling house to obtain a loan from a building society. The transaction proceeded to the stage where a cheque was issued to the building society's solicitor but at that stage the purchaser declined to proceed. The solicitor for the building society had retained the borrower's documents and stated that they would be returned on receipt of the cheque for their costs amounting to 40 gns. The

committee were referred to *Wilkinson v. Grant* (1856, 18 CB 319) in which it was held that a proposed mortgagee's solicitor has no claim for his charges against the proposed mortgagor where the negotiation for the mortgagee goes off through default of the latter. He must look to the party who retains him leaving that person to his remedy if any against the party who occasioned the fruitless expense. The committee were also referred to Fisher and Lightwood *Law of Mortgages,* eighth edition, page 518. The Council on a report from a committee expressed the view that the mortgagees solicitor is not entitled to make any charge against the mortgagor and is not entitled to retain the documents.

Note—The above statement is published in substitution for the statement which appeared at page 161 of the Society's *Gazette* in June 1972 in which the word "purchaser" was inadvertently printed for "party" in the fourteenth line.

SOLICITOR'S COSTS OF FIRST LEASE OR PURCHASE OF NEW HOUSE

Statement by the Council

The total legal costs incurred by the purchaser/mortgagor of a new house has been the subject of considerable adverse comment in the press and elsewhere. In the view of the Council the adverse comment is occasioned by three factors:

1. The imposition on the mortgagor of the mortgagee's solicitor's costs.

2. The imposition on the purchaser of the vendor's lessor's or builder's costs by means of the imposition on him of charges for copy documents of title, declarations of identity and other documents which are necessary to enable him to obtain a mortgage.

3. The lack of uniformity in the costs charged to the purchaser/mortgagor particularly where the sale is by way of building agreement and agreements for lease.

The Council propose to make representations to building societies and other lending institutions with a view to having the mortgagee's solicitor's costs added to the amount of the advance or alternatively to have the lending institutions bear their own costs.

The Council have passed the following resolutions to deal with the other two factors:

1. Agreements for the sale of new houses should not unduly restrict the title offered to the purchaser and should provide for the furnishing to the purchaser without cost to him of all copy documents and declarations necessary to enable him to obtain a loan. In particular the following documents should be furnished to the purchaser where applicable without charge:

Copy documents of book of title including certified copy negative searches.
Statutory declaration of identity.
Certificate of compliance with building covenant.
Lease map.
Indemnities as to roads and services.
Certificate under Section 72 of the Registration of Title Act, 1964.

In the opinion of the Council the charges in respect of these items should properly be borne by the lessor or vendor.

The Council disapprove of the imposition on the lessee or purchaser by the solicitor for the lessor or vendor of charges for postage and petty outlay.

2. The Council recommend the following basis of charging the first lessee or purchaser of a new house including cases in which the transatcion is carried out by way of building agreement and agreement for lease, and regardless of whether the lessor's or vendor's title is registered or unregistered: In the case of houses costing not less than £5,000 and not more than £10,000 a charge of 2 per cent where there is a mortgage contemporaneous with the mortgage and a charge of 1½ per cent where there is no contemporaneous mortgage.

Where the purchase price is less than £5,000 a charge of not more than £80 should be made. No recommendation is made in respect of transactions for more than £10,000. The recommended charges are exclusive of disbursements.

Purchase price	Recommended fee	
	Purchase without mortgage	Purchase with contemporaneous mortgage
£5,000	£75	£100
£6,000	£90	£120
£7,000	£105	£140
£8,000	£120	£160
£9,000	£135	£180
£10,000	£150	£200
Over £10,000	no recommendation	

Where the price does not exceed £5,000 the fee should not exceed £80 in any case.

3. The Council are of the opinion that the costs of a vendor lessor or builder of a new house should not be charged to lessee purchaser or employer.

SOLICITORS SEMINAR IN KILLARNEY

The sixteenth seminar organised jointly by the Society of young Solicitors and the Provincial Solicitors Association will be held in the Great Southern Hotel, Killarney, Co. Kerry, on Saturday, 31 March and on Sunday, 1 April 1973.

Special train fares have been obtained subject to the Society guaranteeing a minimum number of 120 travelling.

The timetable and subjects for the seminar will be as follows:

(1) Saturday, March 31, 10.30 a.m.: *The Legal Effects of Takeovers, Amalgamations and Reconstructions* by Senator Alexis Fitzgerald, Solicitor.

(2) Saturday, 31 March, 2.30 p.m.: *Liquidations and Receiverships — Non-Legal Aspects* by John Stakelum, Chartered Accountant; *Legal Aspects* by Oliver Fry, Solicitor.

(3) Sunday, April 1, 11.00 a.m.: *Social and Economic Complications of Takeovers* by Martin Rafferty, Chairman, Joshua Uatson Ltd.

(4) Sunday, April 1, 2.30 p.m.: *Redundancy Act Procedure* by John Gleeson, Solicitor, Chairman of the Redundancy Appeals Tribunal.

Special hotel rates: Friday night to Sunday lunch: £7.50; Saturday lunch to Sunday lunch: £5.00.

The script of the lecture by Mr. Robert Barr, S.C., on *High Court Practice in Family Law in the Irish Republic*—together with full discussion may be obtained from Mr. Spendlove, 94 Grafton Street, Dublin 2, for 90p, by post £1.

STATUTORY INSTRUMENTS

European Communities

European Communities (Seeds of Perennial Ryegrass and Cereals) Regulation, 1973

The Minister for Agriculture and Fisheries has made regulations, entitled as above, operative from 1 Feb. 1973.

These regulations provide for the implementation of certain provisions of E.E.C. directives concerning the marketing of forage crop seeds and cereal seeds as follows :

(1) perennial ryegrass seed marketed in Ireland as from 1 February 1973 must be certified seed of varieties registered in the Irish National Catalogue of Agricultural Plant Varieties;

(2) seeds of oats, barley or wheat shall not be sold unless they comply with standards prescribed in the regulations;

(3) a person shall not engage in the assembly, storage, or processing of seeds of oats, barley or wheat save in premises approved by the Minister for Agriculture and Fisheries.

Copies of the Regulations may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or through any bookseller.

Price 4p. Postage 2½p extra.

Compensatory Amounts for Plaice under E.E.C. Regulations

As from 1 February 1973 compensatory amounts (levies) will be charged on fresh or chilled plaice (ex tariff heading 0 3.01 B1 (o) 1) imported into Ireland.

Customs duties at the rates specified in the Customs and Excise Tariff of Ireland will also be payable on such imports.

As from the same date compensatory amounts (subsidies) will be granted on fresh or chilled plaice exported from Ireland.

The rates of compensatory amounts vary according to the freshness, size, presentation, origin and destination of the fish.

Further information on the rates of compensatory amounts and supplies of forms of application for payment of compensatory amounts (subsidies) on exports may be obtained.

No. 20/1973

European Communities Act, 1972, European Communities (Fruit and Vegetable) Regulations, 1973

The Minister for Agriculture and Fisheries has made regulations, entitled as above, operative from 1 Feb. 1973.

The regulations supplement the E.E.C. regulations concerning compulsory grading standards for fresh fruit and vegetables, by providing the necessary powers for authorised officers to carry out inspection and sampling and by prescribing penalties for offences against the regulations.

Copies of the Regulations may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or through any bookseller.

Price 1½p. Postage 2½p extra.

No. 30/1973

European Communities (Bacon Levy Periods) Regulations, 1973

The Minister for Agriculture and Fisheries has made regulations entitled as above which provide that the period from 1 January 1973 to 31 January 1973 and from 1 February 1973 to 31 March 1973 shall be levy periods for the purposes of Section 34 (4) of the Pigs and Bacon (Amendment) Act, 1939 (No. 35 of 1939), so that a reduced levy may be fixed from 1 February 1973 in conformity with E.E.C. pigmeat regulations.

Copies of the regulations may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1. Price 1p, postage extra.

Fish (Regulation of Import) Order, 1973, S.I. No. 26 of 1973

Te Parliamentary Secretary to the Minister for Agriculture and Fisheries has made the above-named Order which removes the quantitative restrictions on the import of fish other than trout or carp imported from countries outside the European Economic Community.

Copies of the Order may be purchased from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or through any bookseller. Price 2½p, postage 2½p extra.

Demersal Fish (Handling, Storage and Transport) Regulation, 1973, S.I. No. 27 of 1973

The Parliamentary Secretary to the Minister for Agriculture and Fisheries has made the above-named Regulations amending as from 1 February 1973 the previous Regulations to bring the grading weights of certain species of fish into line with E.E.C. regulations.

Copies of the Regulations may be purchased from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or through any bookseller. Price 2½ p, postage 2½p extra.

Shellfish (Regulation of Export) (Revocation) Order, 1973, S.I. No. 25 of 1973

The Parliamentary Secretary to the Minister for Agriculture and Fisheries has made the above-named Order which removes as from 1 February 1973 the restrictions on the export of unprocessed shellfish.

Copies of the Order may be purchased from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, or though any bookseller. Price 2½p, postage 2½p extra.

Marriages Act, 1972

Section 2 of the Marriages Act, 1972, validates as to form certain marriages solemnised by religious ceremonial only in Lourdes, France. Such marriages may now be registered in Ireland. Applications for registration (and for certificate of registration) may be made to : Custom House, Dublin 1.

District Court (Counsel's Fees) Rules, 1973, S.I. No. 39 of 1973

These Rules, which come into operation on 1st March

Continued on page 60

UNREPORTED IRISH CASES

Separate trade union entitled to picket to gain recognition despite contract between employers and other unions that all employees in the firm would belong exclusively to those unions.

The factory manufacturing hypodermic syringes opened in Dunlaoghaire in 1969. In July 1970 an agreement was concluded between the company, the ITGWU and Nat. Eng. and Elect. T.U. stating that all workers save those in a managerial or clerical capacity must belong in the case of an unskilled worker, to ITGWU, and, in the case of a skilled worker, to NEETU. All the defendants, save Callaghan, District Secretary of Amalgamated Union of Engineering Foundry Workers, agreed to join one of these Unions, although they had been members of A.U.E.F.U. up to this. The five defendants who had been members of A.U.E.F.U. refused to join N.E.E.T.U. The company were informed by Callaghan in July 1970 that one of the members of A.U.E.F.U. had been appointed shop steward but the company would not recognise this. Callaghan then threatened a strike of A.U.E.F.U. members, and refused to obey the Disputes Committee of the Trade Union Congress, who advised him to withdraw the strike notice. The plaintiffs adopted a wait-and-see attitude.

Henchy J. granted an interim injunction to restrain picketing until August 12. On August 19 **Pringle J.** refused an interlocutory injunction. On appeal to the Supreme Court on September 7 it was agreed by consent that no further order be made pending the trial of the action, and that picketing would be discontinued meantime. The trial was held before **McLoughlin J.** in November 1970.

McLoughlin J. granted a perpetual injunction restraining the defendants from picketing plaintiffs' premises, on the ground that there was no trade dispute.

The following matters were determined on appeal.

(1) Is a recognition dispute capable of being a trade dispute?

Even in *E.I. Co. v. Kennedy* (1968) I.R.—this had not been decided up to then by the Irish Courts.

Walsh J. in delivering the majority judgment of the Court answered this question—"Yes". If workmen designate their trade union to be their representatives in any negotiations on questions of conditions of employment, whether or not there is currently negotiations of a dispute, they are doing something which is connected with their employment. If therefore an employer refuses to treat with their designated representative, then that refusal can constitute a trade dispute connected with his employment within Section 5 of the Trade Dispute Act, 1906. Does this principle extend where the particular trade union is not expressly or completely the representative of the workmen concerned? The suggestion that the condition as to joining N.E.E.T.U. was a condition precedent as to the contract of employment cannot be maintained, as the workers concerned were employed. There was merely a subsequent agreement that the workers concerned would transfer their membership to the other union which was a term of their employment. The situation then was that the workers concerned wished to repudiate a term of their employment, and endeavoured to persuade the plaintiffs to waive it. Every refusal on the part of a workman to work in accordance with the terms of his contract is itself a breach of contract.

Henchy J. in delivering the principal *minority judgment,* emphasised that the five defendant employees had been informed by an official of the company, that they would have to be members of either the I.T.G.W.U. or NEETU, and that they freely signed a document that they would do so. When they were eventually informed that their employment was conditional on their joining the relevant union, the reply was a peremptory seven day strike, at the expiration of which pickets were placed on the premises. In effect, the defendants were saying to the company: "Break your contract with I.T.G.W.U. and N.E.E.T.U., and employ us who are members of A.U.E.F.W." If the facts fall within the statutory definition of a trade dispute then the person relying on the trade dispute is entitled to do so. Section 5 (3) of the Act of 1906 clearly defines a trade dispute: once a dispute is between the parties specified and is connected with any of the matters specified, then it ranks as a trade dispute. In this case, the defendants come within the statutory definition of "workmen", they fell into dispute with their employers: the dispute is connected with the terms of their employment. Therefore the plaintiffs are entitled to contend *that a statutory dispute does exist.*

(2) Is the picketing done by the defendants in furtherance of this trade dispute lawful?

Henchy J., in delivering the principal minority judgment, emphasised that, if the picketing is done for a purpose other than peacefully obtaining or communicating information, or of peacefully persuading a person to abstain from work, under Section 2 of the Act of 1906, then this Section cannot grant immunity to picketers. The main purpose of the picketing in this case was to induce the company to break its contract with I.T.G.W.U. and N.E.E.T.U. by employing persons other than the members of those unions.

One of the cases, which constitutes a necessary ingredient of an actionable interference with contractual rights is thus stated by Salmond, *Law of Torts,* fifteenth edition, at p. 498: "When a third party intentionally and without justification interfered with the contract between two parties the defendants thus must be credited with knowledge that if the picketing were successful in inducing the company to break its contract, the company would then be liable for damages for breach of contract, or be subjected to an injunction restraining them from employing persons other than members of I.T.G.W.U. or N.E.E.T.U. The picketing would therefore be unlawful at Common Law, and would be outside the protection not only of Section 2 but also of Section 3 of the Act of 1906."

(3) Is the strike in the present case a breach of contract?

The plaintiffs submit it is, and is therefore unlawful. **Walsh J.** in delivering the majority decision of the Court, said that: Undoubtedly, even if technically

Callaghan had committed a breach of contract, he is protected under Section 3 of the 1906 Act because he was not a party to these proceedings. A contract is not discharged by a unilateral breach, unless the other party chooses to terminate it on that ground. He concurs with Lord Denning who in *Morgan v. Fry* (1968) 2 Q.B. considered Rookes v. Barnard (1963) 1 Q.B. and the more recent English decisions, and concluded that the law was that, if the strike notice given is not shorter than the legal period for the termination of the contract itself, then it is not unlawful: if the strike (this can arise expressly or impliedly) does take place, the contract of employment is suspended during the strike, but revives when the strike is over. In this case, the contract of employment did not contain a no-strike clause. The plaintiff's contention was that it was an implied term that the workers would not take strike action in support of their claim and that it was a breach of contract to do so: this cannot be sustained.

Walsh J. does not accept that, by agreeing to any particular condition, save perhaps an express strike condition, they agree not to raise a condition as to a trade dispute. The notice of strike action in this case was adequate.

Fitzgerald J., in delivering one of the minority judgments, emphasised that the belief that a right to protest justified a right to picket, was unjustified. He held in the present case that the purpose of the picket was to coerce the plaintiff company to break their contract with the two unions with whom they had an agreement. This picket was consequently illegal, and an injunction had been rightfully granted by **McLoughlin J.**

(4) Does the principle of inter-union rivalry apply?

Walsh J., in the majority judgment, stated that the plaintiff contended that the real issue in dispute was simply one of the inter-union rivalry, and could not consequently be a trade dispute within the Act of 1906, and relied on *Stratford v. Lindley* (1965) A.C. But the dictum of Lord Pearce in that case, at page 334, is applicable here: "When a union makes a genuine claim on the employer for bargaining status with a view to regulating or improving the conditions or pay of their workmen, and the employers reject the claim, a trade dispute is in contemplation, even though no active dispute has arisen.

Henchy J. in delivering the principal minority judgment stated that the principles enunciated by the House of Lords in *Stratford v. Lindley* (1965) A.C. applied fully in this case.

(5) Is picketing to gain recognition unconstitutional?

Walsh J., in delivering the majority judgment, held that though **McLoughlin J.** had held that the plaintiff company had not been guilty of any breach of the constitutional rights of the defendants because they had not exercised any coercion, it was not necessary to decide the constitutional issue in this case. It was not necessary to express an opinion on how far or in what circumstances a person can contract out of a constitutional right.

Henchy J., in delivering the principal minority judgment, stated that the case of *Educational Co. of Ireland v. Fitzpatrick* (No. 2) (1961) I.R. was not applicable here, as it decided that when workers are sought to be compelled by means of a picket regardless of their wishes, to join a particular union, such compulsion amounts to a denial of the worker's constitutionally guaranteed right to choose whom he shall join in union with. This case, however, is one of contract, and there is no compulsion or coercion, and no interference with a citizen's free choice here whether he remains a member of one union or joins the other. Accordingly Article 40, Clause 6 (1) of the Constitution which guarantees the right of citizens to form unions, is no impediment to providing by contract that membership of a particular union is to be a prerequisite for a particular employment. Accordingly the majority of the Supreme Court (**O Dalaigh C.J., Walsh and Butler JJ.**) per **Walsh J.** allowed the appeal, and disallowed the injunction. The minority of the Court (**Fitzgerald and Henchy JJ.**) would have enforced the perpetual injunction against the defendants granted by **McLoughlin J.**

[Becton Dickinson & Co. Ltd. v. Lee (No. 2); Supreme Court; Unreported; 19 December 1972]

High Court finds student has no right to vote: age qualification conditional on person being registered according to law.

Mr. Justice Kenny, in a judgment delivered in the High Court in Dublin yesterday, held that David Reynolds, a twenty-year-old student, of Granitefield, Dun Laoghaire, has not got a constitutional right to vote in the General Election on FEbruary 28.

He found, however, that Mr. Reynolds had succeeded in establishing that Section 5 (1) of the Electoral Act, 1963, insofar as it referred to age 21, was repugnant to the Constitution, and that Section 26 was unconstitutional. Apart from that, the question was of considerable public importance and one on which there were strong views. He did not see, therefore, why Mr. Reynolds should not get his costs of the proceedings.

He said that Mr. Reynolds had come to court to assert his constitutional rights, and people who assert their constitutional rights were to be encouraged.

Mr. Reynolds, suing by his father, Arthur Reynolds, had claimed that he was entitled to vote in the General Election and at any election that might occur before April 15. He had named as defendants the Attorney-General, the Returning Officer for the Dail constituency of Dun Laoghaire and Rathdown, and the Minister for Local Government.

Constitutional amendment

Mr. Justice Kenny said that the President, acting on the advice of the Taoiseach, had dissolved Dail Eireann, and it had not been suggested by anybody that that was contrary to the Constitution or that there was anything against the law in doing that. The basis of Mr. Reynolds's claim was that he had acquired by the amendment to the Constitution the right to vote. "The short answer to the case, I think, is that he has not," said Mr. Justice Kenny. If one read Article 16 (1) 2 it would be seen that attaining the age of 18 did not of itself confer the right to vote at an election.

An election could not be conducted without having a register, and the register had to contain the names of the electors so that they could be identified by the returning officer or by the presiding officer at the polling booth. The right to vote conferred by Article 16 (1) 2 was the right to vote conditional upon the person having attained the age of 18, conditional upon the person not having been disqualified, and conditional upon the person complying with the provisions of the law relating to the election of members of Dail Eireann.

The provisions of the law relating to the election of members of Dail Eireann were contained in the Electoral Act, 1923, and in the amending Act of 1963 and they were contained in particular in Section 5 of that Act, which read: "A person shall be entitled to be registered as a Dail elector in a constituency if he has reached the age of 21 years and he is on the qualifying date (a) a citizen of Ireland and (b) ordinarily resident in the constituency."

Mr. Justice Kenny said that he paused there to say that it was agreed by counsel for all the defendants that the reference to 21 years in that section was repugnant to the Constitution and that the section had become unconstitutional as a result of the passing of the Fourth Amendment to the Constitution.

Register provision

The next provision in the Act which was relevant was the provision for a register—there was to be a register of voters made up as of a date which might be prescribed. And Section 26 provided that, subject to the subsequent provisions of the section, every person whose name was on the register of Dail electors for the time being in force in a constituency, and no other person, whould be entitled to vote at the poll at a Dail election.

Mr. Justice Kenny then dealt with the regulations concerning the making of the register of elections and said that the final register had to be published on April 1, and that register came into operation on April 15. When one looked at clause four of the regulations one saw that the qualifying date for the register was September 15 in the year preceding the year in which the register came into force, and Mr. Reynolds could not have been registered or returned last year because at that date the amendment had not been made. Therefore Mr. Reynolds did not comply with the provisions of the law relating to the election of members of Dail Eireann.

Mr. Reynolds had, therefore, no constitutional right to vote, even though part of Section 5 of the Act of 1963 and part of Section 26, the part that related to the questions which may be asked of any elector ("Have you reached the age of 21 years?"), were repugnant to the Constitution.

The right to vote was a constitutional right, but it was a right which, in his view, under the term sof the Constitution, arose only if one complied with the law in force for the time being relating to registration, and it was not a right to vote when a person had attained a certain age.

Compilation impossible

If Mr. Reynolds had a constitutional right to vote the Court would have to find some way by which that right could be exercised, but, for the reasons he had given, he did not think Mr. Reynolds had a constitutional right in the sense that having attained the age of 18 did not of itself confer a constitutinal right to vote. If he did, of course, everybody who attained that age on the day before a General Election would have the right to vote, and that would make the compilation of a register impossible. The Court also had to have regard to the fact that the Dail, having been dissolved under Article 16 (3) 2, a General Election for members of Dail Eireann should take place not later than 30 days after its dissolution.

"The plaintiff has, in my view, no constitutional right to vote," said Mr. Justice Kenny.

He said that he himself had suggested that the draft register which had been prepared could be used as the basis of the election (counsel on both sides spent much of yesterday making submissions on this point).

Mr. Justice Kenny then referred to the difficulties in relation to this suggestion and concluded that it would be administratively impossible and said that, apart from that, there was no legal authority to do so.

Reference had been made to the fact that the Minister could deal with the matter by special regulation, and Mr. Justice Kenny, having discussed the relevant sections of the Act, said that he did not want to express any view on whether the Minister could be empowered under the Constitution to make an alteration in a statute. "My personal view is that he cannot," said Mr. Justice Kenny. He did not think that the fact that the Constitution had been amended so that 18 had been substituted for 21 created an emergency, nor did he think that it created a special difficulty.

No way

Mr. Justice Kenny said that there was no way in which the court could devise the machinery by which those between the ages of 18 and 21 could vote. The State had not, in his view, failed to protect and vindicate the rights of the citizens, because the right to vote was not conditional only on attaining a certain age.

—*The Irish Times* (15-2-1973)

Alleged drunken driver cleared: rules for sealing blood sample defined.

A driver on a drinks charge succeeded in his High Court appeal yesterday when the judge decided that the rules for sealing a defendant's blood sample must be strictly complied with.

Mr. Justice Pringle was ruling on a case stated from **District Justice Lanigan O'Keeffe.**

And though the driver involved, John Hollingsworth, Rathnew, Co. Wicklow, was cleared, leave was granted to the Attorney-General to appeal.

The District Justice, in his case stated, said Mr. Hollingsworth elected to give a sample of blood to Dr. V. Pippett, of Wicklow, who injected it into a tube which he closed by screwing back on the screw cap.

Mr. Justice Pringle said the Garda agreed in evidence at the District Court hearing that it would be possible for any person having acess to the envelope to take out the tube, unscrew the cap and interfere with the contents, replace the cap and replace the tube in another envelope and there would be no trace of the interference.

"The question to be answered," the Judge said, "is, was the blood specimen tube 'stopped' in accordance with the regulations.

"Stopper" was defined as including a screw-top and the stopper provided for the doctor was a screw-top, but Mr. Rex Mackey, for Mr. Hollingsworth, submitted that the words "or similar device to seal a specimen tube" showed that the stopper must consist of something more than an ordinary screw-top and that it should have a device attached to the screw-top which, Mr. Mackey submitted, would not seal the tube and that it should have a lead seal which had been attached to it when the doctor received it.

Mr. Justice Pringle said he thought that while the definition of "stopper" in the regulations used the word "screw-top", that it was intended that it should be a screw-top which would seal the tube.

While he thought the interpretation of the regulations was not free from doubt, he considered that he must interpret them in such a manner as to give the benefit of such doubt to Mr. Hollingsworth.

[A.G. and Suptd. Nagle v. Hollingsworth; Pringle J.; unreported; 15th February 1973]

Will clause on religion rejected by Judge: New Ross man's estate for daughter.

This attempt to get Mrs. Jamieson to give an undertaking that she would remain a practising Roman Catholic was a quite clear attempt to interfere with her freedom of conscience and it was contrary to the Constitution, said **Mr. Justice Kenny** in the High Curt, Dublin, yesterday.

He was giving judgment in an action in which he was asked to determine the true construction of a will made by a Co. Wexford shopkeeper, John A. Doyle, late of the Chalet, New Ross, who bequeathed his entire estate, valued at £15,758, to his daughter, Alice, on the condition that she should be a Roman Catholic at the time of his death and that prior to his death she would be required to give a firm undertaking to the parish priest of New Ross of remaining a practising Roman Catholic. The Judge ruled that Mr. Doyle's daughter was absolutely entitled to the property.

The action was brought by a Dublin solicitor, John Rochford, of Lower Ormond Quay, on behalf of Mr. Doyle's daughter, Mrs. Alice M. Jamieson, now living in Scotland, against the Bank of Ireland Trustee Company Ltd., who are the executors of the estate of the late Mr. Doyle's brother and sister, the late Philip and Mary Doyle.

In his will dated 12 August 1967 Mr. Doyle, who died on 11 January 1969, said that in the event of his daughter not being a Roman Catholic at the date of his death, or of having failed or refused to give the undertaking, he disinherited her from participation in any way in his estate. In that event he appointed John Redmond Colfer, solicitor, New Ross, as sole executor of his will and he bequeathed his estate to his sister, Mary, and his brother, Philip, or their respective heirs (excluding his daughter) if they should predecease him, in equal shares.

Catholicism not contested

Mr. Gerard Lardner, S.C., who appeared for Mrs. Jamieson, said he did not think that it was contested by anybody that she was baptised a Roman Catholic and that she still was one. She was arguing in favour of the validity of the gift to her and claiming that there had been no failure on her part to perform the condition of the will on which the gift depended.

Mr. Donal Barrington, S.C., who appeared for the Bank of Ireland, said he represented both of the estates of Mary and Philip Doyle. He submitted that if the bequest to Mrs. Jamieson were to fail, a problem would arise in relation to the gift—over what precisely it meant.

The difficulty arose, Mr. Lardner said, in regard to the fact that she had not given the undertaking that she would be a Roman Catholic at that time and she had stated in her affidavit that she never knew before her father's death that this undertaking was required of her. She had no knowledge of it and that was the reason no undertaking had been given.

What the testator (Mr. Doyle) meant, he submitted, was a conscious refusal on the part of his daughter or a conscious failure or neglect to carry out his requirements. He had never communicated it to his daughter.

"When Mrs. Jamieson found that something of this nature had been required of her she promptly went to the parish priest and gave the undertaking."

Wrongful interference

Mr. Lardner said of the condition that she should remain a practising Catholic, that it was a provision which constituted a wrongful interference with her right of freedom of conscience and the free profession of her religion given to her under Article 44 of the Constitution. Mr. Lardner submitted that Mrs. Jamieson had complied with one of the conditions in that she was a Catholic on the date of her father's death. She had not refused and had not failed to give an undertaking to the parish priest that she would continue as a practising Catholic. By giving the undertaking as soon as it was required of her she had substantially complied with the testator's condition.

Mr. Barrington said that the conditions in the will had no bearing on the case because they were both void as being contrary to public policy in Ireland, under Article 44 of the Constitution.

If the State was to respect and honour religion he submitted it was offensive to that policy for a Court to uphold anything in the nature of a bribe to practise a religion that he or she did not believe in. If the State upheld the value of freedom of conscience, it too would be offensive for a Court to uphold a gift to a person so that he or she would not follow her own conscience in such an important matter as their religion.

They had this extraordinary factor in this case where the testator was told by his solicitor that he should tell his daughter that she must give this undertaking and he did not tell her.

Left void for uncertainty

Giving judgment, Mr. Justice Kenny held that the phrase "a practising Roman Catholic" was void for uncertainty. "We have no idea what 'a practising Roman Catholic' means, apart from the fact that it involves the Court in the extremely distasteful task of inquiring into people's religious beliefs".

He held the condition requiring Mrs. Jamieson to be a Roman Catholic at the time of her father's death not to be repugnant to the Constitution. Mrs. Jamieson said she did not know about this condition before the testator died, but it was not a breach of her right of freedom of conscience as guaranteed by the Constitution, which also guaranteed the free profession and practice of religion.

On the other hand, said Mr. Justice Kenny, he had no doubt whatever that the second condition in the will requiring Mrs. Jamieson to give a firm undertaking to the parish priest for the time being of New Ross, prior to the testator's death that she would remain a practising Roman Catholic, was an attempted interference with her constitutional right what religion, or lack of religion, she was going to belong to.

Guarantee to practise religion in general terms

The Constitution had stated that freedom of conscience and the free profession and practice of religion were, subject to public order and morality, guaranteed to every citizen. Therefore it was not merely a question of a guarantee against the State but against everybody else. It was the duty of the Courts to give effect to and to protect the constitutional rights. This attempt to get Mrs. Jamieson to give an undertaking that she would remain a practising Roman Catholic was a quite clear attempt to interfere with her freedom of conscience and it was therefore contrary to the Constitution. It was a condition which was certainly unenforceable and contrary to public policy.

Regarding the condition that Mrs. Jamieson be a Roman Catholic at the time of her father's death, Mr. Justice Kenny said this had obviously been satisfied. She was a Roman Catholic and nobody disputed that.

In regard to the condition that in the event of Mrs. Jamieson not being a Roman Catholic at the time of his death or having failed or refused to give the particular undertaking, Mrs. Jamieson would be disinherited, the judge said she had not given the undertaking because she had not known about it at the time. He did not accept that when it was a condition precedent, which was contrary to law, the gift failed. Common sense would seem to indicate that when there was a condition precedent attaching to a gift the object of the law would be achieved by holding the gift to be good and ignoring the condition precedent.

Condition precedent should be ignored and gift invalidated

In his view, said the judge, the sensible rule to apply was that if there was a gift to a person and there was a condition precedent attached, it was contrary to the Constitution and the condition should be ignored.

"In my view, insofar as the first condition is concerned, it is fulfilled and insofar as the second condition is concerned it is contrary to the Constitution. In my view the gift to Mrs. Jamieson is valid."

The phrase "in the event of my daughter having failed or refused to give the undertaking", implied something conscious—a deliberate knowledge on her part of the existence of an obligation to giving an undertaking, which she did not have. It seemed to him that Mrs. Jamieson was absolutely entitled to the property.

He allowed all parties to the proceedings their costs to be paid out of the estate.

[Re Doyle, Decd.—Rochford v. Bank of Ireland; Kenny J.; unreported; 15 February 1972]

Rule against perpetuities applied.

Sir William Goulding, Bart., had an estate in tail male. He made his will in December 1924, when his wife, his son Lingard (born 1883) and four daughters were alive. In 1924 Lingard had two sons, Basil (born 1909) and Ossian (born 1913). Despite the well-known rules relating to the Rule against Perpetuities, the draftsman of the will drew the will incompetently, and thus gave rise to this construction summons. Sir William gave the residue of his estate upon trust to pay an annuity to his wife for her life, then directed that £20,000 out of the residue be invested in authorised securities, and to allow Lingard to receive the income for his life. Then there were some complicated clauses, in view of the estate in tail male, in directing the income to be paid to male grandchildren, etc.

Sir William died in July 1925 and was survived by Lingard, Basil and Ossian. The widow died in 1934 and Lingard died in June 1935. Basil married in 1939 and had three sons : Walter (Born 1940), Timothy (born 1945), both within twenty-one years of Sir William's death, and Hamilton (born 1947).

Basil claims that he is now absolutely entitled to the securities representing this sum, on the ground that it is not possible to create an estate tail in personality. **Kenny J.** held that this contention was well sustained. As regards the residuary real estate, the Rule against Perpetuities does not apply to this. It was also held that the life estate in the personality given to Basil's son if he should be born within twenty-one years from the death of the testator was conscientiously and deliberately created. The words in the clause relating to "in case of failure of issue of such grandson" were held to relate to Walter. One must then determine the effect of the Rule against Perpetuities on the gifts made on the event of the failure of male issue of Walter. The lives in being for the purposes of the Perpetuity Rule were Lingard (who died in 1935) and Basil (still alive). Therefore the interest created had to rest within their lives, and twenty-one years after the death of the survivor of them. Walter's sons could conceivably be born outside this period, therefore the implied gift of residuary personality is void, as it contravenes the Rule against Perpetuities. Buckley J's judgment in *re Hubbards Will Trusts* (1963) Ch., approved. As the implied gift to Walter's son is void, therefore it was held that all gifts which follow it are void, even though Timothy was born within the perpetuity period in 1945. The Rule against Perpetuities invalidates gifts which may rest outside the Perpetuity period. Accordingly if a gift is made to a living person and is expressed to rest on an event which may occur outside the perpetuity period, the gift is invalid. Therefore all the gifts which are dependent on the future of the male issue of Walter are invalid. Therefore the residuary clause in relation to the personal property was effective. When Walter dies there will be an intestacy, and the residuary personal estate will be distributed between the next-of-kin of Sir William. Kenny J. acknowledged the assistance he had obtained from perusing Megarry and Wade on *Real Property*.

[Bank of Ireland v. Goulding; Kenny J.; unreported; 2 November 1972]

District Court (Counsel's Fees), Rules, 1973, S.I. No. 39 of 1973. *Continued from page 55*

1973, provide for revised scales of counsel's fees in the District Court. The new scales, which cover the increased jurisdiction of the District Court under the Courts Act, 1971 (No. 36 of 1971), replace the scales of counsel's fees set out in the Schedule of Costs to the District Court (Costs) Rules, 1970 (S.I. No. 315 of 1970). The Minister for Industry and Commerce has, under Section 2 (2) (a) of the Prices (Amendment) Act, 1972, consented to the exercise by the rule-making authority (the District Court Rules Committee with the concurrence of the Minister for Justice) of their statutory powers to regulate the fees dealt with in the Rules. These Rules can be obtained from the Government Publications Sales Office, Henry Street Arcade, Dublin 1. for 4p and postage.

ENGLISH CURRENT LAW DIGEST

In reading these cases note should be taken of the differences in English and Irish statute law.
All dates relate to dates reported in *The Times* newspaper.

Aliens

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Cusack and Mr. Justice Croom-Johnson.

A Commonwealth immigrant who entered the United Kingdom illegally in 1970 but who had gained an immunity from either deportation under the immigration Acts or prosecution because of the passage of time since his entry, was held nevertheless to have become liable to a deportation order under the provisions of the Immigration Act, 1971, which came into force on 1 January 1973.

Regins v. Governor of Pentonville Prison and Another; ex parte Azam; Queen's Bench; *The Times,* 23/2/1973.

Arbitration

Before Lord Denning, the Master of the Rolls, Lord Justice Buckley and Sir Seymour Karminski.

The authorities establish in a manner binding on the Court of Appeal that, where a third party undertakes the role of deciding as between two other parties a question, the determination of which requires the third party to hold the scales fairly between the opposing interests of the two parties, the third party is immune from an action for negligence in respect of anything done in that role.

Arenson v. Arenson and Another; *The Times,* 22/2/1973.

Certiorari

The Queen's Bench Divisional Court cannot bring up and quash the decision of a Crown Court judge relating to costs following a trial on indictment.

The Lord Chief Justice, sitting with Mr. Justice Park and Mr. Justice May, refused an ex parte application by Mr. Eric Melvin Meredith, a technical college lecturer of Manchester, for an order of certiorari to quash a refusal to award him costs after Judge Da Cunha had directed a Manchester Crown Court jury to acquit him, without calling on the defence on charges of stealing his own car and a Krooklock from a police pound. No evidence had been offered on a charge of taking the car without the owner's consent.

Ex parte Meredith; *The Times,* 17/2/1973.

Damages

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Scarman.

There is an important distinction between the award of damages for loss of earnings and compensation for loss of future earning capacity, given by way of general damages.

Court of Appeal; *The Times,* 10/2//1973.

Evidence

Before Lord Hailsham of St Marylebone, the Lord Chancellor, Lord Reid, Lord Morris of Borth-y-Gest, Lord Simon of Glaisdale and Lord Cross of Chelsea.

There is no rule of law that the sworn evidence of a child which requires corroboration cannot be used as corroboration of the sworn evidence of another child which requires corroboration.

Director of Public Prosecutions v *K*ilbourne; House of Lords; *The Times,* 5/2/1973.

Before Lord Denning, the Master of the Rolls, Lord Justice Stamp and Lord Justice James. Judgments delivered Feb. 20th.

The court, Lord Justice Stamp dissenting, dismissed an appeal by the Board of Governors of the United Liverpool Hospitals from the order of Mr. Justice Cutfield, under Section 31 of the Administration of Justice Act, 1970, directing them to produce the medical records and case notes relating to the treatment of Mrs. F. M. Dunning, of Liverpool, at the Liverpool Royal Infirmary between April and September 1963, to her medical adviser, Dr. John Evans, of Manchester, or to such other medical adviser as he might advise.

Section 31, which came into operation on 31 August 1971 provides: "On the application ... of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court in which a claim in respect of personal injuries to a person or in respect of a person's death is likely to be made, the High Court shall ... have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim (a) to disclose whether those documents are in his possession ...; and (b) to produce to the applicant such of those documents as are in his possession. ..."

Court of Appeal; *The Times,* 21/2/1973.

Family

Before Mr. Justice Hollings.

A separation deed made between a husband and wife and a third party was held not to be a maintentnce agreement within Section 14 of the Matrimonial Proceedings and Property Act, 1970.

Family Division; *The Times,* 20/2/1973.

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Roskill.

The court stated the principles to be applied when granting ancillary relief under the Matrimonial Proceedings and Property Act, 1970, following dissolution of marriage.

Since Parliament had decreed that a divorce was a misfortune that befell both parties, in the financial adjustments consequent upon the dissolution of a marriage which had irretrievably broken down the imposition of financial penalties ought seldom to find a place. The 1970 Act was a reforming statute designed to facilitate the granting of ancillary relief in cases where marriages had been dissolved.

The Times, 9/2/1973.

Before Lord Justice Davies, Lord Justice Cairns and Lord Justice Stamp.

Their Lordships, on an appeal by a husband, whose wife had obtained a decree nisi, set aside an order transferring the former matrimonial home, which had been held in their joint names, wholly to the wife. Instead, they ordered that the matrimonial home, a house in Ferndown, Dorset, is to be held on trust for sale to hold the proceeds of sale and rents and profits until sale in equal shares provided that as long as the daughter is under seventeen or until further order the house is not to be sold; and the wife, who is living in the house with the daughter, now nearly nine, and a man she proposed to marry, is to discharge all outgoings including mortgage interest, any capital repayments to be discharged equally by husband and wife.

The Times, 13/2/1973.

Before Mr. Justice Stirling.

It would be wrong to equate desertion and conduct under Section 2 (1) (b) of the Divorce Reform Act, 1969 (unreasonable behaviour). A wife's determination to sell the matrimonial home and consequently to evict her husband was an act of desertion on her part to be pleaded under Section 2 (1) (c) of the 1969 Act and did not amount to conduct which rendered continued cohabitation unreasonable under Section 2 (1) (b).

Morgan v. Morgan; *The Times,* 23/2/1973.

Gaming and Wagering

Before Sir John Pennycuick, the Vice-Chancellor.

An agreement to share bingo winnings was held not to be a contract by way of gaming or wagering and was therefore enforceable. His Lordship gave judgment for Mrs. E. J. Peck, Hounslow, on her claim against Mrs. W. Lateu, Hounslow, for half a bonanza prize of £1,107, won by Mrs. Lateu, which she had refused to hand over in spite of an agreement to do so.

Peck v Lateu; *The Times,* 17/2/1973.

Before Lord Hailsham of St. Marylebone, the Lord Chancellor, Lord Reid, Lord Morris of Borth-y-Gest, Lord Simon of Glaisdale and Lord Cross of Chelsea.

The "Spot the Ball" competitions run by the *News of the World* do not contravene Section 17 (A) (a) (i) of the Betting, Gaming and Lotteries Act, 1963, as being unlawful forecasts of the results of future events. The House by a majority decision (Lord Simon dissenting) allowed the newspaper's appeal from the decision of the Divisional Court which upheld its conviction by City of London magistrates on two summonses.

News of the World Ltd. v. Friend; House of Lords; *The Times,* 1/2/1973.

Insurance

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Roskill.

The hieroglyphics of a Lloyd's broker's slip in "London insurance market shorthand" constituting insurance cover for foreign aircraft were interpreted by the Court of /Appeal as defeating claims for over $5½m insurance arising out of the destruction of three aircraft at Beirut airport on December 28, 1968, when Israeli armed forces made a helicopter raid as a reprisal for an Arab attack on an Israeli aircraft at Athens airport on Boxing Day.

American Airlines Inc. v. Hope Banque Sabbag S A L v. Hope; *The Times,* 20/2/1973.

Landlord and Tenant

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Diplock, Lord Simon of Glaisdale and Lord Cross of Chelsea.

A tenant who in 1965 had noisy young people above him and who told his landlord at that time that if the noise and stamping continued it would one day bring down the ceiling was held not to be entitled to claim damages against the landlord under the implied covenant to keep the structure in repair under Section 32 of the Housing Act, 1961, when in 1968 the bedroom ceiling fell on him and his wife. Their Lordships held that because the defect in the ceiling was latent and not patent, the landlord's obligation under Section 32 (1) to repair did not arise unless he had prior information which would put a reasonable landlord on inquiry as to whether works of repair were needed at that time.

O'Brien and Another v. Robinson House of Lords; *The Times,* 20/2/1973.

"Refreshment house"

Before Mr. Justice Kilner Brown.

An immobile refreshment stall serving coffee in plastic cups through a hatch in the side of the stall between 8 p.m. and 5 a.m. was held not to be a "late-night refreshment house" under Section 1 of the Late Night Refreshment Houses Act, 1969.

Frank Bucknell & Son Ltd. v. Croydon London Borough Council; *The Times,* 16/1/1973.

Security for costs

Before Lord Denning, the Master of the Rolls, Lord Justice Cairns and Lord Justice Lawton.

Where the defendant to a claim by a limited company applies under Section 447 of the Companies Act, 1948, for security for costs and there is evidence that if the defendant wins the claimant company because of its financial situation may not be able to pay the costs, the court is not bound to make an order but has a general discretion whether or not to make it, having regard to all the circumstances. And if the defendant has made a payment into court, o rits equivalent, so substantial that it is likely to out-top any reasonable amount which might be ordered as security for costs, that payment in is a "circumstance" which can be taken into account.

Sir Lindsay Parkinson & Co. Ltd. v. Triplan Ltd.; Court of Appeal; *The Times,* 23/1/1973.

JUDGE GUILTY OF CORRUPTION

One of America's senior and most distinguished Federal judges was found guilty in Chicago today on seventeen counts of corruption, which included bribery, perjury, conspiracy, mail fraud and income tax evasion. Judge Otto Kerner, who was Governor of Illinois at the time of the offences, now faces a total of up to 83 years in prison and fines of nearly $100,000.

Judge Kerner, who has continued to draw his $42,000 annual salary as a judge of the Seventh Circuit Appeals Court since his arrest last year, has been at the centre of a spectacular corruption trial which has been going on for more than seven weeks in the Mid-Western capital.

Together with Mr. Theodore Isaacs, a close friend from the local Democratic Party machine—with which he was closely associated for most of his political career —Mr. Kerner was accused of accepting large sums of money in horse racing association stock in return for fixing racing dates in favour of a local circuit on the most favourable days of the summer schedules.

Mrs. Marjorie Evertee, known locally as the "Queen of Illinois racing", was said to have offered Mr. Kerner the stock as bribes to fix the racing dates during his term as Illinois governor ten years ago.

The Government also alleged that the judge and Mr. Isaacs had sold the stock at massive profit, and had failed to declare the sales for tax purposes. Altogether, the two principal defendants are said to have made almost $300,000 on the stock deal.

Apart from his domestic judicial fame, Mr. Kerner has something of an international reputation. In 1968 he was named to the chairmanship of the National Commission on Civil Disorders—the so-called Kerner Commission—which studied in great detail the black riots of summer 1968. The report is highly regarded by students of urban violence throughout the world.

The jury trying the 64-year-old judge took seventeen hours over the weekend to come to the unanimous verdict this morning that both defendants were guilty on all counts. There was some early problem in finding a judge to try the case with the necessary competence and impartiality. In the end the US Attorney-General's office had to go nearly 1,000 miles, to Knoxville, Tennessee, and selected District Court Judge Robert Taylor, as the most suitable to try his senior colleague.

—*The Guardian* (20 February 1973)

Court Practice Report on Liability of Barristers and Solicitors

Fourteenth Interim Report

LIABILITY OF BARRISTERS AND SOLICITORS FOR PROFESSIONAL NEGLIGENCE

To: *Desmond O'Malley, Esq., T.D., Minister for Justice*

Introduction

1. The Committee on Court Practice and Procedure were appointed by the Minister for Justice on 13 April 1962 with the following terms of reference:

(a) to inquire into the operation of the courts and to consider whether the cost of litigation could be reduced and the convenience of the public and the efficient despatch of civil and criminal business more effectively secured by amending the law in relation to the jurisdiction of the various courts and by making changes, by legislation or otherwise, in practice and procedure;

(b) to consider whether, and if so to what extent, the existing right to jury trial in civil actions should be abolished or modified;

(c) to make interim reports on any matter or matters arising out of the Committee's terms of reference as may from time to time appear to the Committee to merit immediate attention or to warrant separate treatment.

2. The Committee were requested by your predecessor, Mr. Brian Lenihan, T.D., to examine the questions of the liability (a) of a barrister for professional negligence and (b) of a solicitor for professional negligence while acting as an advocate. These topics form the subject-matter of this our Fourteenth Interim Report.

3. The Committee sought views on these topics from the following bodies:

(1) The General Council of the Bar of Ireland,
(2) The Benchers of the Honourable Society of King's Inns,
(3) The Incorporated Law Society of Ireland,
(4) The Young Barristers' Society,
(5) The Society of Young Solicitors,
(6) The Dublin Solicitors' Bar Association,
(7) The Southern Law Association,
(8) The Irish Association of Civil Liberty,
(9) The Law Schools of Trinity College, Dublin, University College, Dublin, University College, Cork and University College, Galway.

Views were furnished to the Committee by all of these bodies save the Benchers of the Honourable Society of King's Inns and the Law Schools of Trinity College, Dublin, University College, Cork, and University College, Galway.

4. The Committee also, by notice published in the daily press, invited members of the public to submit views on these topics. The general public, however, has shown very little interest in the matter. The newspaper notices evoked only ten replies and nine of these were concerned only with particular complaints by litigants against their legal advisers.

Present position

5. The present legal position as to the liability of a barrister for professional negligence seems to be that he is immune from action for negligence in advocacy in court. With regard to advising and preliminary work in connection with litigation the position is doubtful but the better opinion seems to be that he cannot be made liable. In non-litigious work the position is also doubtful but since the decision in *Rondel* v. *Worsley* (see paragraph 7 infra) the better opinion seems to be that he is liable.

6. The situation with regard to a solicitor is that he is liable in respect of non-litigious work, while his position in litigaton work is doubtful. However, in respect of advocacy in court at all events he is probably immune from action for negligence.

7. The question of the barrister's liability for professional negligence was considered recently in England in the House of Lords in *Rondel* v. *Worsley* [1967] 3 All E.R. 993, [1969] 1 A.C. 191. In that case the House of Lords confirmed the view taken by the English Court of Appeal and by the trial judge that, in relation to court work in any event, the barrister enjoys a legal immunity for claims for damages for professional negligence. The opinions in that case, however, introduced a new element of uncertainty into the position, leading as they do to the conclusion that the immunity enjoyed by the barrister in England is not a comprehensive one and may not exist in relation to other branches of his work, for example, in relation to advisory work and conveyancing. *Obiter dicta* in that case in regard to different aspects of liability for professional negligence on the part of barristers and solitors as mentioned in paragraphs 10 and 11 hereof.

8. In Ireland, the most recently reported judgment concerning the liability of a solicitor for professional negligence is that of the High Court in *McGrath* v. *Kiely & Anor.* [1965] I.R. 497. In that case the solicitor in question was held liable in negligence by reason of his failure to communicate information to counsel concerning the full extent of the plaintiff's injuries, as a result of which she was awarded less damages than she would otherwise have got in an action for damages for personal injuries. The judgment in that case states that the contract between a solicitor and his client pursuing a claim for damages for personal injuries requires the solicitor to prepare and prosecute the claim with due professional skill and care.

9. There is no instance of a reported case, since the establishment of the State, in which a barrister was sued for professional negligence or in which a solicitor was sued for professional negligence while acting as an advocate in court.

10. In *Rondel* v. *Worsley* an accused person who was arraigned at the Old Bailey obtained the services of counsel to defend him on a dock brief. The accused was convicted. Some years later he brought proceedings against his counsel for damages for professional negligence. His claim failed, the House of Lords (Lord Reid, Lord Morris of Borth-y-Gest, Lord Pearce, Lord Upjohn and Lord Pearson) holding that an action did not lie at the suit of the accused against his counsel for negligence (if there were any negligence) in the conduct of the accused's defence. The law as laid down in this case is that the immunity of counsel from being sued for professional negligence in the conduct of litigation, criminal or civil, is based on public policy and not on his contractual incapacity to sue for fees. It held that it is in the public interest that this immunity appears from *obiter dicta* in the case. According to Lord Reid, Lord Upjohn and Lord Pearson this immunity extends to work done in the conduct of litigation, criminal or civil, at the trial, to work where litigation is pending (per Lord Upjohn from the time of the letter before action), to drawing pleadings and to conducting subsequent stages; but (Lord Pearce dissenting) it does not extend to other advisory work or work in drafting or revising documents. Two extracts from the opinions given on these matters read :

> Therefore, the immunity of the barrister, if it exists at all, must depend on some other ground than his status, his inability to sue or his incapability to contract. I think that public policy necessitates that, at all events in matters pertaining to litigation, a barrister should have this immunity, and basically it depends upon two factors. First, a barrister is in a unique potition, even different from a physician, for he is bound to undertake litigation on behalf of a client provided that it is in the usual way of his professional practice and that he is properly instructed or, to put it more bluntly, properly paid according to his standing at the Bar. . . . The second and more important consideration is that the barrister is engaged in the conduct of litigation whether civil or criminal before the courts . . . while counsel owes a primary duty to his client to protect him and advance his cause in every way, yet he has a duty to the court which in certain cases transcends that primary duty.
>
> (Lord Upjohn)

> Does the barrister's immunity extend to "pure paper work", that is to say, drafting and advisory work unconnected with litigation? The authorities to which I have referred above do not show it . . . It seems to me that . . . it is at least doubtful wether barristers have any immunity from liability for negligence in doing "pure paper work" in the sense which I have indicated.
>
> (Lord Pearson)

11. The solicitor's position is also considered in other *obiter dicta* in this case. According to Lord Reid and Lord Pearce, Lord Upjohn concurring (cf. per Lord Morris of Borth-y-Gest and Lord Pearson)—a solicitor should not be liable to be sued for negligence in carrying out work in litigation which, if counsel had been engaged, would have been carried out by counsel; but (per Lord Upjohn) the general result of such immunity, having regard to the different position of a solicitor, is likely to be that he will have immunity only while actually acting as advocate on behalf of his client or when settling pleadings. An extract from Lord Upjohn's opinion reads :

> I see no reason why a solicitor acting as an advocate should not claim the same immunity as can counsel, in my opinion, for acts of negligence in his conduct of the case. But this principle, I have no doubt, must be rigorously contained for it is only while performing the acts which counsel would have performed had he been employed that the solicitor can claim that immunity. Thus, for example, if he so fails properly to instruct himself he cannot claim any immunity. . . . So, too, a solicitor who is going to act as the advocate cannot claim immunity if he fails to appear at the right time on the duly appointed day for the hearing of the case, for, in contrast to the barrister who is incapable of contracting with his client, and for the reasons I have given is in any event immune, the solicitor is in breach of contract. . . . So I think the general result is likely to be that a solicitor acting as advocate will only be immune from the consequences of his negligence while he is actually acting as an advocate in court on behalf of his client or settling the pleadings. Thus he would be immune if, having secured the attendance of witnesses, he negligently fails to call one of them.
>
> (Lord Upjohn)

12. The position then appears to be that the barrister is immune from actions for damages for professional negligence while acting as an advocate in court. The position with regard to that part of litigation consisting of advising and preliminary work is in doubt. With regard to non-litigious work such as conveyancing the generally accepted view since the decision in *Rondel* v. *Worsley* is that there is liability for negligence in this area. On the other hand the solicitor's position is that he is liable to be sued for damages for professional negligence in the performance or non-performance of the work he is engaged to do by his client with the possible exception that he may be immune from action in regard to his conduct as an advocate in court.

13. In a memorandum submitted to this Committee by the Incorporated Law Society of Ireland it was suggested, in regard to the extent of the solicitor's present liability, that :

(a) a solicitor is liable for damages to a client resulting from his neglect to exercise the standards of skill and care to be expected from a reasonably competent solicitor;

(b) he must be acquainted with all the ordinary statutes in everyday use which it would be accepted as his normal duty to know and also with all points of ordinary law and all matters of procedure;

(c) while he would not be liable for a mistake as to the construction of a doubtful statute which was difficult to interpret, he would be liable if he should have realised that there were difficulties of interpretation and failed so to advise his client;

(d) he would be liable for the consequences of ignorance or non-observance of the rules of practice of court and for the want of care in the preparation of a case for trial and for the mismanagement of so much of the conduct of a

case as is usually and ordinarily adopted in his branch of the profession;

(e) he is liable for failure to institute or prosecute proceedings with due diligence and for failing to instruct counsel adequately, and

(f) a solicitor is liable if he does not explain to his client the nature, substance and effect of a document which he is permitting a client to execute.

14. The memorandum points out that a solicitor not only incurs the full liability for negligence of all other professions, but in the following respects he is in a less favourable position than any other profession:

(a) Section 7 of the Attorneys' and Solicitors' Act, 1870, provides that a provision in an agreement between a solicitor and his client respecting the amount and manner of payment of his remuneration relieving the solicitor from liability for negligence is wholly void.

(b) In an agreement as to remuneration for contentious business a provision excluding the liability of the solicitor for negligence is void—per Tindal C. J. in *Lamphier* v. *Phipos* [1838] 8 C. & P. 475.

(c) A solicitor's bill of costs is subject to taxation. The Taxing Master has access to the solicitor's entire file and not only ensures that no item is overcharged but that the solicitor will not be remunerated for work deemed to be unnecessary or resulting from neglect on the solicitor's part.

(d) A solicitor is an officer of the court, and in any matter coming before the court in which he is professionally interested he may be penalised either in costs or in compensation to his client if the court forms the opinion he was negligent or remiss.

Because the provisions of section 3 of the Solicitors Act, 1954, and section 61 of the Courts (Supplemental Provisions) Act, 1961 (which repealed and reenacted in similar terms section 93 of the Courts of Justice Act, 1924) may have altered the previous position that solicitors were officers of the court or were to be deemed to be such, as they were under section 78 of the Supreme Court of Judicature Act (Ireland), 1877 (and as they now are in England under section 50 of the Solicitors Act, 1957), the Committee do not feel it is necessary to express a final view on the question of whether solicitors are now officers of the court.

15. The Law Society's memorandum also draws attention to the position in regard to complicated non-litigious matters in regard to which it seems that a solicitor who obtains and acts on counsel's advice is immune from action for professional negligence, provided that the following conditions are complied with:

(a) the solicitor must have had reasonable grounds for belief that the barrister whom he instructed was competent in the class of case on which the barrister was asked to advise;

(b) all the relevant facts of the case must have been fully and accurately presented to the barrister;

(c) the solicitor must have no reasonable grounds for believing that the advice which he receives is mistaken or erroneous; and

(d) the solicitor *bona fide* acts on the advice received and has not been prohibited by his client from doing so.

(16) The memorandum points out that counsel's advice is no protection to a solicitor where the solicitor in the particular circumstances of the case ought to have the knowledge himself (*Glebe Sugar Refining Company Limited* v. *Greenock Port and Harbour Trustees* [1921] 65 Sol. Jo. 511 per Lord Birkenhead at page 552) or in any matter of normal procedure or not involving special difficulty. Therefore, in all matters of normal procedure not involving special difficulty or where the law is reasonably straightforward, the lay client is protected against negligence by his possible right of action against the solicitor. Even on a difficult or doubtful point of law, if a solicitor takes it upon himself to advise a client, he may be guilty of negligence if he failed to warn the client that the matter was not free from doubt and that counsel's opinion should be taken (*Richards* v. *Cox* [1942] 2 All E.R. 624).

17. It appears that a similar situation arises in connection with advising and preliminary work in the litigation field. The judgment of the High Court (Mr Justice Henchy) in *Millard & Another* v. *McMahon* (delivered 15 January 1968—unreported) notes that '(it is well settled that where a solicitor lays his client's claim before competent counsel and acts on counsel's advice, he is not liable for negligence".

18. The solicitor's liability for professional negligence is partly based on the contractual tie between himself and his client. The barrister, on the other hand, has no contractual relationship with the client and is not therefore entitled to sue the client for his fees. However, the barrister's immunity in respect of advocacy work is not founded on the absence of a contractual relationship but, according to the opinions in *Rondel* v. *Worsley,* on considerations of public policy.

Views submitted to the Committee

(a) *Advocacy Work*

19. The view has been submitted to us that the interest of the public would best be served by preserving the immunity which has hitherto been enjoyed by barristers against any action for negligence arising out of their conduct of cases in court.

20. The immunity of the Bar in regard to advocacy work may amount to a diminution, however slight, of the citizen's right of recourse to the courts but, nevertheless, it is argued that on balance the citizen's rights are best served by a fearless and independent barristers' profession whose members can conduct cases free from the fear of retribution by an ex-client who, having lost his case, decides to sue his counsel.

21. In relation to the work of advocacy carried out in court either by a barrister or a solicitor, the view is urged that it would be undesirable from the public point of view and unfair to the practitioner to expose him to the danger of an action for negligence in respect of any alleged error of judgment committed by him in the conduct of a case. The work of the advocate in court in this respect differs completely from that undertaken by other professional men. This is particularly true under the adversary system of trial of actions. Each case involves a contest between the advocate and his opponent and calls for a very difficult assessment of the tactical approach to each case which may have to be varied from time to time throughout the hearing of the case. New and unexpected developments are always liable to arise in the course of a hearing. The advocate is faced with the necessity of making split-second decisions, often while he is on his feet and addressing the court or questioning a witness. It would add immeasurably to the difficulty of his work if he had to operate under the constant threat of an action for damages by an unsuccessful litigant, and this, in turn,

would be bound to reduce his effectiveness in conducting his client's case. It would introduce a new and irrelevant factor into every decision he had to make—whether he could be held to have been negligent, if the decision should turn out to have been the wrong one. The tendency would be for every advocate to become overcautious, and the clients would suffer as a result.

22. It would be undesirable to allow an action for negligence to lie in respect of advocacy in court because to do so would in effect be to permit a complete retrial of the original action with a view to determining what the result would have been if the case had been conducted in the way suggested by the disappointed client. In criminal cases this would allow a convicted criminal to sue his counsel and in effect have his case retried as a civil matter even when all forms of appeal on the criminal side had been exhausted.

23. Viewing the matter from the point of view of the public, an important aspect is that pointed out by Lord Denning M.R. in the Court of Appeal hearing of *Rondel* v. *Worsley*. The advocate owes a duty to the court and to the community generally as well as to his client. He should not be subjected to the new pressure of possible actions for negligence which could tend to make advocates lean too heavily on the side of satisfying the client to the possible neglect of their paramount duty to uphold truth and justice.

24. It is said that in the past the community has gained much more than it has lost by the existing measures of immunity enjoyed by barristers. It enables the barrister to exercise his judgment in a decisive manner without fear of possible repercussions to himself. Even if there may have been occasions in the past when clients have suffered as a result of errors made by their barristers, there is no evidence that such incidents have been at all numerous. So far as solicitors are concerned actions for negligence against them have been few.

25. It is suggested that the danger of vexatious actions brought by persons with no real cause of action would be much greater in the case of the advocate than in the case of persons in other professions. An example of this is to be seen in the case of *Rondel* v. *Worsley* where a lay litigant, who did not appear to have even a stateable case, exposed a barrister to protracted and costly proceedings in the High Court, the Court of Appeal and the House of Lords. It is probable that the disappointed litigant is much more likely to fall victim to the disease of litigation for litigation's sake than the person who complains of other forms of professional negligence.

26. The point made in the preceding paragraph in regard to vexatious actions against barristers applies with equal force to actions against solicitor advocates. Even unfounded complaints resulting in court proceedings by a client against a solicitor have a punitive effect upon his professional reputation and practice. Because of this, the solicitor can be held up to ransom for excessive damages which may bear no relation to the loss involved.

27. In general it seems that the case based on the public interest in favour of maintaining the immunity of barristers from actions for professional negligence in relation to advocacy in court applies equally to solicitors when exercising their right of advocacy before the courts in which they are entitled to do so. As already mentioned in paragraph 6, the position may well be that solicitors already have this immunity. However, it has been suggested to the Committee that it would be preferable to have the law in this matter made certain by statutory provision conferring on solicitors and barristers the same immunity in regard to advocacy work.

(b) *Advising and Preliminary Documents for Court*

28. It was submitted to the Committee that the considerations which are relevant in concluding that an advocate should not be liable for his conduct of a case in court should apply also to settling the pleadings, the advice on proofs and other preliminary documents for court. It was however conceded that if a solicitor takes it upon himself to settle these documents in an action in which he will not be appearing as advocate, and is negligent in doing so, and thereby causes loss to his client, it would not seem unreasonable that he should be liable, unless the client requires the solicitor to do so in order to avoid the expense of counsel's fee or otherwise. The person handling the case in court should be the final arbiter of the issues to be raised and of the most satisfactory way of proving them. It has also been suggested to the Committee that a solicitor should have immunity for preparatory work in litigation (i.e. that which an advocate would normally do) where such work is done by a solicitor who also does the work of advocate.

29. It was urged on the Committee that immunity from action for negligence on the part of counsel in respect of the preliminary documents, including the advice on proofs, was essential in the public interest and that even with such immunity, the client would be reasonably protected. It was claimed that if counsel were to be liable, he would, to safeguard himself, advise the proving of matters of doubtful efficacy and the summoning to court of unnecessary witnesses with the result that the costs of litigation would multiply. All cases would take very much more of the public time and there would be an enormous loss of time and money on the part of witnesses retained in court for days during which evidence would be given of doubtful assistance to the litigant or to the court. The general loss to the public would far outweigh any slight benefit that might accrue through making counsel liable in negligence for mistakes by counsel in the preliminary documents, and litigation would become the preserve of the very wealthy.

30. One view put forward was that a barrister should be liable for negligence where, by retaining papers in his possession for an unreasonable length of time without taking the necessary steps in relation to them, he had thereby caused the client's action to be defeated by the efflux of time. We cannot say that there is any immunity from action for this type of negligence.

(c) *Non-Litigation Work*

31. It was at one time a commonly held view in this country that a barrister was not liable for professional negligence in non-litigious matters by reason of the absence of a contractual relationship between himself and his client and that a solicitor was also immune when he took and acted on the advice of competent counsel in such a matter. In support of the suggestion that this position should be given legal sanction, the view is advanced that in this country the ascertainment of legal rights whether by litigation or by legal advice is to a great extent subsidised by the solicitor's profession. It was urged that even in non-contentious matters a poor person frequently cannot afford to meet the

costs involved of the research necessary to advise on a difficult or doubtful point, and much of this work is subsidised by the solicitor's profession. It was claimed that if the liability of solicitors for negligence were to be further extended, their difficulty in being insured against such claims and the practical impossibility of a solicitor obtaining insurance cover if a previous claim made against him had been comprised or had resulted in the award of damages would compel them for their own protection to eliminate from among their clients virtually all persons who could not afford to pay the full fees. The result, it was claimed, would involve grave injustices to the poorer section of the community.

Committee's Recommendation

32. The Committee's approach to the question of liability of barristers and solicitors for professional negligence has been conditioned by the following matters :

(1) the present position has given rise to no public disquiet. This is apparent from the lack of public interest shown in our newspaper notices referred to earlier in paragraph 4.

(2) Few claims for professional negligence against solicitors have been brought to court.

(3) The general uncertainty which exists as to some aspects of the law on liability in this area of professional negligence.

(4) The greater importance that will attach to this topic in the event of implementation of our recommendation in our Thirteenth Interim Report to extend the solicitor's right of audience to all courts.

33. The Committee accept that the immunity of advocates from action is based on the considerations of public policy recognised in the case of *Rondel* v. *Worsley* and which ultimately moved the House of Lords to hold that barristers cannot be successfully sued in respect of negligence in advocacy work. In regard to advocacy work, we take the view that the same considerations of public policy confer a like immunity on solicitors acting as advocates. If our view as to the legal position in regard to advocacy work is correct, then we think that no change is desirable in this situation.

34. With regard to the preparatory work in litigation, the legal position seems in doubt and in our view it would be preferable to have the position clarified by court decisions in appropriate cases rather than attempt to define the position by statute. It seems to us that it would be better to allow the law on this question to be elaborated in the courts by the application and development of common law principles rather than by statutory provision because of the difficulty of foreseeing and providing by statute for the variety of circumstances and situations in respect of which the law of negligence may be invoked. An example of how the process has operated in the past is illustrated by *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1964] A.C. 465 which decided that an action for negligence could be maintained in respect of gratuitous professional advice, a view which was assented to in *Bank of Ireland* v. *Smith* [1966] I.R. 646.

35. In regard to non-litigious work, the law, in our view, is that barristers and solicitors are liable for professional negligence. If this view is correct, we do not think it desirable to alter the situation. The opinion, already referred to in paragraph 31, that a barrister was not liable for professional negligence in non-litigious matters because of the absence of a contractual relationship between him and his client we believe to be wrong. We do not think that it would be desirable to establish by statute any such immunity.

Signed :
BRIAN WALSH, *Chairman*
J. K. WALDRON, *Secretary.*

18 May 1971.

IRISH JUDGE IN MAJOR DECISION

Judge Cearbhall O Dalaigh was one of five judges of the Court of Justice of the European Communities, sitting in Luxembourg under the President, Mr. R. Lecort, which has delivered its judgment in a case which the E.E.C. Commission brought against the Italian Government.

The case concerned the failure of the Italian Government to implement a Community directive aimed at rationalising fruit production within the Community. Judge O Dalaigh sat in on the case a day or two after taking up duty in Luxembourg, and this was the first judgment in which he was involved.

The Court held that member States were not entitled to invoke rules of domestic law or domestic practice to justify non-implementation of Community regulations. The Italian Government, by not taking all the steps required to implement the system of premiums for the destruction of fruit trees, was found to have defaulted on its obligations. Italy was ordered to pay the costs in the case.

—*Irish Independent* (20 February 1973)

FOURTH INTERNATIONAL ARBITRATION CONGRESS

by MAX ABRAHAMSON, Solicitor

This Congress was held from October 3 to October 7, 1972, and included as one of its major topics the problems of construction arbitration, a recognition of the national and international importance, or at least problems, of this field. The papers ranged from "Problems of Arbitration Procedure in Disputes Arising from Contracts for Industrial, Scientific and Technical Co-operation", "Arbitration Disputes in Major Construction Projects" and "Arbitration and Contract Guarantees" (by Dr. Eisemann, Director of the International Chamber of Commerce) to "Some Remarks on Pre-arbitration Procedure in Syria" and "Arbitration in Patent and Know-how Licence Agreements". Over fifty communications were written on and about the basic reports.

The amount of time and money spent on efforts to improve arbitration procedure must be minute measured against the importance of this subject, so that it is most sad to have to report that a sizable sum of money and the opportunity of serious work in this field of a large gathering of experts were wasted.

Most of the reports and communications, saying nothing of any value at length but very diplomatically, were both circulated in advance and in many cases read verbatim by their authors at the sessions of the Congress. At the end of the wearisome affair the science or art of arbitration was not noticeably more advanced than at the beginning.

Even surviving the boredom, one was in danger of drowning in powerful undercurrents. Communist countries versus non-communist countries, England, France and America vying with each other as centres of commercial arbitration with the contribution to balance of payments. The hostility between lawyer and non-lawyer arbitrators was evident.

It was particularly interesting that, whilst the delegations from other countries, particularly France, with one of the largest delegations, were almost all lawyers, the English/Scottish/Welsh delegation, with which I travelled, had a very small proportion of lawyers, yet it was calculated that between them this delegation had been involved in some 10,000 arbitrations (this included a very sizable number of shipping arbitrations).

Perhaps it was as foolish to expect enlightenment in Moscow on matters relating to justice as it would be to expect instruction in Switzerland on naval tactics. It is probably naive ever to expect fruitful work from an international congress, and one should be satisfied to have had the opportunity to meet many people well worth travelling far to encounter. Nevertheless I was extremely depressed to encounter once again the extraordinary readiness of lawyers to pontificate on very difficult problems on the basis of often narrow, ill-digested and distorted personal experience, without the benefit of any proper investigation, or evidence. It is not surprising that there has been so little effort to tailor the technique of arbitration to the particular needs of the construction industry and that arbitration has been perverted from its intended purpose to a replica of court proceedings at their worst.

As to Moscow generally, I travelled there in the belief that I would spend most of my time at the congress. As a result I had no plans for using my time as a tourist fruitfully when on humanitarian grounds I released myself from all but the minimum attendance.

I did not succeed in getting into a Russian home or forming any clear picture of the economics of the system or the degree of supervision of the lives of the citizens. It was very difficult in one week to reach conclusions in a country where a first-class ticket to the ballet which would cost £8 in London, is only slighter dearer than a bar of chocolate.

There was no contact with the Russian delegation. I understand, from other sources, that there are something over 10,000 lawyers in private practice in Russia, but that their rolé is quite different to the role we perform, or should perform. A lawyer is prohibited from attempting to minimise the seriousness of the crime of the accused he is defending, and may not plead "not guilty" if he believes that his client committed the crime. This means that an accused is to a large extent defenceless against the State, and coupled with vague definitions of crimes, no doubt goes some way to explaining the abuses of judicial proceedings of which we have heard. Soviet officials are harrassing even when they appear to wish to help; goodness help those of whom harrassment is encouraged officially. But perhaps this is not the best time to adopt an air of moral superiority about our legislation and "judicial" system.

On the sightseeing level, I did not have time to go inside Lenin's tomb. Lenin is one lawyer who is looked upon as a deity by his subjects, unlike some of our judges who only think they are. His photograph is omnipresent and a long queue of sightseers stretches through Red Square waiting to see his entombed remains.

We were told officially that there is freedom of religious worship in Russia, and presumably this is the religion referred to. Several attendances at the Great Synagogues of Moscow were memorable but saddening experiences.

Walking across Red Square after attending a performance of the Bolshoi Ballet in its home theatre, the cavernous Moscow undergrounds, the department store GUM (Government Universal Magazine—Moore Street under cover) were memorable. Moscow is recommended for a visit to all save gourmets—and steer clear of congresses.

NOTICE

Vacancies in United Nations Secretariat

The Society has received from the Department of Foreign Affairs notification of vacancies in the United Nations Secretariat some of which are open to persons with legal qualifications. Any member interested may obtain further particulars on application to the Society quoting the reference E/8/73, February 14th, or preferably direct to the Department of Foreign Affairs quoting the reference 417/131/C, 14th February 1973.

Book Reviews

Cole (J.S.R.)—Irish Cases on Evidence. 8vo; pp. xii plus 206.

This volume has been published under the auspices of the Arthur Cox Foundations, two of whose trustees are Mr. Justice Kenny and the Society. Dr. Cole has performed an invaluable service to Irish legal practitioners by listing under their distinctive exacting headings the more important cases on the Irish law of evidence, and has added useful notes. The author has also included a useful unreported judgment such as *People v. Murray* (1971), although it would seem that such unreported decisions such as *Shan Mohangi* (new trial ordered because irrelevant evidence admitted, 23 July 1961), *Henry Gleeson* (every Judge is entitled to change the jury in the manner that seems best to him—conviction for murder dismissed—7 April 1941), R. V. Christie (1914) applied, *William Coleman.* Improper imputations against character of prosecution witnesses—conviction upheld—14 June 1945. *Francis Cox* (admission of statements valid), 20 December 1949, and *William Hopkins* (epilepsy as form of insanity rejected—conviction upheld—20 April 1953). In view of the title of the book, it would seem that, insofar as the same or identical law was applicable, reported and unreported Northern Ireland cases on evidence, some of which are occasionally mentioned in the notes, might have been included. It is unfortunate that the Table of Cases does not contain the full citation of the cases: in the view of this reviewer, this economy was unnecessary: the sections of the Irish Statutes since 1922 could also have been inserted as the 1951 edition of A. Sandes' book on *Criminal Procedure in Eire* which itself was incomplete, has been out of print for a long time. Dr. Cole has performed a valuable service in selecting from the different Irish law cases reported on evidence which will be of inestimable advantage particularly to practitioners who cannot lay their hands easily on Irish law reports. If the minor blemishes previously mentioned were corrected in a subsequent edition, this learned work would receive the well-justified encomium of Irish practitioners.

Ryan (Edward F.), ed.—Digest of Cases decided by the Superior and other Courts in Ireland and Northern Ireland reported from 1959-1970. 8vo; pp. lxxxviii (88), columns 744; Dublin, Incorporated Council of Law Reporting, 1972; £12.50.

Practitioners who possess the previous *Digest of Irish Cases,* will appreciate how invaluable such a work is, particularly when it has been extended to cover twelve years to 1970. We had already been indebted to Professor Ryan, of University College, Cork, for two most useful summaries of Irish cases from 1949 to 1968. In view of the knowledge of Irish cases which the learned author already possessed, it was a happy choice that he should edit this *Digest.* In accordance with tradition, the *Digest* first contains an Alphabetical Table of Cases with full references, a list of cases followed overruled, a detailed Table of Statutes with appropriate annotated sections, first of the United Kingdom, then of Ireland since 1922, then of Northern Ireland since 1921, which have been judicially interpreted. Finally there is the usual Digest of Cases in columns by alphabetical subject matter. It need hardly be said that this volume is an *absolute must* for practitioners who wish to follow the trend of Irish decisions. Unfortunately in order to defray the high cost of printing, the Incorporated Council were compelled to charge the sum of £12.50 for this volume.

Rideout (Roger)—The Practice and Procedure of the National Industrial Relations Court. 8vo; pp. xvi plus 94; London, Sweet & Maxwell, 1973; £1.75 paper-back.

We are already indebted to Dr. Rideout for a valuable volume on *Trade Union Law.* Inasmuch as the procedure of the Industrial Relations Court is only being gradually formulated, the learned author has performed a most useful task. Unfortunately there is little hope that a similar Court may ever be established in Ireland owing to trade union insistence on out of date collective bargaining procedures. The most valuable sanction of this Court is the fact that the fines imposed on unions for breaches of the Act may be executed by means of sequestration of property. This would be most valuable if an Industrial Court was ever established.

Copinger (C.W.A.) and Skone (E.P.)—James: The Law of Copyright and of International Copyright. 11th edition; 8vo; pp. xlviii plus 920; London, Sweet & Maxwell, 1971; £13.

The editors of this centenary edition of this learned work, which first appeared in 1870, had already expanded the ninth edition (1958) to 917 pages, and it is remarkable that, despite the signing of the Stockholm Copyright Convention of 1967, and the intervening English case law, on the subject, they have been able to confine themselves within this space. The excellence of this work is well known to practitioners who have problems in connection with copyright and has been well maintained, and there are relatively few Irish decisions on this subject. As the English Act of 1956 and the Irish Act of 1963 are somewhat similar, the Irish practitioner will have much to gain from a study of this learned work particularly in relation to such matters as original work, assignment and infringement. The author has divided the work into numbered paragraphs which facilitate reading. The Common Market regulations may introduce changes, but these will doubtless not be implemented for some time. Copyright is a fascinating study for those who have time to specialise in it.

E. R. Hardy Ivamy (ed.)—Paynes: Carriage of Goods by Sea. 9th edition; 8vo; pp. xlviii plus 780; London, Butterworth, 1972; £2.80 paperback.

The first edition of this work was published as long ago as 1914. The fifth edition, published in 1949 contained 184 pages, and the first edition edited by Professor Ivamy, the seventh, contained 214 pages. It has thus been necessary to extend this edition by more than 64 pages to contain the up-to-date material. The English Carriage of Goods by Sea Act, 1971, has now replaced the Act of 1924, and contains new limitations propo-

sals, and limitation of a shipowners liability, particularly as regards containers. The chapter on "Time Charter Parties" now contains a description of no less than thirteen new cases decided between 1969 and 1972. Twelve more up-to-date cases are listed under "demurrage". The Appendices contain the Acts of 1924 and of 1971 in full, the York-Antwerp Rules of 1950, and specimens of bills of lading and of charter parties. All those who wish to learn the principles of the law of carriage of goods by sea are indebted to Professor Ivamy who has written a most readable and up-to-date treatise on this most complicated subject.

Robertson (A.H.)—European Institutions—Co-operation—Integration—Unification. 3rd edition; 8vo; pp. xix plus 478; London, Stephens, 1973 (Library of World Affairs, No. 44); £3.75 paperback.

When Dr. Robertson of the Secretariat of the Commission of Human Rights in Strasbourg first wrote this learned work in 1959, it contained 362 pages. With all the developments in European c-operation that have occurred in the last fourteen years, it is not surprising that Dr. Robertson has had to expand his *magnum opus* by more than 100 pages. As always, this book is indispensable to the student who wishes to understand clearly the differences between the European Institutions—The Council of Europe, NATO, OECD, Western European Union, The European Communities, and The European Free Trade Association; with the advent of Britain into the EEC, this latter Association has almost disappeared. The Appendices contain the Treaties, Statutes and Conventions establishing these various international organisations, which is a fascinating study from the comiarative law viewpoint. The text is written in an easy owing style which makes it a pleasure to read. It is a pity that Dr. Robertson has not written a leading book on Community Law which, like that of his work on *Human Rights* would make this complicated subject so much more comprehensible to the ordinary reader. We are, however, fortunate in this work to be in the hands of a master like Dr. Robertson to explain the different European institutions.

McLean (Ian) and Morrish (Peter) (eds.)—Harris's Criminal Law. 22nd edition; 8vo; pp. lxvi plus 903; London, Sweet & Maxwell, 1973; £4.80 paperback.

The sixteenth edition of this work, prepared by Mr. Wilshere in 1936, contained 730 pages. The twentieth edition prepared by Mr. Palmer in 1960 was reduced to 706 pages. The twenty-first edition, prepared by Mr. Hooper in 1968, contained 858 pages, which has now been expanded to 903. The fact that this learned work, in less than thirteen years, has been expanded by 200 pages, shows the amount of criminal egislation enacted and criminal case law adjudicated upon which has been passed in England recently. The whole procedure of the English Courts has been radically altered by the English Courts Act, 1971, which, following the Beecham Committee recommendations, established Crown Courts. Sweeping changes were also made by the Children's Act, 1971, and the Magistrates' Courts Act, 1972; in the result, Part II dealing with procedure will have to be read with caution. Inasmuch as the same or similar legislation still applies in Ireland, Part I dealing with criminal responsibility, attempts, accomplices, intoxication, etc., will be useful to practitioners here. Part II deals with offences of a public nature, such as treason, piracy, bribery, contempt of court, forcible entry, obscenity, drunkenness, bigamy, drugs, firearms, road traffic, intoxicating liquor, etc. Part III deals with offences against the person such as homicide, abortion and assault. Part IV deals with offences against property such as theft, burglary, false accounting, blackmail and forgery. The appropriate case law relating to each subject is accurately inserted therein. Messrs Morrish and McLean have performed a complicated and invaluable task in bringing the English criminal law up to date for their readers.

A similar book giving up-to-date Irish criminal law and procedure, as well as the decisions of the Court of Criminal Appeal and of the Supreme Court in criminal matters would be invaluable, but will doubtless not be written unless a substantial grant is forthcoming; however, McKnight's book on criminal appeals deserves mention as a most useful work.

Wilkinson (A.W.)—Personal Property. 8vo; pp. xxiii plus 781; London, Sweet & Maxwell, 1971.

The learned solicitor author of this work, who is senior Lecturer in Law in Bristol University, is not to be confused with the author of the excellent book on *Road Traffic Offences.* Instead of producing a large tome like Williams, the author has wisely confined himself to a few topics of personal property, such as bailment, possession, sale of goods, hire-purchase, negotiable instruments and insurance. Bailment is considered under the heading of obligations to the bailor and to the bailee respectively. All the up-to-date decisions are mentioned in respect of each of the topics—such as sales by description, and fitness for purpose in sale of goods. This is a most useful book, particularly for students, which deserves to displace the older text books.

JUDGE O'DALAIGH EXPLAINS ROLE OF EUROPEAN COURT

According to a distinguished authority, the Court of the European Community in which Cearbhall O Dalaigh took his place earlier this week as the Irish representative, "possesses more varied jurisdiction than any other court ever established".

At one end of the scale it is an international court settling disputes between member States. It is also a *conseil d'etat,* or administrative court dealing with what in Ireland would be called problems of administrative law, offering individuals an opportunity of challenging actions by Community officials on grounds of illegality and also of administrative correctness. It also deals with contracts of employment in the Community institutions and actions brought by private individuals for accidents caused by Community chauffeurs.

Thus it not only judges disputes between member States and Community institutions, but it also makes it possible for farmers, businessmen and other people affected by Community decisions, to ensure that their rights are properly observed. In a recent case—one listened to by Judge O Dalaigh, as a spectator when he visited the court a few months ago, an Italian widow claimed compensation from her Government under a Community milch cow slaughter scheme, half of which was payable by national authorities. Her lawyers maintained that it was the Italian Government's duty to make funds available and the point was submitted to the European Communities Court, which ruled in her favour.

This is the example referred to by Mr. Justice O Dalaigh in reply to the first question in the interview that follows. He spoke to Fergus Pyle in Luxembourg a few days ago about the way the European Court works.

What will the Court of Justice of the European Communities mean to the ordinary Irish citizen?

I suppose—though my experience is still too limited to afford you any really satisfactory answer—it is possible that we might have problems such as the Italian Government seems to have had in not having monies voted by Parliament. Our Constitution does indicate that Parliament has a control over national funds, monies are not to be paid out unless voted by Parliament, and Parliament cannot vote monies except on a resolution put down by Government.

So this is a very real problem, this problem of States ensuring when they undertake obligations that the structures of national Government are adjusted to ensure that there isn't delay that might amount to a denial of relief—denial of payment or compensation.

In other words, you see that the Treaty and other obligations are duly implemented?

And that we and other States whose machinery may delay to the point of denying compliance—that the national structures of Government, of legislation and the provision of funds are adjusted in such a way as to see that obligations are complied with.

What powers do you have to enforce the judgment against a defaulting Government?

I think this eventually becomes a political question. In a national State you can send in the sheriff, you can call in the guards, you can seize the man's property. This machinery is not available as far as I am aware on a Community basis, and certainly not available against Governments.

So what happens?

Well, if a Government continually fails to comply with its obligations under the Treaty of Rome, then it becomes a grave political question as to whether such a member State can be retained in membership. It is like any member of a club who is repeatedly in breach of the rules.

Can an individual take an action against one of the Community's institutions, like the Commission or the Council?

I would think in principle, yes. It seems to me that basically anyone who is hurt by an exercise in Community powers, which are in excess of powers granted by the Treaty, must have a remedy in this court.

What is the relationship between this court and our national courts—it isn't a final court of appeal in any sense, is it?

No, it seems to me that what might simply be called in Irish law terms, the "case stated" procedure, will probably be one of the areas in which Irish courts will be chiefly in relationship with this court, and that is the obligation which rests on an Irish court, if it is a court of final appeal—not necessarily the Supreme Court, but any court which is the final court in the particular matter which is then before it. For instance, the Circuit Court hearing a District Court appeal, or the High Court on Circuit hearing a Circuit appeal—if a question arises as to the interpretation of the Treaty of Rome, and the matter is not in the category of something that is clear beyond dispute, then it is the duty of the presiding judge or judges to suspend the hearing of the case while they ask the European Court in Luxembourg what the correct interpretation of the particular clause of the Treaty is. And this court does not concern itself with the particular facts of the case or decision; it is merely concerned to ensure that the Treaty is uniformly interpreted and uniformly applied throughout the length and breadth of the Community.

What, briefly, is the body of law that you are going to administer?

I have the task of endeavouring to familiarise myself with the jurisprudence of the court which has accumulated in its fifteen years of existence.

These are the cases which have been heard and decided?

Yes, by brother judges—the old guard, as they were referred to on my first day in court—very distinguished jurists, professors of law and men of great learning, have been working over this text now for fifteen years and there has been quite a body of case-law, or wisdom, of jurisprudential approach, established. Of course this may be modified in time, by the views of the new members of the court—I don't know. But primarily the new members will have to familiarise themselves with it.

Is there any danger of conflict between our Common Law tradition and continental legal traditions?

When you say our Common Law, a great Irish judge

Continued on page 73

CORRESPONDENCE

Proposed Allied Irish Banks Scholarship at Law Society

Allied Irish Banks Limited (Legal Dept.),
3-4 Foster Place, Dublin 2,
24 January 1973.

E. A. Plunkett, Esq. (Secretary).

Dear Mr. Plunkett,

Receipt is acknowledged of your letter of the 23rd instant enclosing the text of a short notice which you propose to publish in the Society's *Gazette*. I note from the text that it is now proposed to award the prize on the results of the paper on Company Law in the *Final* Examination.

In your letter of 24 November last you intimated that it would be on the Company Law paper in the Second Lw Examination.

I would also mention that there is a typographical error in line three, the word "by" immediately after the word "accept" should read "with".

Yours sincerely,

E. Rory O'Connor.

Department of Foreign Affairs.
7 February 1973.

E. A. Plunkett, Esq. (Secretary).

Dear Sir,

I am directed by the Minister for Foreign Affairs to refer to your letter of 25 January 1973 concerning the establisment of a depository library for material relating to the European Communities.

I am to inform you that the National Library has now been designated a depository library and will receie all the publications of the institutions of the Communities. The library has already begun to receive this documentation and its facilities are, of course, aailable to the general public. It is noted that the Society has applied for designation as a European Documentation Centre.

The Minister is of opinion that, if the legal profession requires additional documentation facilities, it is for the profession itself to arrange this.

Yours faithfully,

H. McCann (Secretary).

Guest Lane, Williams & Co.,
32-34 South Mall, Cork.

1 January 1973.

E. A. Plunkett, Esq. (Secretary).

Dear Sir,

We understand that for some time past the Department has been considering a Bill to amend the Landlord and Tenant Act with particular reference to revision of rents every seven years in twenty-one year leases if and when the Bill will become law. We shall be very glad to hear from you with any information which may be available to you regarding the proposed Bill and whether the proposals are likely to come into operation soon.

Yours faithfully,

Guest, Lane, Williams & Co., Solicitors, Cork.

10 January 1973.

The Secretary,
Department of Justice,
Dublin 2.

Dear Sir,

I enclose copy of a letter received by the Society from Guest Lane Williams & Co., Solicitors, Cork, and I shall be obliged if you can supply any information on this subject.

Yours faithfully,

Eric A. Plunkett (Secretary).

Department of Justice,
72-76 St. Stephen's Green.
26 January 1973

E. A. Plunkett, Esq. (Secretary).

Dear Sir,

I am directed by the Minister for Justice to refer to your letter (EAP. L/55/73) of 10 January 1973 with a copy of a letter from Messrs Guest Lane Williams & Company, Solicitors, Bank of Ireland Chambers, 32-24 South Mall, Cork, regarding proposd landlord and tenant legislation with particular reference to the revision of rents every seven years in certain leases.

The Landlord and Tenant Commission, in their Report entitled "Report on Occupational Tenancies under the Landlord and Tenant Act, 1931" (Pr. No. 9685), have recommended (para. 269) that a tenancy that is renewed under Part III of the Landlord and Tenant Act, 1931, should contain provision for a review of the rent at the end of every seventh year of the renewed tenancy on the application of either the landlord or the tenant. A comprehensive landlord and tenant Bill, which will include proposals arising out of the recommendations of the Commission, is at an advanced stage of preparation. It would not, however, be possible to indicate a date for the circulation and publication of this Bill.

Yours faithfully,

R. B. Toal.

22 February 1973

Dear Mr. Plunkett,

Just recently I completed the purchase of a new house by way of lease to be registered as a burden on the lessors freehold folio (the lease contained a consent to the lease being registered as a burden) and made the usual searches in the Judgments, Bankruptcy and Sheriffs offices and in the Registry of Deeds, Land Registry and Companies Office which were all clear. We also got a letter from the lessors solicitors consenting to the use of the land certificate for the purpose of the registration.

When I lodged my client's lease to be reigstered the Land Registry refused to accept the lease for registration as there was a letter attached to the Land Certificate from a city firm of solicitors acting for a mortgagee (by equitable deposit) who had lodged the Land Certificate for the purpose of registering any leases but stipulating that any lease or other dealing was not to

be registered unless the purchaser/lessee also lodged a letter from their office consenting to the registration of the lease.

I saw one of the legal assistants and pointed out that the mortgagees had been paid off and that there was a note on the folio cancelling the inhibition which had been put on the folio and formally demanded that my client's papers be accepted for registration. This was refused after the Registrar had been consulted in the matter.

I have had to take back my client's papers and have now to write to the lessors solicitors asking them to arrange that the mortgagees solicitors withdraw their letter to the Registrar and make the Land Certificate available to the lessors. I do not know how long I will have to wait.

The reason for the above impasse is that apparently if a solicitor lodges a Land Certificate whether for the registered owner or a mortgagee for a particular transaction or with a direction or general inhibition no note of this inhibition or whatever is attached to the folio therefore no solicitor knows of it until he lodges his client's papers for registration. This could lead to a very serious situation for any solicitor.

I have today given instructions that no dealing in which the Land Registry is involved is to be completed until the original Land Certificate has been produced to me or inspected in the Land Registry.

I am writing this letter to you as a warning to other solicitors of what can happen.

P.S.—I have never had much faith in the Land Registry Folio, now it is clear it may not be relied on.

Yours faithfully,

Bergin and Burke, Solicitors,
118 St. Stephen's Green, Dublin 2.

Dear Sir,

The strong and fully-justified criticisms by Senator Robinson and Dr. O'Higgins of the Offences against the State (Amendment) Act, 1972, as reported (January 18th), omit two vital points.

The Act allows the opinion of a Garda officer to be "evidence" of certain criminal offences. The O Bradaigh case shows that a man can be convicted when the *only* evidence is the "opinion" of a garda. That case, therefore, goes much further than the Act and treats an unsubstantiated and uncorroborated opinion as proof beyond reasonable doubt, the standard of proof required in criminal cases. Whether correct in law or not, ths is an even more objectionable interpretation of the Act than was feared.

Since the Act makes it possible to jail a man on the bare opinion of the gardai, without any trial as the word is normally understood outside totalitarian countries, it has in effect introduced internment by another name. But it is internment by the Executive with a veneer of respectability provided by the judiciary, the judges have been unfairly saddled with the duty of being a cloak for Executive action, thereby comprising their constitutional independence.

The present Government has a disgraceful record of weakness and failure to enforce the existing laws against the I.R.A. But it has also been responsible for the most insidiously objectionable laws in the history of the State.

Anyone concerned with civil liberties and the rule of law should support any organisation which will campaign to have the 1972 Act repealed, or all the Offences against the State Acts limited to operate for a year at a time.

Yours, etc.,

John Temple Lang (Dublin).

Judge O'Dalaigh explains Role of European Court

Continued from page 71

who was also a great European, George Gavan Duffy, has a phrase somewhere in one of his judgments—it may have been in the famous Ballybunion case—in which he refers to the Common Law as—what was it? —"A rude monument to the ancestors of another people." The Common Law in Ireland exists with and subject to the Constitution, which is a very important modification, I think, because one of the principles of the Common Law is the supremacy of Parliament. One of the principles of our Constitution is that Parliament is subject to the Constitution, and there are various guarantees of personal and other rights that are of great importance to Irish citizens, if they look to enforce them. So that an Irish lawyer's contribution in this, I think, would be different from the contribution of an English or Scots lawyer; he comes more with an American outlook, if one wants approximate terms, which is really wider ranging and less confined, I would think, with great respect to my new colleagues on the other side, then perhaps their approach. A good friend and colleague in the court has spoken of this as a synthesisation of national laws. This is what the court is endeavouring to do—not to rub out one approach or other, but to harmonise and synthesise the various national approaches, always bearing in mind what must always be a supreme principle for any judge, that justice shall be done.

—*The Irish Times* (12 January 1973)

NOTICE

In the Editorial note on page 41 of the February *Gazette* it was erroneously stated that the Editor was prepared to publish suitable comments qualifying the legislation if submitted. This should have read "suitable comments about the legislation".

VALUE ADDED TAX ON SALE OF PROPERTY

VAT became part of the tax system on 1 November 1972. Solicitors are exempted from liability to register and pay VAT on fees received for services rendered in the course of their profession.

The tax applies to building construction including the provision of new houses and other new buildings and may also apply to sales of land and existing building which have been the subject of development after 31/10/72.

Except in exceptional circumstances as provided for in Section 4 (5) of the Value-Added Tax Act 1972 VAT does not apply to sales of undeveloped land or sales of secondhand houses or other buildings. Even in the case of developed land no liability will arise on sale unless the person selling it has carried out some development work such as demolition, extension, alteration or construction on it after 31/10/72 or is deemed to be caught under Section 4 (5) of the Act (disposal by person other than the developer, e.g. a lessor granting a lease to the builder's nominee).

A client who is a registered person i.e. who carries on a business not exempted from VAT may be liable for VAT on the sale of the premises. The effective rate is 3.156 per cent on the purchase price (5.26 per cent on 60 per cent of the total tax exclusive consideration). He will be entitled to issue an invoice showing VAT as a separate item. If the purchaser is himself a registered person he will be entitled to credit for the tax so paid against VAT on his ordinary trading receipts. If the purchaser who acquires the premises is not an accountable person (e.g. a bank or an accountant) he will have no means of recovering VAT paid to the vendor as he will have no income chargeable to VAT.

Although solicitors are not accountable persons they will no doubt be consulted by clients in the course of selling or buying as to the impact of the tax. The main relevant documents are : Value Added Tax Act 1972; Value Added Tax Regulations 1972 (S.I. No. 177 of 1972); Guide to the Value Added Tax issued by the Revenue Commissioners, particularly Chapter 20, obtainable on application to Dublin Castle.

The client is the accountable person and where the vendor is registered should be reminded of his liability to account for the tax which he can pass on to the purchaser. The purchaser in turn should be reminded of his liability to pay the tax to the vendor and his right to obtain an invoice which may be used to obtain a tax credit if he is registered.

Example 1

Sale after 31/10/72 of new property in respect of which there has been no development after 31/10/72 —No VAT liability on vendor or purchaser. Wholesale tax and turnover tax will have been paid on the component materials—Section 35.

Example 2

Sale not in the course of business of any premises even where there has been development after 31/10/72 —No VAT liability on vendor or purchaser.

("Course of business' is a wide term. A multiple trading group selling off a branch developed after 31/10/72 would be liable to VAT as credit could have been claimed on VAT suffered on development. Such a sale would be in course of business.)

Example 3

It may be arranged in the contract that the price of premises subject to VAT shall be tax-inclusive.

Sale by builder of house newly built or developed after 31/10/72	£10,000
(Tax included in £1,000 equals £305.90.)	
Tax-exclusive price	£9,694.10
Add VAT at 3.156 per cent	£305.90
Total payable on completion	£10,000.00

In this case the purchaser of the house as a residence will receive no tax credit. On a subsequent sale by an unregistered person there will be no further liability for VAT but in the case of business premises if the purchaser is an accountable person under Section 8 i.e. a person engaged in the delivery of taxable goods or services and the premises are acquired for that purpose he will be entitled to an invoice for tax included in the price i.e. £305.90 and will be entitled to a tax credit for the amount shown on the invoice against VAT on his trading receipts.

Building contracts which straddle 31/10/72 present special problems and members should refer to Section 35 of the Act which contains provisions for adjustment and recovery of consideration in such cases.

The tax on housing under VAT is estimated to be the same as under the previous system of turnover and wholesale tax. If, therefore, a price for the erection of a house has been agreed before November 1st there would normally be no case for an adjustment of the price merely because some of the payments were received by the builder after November 1st. In fixing the price of a new house after November 1st, it would be most desirable to make quite clear whether the price is inclusive of VAT or whether it is a tax-exclusive amount to which an appropriate addition for VAT may be made later on.

In general it is thought that it will simplify matters to make VAT sales of property at tax-inclusive prices so that VAT will be regarded as included in the purchase price.

VAT may also arise on the creation of rents on their capitalised values whether in respect of developed land or new office or shop buildings where the lease is for more than ten years.

It is important to realise that on a sale of property chareable with VAT where there has been a partial development e.g. a garage worth £100,000 with a development worth e.g. £2,000 the whole consideration £102,000 will attract VAT. The purchaser who receives an invoice for the VAT charged will be entitled to a tax credit for the VAT charged against his subsequent trading receipts.

It is suggested that the following among the pre-contract enquiries should be made by the solicitor for the purchaser of property.

(1) Is the vendor an accountable person selling in the course of business?

(2) Has there been development since 31/10/72?

(3 Is the price tax-exclusive or tax-inclusive?

(4) Does the property fall within Section 3 (5) (b) (iii) that is certain sales of businesses as going concerns which will not be chargeable to VAT?

Stamp duty is chargeable on the gross price inclusive of VAT.

A vendor who is doubtful whether or not VAT will be chargeable in relation to a particular sale may apply to the Revenue Commissioners for a certificate in this regard. The Commissioners will require a full statement of the relevant facts in relation to the property in question and on the basis of the facts as so supplied will indicate whether or not VAT would be chargeable if delivery were made on a particular date.

Members are reminded that this is necessarily an incomplete summary intended to alert them to the provisions of the Act. They should refer to the Statutes, Regulations and Guide for full information on the subject.

This article supersedes the circular letter already issued in which it was not sufficiently clear that VAT applies only to property which aas been the subject of development.

For convenience, the text of Mr. Egan's letter is printed here :

Value-Added Tax

Dear Mr. Plunkett,

Thank you for the revised draft of the circular.

I think you will find that adequate provision is made in section 34 of the VAT Act to prevent double taxation in relation to a property deal which straddles the commencement date for VAT. Assume, for example, a contract by a builder to erect a private residence for a customer for a tax-inclusive consideration of £10,000: the value of the work-in-progress on November 1st, 1972, was £7,000 and £5,000 had been paid by the customer. The builder's liability on completion of the house will be as follows :

		£
Contract price		10,000.00
Less paid prior to November 1st		5,000.00
Balance of consideration		5,000.00
Less VAT deemed to be included £5,000 @ 3.059%		152.95
Consideration liable to VAT		4,847.05
VAT @ 3.156%		152.95
Less Relief under Section 34 :		
Value of W-in-P on 1/11/72	£7,000	
Paid on account	£5,000	
Balance being undelivered W-in-P	£2,000 @ 3%	60.00
Net VAT liability		92,95

The total turnover tax and wholesale tax included in charges for building work has been estimated to be 3%, and it may be assumed, therefore, that when the builder quoted a tax-inclusive price of £10,000 for the house he included therein approximately £300 for tax. This will cover the total of the turnover tax, wholesale tax and VAT which he will bear or pay as follows :

Turnover tax and wholesale tax 3% of 7,000	210.00
Net VAT liability	92.95
Total	**£302.95**

You will see, therefore, that the element of double taxation is insignificant.

I would emphasise again that the Revenue Commissioners consider that the treatment of the creation of rents is adequately dealt with in Regulation 20 of the VAT Regulations, 1972, and they do not intend to issue any special statement in this regard.

Yours sincerely,

P. J. Egan
Principal Inspector of Taxes

Office of the Revenue Commissioners
Dublin Castle
23rd December 1972

Practice Notice

In all Malicious Injury Applications before his Honour Judge Deale it is necessary for the Claimants' Solicitor to be present in Court when the case is called as otherwise costs will not be awarded. This has been the practice on the Eastern Circuit for some years.

Notice – E.E.C. Lectures

If sufficient numbers of members ask for photocopies of the lectures delivered in the Burlington Hotel, Dublin, on E.E.C. Restrictive Practices Law, on Council of Company Mergers, and on Patents, Know-How and Trade Marks given by Dr. Gleiss and Dr. Helm on 27 January 1973, it may be possible to supply them at a reasonable rice. Members would have to pay nearly £8 if they ordered single photocopies of these lectures.

Requests for photocopies should be made to the Secretary.

Land Registration Rules 1972

In the December 1972 *Gazette,* at page 275, the fees in Part I of the Schedule of Costs are set out. It has been pointed out that these fees are strictly subject to Rule 234 of the Land Registration Rules, which sets out in detail the circumstances in which the fees charged shall only be half those stated.

PROFESSIONAL LIABILITY SCHEME

The results of the first three years operations of the professional liability scheme managed by Underwriting Agencies Ltd. are now to hand.

For the year 1972 439 policies were issued gross premiums being £72,423.00. Eleven claims were notified of which ten are outstanding and a reserve of £34,470 has been retained to meet these claims. The anticipated results of the year's working indicates a sum of £34,470 for payments and outstanding claims and a reserve of £17,235 for unexpired risks making a total of £51,705 in all or at a ratio of claims to premiums of 71 per cent.

Gross premiums for the years 1970 (part), 1971 and 1972 were £140,569. Fifty-three claims were received of which nineteen resulted in a nil liability, six cost £1,425 and twenty-eight outstanding claims are estimated at £77,395. Anticipated results are a reserve of £17,235 for unexpired risks making a total of £96,055 possible liability being a ratio of 68 per cent of claims to premiums

UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH

Fifteen fellowships for the Study and Dissemination of International Law are being offered by UNITAR. Most of the fellowships are confined to government officials. All candidates must be law graduates in the 24 to 40 age group. Non civil servants are required to attend courses in International Law in The Hague under study scheme (maximum number five) for eleven weeks from 10 July to 22 September 1973 or Study Scheme D (maximum number six) for seven weeks from 10 July to 22 August 1973.

All candidates must have experience in the field of International Law, and, if accepted, all travelling and accommodation expenses will be paid. Tuition will be in English and French.

Application forms may be obtained from the Department of Foreign Affairs, St. Stephen's Green, Dublin 2, as Irish candidates are ultimately nominated by the Minister. The completed application forms should reach the Department of Foreign Affairs, Dublin, at latest by 23 March 1973.

INVENTOR WHO LED DOUBLE LIFE GAOLED

A man described as a brilliant inventor who had led a double life as a highly-respected scientist and an incorrigible confidence trickster was back in jail last night.

Alfred Weston, 55, creator of the original design for the Black Box flight recorder, was sentenced to four years at Chester Crown Court after pleading guilty to six charges of fraud.

Two psychiatrists said Weston, who has spent 27½ years of the past 29 years in jail, was suffering from chronic hypomania—over-activity of the brain. They recommended hospital treatment.

But Judge Robin David declared that the public must be protected and he could not "gamble" on treatment which might not remove the criminal element from Weston's make-up.

Hotel bills unpaid

Weston had defrauded Abbots Well Motor Inn, Waverton, near Chester, of £1,025 by entertaining a bank manager and associates.

On five other charges of obtaining hotel accommodation and a taxi ride by false pretences he was sentenced to one year's imprisonment on each to run concurrently.

Within two weeks of release from prison last year had had run up hotel bills in Chester, Ellesmere Port and Poole, Dorset, on a "flight of fantasy".

He "conned" Mr. Scott Carpenter, former American astronaut, into travelling to London to discuss a £1 million deal to raise a ship from the sea-bed off Dorset.

The trip cost Mr. Carpenter £1,400 for a conference to discuss the project but he did not press charges.

Mr. Gareth Edwards, defending, said Weston had spent 27 years in prison but his condition had never been diagnosed before. The Court should make an order ensuring that he received the treatment he needed.

Wearing a dark-brown suede safari-type jacket, with a neatly-clipped moustache, Weston showed no emotion as the Judge returned him to prison.

It was in prison that he obtained a Doctor of Science degree in aeronautical engineering and other qualifications. He has had visits from Government experts about his work with under-water pollution.

A paradox

The Judge told him : "Your life has been a paradox. You are a man of quite exceptional talents with scientific qualifications of the highest order, and some of your inventions have been of great value to society.

"The odd feature is that your qualifications and constructive work has been done within the setting of the prison system. Out of prison, you must recognise, you are a thoroughly unscrupulous fraud."

The Judge said he was satisfied Weston was suffering from hypomania but not with the prospects of successful treatment and the probability of continuing to offend.

The sentence had to be in line with the gravity of the charges "to protect the innocent from frauds like you." He ordered that a transcript of the case be sent to the Home Secretary so that Mr. Carr could consider whether Weston should be transferred to hospital for treatment.

Mr. Edwards said afterwards that the question of an appeal against the sentence was under consideration.

—*The Daily Telegraph* (17 February 1973)

Bar Council totally opposed to reducing rights of accused

by MICHAEL ZANDER

The Bar Council has come out strongly against recommendations of the Criminal Law Revision Committee about the rights of the accused. A report issued today condemns all the committee's main proposals.

Mr. Roger Parker, Q.C., chairman of the Bar Council, said that the proposals struck at the fundamental concepts of the British system of justice. Even so, they would be ineffectual in achieving what the committee seemed to have mainly in mind—more convictions of the guilty in serious cases.

The 73-page report is based on work by the Criminal Bar Association which represents both defence and prosecution barristers. It goes through the committee's proposals point by point :

The right to silence—The report condemns the proposed abolition of the right to silence in the police station. It says that this right is the basic safeguard for the accused. Its abolition would impair the fundamental principle that it was for the prosecution to prove its case. It would bear particularly on the inarticulate and considerably increase the powers of the police.

The caution—This should not be abolished since it was the only way to ensure that the right to silence was brought to the suspect's attention.

Proposed new procedure—The suspect should be asked to sign notes taken of the interrogation and a copy should be given to him within 48 hours of being charged. This would help to reduce argument at the trial as to what he had said whilst being interrogated.

The Judges' Rules—Evidence obtained in breach of the Judges' Rules should be inadmissible at the trial unless the judge specifically ruled with reasons that the breach should be condoned.

Legal advice in the police station—The report says that suspects were now often deprived of access to a solicitor. It recommends that in such cases any statement made after the refusal should be inadmissible at the trial unless, again, the judge ruled with reasons that the refusal was justified.

Defence duty to disclose evidence—The Bar suggest that at the committal proceedings an accused should be invited to consider whether he wished to disclose his defence so that it could be checked and tested by the police.

Hearsay evidence—The committee's proposal that hearsay evidence of unidentified or untraceable persons should be admissible is strongly criticised. Such evidence could too easily be manufactured. No hearsay should be admitted unless other corroborating evidence existed.

The committee's proposal that a confession could be evidence of the facts stated in it was unacceptable. It would mean that an accused could be found guilty on the out-of-court statement of a co-accused who might not give evidence and therefore never be tested by cross-examination. This would tempt one accused to make statements against another in return for favours from the police.

Previous convictions—The report rejects the committee's proposal that previous convictions should be admissible where the accused admits the facts and denies only his criminal intent. Previous convictions were very prejudicial, especially since they might be for much more serious offences than that in issue at the trial. A danger existed that prosecutors would use them to shore up weak cases.

The Bar Council's memorandum proposes that the whole question of criminal evidence and procedure should be referred for further consideration to the Law Commission.

Evidence in Criminal Cases, Bar Council, £1.

The Guardian (1 February 1973)

In Lighter Vein

The following is an extract of a letter written by a bank in answer to one from a country firm asking their advices in reference to the transfer by a client to a relation of hers, of her farm, farm stock, and marketable securities :

"There is no reason why the stock exchange could not be transferred immediately into Mrs. S's name and a further idea is that Mrs. S should apply for a hard number. Perhaps you would study these suggestions and have a further discussion with our mutual clients."

Note—Members are requested to forward humorous stories for this column.

EEC Directive on Company Law

Proposed changes in company law in the EEC include a minimum capital requirement for companies, more information for shareholders and employees on proposed mergers and more detailed format for the contents of balance sheets and profit and loss accounts.

The EEC directive, which necessitates the law changes, is to be implemented by July 1, the Government Information Bureau announced yesterday. The proposal of minimum capital requirements, if adopted in its present form, would require a paid-up capital of £2,500 for large companies and about £400 for the smaller ones.

The Irish Press (2 February 1973)

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

An application has been received from the registered owner mentioned in the schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that tht original certificate is in existence and is in the custody of some person other than the registered owner. Any such notification should state the groutds ot which tte certificate is being held.

Dated this 28th day tf February 1973.

D. L. McALLISTER,

Registrar of Titles

Central Office, Land Registry, Chtncery Street, Dublin 7.

Schedule

(1) Registered Owner: Bridie Moynihan; Folio No.: 30615; County: Cork; Lands: Part of the land of Knockantowen in the Barony of Muskerry East situated on the south side of the Main Street in the village of Coachford; Area: 2 p.

(2) Registered Owner: Joseph Daly; Folio No.: 12915 R; Lands: Cloonbonitgh South; County: Leitrim; Area. 52a 0r 0p.

(3) Registered Owner: Holton Ronayne Conron; Folio No.: 15182; Lands: Kilcrone; County: Cork; Arta: 64a 1r. 33p.; Lands: Ballyfin; Area: 37a.1r.17p.

(4) Registered Owner: Kavanagh Brothers Limited; Folio No.: 14425; Lands: Ross; County: Meath; Area: 47a. 1r. 13p.

(5) Registered Owner: Mallow Industries Limited; Folio No.: 50512; Lands: Ballydahin; County: Cork; Area: (1) 0a. 0r. 24p.; (2) 0a. 0r. 3p.

(6) Registered Owner: Thomas Ryan; Folio No.: 4421; Lands: Cltshnevin; County: Tipperary; Area: 83a. 1r. 2p.

(7) Registered Owner: James Flahavan; Folio No.: 599; Lands: Lisnageragh; County: Waterford; Area: 156a. 2r. 8p.

(8) Registertd Owner: John McNicholas; Folio No.: 3425; Lands: Clagnagh; County: Mayo; Area: 31a. 1r. 9p.

LOST WILL

John Finn (Farmer) deceased, late of Farlinstown, Ballinhassig, Co. Cork. Will any person having any knowledge of a will of the above-mentioned deceased, who died on 14th June 1972, please communicate with Guest Lane, Williams & Company, Solicitors, 32-34 South Mall, Cork.

NOTICE OF DISSOLUTION OF PARTNERSHIP

Take Notice that the Partnership carried on at No. 151, West End, Mallow, between Andrew F. Comyn and Richard Moylan under the titles *O'Connor & Dudley* and *R. Moylan & Co.* has been dissolved with effect from the 30th day of September 1972.

A. F. Comyn will continue to carry on business at 151, West End, Mallow under the title O'Connor & Dudley. Richard Moylan will carry on business at 17, West End, Mallow under the title R. Moylan & Co.

OBITUARY

Mr. Thomas A. Lynch, B.A., Solicitor, died suddenly at the County Hospital, Ennis, Co. Clare, on 29 January 1973. Mr. Lynch was admitted in Easter term 1933 and practised as Solicitor to Clare County Council in 5 Bindon Street, Ennis.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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Contents

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EDITORIAL

The New Administration

It is highly satisfactory to note that many members of the legal profession have been selected to take charge of important Ministries in the new Government. It will be recalled that the Taoiseach, Mr. Liam Cosgrave, and the Attorney-General, Mr. Declan Costello, are Senior Counsel, while the Minister for Foreign Affairs, Dr. Garrett Fitzgerald, and the Parliamentary Secretary to the Taoiseach, Professor John Kelly, are barristers. However, we must congratulate particularly our Vice-President, Mr. Thomas Fitzpatrick, upon his appointment as Minister for Lands, and our colleagues Mr. Richie Ryan and Mr. Patrick Cooney, upon their appointments as Minister for Finance and Minister for Justice respectively. We venture to hope that the problem of law reform, which had been dormant up to the present, will be revived with renewed vigour, and that the legal profession will be consulted in advance in all proposed measures of law reform.

British Criminal Justice

The British are experts at letting it be known that their alleged standards of integrity and justice in criminal law are the best in the world. Yet some facts have recently emerged which have tended to disprove this.

First of all, the Diplock Report on the trial of persons who are allegedly security risks in Northern Ireland suggests that police witnesses and other informers can give their evidence by being hidden behind a curtain without being seen by the accused or his counsel, although the Commissioner who decides the case can see them. It is also possible to dispense with the laws of evidence.

Secondly, although no one can support the action of those who planted indiscriminately bombs in London because they objcted to the border poll, yet it is undeniable that ten accused Irishmen, among them three women, were held naked with blankets in Ealing police station for more than four days incommunicado without being allowed to see their relatives or their legal advisers and in inhuman conditions of solitary confinement before being charged with offences under the Explosive Substances Act 1883. We are pleased that our colleagus — the Editor of the *New Law Journal* — has seen fit to condemn this disgraceful and unwarrantable practice which is a gross infringement of Article 5 (3) of the European Convention of Human Rights which declares that anyone arrested on suspicion shall be brought promptly before a Court and shall be entitled to trial within a reasonable time or to release pending trial. With the customary prevalent anti-Irish bias, it is not surprising that bail was not granted, and that the police concerned were not severely castigated.

Finally we condemn unreservedly the nefarious practice of mugging, which consists in attacking suddenly and in a vicious manner, a defenceless person, and having beaten him up and rendered him unconscious, stealing relatively small sums of money or other valuables from him. However, we cannot condone the sentence of twenty years imprisonment imposed concurrently on two separate counts on a boy of sixteen in Birmingham who was found guilty of mugging, as we do not believe that a long sentence of imprisonment is a serious deterrent, particularly in English prisons, where up-to-date improvements are minimal.

THE SOCIETY

Proceedings of the Council

8th FEBRUARY 1973

President in the chair also present Messrs W. B. Allen, Bruce St. J. Blake, John F. Buckley, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, James R. C. Green, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, Patrick C. Moore, Patrick McEntee, Brendan A. McGrath, Senator J. J. Nash, John C. O'Carroll, Peter E. O'Connell, Rory O'Connor, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

The following was among the business transacted.

Retirement of Secretary

It was announced that the Secretary would retire during the year 1973, but would continue to act in the part-time capacity as consultant-adviser to the Council.

A committee was appointed to make arrangements for the appointment of his successor and also for the appointment of an assistant-secretary to fill the vacancy caused by the recent resignation of Mr. Joseph Finnegan.

Blackhall Place

The Chairman of the Finance Committee announced that having obtained expert advice the Comittee recommended the purchase of the Evie Hone Window at Kings Hospital which was excluded from the premises sold to the Society. It was decided that a nominee of the Committee be authorised to purchase the window at a price to be sanctioned by the Committee.

Reception of refugees

At the request of the Minister for Local Government the Council consented to the use of Blackhall Place as a reception centre for refugees from Northern Ireland in the event of any sudden emergency, subject to the completion by the Department and the Dublin Corporation of an agreement to be prepared by the Society's solicitors.

E.E.C.

Draft directive on removal of restrictions on the right of establishment on free supply of services: A report from the EEC Committee was considered. At the date of the report only an unofficial English direction of the draft directive had been received. It was decided at a request that no further steps should be taken until an official English version had been sent to the Society. This will be published in the *Gazette* when received.

Apprenticeship and education regulations

The Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1973 (S.I. No. 47 of 1973) were made and laid before the Oireachtas. The effect of the regulation is that candidates taking Commerce as a subject would be required to take only one of the four papers (Economics, Business Organisation, Accountancy or Economic History).

Solicitor on record giving evidence

Members who made an application to the District Court for a restaurant certificate and music and dancing licence enquired as to the views of the Society on the following matters.

A colleague replied to one of the advertisements stating that he would be opposing the application on the grounds that noise emanated from the restaurant into a flat owned by his clients. At the hearing of the case, the colleague represented his clients and they were cross-examined. The colleague then told the District Justice that he wished to give evidence and went into the witness-box stating that the night before the application he attended the restaurant and saw wine being sold after hours. Member submitting the query alleged that this was to influence the Justice in refusing the restaurant certificate which was, however, granted. The colleague also gave evidence as to noise emanating from the restaurant. Members ask for a ruling as to the propriety of a solicitor who was acting for a party in a matter of this kind giving evidence personally in support of the client's case.

The Council on report to the Committee stated that it was undesirable but not improper that a solicitor should give evidence in such a case.

Insurance brokers negotiating settlements

Members from Cork refer to the action of a local firm of insurance brokers who act for an insurance company negotiating knock for knock claims between vehicles and thought that the practice was objectionable. The matter was referred to the Southern Law Association.

Land Act 1965 and removal of restrictions following accession to the EEC

Attention has been drawn in the February issue of the Society's *Gazette* to the Land Act 1965 (Additional categories of qualified persons) Regulations 1972 (S.I. No. 332 of 1972). The effect of this order is to exclude from the provisions of Section 45 of the Land Act 1965 all those who benefit as a result of the European Community directives mentioned in the schedule. The directives are incorporated by reference without further information or specification. It was decided to bring to the attention of the appropriate authorities the inconvenience and difficulties caused by this method of legislation by reference and that statutory instruments giving effect to this and other EEC directives should do so in express and explicit terms which will clearly indicate the effect of the legislation.

8th MARCH 1973

The President in the chair.

Catalogue of Library and EEC Publications

This matter was referred to the Finance Committee.

Seanad election

Senator John J. Nash was unanimously proposed by the Society for nomination to the Cultural and Educational Panel for ~~the~~ forthcoming Seanad Election.

Blackhall Place

It was reported that the Evie Hone Window at Blackhall Place had been purchased for the Society.

Building society's letter

A building society issued a letter containing the following statement: "If you have not got a solicitor we suggest that you will find it beneficial to use the society's solicitor. Please return the acceptance offer signed and leave the solicitor's name and address blank." It was decided that this letter was open to serious objection and that the building society be so informed.

Building societies' solicitors' charges

Members applied for a waiver to charge the special fee of 1½ per cent on the amount of a building society loan acting for the mortgagees. It was decided on a report from the Committee that the necessary waiver under Professional Practice Regulations be granted in any case where the fee proposed is less than the full permitted scale fee.

"International Business Lawyer"

This journal is published by the International Bar Association and contains articles on business law and lists the Committee Chairmen and Vice-Chairmen of the various sections. Membership of the section is open

to all patrons and subscribers of the IBA and an application form for membership is included. Members ask whether publication of the names in this journal is open to any objection. The Council decided in the negative.

Gazumping

A member was instructed by a client to dispose of his interest in certain property for £6,500. On the client's instructions member submitted a contract to the solicitor for the purchaser which was returned shortly afterwards duly executed with a cheque for the deposit payable to member as stakeholder. When member requested his client to call to execute the contract, the client said he did not intend to proceed with the sale at the time and instructed him to submit a new contract to the solicitor for another purchaser who was prepared to offer £8,000 for the property. Member enquired as to the view of the Council on his professional position.

The Committee reported that this practice which has become known in England as "gazumping" is contrary to professional practice and should be disapproved strongly by the Council. The Council recommend that on the making of a contract for the sale of property, the contract should be prepared and executed in duplicate, one part being executed by the vendor and the other being executed by the purchaser and that the contracts should be exchanged, neither party being bound until the exchange of contracts. This would prevent the undesirable practice of vendors of having contracts signed by several parties who thereby become bound and ultimately turning down purchasers whose prices are less than the price named in the highest contract.

The Council regard it as unethical that a solicitor should send out several contracts to different purchasers leaving each under the impression that his offer will be accepted by the vendor if he signs the contract, while at the same time it is the intention of the vendor to sell to any other purchaser who offers more than the price in the first contract.

Full-time solicitor to bank

The Council granted permission to the full-time solicitor of one of the banks to wind up unfinished cases privately carried on by a solicitor in the employment of the bank. They stated at the same time, that it is contrary to the rulings of the Council that a salaried solicitor employed by a bank should carry on a private practice.

Commission scale fee on probate

The Council expressed the opinion that in a case in which the commission scale fee is applicable to the administration of an estate it is chargeable on the value of inter vivos gifts which are deemed to pass on the death of a deceased donor. The costs will be payable in the ordinary way out of the residue of the estate.

Practices of solicitors for lending bodies

Member wrote referring to the practice of solicitors for lending bodies on charging 1½ per cent on the amount of the loan where this sum may exceed the appropriate scale fee and asked that the matter should be considered by the Council. The Council on a report from a Committee stated that the mortgagee's solicitor is not entitled to charge a scale fee which would exceed the permitted scale fee applicable to the particular case.

CORRESPONDENCE

Department of Justice,
72-76 St. Stephen's Green,
Dublin 2.
21 February 1973.

Dear Sir,

I am directed by the Minister for Justice to refer to your letter dated 13th February 1973 with which you enclosed a copy of a letter addressed to your Society by Messrs Malone and Martin, Solicitors, Trim, Co. Meath, regarding the possibility of the payment of Land Registry fees by Guaranteed Cheque or Bank Draft.

The Minister proposes that, in future, fees payable to the Land Registry will be accepted in cash or by means of money order, postal order or cheque drawn to the order of the Land Registry, or Land Registry stamps. A detailed system is at present being worked out and will be brought into operation as soon as possible.

Mise, le meas,

Cathal Crowley.

Eric A. Plunkett, Esq.,
Secretary, The Incorporated Law Society of Ireland.

Land Registry, Central Office,
Chancery Street, Dublin.
17th November 1972.

Dear Mr. Plunkett,

I have yours of the 14th instant. As regards your queries (1) and (2) agreement has been reached in principle on both aspects.

I hope to have something concrete by the new year at latest.

Yours faithfully,

D. McAllister (Registrar).

Eric A. Plunkett, Esq.,
Secretary, The Incorporated Law Society of Ireland.

STATUTORY INSTRUMENTS

European Communities

Regulations relating to Additional Categories of Qualified Persons mentioned in the Land Act, 1965.

The Directives concerned in S.I. 332/1972 relating to the above-mentioned Regulations are the following :

(1) **No. 1323** being a Council Directive of 2 April 1962 which lays down detailed provision for the attainment of freedom of establishment in agriculture in the territory of Member States in respect of those who have been employed as paid agricultural workers in other Member States for a continuous period of two years.

(2) **No. 1326** being a Council Directive of 2 April 1962 which abolishes restrictions on rights of nationals of any Member State to acquire farms in respect of agricultural holdings which have been abandoned or left uncultivated for two years on the ground of freedom of establishment.

(3) **No. 190/1967** being a Council Directive of 25 July 1967 which grants to agricultural workers who are members of one Member State and who are working in another Member State the right to change their location and transfer their occupation from one place to another.

(4) **No. 263/1967** being a Council Directive of 24 October 1967 granting the right of freedom of establishment and of the free exercise of occupation in the non-salaried activities of forestry and of exploitation of timber to nationals of Member States who are self-employed in forestry and logging.

These Directives are in practice of very limited scope.

COMPANIES and EUROPEAN COMMUNITIES ACT 1972

The article at p. 1076 of *The New Law Journal,* 'Company Law in the Common Market', by James Fenton, F.C.I., solicitor, the first in a series dealing with s.9, European Communities Act 1972, mentioned that harmonisation of the law is brought about by the issue of a Directive under Article 54 of the E.E.C. Treaty. The only Directive so far adopted by Member States is Directive 151/1968 (adopted 9 March 1968).

The precedent below paraphrases the contents of EEC Directive 151/1968 and gives the corresponding U.K. statutory provisions.

E.E.C. DIRECTIVE 151 OF 1968

DIRECTIVE		U.K. STATUTES	
Number of Article	*Substance*	*Companies Act 1968*	*European Communities Act 1972*
2	Publicity must be given to the following matters :		
	(a) Memorandum and Articles and alterations.	ss.5(7), 8, 10, 12, s.143(1) and (4) requires, *inter alia,* the filing of resolutions making changes	ss.9)3), (5) and (6)
	(b) Particulars relating to Directors: names	s.200(2) and (4)	sub.s.9(3)
	dates of appointment and termination *and* whether they can act singly or only as a board	Regulation 102 of Table A (Sched. I)	sub.s.9(1)
	(c) Annual final accounts, issued capital and auditors	ss.124, 127(1), 149, 156(1) and paragraph 2 of Schedule VIII	sub.s.9(3)
	(d) Changes in the registered office	s.107(2)	sub.s.9(3)
	(e) The start and end of a winding up, appointment of liquidator	ss.143(1) a nd (4)(e), 230, 240(a), 274(2), 290(3) and (4), 300(3) and (4)	
	and striking of company's name from register	s.353 Rule 42 — Companies (Winding-up) Rules 1949	sub.s.9(3)

	(f) "Cancellation" of the company as a nullity by a court	This is not appropriate to the U.K. as s.15(1) provides that a certificate of incorporation is conclusive evidence of compliance with all pre-incorporation matters. However this probably would not exclude an application for cancellation of the registration if the objects of the company were illegal (*Bowman v. Secular Society Ltd.* [1917] A.C. 406; and *Cotman v. Brougham* [1918] A.C. 514). The nearest remedy is winding-up under s.211	
3 (1) and (2)	Documents listed in Article 2 must be published in an official register	The sections above referred to and s.426(1)	
(4)	*and* these entries in the official register must be advertised in the gazette	Rule 218 Companies (Winding-up) Rules 1949 s.353 (striking off the register) s.305 (appointment of liquidator)	 sub.s.9(3)
(3)	Copies of documents published in the official register must be available to the public	s.426(1)	
(5)	Company must not be able to rely as against outsiders on matters which are required to be published in the gazette until such publication *unless* the outsider has actual knowledge *and* company cannot rely upon the gazette publication until the 16th day thereafter if outsider shows he could not have known of the matter (see s.9(4), E.C.A. for details of the matters)		sub.s.9(4)
4	Business letters and order forms must contain note of : (a) place of registration (b) registration number (c) registered office (d) type of company (e) being wound up (f) paid-up capital (optional)	s.338 in respect of (e) only	sub.s.9(7) (except (e)) Also see *N.L.J.* for 12 October 1972 at pp. 885 and 886
7	Unless the parties otherwise agree a person entering into a pre-incorporation contract for a company must be personally liable to an outsider		sub.s.9(2)
8	Where appointment of directors has been published in the gazette their acts must bind the company even if the appointment was irregular (unless the outsider knows of the irregularity)	s.180	sub.s.9(1) and (3)
9(1)	Where company through its management organ contracts, it must be bound by it even if it has no power to contract for the particular purpose. An exception may be made by national legislation where outsider had knowledge that it was outside the scope of the company's objects		
(2)	Persons dealing with a company must be unaffected by any limitation imposed on the management organs whether published or not		sub.s.9(1) sub.s.9(1) (except that this sub-section requires good faith by the outsider—this is not stipulated by the Directive)

European Communities (Names and Labelling of Textile Products) Regulations, 1973—S.I. No. 43/1973

These Regulations have been made to give effect to the European Communities Council Directive No. 71/307/EEC of 26 July 1971 (OJ No. L185/16-25 August 1971) (as adapted by the Treaty of Accession of Ireland to the Communities) relating to the names and labelling of textile products.

European Communities (National Catalogue of Agricultural Plant Varieties) Regulations 1972—S.I. 339/1972.

The Order provides that the Minister for Agriculture and Fisheries shall maintain a National Catalogue of varieties of agricultural seeds which shall be eligible for certification and sale under EEC conditions.

European Communities (Crystal Glass) Regulations 1972—S.I. No. 312/1972

These Regulations are made to give full effect to the European Communities Council Directive (69/493/EEC) of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (OJ No. L326/29 December 1969).

Marriages Act, 1972 (Commencement) Order, 1973—S.I. No. 12/1973

This Order provides that Sections 2, 3, 4, 5, 8, 9, 11, 12, 16, 17, and 19 of the Marriages Act, 1972, shall come into force on 1 February 1973. The Order also provides that Sections 10, 13, 14 and 15 of the same Act will come into force on 1 April 1973. Copies of this Order may be obtained for 1½p plus postage.

EEC loses decision in Court

The European Common Market's anti-monopoly campaign suffered a major defeat yesterday when the European Court of Justice rejected the Common Market's case against an American firm, Continental Can.

The Common Market's Commission had accused Continental Can of "acquiring an abusively dominant position" in the Common Market through its purchase of several Dutch and German can manufacturing companies. Europemballage, Continental Can's European subsidiary, was accused of supplying more than four-fifths of all cans sold in the northern nations of the Market.

The Commission did not accuse Continental Can of buying up companies to force up prices or to establish an outright monopoly. But it said the firm's overwhelming share of the market amounted to an abuse in itself.

The Court's 65-page judgment indicated that it rejected the Commission's case on a technicality. It said there were "uncertainties" in the Commission's charge and complained that it had not clearly defined the market area in which Continental Can's alleged combination took place.

But it said a true "abuse" would take place only if a firm so dominated a market that all other companies producing the same items depended on it.

In its ruling, however, the Court admitted that the legal basis of the Commission's position was justified. The Court ruled in favour of Continental Can and its European subsidiary, Europemballage, because of uncertainties and contradictions in the Commission's position.

The five-judge Court ordered the Commission to pay the costs of the case.

The case is of special importance because it is the first time the Commission has used its powers to try to stop a takeover.

As the earlier hearings had been dealt with by judges from the six original E.E.C. member States only, the judges from Britain, Ireland and Denmark did not take part in the final deliberations which led to yesterday's judgment. There was no immediate comment on the Court's decision at the Brussels headquarters of Europemballage.

The Irish Times (22 February 1973)

ABUSES OF POWER WORRY JUDGE

Mr. Justice Ackner spoke in the High Court yesterday of the growing importance of protecting citizens from abuse of power by officials "as governmental interference increases". He asked why a suspected person's "right of silence"—so jealously guarded by lawyers in the face of recent suggestions that silence in a criminal case could be indicative of guilt—did not apply in tax evasion cases.

Giving judgment in a dispute about whether a bank had a duty to supply information about customers to the Inland Revenue, the Judge said that to provide protection was "one of the vital functions of the courts".

He ruled, however, that Mr. G. B. Clinch, managing director of N. T. Butterfield & Son (Bermuda), must comply with an Inland Revenue demand for information about customers' affairs. These include dealings in Bermuda, where profits tax, income tax, capital gains tax, and estate duty do not exist.

Sir Elwyn Jones, SC, for Mr. Clinch, said the Inland Revenue's demand was an "intolerable interference with the liberty of the subject" and "a gross invasion of privacy".

The Judge refused to grant Mr. Clinch a declaration that he was not bound to comply with the demand. He gave judgment with costs, for the Commissioners of Inland Revenue who, he said, had "extensive powers of making roving inquiries".

He commented: "The so-called 'right of silence' currently alleged with such emphasis and fervour by many lawyers as going to the very root of British notions of justice seems to find no place in the field of tax avoidace, all the more so where tax evasion is concerned."

"If it is an essential part of our principles of jurisprudence that silence should be sanctified, I pause only to wonder why, when it comes to the detection of deceptions practised upon the Commissioners of Inland Revenue and Customs and Excise, those principles have no application."

He held, however, that the Inland Revenue had power under the Income and Corporation Taxes Act, 1970, to demand the information.

The Guardian (14 February 1972)

UNREPORTED IRISH CASES

State must prove blood test was by a doctor.
Mr. Justice Butler, in a judgment in the High Court yesterday, held that the State must prove that the person who signed a certificate relating to the taking of a blood specimen under the 1968 Road Traffic Act was a designated registered medical practitioner.

He was giving his decision in a consultative case stated by District Justice Breathnach at the request of counsel for the Attorney-General, arising out of a case in which Donald O'Connor of Rockfield Ave., Terenure, Dublin, appeared before him charged that on 24th May 1972, at Harold's Cross Road, Dublin, he drove a car while under the influence of intoxicating liquor.

In the course of the hearing, District Justice Breathnach stated, the prosecution tendered in evidence a certificate in the prescribed form purporting to be a certificate of a designated registered medical practitioner issued under Sub-Section (1) of Section 43 of the Road Traffic Act, 1968. The certificate was signed "T. J. Coffey, M.D., B.L."

District Justice Breathnach stated that the Register of Medical Practitioners was not produced to him and there was no evidence adduced before him to show that T. J. Coffey appeared on the register.

Counsel for the Attorney-General submitted that no such evidence was necessary.

After legal argument, Mr. Justice Butler held that Section 44 (1) of the Road Traffic Act, 1968, did not relieve the State of the obligation of proving that a person who signed the certificate was a designated registered medical practitioner.

[Attorney-General (O'Connor) v. District Justice Breathnach]

The Irish Times (13 January 1973)

New company must make redundancy payments to workers from an old company.
The High Court, in a reserved judgment yesterday, held that two men were entitled to have redundancy lump sums paid to them on the basis that they were employed respectively from 1919 and 1930, even though the original firm ceased to operate and part of its business was taken over by another company in 1963. The men were dismissed on the grounds of redundancy by the new company in 1968 and the company had claimed that they were only responsible for redundancy payments from the time they took over the two employees.

On this basis they paid one of the employees £217 odd and the other a pension of £4 a week.

The Court was delivering reserved judgment in a case referred to it by the Minister for Labour in which he asked to have determined the question whether the Redundancy Appeals Tribunal was correct in holding that the company's interpretation of their liability to the employees was the right one.

The men, Herbert Devoy, Dangan, Thomastown, Co. Kilkenny, and William O'Brien, Newtown Tce., Thomastown, had been employed continuously with the firm of R. Pilsworth Ltd., Grennan Mills, Thomastown, since August 1919 and July 1930, respectively. The company ceased to operate and part of its business was taken over by R. Pilsworth (1963) Ltd. They were dismissed for redundancy reasons in August 1968.

Mr. Justice Kenny held yesterday that both men were entitled to have their redundancy lump sums calculated on the basis that they had been employed continuously from 1919 and 1930, respectively. Both the men and the company were allowed their costs against the Minister.

[Minister of Labour v. Pilsworth]

Irish Independent (7 March 1973)

Statutory lump sum to be paid if employer knew facts.
In a second case, Mr. Justice Kenny held that where an employer failed to issue a redundancy certificate, the compensation paid by him to an employee rendered redundant could be treated as payment of the statutory redundancy payment only when the employer proved to the satisfaction of the Redundancy Appeals Tribunal that at the time of the payment the employee knew the amount of the statutory lump sum he was entitled to and agreed to accept it in discharge of his claim for a statutory lump sum.

The Court was dealing with a case in which Irish Dunlop Company Ltd., Dunlop House, Cork, had paid an employee, Daniel P. O'Connor, Ballinteer Park, Dundrum, Co. Dublin, £500, after he had been dismissed on the grounds of redundancy. Mr. O'Connor claimed that, in addition to this sum, he was entitled to be paid a statutory sum of £132 under the 1967 Redundancy Payments Act.

The matter came before the Appeals Tribunal, who held that the company, in paying a sum in excess of the statutory sum, had fulfilled its obligations under the Act, but Mr. Justice Kenny held that Mr. O'Connor must now be paid the £132 in addition to the £500 already paid him by the company. He ruled that where an employer agreed to pay a larger sum than the statutory lump sum laid down in the Act, the employee did not lose his right to the payment of the statutory lump sum, in addition to the other sum paid by the employer.

Mr. Justice Kenny said the statutory obligation resting on the employer in such circumstances was to give a certificate of redundancy to the employee to ensure that the employee received the amount of statutory redundancy payment to which he was entitled. Section 18 of the 1967 Act did not state whether the certificate was to be given before, at the time of, or after dismissal. This unfortunate ambiguity had been corrected by an amendment in the 1971 Act, which provided that the certificate was to be given to the employee not later than the date of dismissal.

The amendment made in the 1971 Act, however, did not affect the present case because the employee had been dismissed before it had been passed.

Mr. Justice Kenny said he thought Section 18 of the 1967 Act, before it was amended meant that a redundancy certificate was to be given at the time of dismissal, or within a reasonable time thereafter. The dissenting member of the Tribunal was incorrect in stating that the 1967 Act required that the certificate should be given at the date of, or before dismissal.

The obligation to make a lump sum payment on dis-

missal for redundancy was imposed on the employer who was entitled to a refund of half of the amount paid by him, from the redundancy fund. One of the purposes of the redundancy certificate was to enable the employee to see how the sum was calculated. In none of the cases which had come before the Court had the employee signed the certificate. It was important to emphasise, in the interest of employers, that the employer must get the employee to sign the certificate when the lump sum was being paid. If this had been done in the present case, the dispute would never have arisen.

If an employer agreed to pay a larger sum than the statutory lump sum, the employee did not lose his right to the payment of the statutory lump sum in addition unless the employer established (1) that the employee knew the amount of the statutory lump sum before, or at the time of his dismissal; and (2) that the employee agreed to accept the sum offered in discharge of the employer's liability to pay the statutory lump sum.

The Judge said he did not accept the view that where an employer paid an amount equal to or greater than the statutory lump sum when the negotiations were going on, and that this amount was never mentioned to the employee, that this complied with the provisions of the Act. In his view, the employee was entitled in this case to be paid the statutory lump sum of £132 in addition to the £500 paid him by his employers.

Mr. Seamus Egan, S.C., for the Minister, said that as the case had been brought for the purpose of clarifying the position under the Act, he had been instructed not to oppose the payment of costs to either party in the proceedings, and Mr. Justice Kenny said that both parties would be allowed their costs.

[O'Connor v. Irish Dunlop Co. Ltd.]

Irish Independent (7 March 1973)

Objector to plan will contest development plan order. Judge dismisses action against corporation as no reserved function involved.

Mr. Justice Teevan, in the High Court, Dublin, yesterday, dismissed with costs an action brought by William J. O'Hora, of 6-7 Francis Street, Dublin, against the Dublin Corporation.

Mr. Rex Mackey, who appeared for Mr. O'Hora, submitted that Mr. James B. Molloy, assistant city manager, had appointed, without authority, five persons to hear representations from persons who objected to a proposed development plan for the Francis street area of Dublin.

Mr. O'Hora sought a declaration that the order was void and of no force and effect. He also sought an injunction restraining the Corporation from making a development plan or from doing any act affecting his property rights until his case, as a ratepayer making objection to the draft plan, has been entertained in accordance with law.

The Corporation, in its defence, denied that it had acted wrongfully.

Mr. Mackey said that in May 1967 the Corporation caused notice of the draft of the proposed development plan to be published. This plan provided for the demolition of Mr. O'Hora's property. Availing himself of the provisions of the Local Government (Planning and Development) Act, 1963, Mr. O'Hora lodged objections to the plan and requested an opportunity to state his case.

In August last, the Corporation, in breach of statutory duty, recommended by resolution that Mr. Molloy should appoint persons from its planning staff to hear statements from ratepayers objecting to the plan. In the same month Mr. Molloy purported to appoint five named persons to hear the statements, Mr. Mackey said.

Mr. Mackey submitted that while the city manager had power to delegate functions to the assistant city manager, that power was limited to functions which the city manager could himself exercise. The function which the city manager purported to delegate in this case, he submitted, was a function reserved to members of the City Council by statute and it could not be exercised by the city manager.

Mr. W. D. Finlay, S.C., who appeared for the Corporation, said that the area was intended to be used as a car park. The objections which had been made had been considered by the Planning Committee of the Corporation. That body had recommended the exclusion of Mr. O'Hora's premises from the plan and a revised draft would be submitted to the Corporation for approval.

There was, said Mr. Finlay, a vital distinction between preparing a draft of a proposed plan and making a plan. At a practical level it was essential that the act of the Planning Authority in making a plan must be preceded by a great number of preliminary steps but the Statute nowhere provided that the taking of the preliminary steps was to be a reserved function. The reserved function was the making of a plan or making variations in the plan.

Mr. Justice Teevan, in his judgment, said he was satisfied that the appointment of persons to hear statements objecting to the plan was not a reserved function.

The Legislature was always specific, either by means of a direct statement as to a particular function or in a general definitive way, in saying what were and what were not to be considered as reserved functions. Anything which the Legislature did not in one way or other make a reserved function was, accordingly, an executive function.

Mr. Finlay had drawn attention to the careful and discriminating way in which the 1963 Act had laid down what were to be reserved functions, said the Judge. He had also drawn a distinction between the making of a plan and the preparation of a draft plan.

"I am quite satisfied that this particular function which must be undertaken in compliance with Section 21 (2) of the Act, is an executive function or, to be more legally precise, it is not a reserved function and that it lies in the power of the assistant city manager to make these appointments."

Mr. Justice Teevan allowed a stay on the order for costs.

[O'Hora v. Dublin Corporation]

The Irish Times (26 July 1968)

Forfeiture of lease granted where false claim to possession made by tenant.

By lease of August 1895, Patrick O'Reilly, the grandfather of the plaintiff, demised the premises 60 St. Stephen's Green, Dublin, to Richard Tobin for twenty years at an annual rent of £125. In 1903 the twenty year period was extended by a further thirty years until July 1945. On 20 August 1946 the plaintiff made a further lease to six Sisters of Charity for a further period of thirty years from 15 July 1945 at a rent of £295. The defendant Sister is the sole survivor. The premises intended to be demised by the 1946 lease were

the same as those in the 1895 lease, and undoubtedly the map shows the garage opening directly on Leeson Lane at the back, and the buildings over the original right of way.

In 1971 the Sisters of Charity put the premises up for sale as part of the old St. Vincent's Hospital. In the conditions of sale, it was stated that the purchaser was bound to admit that the map attached to the 1946 lease showing that a small portion of the premises at the back of the Leeson Lane was attached to 60 St. Stephen's Green was erroneous: this was incorrect, as the purpose was to pretend that the Sisters of Charity held these particular premises under a 10,000 year lease from the Pembroke Estate. A vigorous protest relating to this exclusion was made by plaintiff's solicitors in September 1971 pointing out the grave deterioration in his property contained in this statement, and that he would only give his consent to the sale if it comprised the whole property. The defendant's solicitor with blustering arrogance combined vain threats of an action for substantial damages for delay with an unwarranted threat that the plaintiff was deliberately putting forward a false claim.

The plaintiff then took ejectment proceedings on the title based on the plaintiff's right to forfeit the lease for the defendant's breach of condition in denying the plaintiff's title. The question to be determined is, was the plaintiff entitled to forfeit the lease and re-enter the premises.

At Common Law, as stated in Bacon's Abridgment, a denial or disclaimer of the title of him of whom land was held gave rise to a forfeiture of the tenant's interest in the land. A tenant may thus incur forfeiture of his estate by a matter of record, where, in an action by his lessor grounded upon the lease, he resists the demand —under the grant of a higher interest of land. The written disclaimer accordingly had to go further than mere denial of the title—the tenant had to prove a title which would adversely affect the landlord's interest. The historical position is admirably stated by Lord Denning in *Warner v. Sampson* (1959) 1 All E.R. 120. It is clear that forfeiture by record has always existed through the centuries. From the authorities it is clear that where a tenant, on or off the record, clearly and unambiguously denies his landlord's title in a manner which may adversely affect the landlord's estate or reversion, the landlord is entitled to forfeit the lease in respect of the property to which the denial extends. In this case **Butler J.** held that the defendant had clearly and unambiguously and in writing denied the plaintiff's title as lessor in respect of the portion of the demised premises coloured blue marked on the plan. The fact that she seeks to bind the purchaser to admit that the map on the plaintiff's lease is erroneous denies the plaintiff's title and sets up an adverse title. The plaintiff is accordingly entitled to forfeit the defendant's interest in the premises and is entitled to possession: this forfeiture only extends to the portion of the premises coloured blue on the map.

[O'Reilly v. Gleeson; Butler J.; unreported; 19 February 1973]

Claim for contribution and indemnity amongst defendants in sea accident to vessel rejected.

The plaintiff is the father of the deceased, and claims damages for negligence, and break of statutory duty against the defendant. The plaintiff's daughter was one of the passengers who died by drowning on 7 June 1969 while on the Motor Vessel "Redbank" near New Quay, Co. Clare. The plaintiff settled the action with the defendants for £1,000 damages, and £666 costs. The first defendant is the Redbank Oyster Co. Ltd., and its director, Stassen, and it is claiming contribution or indemnity under the Civil Liability Act 1961 against the second defendant, Fairway Fabrications, an English company who built the vessel, for defective construction. Fairway Fabrications for their part are claiming contribution against the third defendant, Bord Iascaigh Mhara (hereinafter called BIM) for having insisted upon some details in the erection of the vessel which made it unseaworthy. The contract between the first defendant and Fairways was specifically subject to the acceptance of the vessel by BIM. In the Summer of 1968 the first defendants gave Fairways an order to construct a new oyster and lobster vessel, and agreement was reached as to the terms. The lengthy negotiations are fully described.

Finally a contract in writing dated 19 February 1969 was made between the parties, and it specifically provided that this contract was subject to acceptance by BIM for grant purposes. On inspection the BIM inspector insisted on certain changes in the structure which were eventually the cause of the accident. On June 27 there was a further inspection after delivery of the vessel, and everything looked satisfactory. On Sunday, June 29, the vessel was named and blessed, and it was taken out without incident on four occasions, but on the last trip, the vessel had sustained much water. The Fairways representatives was then asked to take out some girls—but the boat was overloaded. The engines stopped half a mile from the shore, the boat was turned over, and everyone was thrown into the sea. Nine persons including the plaintiff's daughter, were drowned. The first defendant's claim against Fairways, and Fairways' claim against BIM, both arise by virtue of Sections 21, 27 (1) (b), and 29 (1) of the Civil Liability Act 1961.

Pringle J. was not satisfied that it was reasonably foreseeable by Fairways that the vessel would not be used for oyster or lobster fishing, but for pleasure trips. Therefore Fairways were neither liable to the plaintiff nor to the first defendants in respect of the accident as they were not "concurrent wrongdoers" within the Civil Liability Act: it follows that the first defendants cannot succeed in their claim for indemnity or contribution against Fairways, and therefore the question of a claim by Fairways against BIM does not arise. Undoubtedly the vessel as delivered was defective for the purposes for which it was being used, and even for the purposes for which it was intended to be used. But the effective cause of the accident was not any defect in the boat but the negligence of the defendant's in allowing the boat to be grossly overloaded.

[Conole v. (1 Redband Oyster Co. Ltd. and Stassen, (2) Fairway Fabrications Ltd., and (3) An Bord Iascaigh Mhara; Pringle J.; unreported; 2 October 1972]

Supreme Court quashes conviction for murder, and directs a new trial, as, following an Australian case, it is now possible to leave a verdict of manslaughter to the jury.

The appellant was convicted of the murder in January 1969 of Smith and Ney in Ormond Square, Dublin, held before Henchy J. in the Central Criminal Court in November 1969 and sentenced to imprisonment for life. His defence was that he had acted in self-defence. The

Court of Criminal Appeal dismissed his appeal in April 1970. Subsequently, in November 1970, the Attorney-General granted a certificate upon the following question of law of exceptional importance :

"Where a person subjected to a violent and felonious attack, endeavours, by way of self-defence, to prevent the consummation of that attack by force, but, in doing so, exercises more force than is necessary but no more than he honestly believes to be necessary in the circumstances, whether such person is guilty of manslaughter and not murder."

The brief facts were that all the persons concerned had been drinking heavily in some bars near the Four Courts on 23 January 1969 and that they were in a provocative mood for an all-in fight and brawl which duly developed. The appellant alleges he was hit on the head from behind with a blunt instrument, and states he brandished his knife to defend himself. When the fighting ended, Smith and Ney had fallen fatally stabbed, and the inescapable inference was that the appellant was responsible. However, even if the appellant was being attacked, there was no evidence that any of his assailants were armed, or that he was prevented from making his escape; accordingly the appellant used more force than was reasonably necessary for his own protection, and, in the circumstances, **Henchy J.** directed that the verdict should be murder if he were found guilty. The Court of Criminal Appeal approved of this direction, although it had been contended that the Australian case of *R. v. Howe* (1958) supported a verdict of manslaughter, which had up to then never been considered in Ireland or England.

Section 4 (1) of the Criminal Justice Act 1964 provides that : "Where a person kills another unlawfully, the killing shall not be murder unless the accused intended to kill or cause serious injury to some other person, whether the person actually was killed or not. While a person is entitled to protect himself from unlawful attack, he may use no more force than is necessary to ward off the attack, otherwise his acts are unlawful. If his intention in doing the unlawful act was primarily to defend himself, he should not be held to have the necessary intention to kill or cause serious njury. This killing, though unlawful, would be equivalent to manslaughter; this is the view held by the High Court of Australia in *R. v. Howe* (1958). The English Privy Council in *R. v. Palmer* (1971) 1 All E.R., actually disapproved of the decision in *R. v. Howe;* but even there it was held that the question of the possible absence of the intention to constitute murder must still be considered by the jury. As Lord Morris said : "If on the evidence in the case the view is possible that though all questions of self-defence and of provocation are rejected by the jury, it would be open to them to conclude that although the accused acted unjustifiably he had no intent to kill or to cause serious bodily injury, then manslaughter should be left to the jury."

In *R. v. McInnes* (1971) 3 All E.R., the Court of Criminal Appeal, in rejecting the rule in Howe's case, was nevertheless prepared to apply the same logic as the Australian judges, as is evidenced by the judgment of Edmund Davies L.J. when he stated : "The facts, for example, go to show that he may have acted under provocation or that, although acting unlawfully, he may have lacked the intent to kill or cause serious bodily harm, and in that way render the proper verdict one of manslaughter."

It is essentially for the jury to find out what was the intention of the accused at the time of the killing. However, where on the evidence self-defence is open as an answer to a charge of murder, the jury must be so satisfied before convicting of that charge, and the accused is entitled to have it left to the jury to consider whether, even if they find he used more force than was reasonably necessary to defend himself, he nonetheless used no more than he honestly believed to be necessary in the circumstances. In the latter case they should be directed to find him guilty of manslaughter and not of murder.

The point of law raised in the Attorney-General's certificate should, therefore, be answered in the affirmative. The appellant is entitled to have the verdict of murder set aside and, accordingly, it is unnecessary to consider the other grounds advanced on this appeal. As there was evidence which would entitle a jury to reject completely the plea of self-defence, a new trial should be directed on the charges of murder.

[The People (Attorney-General) v. Dwyer; Supreme Court (O Dalaigh C.J., Walsh, Budd, Fitzgerald and Butler J.J.); separate judgments by Walsh J. and Butler J.; unreported; 19 December 1972]

The expression "felon-setter" is not defamatory.

On 25 September 1970 *The Irish Times* published a story concerning the occupation by fifteen members of Sinn Fein of the BOAC office in Grafton Street, Dublin. There was a photograph showing a poster hung from the office window with a man bearing a placard with the words : "Peter Berry—20th century Felon Setter—Helped Jail Republicans in England". The plaintiff, as Secretary of the Department of Justice, was well known to the public. It was pleaded that the aforementioned words were defamatory *per se.* The defence was fair comment on a matter of public interest, and that the publication was privileged. At the trial before Butler J. and a jury, three questions were put to the jury : (1) Whether the material complained of conveyed that the plaintiff had helped in the jailing of Irish Republicans in England? By direction of the Judge, the jury answered "Yes." (2) Was this publication defamatory of the plaintiff. Answer "No." (3) Damages—does not arise. Judgment was accordingly entered for *The Irish Times.* The plaintiff appealed.

The appellant asked the Supreme Court, as a matter of law, to hold that the words complained of could not be held other than defamatory—in other words they are words which must hold the plaintiff up to public odium and contempt : the test is whether it will lower him in the eyes of the average right-thinking man. There is little doubt but that the object of those displaying the poster was to injure the plaintiff in his general reputation. Here there is no allegation of malice against *The Irish Times* for publishing the placard.

The majority of the Supreme Court (**O Dalaigh C.J., Walsh and Butler J.J.**) per the Chief Justice, held that the words in question is an allegation that the plaintiff had by furnishing evidence or in some other way assisted in the prosecution to conviction of two accused named Lynch and O'Sullivan in England. They were convicted in an English Court of an offence against the laws of England. No allegation was made that the procedure followed at the criminal trial abroad was not one by which our standards of law and justice could only be deemed a travesty of justice, nor was it suggested that the plaintiff was assisting in such repug-

nant procedure. It is surprising that this Court should be asked to hold, as a matter of law that it is necessarily defamatory to say of an Irish citizen, that he assisted in the bringing to justice in another country of fellow countrymen who broke the laws of that country, and were tried and convicted according to law. This Court is bound to uphold the rule of law and it is not defamatory to suggest that ordinary right-thinking people could not condemn such militant activities abroad on the ground of disgraceful conduct. The statement would have been defamatory if it had been alleged that the Secretary of the Department of Justice used information which came to his knowledge officially without the sanction of the Minister, but this was not alleged. The fact that in this case the allegation was false does not make it defamatory. No objection was taken to the Judge's charge at the trial. The Judge did not encourage the jury to find that the words were not defamatory, and this ground fails. The appeal should accordingly be dismissed.

Mr. Justice Fitzgerald, dissenting, said that it appeared to him that the words complained of were clearly a libel. The word "felon-setter" which was admitted to be untrue, was equivalent to calling the plaintiff a traitor. The defence of privilege cannot in any event be sustained. In his view the case should be re-tried on the issue of damages only, as a gross injustice had been done to the plaintiff.

Mr. Justice McLoughlin, dissenting, said that the impression conveyed to him was that the publication was so clearly defamatory of the plaintiff that it was beyond all argument. The expression "felon-setter" is clearly vituperative and reviling, and clearly means that the plaintiff had acted as a British police spy and informer which, though totally untrue, has a peculiarly nauseating effect in Irish life. Undoubtedly the publication is defamatory of a person if it injures his good reputation in the minds of right-thinking persons, who do not approve of the acts of militant republicans in England, yet would regard the plaintiff with contempt if they believed he had gone out of his way to supply information to the British police so as to have such persons jailed in England. In his view there should be a new trial on the question of damages.

The appeal was accordingly dismissed.

[Berry v. Irish Times Ltd.; Full Supreme Court; unreported; 31 July 1972]

Premises used as theatre must comply with prescribed notice under Fire Brigade Act, 1940.

Two summonses under Section 7 of the Fire Brigades Act, 1940, were brought by the Corporation of Dun Laoghaire, the Sanitary Authority for the Borough of Dun Laoghaire against the Alliance and Dublin Consumers' Gas Company, alleging that on the 21st September 1971 and on the 30th September 1971 at Upper George's Street, Dun Laoghaire, within the Borough of Dun Laoghaire in the Court Area and District aforesaid, the Defendants being the Proprietor of a building at Upper George's Street, Dun Laoghaire, in respect of which a Fire Precautions Notice is in force, did: Contravene, cause a contravention, or permit a contravention of the said Notice, contrary to Section 7 (4) of the Fire Brigade Act, 1940.

The Justice, who heard the case, was District Justice Delap. He gave his decision on the 6th January 1972.

The Corporation of Dun Laoghaire v. Alliance and Dublin Consumers' Gas Company (6 Jan. 1972)

The following is the judgment in the case in full:

In this case a Fire Precautions Notice pursuant to Section 7(2)(b) Fire Brigades Act 1940 was served on the Defendants as Proprietors of the Gas Showrooms, Upper George's Street, Dun Laoghaire. The Notice, which was served on the 14th May, 1971, set out that the Defendant Company were Proprietors of a potentially dangerous building as far as fire hazards were concerned and it required the Defendants to stop using part of the first floor known as the Gas Company Theatre unless or until certain requirements laid down in the Notice were met. The Notice contained a Statement at the end that the Proprietors could appeal within fourteen days or service to the District Court on any of the grounds provided by Statute and there was also another reference in the body of the Notice to this right of appeal. The Defendants did not appeal within the time specified but at a later stage brought an application for extension of time to appeal before the President of the District Court who refused the Application. The complainants now allege that the requirements of the Notice were not complied with and a Summons issued on the 12th October, 1971 alleging that the Notice:

(i) was contravened;
(ii) a contravention of the Notice was caused;
(iii) a contravention was permitted,

contrary to Section 7(4) of the Fire Brigades Act, 1940.

The Chief Fire Officer of the Complainants visited the Theatre on two occasions when a play was being staged and gave evidence that the Fire Regulations had not been complied with and the Defendants did not challenge this evidence. Evidence of ownership of the premises was given by Mr. O'Brien, the Secretary of the Gas Company, who was subpoenaed by the Complainants. In cross-examination Mr. O'Brien stated that the premises had been let under a Quarterly Agreement to a Theatre Group from 29th September, 1971 and prior to that it was let on a weekly tenancy. Neither agreement was produced in evidence nor were their terms disclosed in Court.

The Defendants did not call any evidence and Mr. Humphries on their behalf argued that it was not established that they were Proprietors, that there were different Proprietors of different parts and that Proprietor means occupier. He submitted that the wrong person was before the Court and he relied on Section 7 (Sub-Section 1) of the Act which states that where different persons are the Proprietors of different parts of a building each such part of a building shall for the purposes of the Section be deemed to be the Proprietor of a building and he quoted the case of *Devlin v. Conlon* reported at (1920) 2 I.R., p. 179.

Mr. Smyth for Complainants in reply stated that there was no provision in the Act whereby a person could disclaim proprietorship and that Section 7(iii)(d) set out the grounds of Appeal. He also relied on the fact that as the Defendants had not availed of their right of appeal under the Act they were estopped from denying that they were the Proprietors and quoted the Scottish case of Magistrates of *Stornoway v. McDonald* reported in the Scots Law Times Reports of 1971 at p. 1954. In that case the Court of Session on Appeal held that the Proprietor of a yard who had not availed of a right of Appeal against a Notice requiring him to pay a contribution towards the levelling of a private

street was estopped from raising the argument that the original resolution sanctioning the work was ultra vires. The Notice served contained a notice informing the Defendant of his Statutory Right of Appeal but he did nothing. Mr. Smyth went also on to say that the Defendants were also bound by a letter received from their Solicitors dated 8th April, 1970 in which they stated that the expenditure on meeting the Fire Officer's requirement would not be justified. I reject this portion of his argument in the light of the decision in *Bord na gCon v. Thomas Murphy,* Vol. 105 I.L.T.R., page 77, as no evidence was given in it that the Solicitors acted as Agents for the Defendants.

There is also an Irish case of the *County Council of Cork and Sylvester O. Cotter v. Garde* (1963) Irish Reports, 159 in which Mr. Justice Henchy held on Appeal from the Circuit Court that the Defendants who contended that a rate struck was bad on its face because it did not comply with the statutory requirement in not describing the Defendants sufficiently were estopped from raising this defence because they had not appealed against the rate itself. In the light of this decision and the Scottish decision and the fact that Defendants did not appeal to the District Court as they were entitled, from the requirements of the Notice and that in fact they are now adopting a different attitude to that adopted by them in their application for an extension of time to appeal, I hold that they are now estopped from denying that they are proprietors.

The definition of "Proprietor" has also to be dealt with. I have searched in vain through the Public Health Acts, Town Improvements Act and similar legislation for a definition. Of course there is no definition of the word in the Fire Brigades Act. There are definitions of Proprietors in the Small Dwellings Acquisition Act, 1899, Section 10 (3) and in the Hotel Proprietors Act, 1963 but in neither case do the definitions help. I hope that the Legislature will see fit to close this gap and define "Proprietor" in some future piece of legislation. In the case of *Devlin v. Conlon* (1920) quoted by Mr. Humphries the questions of whether a proprietor or occupier should be liable for illicit distilling by a trespasser on lands and whether a proprietor or occupier should be punished for the sins of an unknown offender arose but in my opinion the decision turned on the question of occupation or proprietorship. Mr. Humphries went on to say that proprietor means occupier. There is not a definition of occupier in the Fire Brigades Act but I find that the word is used in another Section of the Act which relates to payment of fees to Fire Brigades acting outside their district—Sub-Section 2(a) of Section 4—so the Act itself appears to distinguish between occupier and proprietor.

In the absence of a definition in the Act I must follow the natural, obvious and popular meaning of the word. I must take the word in its ordinary sense. The Concise Oxford Dictionary defines Proprietor as Owner and on the evidence of Mr. O'Brien there is no doubt but that the Defendants are the owners and consequently I hold that the Defendants are Proprietors within the meaning of the Fire Brigades Act, 1940.

Accordingly I am going to convict for a contravention of the Notice.

(Decision of Justice Delap given at Dun Laoghaire District Court on 6th January, 1972.)

S.I. No. 47 of 1973

Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1973 (S.I. No. 47, 1973)

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by Sections 4, 5 and 40 of the Solicitors Act 1954 hereby make the following regulations.

(1) These Regulations may be cited as the Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1973 and shall be read together with the Solicitors Act 1924 (Apprenticeship and Education) Regulations 1955 (S.I. No. 217 of 1955) (hereinafter called "the Principal Regulations) and subsequent amending Regulations.

(2) These Regulations shall come into operation on 8th February 1973.

(3) Paragraph 10 of the Principal Regulations as amended by the Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations 1969 (S.I. No. 110 of 1969) is hereby deleted and the following paragraph is substituted therefor.

(10) The subjects at the preliminary examination shall be as follows:

Compulsory: English, Mathematics and Latin.

Optional: Any three subjects from History, Geography, Greek, a modern language (other than Irish) approved by the Court of Examiners, Physics, Chemistry, Biology, Commerce (which is comprised of four sections namely Economics, Business Organisation, Accountancy and Economic History of which the candidate will take one section only).

Signed on behalf of the Incorporated Law Society of Ireland this 8th day of February 1973.

THOMAS V. O'CONNOR (President).

ENGLISH CURRENT LAW DIGEST

In reading these cases note should be taken of the differences in English and Irish statute law.
All dates relate to dates reported in "The Times" newspaper.

Compulsory Acquisition

Before Lord Justice Russell, Lord Justice Buckley and Lord Justice Lawton.

A local authority acting bona fide is the sole judge of whether land was no longer required for the purpose for which it had been originally acquired or appropriated.

Dowty Boulton Paul Ltd. v. Wolverhampton Corporation; Court of Appeal; 28/2/1973.

Contract Arbitration

Before Lord Justice Cairns, Lord Justice Lawton and Lord Justice Scarman.

The RIBA Conditions of Engagement for the mutual benefit of clients and architects do not by themselves constitute a contract. They only operate by incorporation in a contract. Almost any dispute that arises between the parties is likely to involve examination both of the conditions (with the provisions for the reference of disputes to arbitration) and the terms of the contract. There were not two contracts between the parties but only one, and an arbitration clause which was incorporated into the contract should be interpreted as covering any dispute under the contract.

Sidney Kaye, Eric Firmin and Partners (a firm) v. Bronesky; Court of Appeal; 23/2/1973.

Crime

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Bridge.

Christmas puddings contaminated by mice and found in an Uxbridge restaurant's dry goods store room were presumed to be intended for sale for human consumption because of Section 111 (b) of the Food and Drugs Act, 1955, and Justices should not have acceded to a defence submission that there was no case to answer at the close of evidence for the prosecutor by a public health inspector that the puddings were found in an inaccessible tray which was not part of the day to day storage.

Hooper v. Petrou and Another; Queen's Bench Division; 1/3/1973.

The Divisional Court allowed an appeal by Rorke Garfield, a member of the Hunt Saboteurs Association, who had been convicted on an information laid before Peterborough magistrates, but whose unsuccessful appeal to Huntingdon Crown Court was heard on the basis of a significantly altered information.

The original information charged him with using threatening behaviour with intent to provoke a breach of the peace, contrary to Section 5 (as amended) of the Public Order Act, 1936, but the amended information before the Crown Court charged him with using insulting behaviour whereby a breach of the peace was likely to result contrary to the same section.

Garfield v. Maddocks; 6/2/1973.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Park and Mr. Justice May.

For an act preparatory to the commission of an offence under the Official Secrets Act, 1911, to be a contravention of Section 7 of the Official Secrets Act, 1920, it is sufficient if the person committing the act complained of has in mind that transmission of prejudicial information might follow—not that it would probably follow.

Their Lordships so held when dismissing an appeal by Mrs. M. Grace Bingham from her conviction at Winchester Crown Court (Mr. Justice Shaw) of contravening Section 7 of the 1920 Act, by doing an "act preparatory to the commission of an offence under" the 1911 Act in that she communicated with a member of the staff of the Soviet Embassy in London. She was acquitted on two counts of communicating information contrary to Section 2 of the 1911 Act.

Regina v. Bingham; Court of Appeal; 13/2/1973.

Before Lord Justice Phillimore, Mr. Justice Cusack and Mr. Justice Mars-Jones.

A person convicted of cruelty to a child by wilfully neglecting it so as to cause unnecessary suffering or injury to health, contrary to Section 1 (1) of the Children and Young Persons Act, 1933, is not automatically guilty of manslaughter if the child dies as a result of the neglect, the Court held, in a reserved judgment, when allowing an appeal by Robert Lowe, 34, Nottingham, against his conviction of manslaughter by Nottingham Crown Court (Mr. Justice May).

Regina v. Lowe; Court of Appeal; 24/1/1973.

Before Lord Justice Lawton, Mr. Justice Melford Stevenson and Mr. Justice Brabin.

A Judge's comment on the failure of a man on trial for murder to give evidence overstepped justifiable limits of a discretion in summing up. The Judge should not have made a comment which the jury could and would have taken to be a direction that there was nothing in the defence. Nevertheless, no miscarriage of justice had occurred, and an appeal against conviction was dismissed.

Regina v. Sparrow; Court of Appeal; 18/1/1973.

Mr. Porter, a hospital patient, discharged himself after consenting to provide a blood specimen and was arrested outside the ward before the specimen was given. His conviction was quashed on the ground that the police had failed to comply with either the "hospital procedure" or the "police station procedure" laid down by the Act.

The Court of Appeal certified that a point of law of general public importance was involved in its decision, but refused leave to appeal.

20//2/1973.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Cusack and Mr. Justice Croom-Johnson.

Motorists who intend to call evidence showing that special reasons exist why they should not be disqualified, ought to notify the prosecution of the intention, the Court stated when laying down guidelines on the onus and standard of proof and the practice in establishing special reasons under Section 5 (3) of the Road Traffic Act, 1962.

Queen's Bench Division; 20/2/1973.

Damages

Before Lord Denning, the Master of the Rolls, Lord Justice Stamp and Lord Justice James.

A young man who was keen to become an airline pilot and who claimed damages against British European Airways in respect of the loss of the ends of two fingers on his left hand while working as a loader at London Airport, but told the trial Judge that he was confident he could manage the switches and buttons in spite of his disability had the damages awarded by the Judge reduced by £1,750 when the Court of Appeal held that an additional £3,000 awarded for loss of future earning capacity as an airline pilot was based on speculation and not on evidence.

Field v. British European Airways Ltd.; Court of Appeal; 28/2/1973.

Discovery

Before Lord Justice Davies, Lord Justice Cairns and Lord Justice Stamp.

Although the Court has jurisdiction to debar a defendant from defending because he has failed to give discovery within the time ordered by the Court, it should not exercise that power unless there has been previously a peremptory order requiring discovery by a certain date and providing that in default the defendant will be debarred.

London and County (A & D) Ltd. v. Mitchison Sons & Partners; Court of Appeal; 31/1/1973.

Evidence

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Bridge.

A police constable who was not an authorised examiner for the purpose of testing the condition of vehicles on roads under Section 53 of the Road Traffic Act, 1972, was nevertheless

able to prove that a car which he pushed with the handbrake on had defective brakes.

Stoneley v. Richardson; Queen's Bench Division; 3/3/1973.

Before Lord Justice Lawton, Lord Justice Scarman and Mr. Justice Phillips.

It would be contrary to public interest to deal with an appeal on the assumption that police officers on whose evidence the appellant was convicted were themselves guilty of offences with which they had been charged but had not yet been tried, their Lordships held, when adjourning the appeal of R. E. Savin, 31, of London, to a later date.

Regina v. Savin; Court of Appeal; 3/3/1973.

Family

Before Lord Justice Edmund Davies, Lord Justice Stephenson and Lord Justice Roskill. Judgments delivered February 23.

The drastic order of an injunction ordering a divorced husband to leave the matrimonial home, a council house of which he and the wife are joint tenants, should only be made in the clearest circumstances that it is imperative. The Court will make such an order if the husband's continued presence creates an intolerable situation and it has been proved necessary for the protection of the physical or mental health of the wife or any child of the marriage living with her.

P. v. P.; Court of Appeal; 1/3/1973.

Gaming and Wagering

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Bridge.

When an applicant for a bingo licence fails to satisfy the licensing authority that there is a substantial demand for bingo in the area, the authority are not bound by Par. 18 of Schedule 2 to the Gaming Act, 1968, to refuse the application, but have a discretion whether to grant the licence or not.

The Court so decided when granting an application by Cambros Enterprises Ltd., of Lancashire, of orders of certiorari and mandamus against the decision of Manchester Crown Court (Judge Zigmond) in upholding the refusal of Manchester licensing Justices to grant the applicants a bingo licence for premises at 55 Bolton Road, Walkden, Lancashire.

Regina v. Manchester Crown Court, ex parte Cambos Enterprises Ltd.; Queen's Bench Division; 5/3/1973.

Land Registration and Mortgages

Before Lord Justice Russell, Lord Justice Cairns and Lord Justice Stamp. Judgment delivered January 24.

Banks who do not register a charge by way of legal mortgage but rely on the fact that they hold the land certificate and have registered notice of deposit of that certificate on the land charges register do not lose priority against a subsequent equitable interest protected by a registered caution against dealing with the property.

Barclays Bank Ltd. v. Taylor and Another; Court of Appeal; 31/1/1973.

Negligence

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Scarman. Judgments delivered February 6.

A lighterman on a barge being moved into a dock who was knocked unconscious when a defective rope from the dockside broke was held not to be barred in his claim for damages for negligence against the British Waterways Board by a notice on the dockmaster's office, of which he was aware, stating that lightermen who availed themselves of the board's facilities and the assistance of their servants in bringing craft into and through the dock entrance did so at their own risk on the understanding that "no liability whatsoever" should be attached to the board or their servants.

Burnett v. British Waterways Board; Court of Appeal; 8/2/1973.

Before Judge Kenneth Jones, Q.C. (sitting Queen's Bench Division).

In a case said by counsel to be the first decision in an English Court on a front seat passenger's duty to wear a seat belt, a woman undergraduate who suffered severe facial injuries in an accident caused by the negligent driving of a fellow student was held to have contributed to her injuries to the extent of 5 per cent by failing to wear a belt.

Pasternack v. Poulton; Queen's Bench Division; 12/2/1973.

Planning

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Eveleigh and Mr. Justice May.

A person wilfully destroys a tree within Section 29 (1) of the Town and Country Planning Act, 1962, and a tree preservation order if he inflicts on the tree so radical an injury that, in all the circumstances, any reasonable forester would consequently decide that it should be felled.

Barnet London Borough Council v. Eastern Electricity Board and Others; Queen's Bench Division; 20/2/1973.

Practice

Before Lord Denning, the Master of the Rolls, Lord Justice Stamp and Lord Justice James. Judgments delivered Feb. 26.

An action involving important questions of fact in a dispute about tubing and solder paint supplied for the Gas Council's Guaranteed Warmth domestic central heating campaign in 1969 is to be tried by a Judge and not by the official referee because there is normally no appeal on fact from an official referee and the suppliers' reputation was involved.

Their Lordships so held in allowing an appeal by Simplicity Products Company, of London, from Mr. Justice Forbes, who had affirmed Master Elton and ordered, on an application by Domestic Installations Co. Lotd., London, that the plaintiffs' action for £1,868 for goods sold and delivered and the defendants' counterclaim should be transferred to the official referee.

Simplicity Products Co. v. Domestic Installations Co. Ltd.; Court of Appeal; 3/3/1973.

Rating

Before Lord Denning, the Master of the Rolls, Lord Justice Buckley and Sir Seymour Karminski.

The distinction in valuation for rating purposes between colleges voluntarily provided by a local authority and public schools or universities owned and run by charities was preserved by a majority decision of the Court of Appeal that the Lands Tribunal in valuing a teachers' training college in Cardiff on the "contractor's basis" had correctly taken 4½ per cent on the effective capital value of the hereditament as the hypothetical rent, rather than 3½ per cent which in other cases had been applied for public schools and universities. The Court was told that its decision would still be relevant when the new valuation list came into force.

Cardiff Corporation v. Williams (Valuation Officer); Court of Appeal; 7/2/1973.

Redundancy Payments, Master and Servant

Before Sir John Donaldson, President, Mr. R. Boyfield and Mr. H. Roberts. Judgment delivered February 27.

A dismissed employee was held to be entitled to both a redundancy payment and compensation for unfair dismissal, where an industrial tribunal found that her employers had failed to rebut the presumption of redundancy in Section 9 of the Redundancy Payments Act, 1965, and had failed to show that the reason for her dismissal was a reason within Section 24 (2) of the Industrial Relations Act, 1971.

Midland Foot Comfort Centre Ltd. v. Moppett and Another; National Industrial Relations Court; 1 /3//1973.

INTERNATIONAL STANDARDS NOT APPLIED TO EMERGENCY LAWS

Dr. Paul O'Higgins, lecturer in law at Cambridge University, said in Dublin last night that neither the British nor the Irish Government cared much about international standards when they framed and applied emergency legislation.

However, that did not excuse the lack of effort on the part of organisations which should have opposed the legislation, said Dr. O'Higgins, addressing a meeting organised by Citizens for Civil Liberties in Trinity College.

"Criticism gets you nowhere unless there are trade unions and other broad-based organisations who will take up the fight and oblige their Governments to adhere strictly to the standards," said Dr. O'Higgins.

He described the Offences Against the State (Amendment) Act, 1972, as astonishing, extraordinary and sweeping in its derogation from normal legislation. It had the marks of having been hastily drafted, contained vague and dangerous concepts and, in the section covering Garda evidence, opened the door to very serious risks of abuse.

No justification

Senator Mary Robinson said that there was no justification in the Constitution for the erosion of the general right to trial by jury, but cases which had no political overtones had been certified by the Attorney-General for trial before the Special Criminal Court because the gardai wanted to secure a conviction.

"It is intolerable to see the quiet erosion of this costitutional right through the back door of the Special Criminal Court," said Senator Robinson. "It is to be hoped that either the Court itself will refuse to accept these cases or else that the constitutionality of the procedure will be challenged."

Dr. O'Higgins said that the enactment of the Offences Against the State (Amendment) Act raised the general issue of the legitimate scope of emergency legislation and the safeguards which ought to be included to guard against abuse.

Rights swept away

Emergency legislation, of which Ireland had more experience than any other nation, caused the rights enshrined in the Constitution to be swept away, producing a great risk of abuse and undermining the faith of the community in ordinary legal rules and institutions. The Offences Against the State (Amendment) Act 1972 also raised, because of its extraordinary terms, a number of specific problems. There was, for instance, the provision that any meeting should be deemed to constitute an interference with the course of justice and, therefore, to make those taking part liable to a criminal conviction, if such a meeting were "likely indirectly to influence any person or authority concerned with the institution of any proceedings, civil or criminal, as to whether the proceedings concerned should be brought or defended."

Dr. O'Higgins commented : "A meeting to discuss the question whether the parents of thalidomide children should initiate legal proceedings if held in public now becomes unlseful if the State wished to use the power it has been given."

He continued : "Emergency legislation now is lawful only within the ambit permitted by the European Convention on Human Rights and Fundamental Freedoms, and the provisions of the new Act all too often appear to conflict with the Convention. Of course, States are permitted to derogate from the obligations of the Convention, if there is an emergency threatening the life of the nation, but only to such limited extent as is strictly required by the exigencies of the situation.

"It is difficult to see how the present situation in Ireland could possibly justify the extraordinary width of the provision of the Act making certain, otherwise innocent meetings, having nothing to do with politics, into criminal offences. The fact that the provisions of the Act might never be applied to such meetings does not lessen the fact that such measures may be a violation of the European Convention.

Absurd legislation

"Where legislation in any country passed in an 'emergency situation' exceeds reasonable bounds, and does not contain adequate safeguards, experience suggests that such legislation is abused, that it lessens respect for law and legal institutions, not to mention respect for conventional politics thereby contributing to the very end sought to be avoided, and makes still easier the enactment of further extraordinary legislation."

Senator Robinson said that if her colleagues in the Seanad had not voted on party lines on the Offences Against the State (Amendment) Act, they might have delayed its passage for ninety days, thus allowing time for discussion in a calmer atmosphere. This could have made a difference to the attitude of the Opposition parties in the Dail.

She said that the President might also have referred the Bill to the Supreme Court under Article 26 of the Constitution.

She said that the Special Criminal Court in its operation posed a direct threat to the constitutional right of trial by jury. This right was guaranteed in Article 38 subject to the possibility of setting up special courts where it is established "that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order".

The Government had made a declaration to this effect under Part 5 of the Offences Against the State Act, 1939, and set up the Special Criminal Courts.

But there was no justification in the Constitution for the erosion of the general right to trial by jury. Charges of robbery and burglary with malicious damage to a safe had been certified to the Special Criminal Court. In one case a man was convicted of assaulting a member of the Garda, although in two previous trials in the Circuit Criminal Court and the Central Criminal Court the juries had disagreed and failed to convict him.

"Obviously the gardai and the Attorney-General consider that it is easier to secure a conviction before the Special Criminal Court than to uphold the right to trial by jury for the citizen," Senator Robinson said.

"However, it was never suggested in the declaration bringing in the Special Criminal Court that the ordinary Courts were inadequate to deal with crimes of this nature.

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Equal Pay For Women

by MRS. MARY MATHEWS, LL.M., Solicitor

The most recent declarations relating to equal pay include :

(1) (a) The UN Universal Declaration of Human Rights, adopted by the General Assembly of the UN in December 1948 says in Article 23 (2) that "everyone without distinction has the right to equal pay for equal work". (b) In November 1967 the Declaration on the Elimination of Discrimination against Women was adopted, which says in Article 10 : "all appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life and, in particular, ... the right to equal remuneration with men and to equality of treatment in respect of work of equal value".

(2) The European Social Charter, adopted by the Council of Europe in October 1961, provides in par 3 of Article 4 that the contracting parties shall undertake; "to recognise the right of men and women workers to equal pay for work of equal value". This paragraph was not universally accepted : among those who did not accept it was Ireland.

(3) The ILO in June 1951 adopted a Convention (Convention No. 100) which contained the same provisions as those in the European Social Charter. It stated that "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex. This Convention was ratified by more than seventy countries, including all the then members of the EEC, the UK (though not until after their Equal Pay Act, 1970, was enacted), Norway and Denmark. Ireland did not ratify the Convention. When a question arose in the Dail about this at the time, it was stated in reply that since the normal method of wage negotiation in Ireland is free collective bargaining, before deciding to ratify the Government would have to regard the trend in free collective bargaining concerning equal pay.

(4) The Treaty of Rome, mainspring of the EEC, signed in March 1957, states in Article 119 : "Each member State shall, during the first stage, ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work."

Irish constitutional safeguards

It is perhaps paradoxical that Ireland, the "non-ratifying country of international conventions" has at the same time constitutional safeguards covering discrimination against women. According to Article 40 (1) "all citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

This provision was interpreted in the High Court by Mr. Justice Kenny to the effect that a policy or general rule under which anyone sought to prevent an employer from employing men or women on the ground of sex was prohibited by the Constitution : *Prendergast and Walsh v. INUVGATA*, 7 March 1972, unreported. The protection in this case was wider than the issue of remuneration and extended to the actual terms and conditions of employment.

The Irish Constitution also provides among its Directive Principle of Social Policy in Article 45 (1) that : "The State shall, in particular, direct its policy towards securing that the citizens (all of whom men and women equally have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs." In par. 142 of the Report of the Committee on the Constitution in 1967 the Committee surveyed this Article and felt that it should include "a provision establishing the principle of equal pay for men and women for work of equal value".

Of greatest note in Ireland is the Commission set up on 31 March 1970 "to examine and report on the status of women in Irish society, to make recommendations on the steps necessary to ensure the participation of women on equal terms and conditions with men in the political, socia, cultural and economic life of the country and to indicate the implications generally—including the estimated cost—of such recommendations". This action was criticised by the then Opposition parties in Dail Eireann who accused the Government of the time of further staving the issue by the introduction of a commission. No doubt one can now expect speedier legislative action, but time has shown (particularly in the light of the think British legislation) that reflection and deliberation are necessary if a bone fide policy is to be effected at all. An interim report was issued by the Commission in response to Ministerial request in August 1971 and the Commission has sat for the last time recently.

British Equal Pay Act 1970

The main purpose of this article is to look at the British Equal Pay Act 1970 with a critical eye, hoping that its deficiencies will not find repetition in Ireland. The Act (and a corresponding one in Northern Ireland) evinces the general intention that employers shall be obliged to give equal treatment as regards terms and conditions of employment to men and women. The Act therefore is not limited to securing equal pay. It contains three basic principles :

(1) For men and women employed in like work the terms and conditions of one sex shall not be any less favourable than those of the other;

(2) For men and women employed in work rated as equivalent the terms and conditions of one sex shall not be less favourable than those of the other in any respect in which the terms and conditions of both are determined by the rating of their work;

(3) Collective agreement shall not make any provision relating to men only or to women only. "Collective agreement" is defined so as to include any agreement between employers, their representatives, organisations or associations, and employees' organisations, their representatives or their associations, and also any award based on such agreements. The principle extends to employers' pay structures, which are defined as arrangements adopted by an employer which fix common terms and conditions of employment for his employees or any class of them and of which the provisions are generally known. This last requirement was acknowledged in Committee as imprecise, yet it remained.

Persons employed are for the purposes of the Act defined so as to include persons employed "under a contract personally to execute any work or labour" as well as persons employed under a contract of service. It became clear in Committee that this measure was intended to prevent avoidance of the Act by the use of labour-only sub-contracting, a rather wise move. The Government's claim is that by their three basic principles they have avoided the controversy between "equal pay for the same work"—the concept adopted by the Treaty of Rome—and "equal pay for work of equal value"—that of the ILO Convention. It has been fairly suggested, however, that the same dispute will reproduce itself when the concept of "equally favourable conditions for like work" comes to be applied.

Expanding on the three principles:

Definition of "like work"

(1) A woman is to be regarded as in "like work" if her work and men's is of the same or a broadly-similar nature and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly comparing her work with theirs regard is to be had to the frequency or otherwise with which any such differences occur in practice, as well as to the nature and extent of their differences. How will the tribunals cope with all this particularly as comparison is to be made with all persons employed by the same employer in any establishment at which common terms and conditions are observed? How many and what terms and conditions must be common ones? The Committee on the Bill instanced a case where a man is employed in London at £20 p.w., a woman in London at £16 p.w., a man in Scotland at £16 p.w., and a woman in Scotland at £12 p.w., all by the same employer on the same work. Will the Act bring the woman in Scotland up to £20 p.w.? Or is it more likely that employers by concentrating all the women in the area which has the regional differential against it will evade the Act, thus giving rise to discriminatory job allocation. Further will the provision entitle all women to the minimum non-skilled male rate in e.g. the engineering industry, where no men are doing the lowest grade of the work done by women?

Definition of "equivalent work"

(2) A woman's work is "equivalent" to men's if her job and theirs have been given an equal value in terms of the demand made on a worker under various headings (for instance, effort, skill, decision) on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

The provision does not impose an obligation on the employer to have a job evaluation done, it just says that when it has been done, there shall be no discrimination. We do not know if it matters how long ago the work was rated as equivalent. Since all employers conduct their own evaluations in one way or another, how sophisticated is the evaluation in the Act to be? No particular method is preferred and there are significant shifts in emphasis in the various recognised methods, job-ranking, grade-description or classification, factor comparison or points rating. Discrimination could very easily be built into job evaluation, since the Act does not deal with discrimination built in to the relative weighting of factors, for example, if a job evaluation scheme gives relatively high weight to strength and relatively low weight to dexterity, would this not be discrimination? This sort of indirect discrimination was noted as one of three major insufficiencies still existent in the original EEC member countries in the Commission's Report on 31 December 1968. (Particular reference might be made to German practice in this regard.) There are instances of "reorganisation" of work in Northern Ireland following the Equal Pay Act, women have now been described as "equal but separate" (see a report in *The Irish Press* 8 October 1972).

Job evaluation

It will be important to clarify the question of job evaluation. If no duty is imposed upon an employer to carry out such a scheme, then the number of women in Ireland who will be forced to rely on the first principle will be proportionately as great as the English figure. In discussions on the English Bill, the suggestion was launched that one-third of all employees (approx.) were covered by job evaluation schemes. The National Board for Prices and Incomes published a report on Job Evaluation in 1968, based on a survey of the use of evaluation in the UK. "Although" the report says "most establishments have made no use of job evaluation some 7½ per cent of establishments covered by the survey not using job evaluation were actively considering its application. If these establishments too apply job evaluation to an again nearly 60 per cent of their workers the coverage of such techniques will rise over the next few years from nearly 25 per cent of the employees in our sample to about a third." However, taking into acctunt that the survey covered only those concerns employing twenty-five or more employees while many women work in concerns employing less than that number, and also remembering that industries tending to use job evaluation show a marked difference in the low figures of female employees, it has been estimated that no more than 1 million women employees in the UK and probably no more than 500,000 are covered by job evaluation schemes. With a total female labour force in the UK of 9 million, 1 million of which are in receipt of equal pay, this leaves roughly 7 million who will not be in a position to benefit from this part of the Act. Clearly such a result must be avoided in Ireland.

(3) A collective agreement under the Equal Pay Act can be referred to the Industrial Court by the parties to the agreement o rby the Secretary of State. The parties to the agreement in England no less than in Ireland will usually be men and this may prove unfortunate for the referral of collective agreements for amendment to the Court. Women trade unionists will simply have to become alert. In Ireland there are seven full-time women officials out of a total of 230. The proportion of trade union members was last ascertained in 1966 to be, among women, two out of every five, and among men, two out of every three. In the UK, density of unionisation is approx. 60 per cent for males as opposed to 28 per cent for females.

There is a rather strong case for equal pay in Ireland in the private as well as in the public sector. Women constitute approx. one quarter of the Irish labour force,

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Pretence by House Society

Cut-price conveyancing carried out by the National House Owners' Society for its members was conducted under a cloak of pretence to avoid its officers being prosecuted, Sir Joseph Molony, Q.C., told magistrates at Harrow yesterday.

He was appearing for the Law Society in private prosecutions the solicitors' organisation is bringing against three officers of the House Owners' Society for alleged offences under the Solicitors Act.

Mr. Basil Lambert Blower, of Watford Road, Harrow, described as chairman and honorary conveyancer of the society, Mr. Michael Hickmott, 36, of Frankford Farm, Tedburn St. Mary, near Exeter, and Mr. Antony Duke, 58, of Corporation Street, Middlesborough, have pleaded not guilty to 22 summonses under the Act.

These alleged that as unqualified persons they drafted or prepared conveyancing documents when acting for buyers of unregistered land for fee, gain or reward.

Guitly Plea

Mr. Duke, a struck-off solicitor, pleaded guilty to one charge—that as an unqualified person he prepared the assignment of a lease for fee, gain or reward, contrary to the Solicitors Act.

The maximum penalty for conviction under the Act is a £50 fine for each offence, and the case is expected to last for four or five days.

Sir Joseph alleged that the House Owners' Society put forward the pretence that draft conveyances were prepared in Harrow by Mr. Blower, the honorary conveyancer, who, it was claimed, did the work for nothing.

Examination of typescripts by experts had shown that in fact the drafts were prepared by Mr. Hickmott, the House Owners' Society's agent at Exeter, and by Mr. Duke, its agent at Middlesbrough, who had some conveyancing expertise.

Richly rewarded

They did the work for "a great deal of money" and "were richly rewarded" said Sir Joseph. Three-fifths of the fee charged was paid to the agent from whose office the transaction was conducted, he claimed.

Draft conveyances were then forwarded to Harrow, from where they were sent out with a letter from Blower under the pretence that they had been prepared by him. In some cases a copy of the draft was retyped in Harrow. In others, what was sent out was merely a copy typed in Middlesbrough or Exeter.

"The idea was to create the pretence that the conveyance was solely the concern of the honorary conveyancer and, that by saying he was doing it for nothing, throwing the cloak of protection round agents who were doing it for a great deal," said Sir Joseph.

Blower was no conveyancer and the arrangement was "just a sham" he added. Blower held himself out as responsible for the conveyancing document and if the competence of the conveyance was called in question he would have "a great deal to answer for."

Sir Joseph said the three defendants took part in preparing conveyancing documents. Under the Act it was for the defence to show that there was no expectation of fee, gain or reward.

The magistrates found the cases proved, and awarded costs of £450 to the prosecution, payable in equal amounts of £150 each by the three defendants.

Convictions were recorded as follows: Mr. Hickman —four charges—total fines of £200; Mr. Blower—seven charges—total fines of £350; Mr. Duke—four charges—total fines of £200.

SOLICITORS DECLARE WAR ON CUT-PRICE CONVEYANCING

The Law Society is waging a major new campaign in its battle to stamp out house conveyancing by two cut-price competitors who are trying to break the solicitors' monopoly. It has already secured convictions against three officials of the National House Owners Society one of whom is appealing on a point of law. And last week solicitors were officially advised "not to deal with the NHOS as it is not in the public interest that they should dos o."

The NHOS is criticised for employing struck-off solicitors, failing to publish accounts and advertising invalid insurance cover. But the Law Society's case was based on the solicitors technical monopoly, as embodied in the Solicitors Act 1957 which prohibits preparation of the conveyancing document by anyone except a solicitor if it is prepared for "fee, gain or reward".

The Law Society bolstered its case with crucial evidence from former NHOS employees, some of whom, uhappy with NHOS's administration, formed the breakaway Property Transfer Association last year. Now the Law Society has turned even on their loyal allies. Solicitors are advised at present to ignore the existence of the PTA when it is involved in a house conveyance and to deal directly with the customer.

The PTA is headed by Mrs. Doris Green who gave evidence for the Law Society. It operates from four offices in the South-East and claims 500 satisfied customers. Prices are less than half those of solicitors. For instance, the PTA charges £35 for conveying a £15,000 house on registered land compared with solicitors' recent average fees of £78.75 plus extras.

The future of cut-price conveyances may depend on the judgment in the appeal by the NHOS official. An organisation probably breaks the law if an honorary conveyancer acts free of charge but without exercising any skill, for instance, by merely signing or copying the conveyance document. For in these circumstances the paid employee who drafts the conveyance is acting for "fee, gain or reward", and the honorary conveyancer is just a rubber-stamp.

The unpaid honorary conveyancer for the PTA is Councillor Frank Reynolds, a lecturer at Birmingham

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CORRESPONDENCE

Office of the Revenue Commissioners,
Estate Duty Branch,
Dublin 2.
26 February 1973.

E. A. Plunkett, Esq., Secretary.

re Government Securities Tendered for Estate Duty

Dear Mr. Plunkett,

I am directed by the Revenue Commissioners to enlist your help in solving a problem to which I referred when I met Messrs Osborne and Finegan some time ago.

You will appreciate that an Inland Revenue Affidavit must be receipted and stamped before a Grant of Representation can issue. An affidavit cannot be stamped until the duty has been paid to the Accountant-General of Revenue. When Government securities are tendered in payment of duty assessed on an Inland Revenue Affidavit, the securities cannot be transferred to the Minister for Finance until the Grant has issued. The Commissioners, therefore, advance, to the cashier, a sum equal to the face value of the tendered securities to enable the affidavit to be stamped and the grant to issue. These moneys must be supplied from other revenue receipts. Each personal representative undertakes to transfer the relevant securities immediately on the issue of the grant. The grant is taken up by the solicitor having carriage but, unfortunately, in a large number of cases, the securities in question are not transferred to the Minister to enable him to remit the amount outstanding to the Revenue Commissioners. There is a sum of over £400,000 at present outstanding and it is expected that this sum will grow to £500,000 by the end of the present financial year. The list of cases in which transfers have been neglected is too lengthy to reproduce here. Some of the cases go back to 1969, even though reminders have been issued and solicitors have been spoken to on the phone.

You will understand why the Commissioners are greatly perturbed that this situation should exist. The Minister for Finance is also gravely concerned, since these sums cannot be made available to the Exchequer until the transfers have been effected. Another disquieting feature of this problem is that the taxpayer is now losing the difference between the rate of interest on the security tendered and the 9 per cent interest rate on duty in arrear on the face value of the security for the period of the delay in effecting the transfer.

This problem must necessarily be referred to in relation to any representations which may be made to introduce here a system of the provisional assessment of objection to the adoption of such a system in our context.

The legislative authority for the present procedure of stamping affidavits on credit is found in Section 123 of the Probate Duty (Ireland) Act, 1816. Section 125 of that Act enables the Commissioners to impound grants until the outstanding duty is paid—in the present instance, until the relevant securities are transferred to the Minister. The Commissioners would be reluctant to insist that grants be impounded in all cases because of the obvious inconvenience that would ensue—both for the Commissioners and the taxpayer. Their primary function, however, is to protect the revenue and they cannot, therefore, permit the present situation to continue.

I am, accordingly, to request you to bring this matter before your Council at the earliest opportunity. In the meantime, perhaps you would be good enough to give the problem some publicity in your *Gazette* to see if some immediate improvement could be effected.

Yours sincerely,

M. K. O'Connor (Assistant Secretary).

EQUAL PAY FOR WOMEN (Contd. from page 96)

and though their participation rate is lower than other developed oecd countries (see "Labour Force Statistics 1957-1968", OECD publication) indications are that this rate will increase in the future. According to information in the Quarterly Industrial Inquiry, in a week in December 1970 women's average hourly earnings amounted to roughly 56 per cent of men's. In the UK, the corresponding figure is around 60 per cent.

Questions relating to taxation, enforcement, and most important of all, to equality of opportunity, have been excluded from this discussion. One can only hope that at least in respect of the matters outlined our Irish legislation will embody, not only formal justice, but social equality as well.

Further Reading

(1) *Interim Report of the Irish Commission on the Status of Women* (August 1971).

(2) *The Worker and the Law,* K. W. Wedderburn (1971), 16, 39, 234-37.

(3) *Employment and Productivity Gazette* (January 1970).

(4) *Reports of the Standing Committee on the English Bill* (19 February to 16 March 1970).

(5) *Industrial Education and Research Foundation Research Paper No.* 1 (1969), 15-21.

(6) *Industrial Law Bulle*tin, I, 3; "Sex, Career and Family" (1971), M. Fogarty and others—an interesting sociological study.

SOLICITORS DECLARE FAR (Contd. from page 97)

University. The PTA believes its arrangement is legal but the Law Society may challenge it in court after the Divisional Court issues its judgment in the NHOS appeal.

The Law Society is anxious to keep a monopoly because most solicitors get the bulk of their income from conveyancing and it maintains high professional standards to protect the public.

The PTA, however, wants the creation of a register or Board of Trade certificates for non-solicitor conveyances, offering a cheaper service than solicitors, who could satisfy any standards thought necessary to protect the public from rogues. A PTA official says: "Many of our clients come to us precisely because of their previous bad experience of incompetence by solicitors. We convey property more efficiently than most solicitors."

The Sunday Times (17 February 1973)

BOOK REVIEWS

Elles (Neil) and Vallatt (J.H.)—Community Law Through the Cases. 8vo; pp. xxviii plus 411; London, Stevens, and New York, Matthew Binder, 1973; £7.50.

The learned authors are to be commended for having planned a work which would incorporate the most important cases relating to European Law, not only decided by the European Courts, but also by National Courts from Belgium, France, Germany, Italy and the Netherlands. These latter decisions are all the more valuable as they have not all been available in English. Part I of the work deals with the Foundation of the Community, and treats of such questions as(1) the Free Movement of Goods, (2) the Elimination of Customs Duties between Member States eventually leading to the establishment of the Common Customs Tarriff, (3) the Prohibition of Quantitative Restrictions with listed exemptions, (4) the Progressive Adjustment of State Monopolies, (5) the Problems of Agriculture, (6) the Free Movement of Labour, the Right of Establishment of Migrant Workers and their Right to Social Security, and (7) the Problems of Transport.

Part II of the work deals with the policy of the Community including (1) the Rules of Competition applying to Undertakings against Dumping, (2) Tax Provisions, (3) Regulations relating to Approximation of Laws, and (4) Economic Policy including (a) Balance of Payments, (b) Commerical Policy, and (c) Social Policy.

Part III relates to the institutions of the Community including (1) the European Assembly, and (2) the provisions common to several institutions. The part relating to the Court of Justice deals with the specific problems of (1) the failure of Member States to comply with Treaty Obligations, (2) the Legality of Acts of the Council and of the Commission, and (3) the problem of the Jurisdiction of the Court. Part IV deals with such General Matters as (1) the contractual liability of the Community, including the application of the Treaty, and the attainment of the objectives of the Community. Part V deals specifically with the problems of the European Coal and Steel Community, which will only arise occasionally in the case of Irish readers. The appendices contain the full text of Regulations 17/1967, 19/1965 and 67/1967 which affect competition. Numerous examples are given. For instance, under Article 177, which relates to the circumstances in which the European Court can give preliminary hearings, more than forty cases are listed. Each case is divided into (a) points decided, (b) background, and (c) judgment and reasoning. Normally, the European Court refrains from giving judgment on a reference until the National Court has given judgment, yet, where there is difficulty in interpretation, Community law must prevail.

As Community law has now become part of Irish law, this volume is an essential companion for all practitioners who wish to become proficient in this difficult branch of law.

Hill (D.J.)—Freight Forwarders. 8vo; pp. xxi plus 376; London, Stevens, 1972.

The learned author is Professor of Commercial Law in the University of Nairobi, and has written a treatise in which all the activities of the freight forwarders are fully described. The Courts have been reticent in defining them, but would seem to include any person who holds himself out to the general public—to provide and arrange transportation, including shipments, of property to the ultimate destination for compensation; in other words, he carries out all the conditions relating to the carriage of goods by land or by sea in a superlative manner.

At first, the legal status of the freight forwarder is fully considered; his independence is contrasted with that of the French "courtier maritime" who is a public official named by deed who, as a "commercant" has to keep all the relevant commercial books. Unlike a common carrier, forwarding operations can be carried on with many other occupations such as finance. As regards negligence, he is only liable to the extent that he has undertaken duties of care; he will not, for instance, be liable for delivery if he has only undertaken to forward the goods, but he must inform the client of any loss, if he is to avoid ultimately an action for conversion and detinue. The forwarder must obey fully the instructions of the true owner. It is the duty of the forwarder to avoid delay as far as possible, particularly if perishable goods are concerned. Instructions to a forwarder may be written, oral, or implied by custom, but they must be rigorously observed. As regards dangerous goods, the forwarder need only accept them if the consignor gives a warranty that he will be liable to compensate the forwarder for any damage ensuing; this means that such goods must be properly packed so that their dangerous nature can be seen on inspection. As the risk borne by the forwarder is disproportionately high, it is customary for him to impose financial limitations upon his liability. However, where a forwarder arranges to forward goods by sea, he will invariably contract as an agent on behalf of his principal, the skipper, who has signed the bill of lading, and will therefore accept no responsibility for the acts of the sea carrier; but the forwarder may be liable for theft arising out of carriage by road. As regards liens, the forwarder, when acting as agent is given a particular lien.

In respect of charges incurred on behalf of his principal; if he is also a carrier, the nature of the lien will depend on whether he is a common or a private carrier. The duties of the forwarder in relation to insurance will depend on whether his obligations arise under Common Law or under Standard Trading Conditions, or arising from special instructions. In all cases, Professor Hill has illustrated his text profusely with relevant case law, and has often made useful comparisons with the Civil Law. There is a most useful appendix containing the full text of Standard Trading Conditions, various conditions of Carriage (including the French and Belgian ones) and various Forwarding conditions. Professor Hill must be much commended for having written a law book on such a specialised subject with such expertise and learning. It is indeed a most readable book.

Slater (John C.)—Cases and Statutes on Criminal Law. 8vo; pp. xv plus 166; London, Sweet & Maxwell, 1973; paperback, £1.25.

This is one of the first two books to be published in the new series "Concise College Casenotes", the other being *Cases and Statutes on Contract* by Brazier, which is on the same lines. It is important to note that these Case-

notes are written in order to be used as a companion to the chosen text book.

The notes are notes of 300 cases which is claimed a conscientious student would make for himself in readable form, inserting the essential facts of the case, and the principle established by it. The extracts from the 60 statutes relates to major substantive crimes. The idea of these Casenotes is excellent, and as at least two-thirds of the cases cited would be relevant in Ireland, it would be particularly useful for a busy Circuit Court practitioner, but, of course, he would have to remember that any reference to English statutes passed since 1922 would not generally affect him.

Oberdorfer (Conrad W.), Gleiss (Alfred), and Hirsch (Martin)—Common Market Cartel Law: Being a Commentary on Article 85 and 86 of the EEC Treaty and Regulations. 17/1962; 27/1962; 19/1965; 67/1967; second edition; 8vo; pp. xviii plus 302; New York, Commerce Clearing House Inc., 1971.

Those of us who had the pleasure of listening to Dr. Gleiss at the end of January will appreciate that this work has been compiled by experts in the Cartel Law of the European Community. Dr. Hirsch is a partner in the same law firm in Stuttgart as Dr. Gleiss, while Dr. Oberdorfer is a practising attorney in Boston.

Article 85 is first dealt with in great detail, section by section, and there is a detailed list of examples after every section; Article 86 is subsequently dealt with in a similar manner. The 26 Articles of Regulation 17 of 1962 and then dealt with in detail, as are the 6 Articles of Regulation 27 of 1962, the 5 Articles of Regulation 26 of 1962; the 8 Articles of Regulation 19 of 1965, and the 9 articles of Regulation 67 of 1967.

If it takes 300 pages to explain only *two* Articles of the Treaty of Rome, members can appreciate how very complex the subject of European Community Law is. It need hardly be said that the work done by the expert authors will be most helpful to all those who have problems in relation to the limitation of Cartels under the Law of the European Community and is most highly commended.

O'Higgins (Paul)—Censorship in Britain. 8vo; pp. 232; London, Thomas Nelson, 1972; £3.

We are once more indebted to that prolific writer, Dr. Paul O'Higgins for a book on *Censorship in Britain.* In the introduction, the learned author analyses the various types of censorship, such as (1) *self-censorship* (abstention from expressing views due to fear or self-interest); (2) *social censorship* (when groups discourage the propagation of ideas); (3) *legal censorship* (by which matter may not be published saved by licence of a prior authority or penal sanctions imposed if certain limits are contravened in publications) and (4) *voluntary censorship* (where an institution without legal authority imposes publication restrictions'). Undoubtedly, as proved in actual cases, defamation has the effect of inhibiting press comment, though *Private Eye* appears to be an exception. In the Ladies Directory case, the House of Lords extended widely the idea of conspiracy to corrupt public morals. It is only too obvious that the Official Secrets Act has become the most ubiquitous, far-reaching and all-purposeful block of statute law. In contempt of court proceedings, the truth of the allegation may undoubtedly often be irrelevant to the establishment of liability. Strangely enough it has been held in England in 1965 that an indecent article is not necessarily obscene, whereas an obscene article almost certainly must be indecent: this would appear to flaunt our censorship laws.

Save under the Offences Against the State Acts, it should be noted that it is unlawful for the police to detain anyone for questioning, even to allegedly "help with inquiries". Whereas in England obscene literature may be impounded as a result of a search, it is more usual in Ireland to have the offending book stopped by the Customs Authorities. It is easy for the authorities to institute telephone tapping, and their assurance that it is only used sparingly can be taken with a grain of salt. The authority can also institute press censorship by requesting the Press not to publish certain matters. Whether the Irish authorities were justified under the Emergency Powers Acts in stopping the performances of Maupassant's *Boule de Suif* in the Gate Theatre during the war is questionable. Censorship amongst librarians is a variable factor, but could be rigid. Film censorship in Ireland is exercised by a National Board, with an Appeals Board, whereas in England it is largely determined by local authorities. Advertising may also be subject to statutory restrictions. But perhaps the most draconian censorship was that undertaken in Ireland during the Second World War to allegedly preserve our neutrality—even references to weather were taboo. From the selective parts covered, it will be seen that Dr. O'Higgins, in his usual masterly way, has given us a fascinating and readable view of censorship in Britain.

Bevan (H.K.)—The Law Relating to Children. 8vo, pp. lix plus 522; London, Butterworth, 1973; £6.

Professor Bevan's learned work is a simplified version of the famous tome—Clarke, Hall and Morrison on the Law of Children. This is an area which, as the Kennedy Report showed, is most unsatisfactory, and requires radical reforms in Ireland. In England, the system of Juvenile Court panels is of doubtful benefit inasmuch as many of its members have no legal training; the Scottish system of Reporters appears to be far superior. The role of the parents under the Irish Constitution is paramount, and, while English Juvenile Courts are prepared to send children to homes on comparatively flimsy pretexts, the case of neglect against the parents and unsatisfactory home conditions or lack of control on the part of the child would have to be proved to the hilt in Ireland. While in Ireland, the supervision of children who have come before the Courts is normally confided to Probation Officers the 1969 English Act gives too much discretion to local authorities; they have the power under specified conditions to vest in themselves almost all parental rights and powers. Other problems dealt with by Professor Bevan include the penal protection of children against moral and physical harm, and the question of legitimacy. In proceedings about custody of children, as in Ireland, the moral and physical welfare of the child is the paramount consideration, and inevitable difficulties will still arise. Since 1971 in England, the father has no longer any *prima facie* right to custody, thus bringing English law in line with Irish law. There are further chapters on Adoption (where conditions in England are more favourable), Guardianship of Wards and Financial Provision for Children. Throughout Professor Bevan has written in a readable flowing style on a subject on which he is a master. Highly recommended.

Liability for Estate Duty on sale of property in course of Administration

Section 8 (4) of the Finance Act 1894 enacted that

> Where property passes on the death of the deceased and his executor is not accountable for the estate duty in respect of such property every person to whom any property so passes ... and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property.

Section 32 of the Finance Act 1971 amended Section 8 (4) of the Finance Act 1894 by the deletion of the words "and his executor is not accountable for the estate duty in respect of such property". The section therefore now reads :

> where property passes on the death of the deceased every person to whom any property so passes for any beneficial interest in possession ... and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property.

Prior to the passing of the Finance Act 1971 leaseholds passing on a death (other than settled leaseholds) and other personal estate vested in the personal representative "as such", and the estate duty thereon was a testamentary expense which the personal representative alone was accountable for and liable to pay. Consequently on a sale of leaseholds by a personal representative it was not necessary for a purchaser to obtain any certificate of discharge of such duties. Neither freehold registered land devolving as personal estate under the Registration of Title Acts 1891-1964 nor real estate vesting in the personal representative under the Succession Act 1965, vest in the personal representative as such, but do so by virtue of the respective statutes, and accordingly, the estate duty thereon is a charge upon the property itself under Section 9 of the Finance Act 1894 (*Marry v. Drew,* 1923, 1 I.R. 35) and a certificate of discharge therefrom was always necessary.

Radical change effected

The amendment effected by Section 32 of the Finance Act 1971 makes a radical change in the law not alone as regards leaseholds but as regards other property such as furniture, pictures, horses, motor cars, stocks and shares and other personal property. The advice of counsel has been taken on the subject and he confirms this view. The section in question does not alter the primary incidence or accountability for duty nor does it create a charge for duty which does not already exist; it enlarges the powers of the Revenue Commissioners to recover duty from persons who have derived property on a death where formerly the personal representative was alone accountable. Prior to 1971 on the purchase of leasehold property from an executor the purchaser incurred no liability for estate duty either by reason of duty being a charge on the property or by reason of the ownership carrying with it a personal liability, the only party personally liable being the executor.

The effect of Section 32 of the Finance Act 1971 is that on becoming the owner of the leasehold property the purchaser at the same time becomes accountable under Section 8 (4) of the Finance Act 1894 as amended for the estate duty thereon and therefore also liable to pay it. It therefore becomes necessary for the executor to prove by the production of a certificate from the Estate Duty Office that there is no outstanding claim for duty on the property in order to satisfy the purchaser that by purchasing he does not render himself accountable for and personally liable to pay any unpaid duty on the property.

Where duty not formerly paid, valuables now liable to duty

It follows from what has been already said that the result is the same in the case of the deceased's pure personal estate or any item thereof. Valuable pictures, furniture, horses, motor cars, china, stocks and shares or other articles which pass to the executor in respect of which duty has not been paid would appear now to carry with them an inherent liability to duty so that a purchaser from an executor or from a beneficiary (following an assent) within twelve years of the death which gave rise to the claim for duty must satisfy themselves that no claim for duty attaches to the article in question.

The far-reaching results of this amendment do not appear to have been appreciated by the Revenue Commissioners as it must inevitably result in a very heavy demand for certificates which they may find difficult to meet.

Position of bona fide purchaser without notice

It is, however, right to point out a feature which may help to reduce the flood of applications for a certificate. Sub-section (18) of Section 8 of the Finance Act 1894 provides that

> nothing in this section shall render liable to or accountable for duty a bona fide purchaser for value without notice.

The phrase "without notice" is awkward. A man is deemed to have notice of a fact of which he would have had knowledge if he had made such enquiries as he ought reasonably to have made. If in the case of leaseholds the liability would have appeared on a proper investigation since 1971 of the title the purchaser within twelve years of the death on which leaseholds pass would seem not to escape if he required no proof of payment of duty.

But a man purchasing a picture, horse or like chattel from a stranger at an auction could not be expected to enquire into his title. Buying privately all he could do would be to ask if his vendor had boughtfrom an executor or had these been an executor's sale in the recent history of the chattel. In either case he should then at any rate within twelve years from the death make such enquiries as he could as to the payment of duty. In practice it is thought that except in the case of leaseholds or some particularly valuable chattel at an executor's sale the amendment will not make a serious impact.

International Bar Association Section on Business Law

In 1970 the Council of the International Bar Association, which is a non-political Federation of Bar Associations and Law Societies, decided to establish a Section on Business Law. The IBA itself now has 65 member organisations from 49 countries and 2,800 individual lawyers actively participating in its work as patrons and subscribers. Of these, over one-third have already joined the Section on Business Law.

The Section was formed to provide a direct link between the many lawyers throughout the world concerned with the legal problems arising from international trade and business of all kinds. It offers the opportunity of discussing common problems verbally and by correspondence and of making personal contacts and in finding correspondents amongst lawyers from all over the world having similar interests. Membership is open to all IBA patrons and subscribers on payment of an additional US $10.

The work of the Section is divided between the 20 committees listed below and members may participate in the work of as many committees as they wish upon payment of an additional US $10 per committee for the second and any subsequent committee. Much of the work of the committees, which is decided upon by the committee chairman in consultation with his members, is undertaken by correspondence, but periodic meetings are also held. All committees met during the IBA Monte Carlo Conference in September 1972 and plans are being made for them to meet again in London in November 1973.

The section publishes its own Journal bi-annually which contains reports of the work of each committee and contributed articles from experts in fields of business law. During 1973 a directory listing the names, addresses and committee membership of all members of the Section will be sent to all Section members. The directory will be revised at regular intervals in order to keep it up-to-date.

The Officers and Council of the Section for 1973 are as follows :

Chairman, George C. Seward (USA).
Vice-Chairman, Colin McFadyean (England).
Secretary, Jacques Lassier (France).

The present committees and their chairmen and vice-chairmen are as follows :

(a) Admiralty and Maritime Law : Chairman, Lennart Hagberg, Gothenberg, Sweden; Vice-Chairman, L. Hardenberg, Amsterdam, Netherlands.
(b) Aeronautical Law : Chairman, Dean Booth, Atlanta, Georgia, USA.
(c) Antitrust Law and Monopolies : Chairman, Arved Deringer, Koln, Germany.
(d) Procedures for Settling Disputes : Chairman, Jean Robert, Paris, France.
(e) Commercial Banking : Chairman, Bela Szathmary, New York, N.Y., USA; Vice-Chairman, Robert Fabian, San Francisco, California, USA.
(f) Environmental Law : Chairman, K. C. Imlah, London, England.
(g) Forms of Business Organisation : Chairman, Willard P. Scott, Oklahoma City, Okla., USA.
(h) Insurance. Chairman, F. Baron van der Feltz, Amsterdam, Netherlands.
(i) Investment Companies : Chairman, Richard C. Meech, Toronto, Canada.
(j) Creditors' Rights : Chairman, Joachim Kilger, Hamburg, Germany.
(k) Public Utilities : Chairman, Philip Turner, London, England.
(l) Patents : Chairman, M. Takeda, Tokyo, Japan; Vice-Chairman, Gordon Henderson, Ottawa, Canada.
(m) Sales of Goods : Chairman, Dr. Antonio Maria Pereira, Lisbon, Portugal.
(n) Taxes : Chairman, Jean-Claude Goldsmith, Paris, France.
(o) Mineral and Petroleum Resources : Chairman, Laszlo Gombos, London, England.
(p) Labour Law : Chairman, Fred C. Rea, Portsmouth, England.
(q) Security Issues and Trading : Chairman, J. W. Gauntlett, London, England; Vice-Chairman, Blaise Pasztory, New York, N.Y., USA.
(s) Consumer Protection : Chairman, C. F. Murphy, Vancouver, B.C., Canada.
(t) International Construction Contracts : Chairman, Jean Vadon, Marseilles, France.
(u) Loan Societies : Chairman, T. Hal Clarke, Washington, D.C., USA; Vice-Chairman, William C. Prather, Chicago, Ill., USA.

Further details of the IBA and the Section on Business Law and membership application forms may be obtained from the Director-General, The International Bar Association, 14 Waterloo Place, London SW1, England.

ONE-DAY SEMINAR ON EEC COMPETITION LAW

The Law Society's first venture in holding a one-day seminar took place at the Burlington Hotel on Saturday, January 27th, on the theme of "EEC Competition Law". The seminar was most successful and was attended by seventy-two lawyers from all parts of Ireland, the farthest flung being Kerry and Mayo.

The principal speakers were two prominent German competition lawyers from Stuttgart, Dr. Alfred Gleiss and his partner, Dr. Horst Helm. Dr. Gleiss gave two lectures, the first a general survey of EEC competition law to provide an outline for the following lectures, and the other on merger control under Article 86 of the Treaty of Rome, with special reference to the recent controversial Continental Can case, in which Dr. Gleiss represented that company, and the decision of the European Court eventually sustained his argument. Dr. Helm gave an extremely practical lecture on procedure under EEC competition law and then concluded the seminar with a discussion of patents, know-how and trade marks under EEC competition law. Both speakers demonstrated their very thorough grasp of their subject (and the amount which we have to catch up) in answering all kinds of questions in the discussion periods, which brought out the many practical problems involved.

The Irish solicitors who attended this seminar appreciated how fortunate they were in having two eminent lecturers to give their expert views on one of the most difficult branches of European Community Law.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

An application has been received from the registered owner mentioned in the schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original certificate is in existence and is in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Dated this 31st day of March 1973.

D. L. McALLISTER,
Registrar of Titles

General Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Anne Hogan; Folio No.: 1127; Lands: Part of the townland of Drimnagh with the cottage thereon; County: Dublin.

(2) Registered Owner: Teresa Reilly; Folio No.: 30606; Lands: Slisbmeen; Area: 46a. 2r. 12p. Lands: Cornanagh; Area: 2a. 0r. 6p. Lands: Cornalassan; Area: Oa. 2r. 13p County: Mayo; Land Certificate 6099 issued as to properties No. 1 and 2.

(3) Registered Owner: Michael Egan; Folio No.: 265R; Lands: Mullaunbrack; Area: 6a. 2r. 0p.; County: Tipperary.

(4) Registered Owner: James McCarthy; Folio No.: 4152; Lands: Inchinoe; Area: 37a. 1r. 16p.; Area: one-twelfth of 277a. 3r. 2p.; County: Cork.

(5) Registered Owner: Michael Dwyer; Folio No.: 5075; Lands: Kilcoole; Area: 62a. 2r. 6p.; County: Carlow.

(6) Registered Owner: Patrick McBennett; Folio No.: 4135; Lands: Lisquigny; Area: 3a. 2r. 18p.; County: Monaghan.

(7) Registered Owner: Thomas Delaney; Folio No.: 2180; Lands: Duneany; Area: 119a. 2r. 15p.; County: Kildare.

(8) Registered Owner: William Colleran; Folio No.: 6849; Lands: Annaghkeen; Area: 51a. 3r. 12p.; Area: one-eighteenth part of 47a. 3r. 25p.; County: Galway.

(9) Registered Owner: James Doran; Folio No.: 11503; Lands: Ballycomclone; Area: 85a. 3r. 5p.; County: Wexford.

(10) Registered Owners: Most Reverend Michael Fogarty, D.D., Very Reverend William Kennedy and Reverend Thomas Hogan; Folio No.: 14853; Lands: Feakle; Area: 1a. 3r. 10p.; County: Clare.

(11) Registered Owner: Elizabeth Moylan; Folio No.: 993L; Lands: The leasehold estate in the dwellinghouse and premises known as No. 5 Arbutus Avenue situated on the east side of the said Avenue in the District of Rathmines, Parish of St. Catherine and City of Dublin.

(12) Registered Owner: James Donohoe; Folio No.: 2234; Lands: Glencorran; Area: 14a. 3r. 26p.; County: Cavan.

(13) Registered Owners: The Marist Trustees; Folio No.: 871; Lands: Coolock; Area: 19a. 0r. 21p.; County: Dublin.

(14) Registered Owner: Patrick J. McLoughlin; Folio No. 9938; Lands: Ardnacassagh; County: Longford; Area: 2a. 2r. 38p.

PRACTICE FOR SALE

Solicitor's Practice for sale in Cootehill, Co. Cavan. Particulars from Thomas P. Owens, Alpha House, Cootehill, Co. Cavan.

LOST WILLS

George Ernest Mills, late of 26 Coulson Avenue, Rathgar, Dublin 6, motor taxation office official (retired). Will any person having any knowledge of a will of the above-named deceased who died on the 13th February 1973, please communicate with M. Sellors & Co., Solicitors, 47 O'Connell Street, Limerick.

OBITUARY

Mr. Peter J. Flynn died on 6th March 1973. Mr. Flynn was admitted in Trinity Term 1937 and practised at D'Olier Street Chambers, 17 D'Olier Street, Dublin 2.

Mrs. Dorothea O'Reilly died on 26th March 1973. Mrs. O'Reilly was admitted in Michaelmas Sitting 1924, and practised as a member of the firm of Messrs Patrick F. O'Reilly & Co., 8 South Great George's Street, Dublin 2.

Computers for Lawyers

REPORT TO THE SCOTTISH LEGAL COMPUTER RESEARCH TRUST

by PAUL LEACH

A report, *Computers for Lawyers,* has just been published by the Scottish Legal Computer Research Trust on the work carried out with the support of a grant from the Carnegie Trust for the Universities of Scotland by William Aitken of the Edinburgh Regional Computing Centre, Colin M. Campbell of the Department of Public Law, University of Edinburgh, and Richard S. Morgan of the Solicitors' Law Stationery Society Ltd.

The report believes that a legal information retrieval system for Britain could be workable in five to ten years' time but that Scotland alone could not support the system. The system would enable a lawyer sitting at a terminal in his office to search the full and up-to-date text of statute law, statutory instruments, case law, private Acts and selected textbooks and journals. The service would help the profession by its speedy comprehensiveness and accuracy. It would also be of great assistance to Parliamentary draftsmen and legal researchers.

The report mentions that an encouraging development is the imminent availability of the revised statutes in force in computer usable form, which means that magnetic tapes containing all the statutory material in force in Great Britain will be generated within the next six to seven years and the contents of these tapes could be the basis of such a retrieval system.

The report recommends that the trust should actively participate in the establishment of a British non-profit-making organisation to further developments in this field and safeguard the interests of the legal profession and the public by ensuring that any computer services and systems adopted are operationally effective, give value for money and are technically compatible with each other.

The report mentions favourably the recent moves by the Computer Study Group which I have set up and about which readers of the *Gazette* have been kept informed. If a tax-exempt organisation can be set up on the lines which I mentioned in my report in the December 6 Gazette (p. 1168) and which is broadly on the lines proposed by the present report, there is reason to believe that, when computers are applied to the law in Britain, the resulting service will be the best possible for lawyers and their clients. The report proposes that the trust should encourage further education among the legal profession of the potential of computers to its work; it should press university law faculties to introduce their students to modern technology and to the potential utility of various computer applications to the law and should encourage the introduction of subsidiary applications in this field, such as, in Scotland, the publication of microfiche form of selected legal materials.

The report examines the major areas of outlay which will be necessary before any computer-based information retrieval system could be produced and service existing projects in various countries. From interviews with 122 Scottish lawyers, it was clear that the profession was receptive to the introduction of computers and accepted such developments in the coming decade, but no system would be welcome by the profession unless a strict commercial case could be made in its favour. The existing system of legal research is examined and, although on the whole it seems to work well, threequarters of the solicitors interviewed said that there were areas of the law which they had to consult in which they encountered difficulties, particularly taxation law and the Finance Acts, the Rent Acts, social legislation, conveyancing, agricultural law, international private law and estate duty.

The report ends on a forward-looking note and says that on the basis of a serious responsible discussion, 'the time is ripe, as it may never be again, for a constructive, positive initiative that may shape and guide further activity, and eventually result in a national legal information retrieval service being introduced in Great Britain'.

It is in this context that the Computer Study Group, which includes among its members the three authors of this report, is now working.

Copies of this report may be obtained from the Secretary of the Scottish Legal Computer Research Trust, price £1.

MERGER OF THE "LAW GUARDIAN" AND THE "GAZETTE"

Law Guardian Publishing Company Limited, which in 1970 was acquired by Websters Publications Limited has sold the *Law Guardian* to the English Law Society.

The Law Society intends to publish every fourth issue of the Law Society's *Gazette* under the title of *Guardian Gazette* and to circulate that issue to the present readership of the *Law Guardian.*

As a consequence of the sale the *Law Guardian* Editorial Advisory Committee becomes *functus officio* and will not therefore continue to act in their former capacity as an advisory panel on editorial content.

The *Guardian Gazette* intends to continue the *Law Guardian* tradition as a magazine of interest to the whole of the legal profession.

TRIAL BY JURY ORDERED FOR BERNARD LEVIN LIBEL CASE

The libel action in the High Court over an article by Bernard Levin on the close of the *Daily Sketch* is to be tried with a jury, the Court of Appeal decided yesterday. It allowed, by a majority, an appeal by Times Newspapers Limited, against a ruling by Mr. Justice Ackner, that the case be tried by a judge alone.

The Times, its editor, Mr. William Rees-Mogg, and Mrs. Levin are being sued by Associated Newspapers Limited, who published the *Daily Sketch,* the company's president Viscount Rothermere, and its chairman, Mr. Vere Harmsworth.

Lord Denning, Master of the Rolls, said Associated Newspapers claimed the article meant the Rothermere group was an ill-run group which shamefully closed a great newspaper—giving bogus reasons of economy—whereas the true reason was to make unconscionable additional profits. Further, that it had closed the newspaper in a brutal manner causing acute hardship to a loyal staff. The Times pleaded justification and fair comment.

In its plea for a trial by a Judge alone, the group said a massive number of documents would need prolonged examination. "I think this assertion may well turn out to be a bogy which, in capable hands, can be cut down to size."

No doubt the trial would be long and complicated, but length and complication of themselves were no bar to a jury. It was not length and complication, but prolonged examination of documents which took away the right of a jury. He was not satisfied the case would require such prolonged examination.

Lord Denning added : "Looking back on our history, I hold that, if a newspaper has criticised the great and the powerful on a matter of large public interest and is then carged with libel, its guilt or innocence should be tried by a jury, if the newspaper asks for it, even though it requires the prolonged examination of documents."

Lord Rothermere and his colleagues had been accused of shameful conduct. "If they had themselves asked for a jury, surely they would have been given one? It is one of the essential freedoms that the newspapers should be able to make fair comment on matters of public interest. So long as they get their facts right they are entitled to speak out.

"I can understand the concern of the editor (of the Times) to preserve the right of a defendant to trial by jury. He regards it as the duty of his newspaper to bring to the notice of the people those matters which are of public interest and concern, and to point out those things which in his view are done wrong, no matter how high and mighty the participators may be. If he should overstep the mark he would rather have his guilt or innocence decided by a jury of his fellowmen than by a judge."

Lord Justice Lawton agreed that there should be a jury. "If the defendants lose their action and heavy damages are awarded against them, the newspaper scene in this country may never be the same again.

"The reputation which the Times has enjoyed for so long around the world for responsible journalism will be sadly dented, if not destroyed. The destruction of its reputation would be the destruction of a national institution. In my judgment a trial which could have this result should not be the responsibility of one man."

He continued : "The plaintiffs are alleged by the defendants to have put profits before people. If the facts upon which they have based this allegation are ture, the Court may have to decide whether the imputation of dishonour was one which the defendants could fairly make against the plaintiffs.

"I have no doubt that many judges would welcome the help of a jury on a problem of this kind."

Lord Justice Cairns, dissenting, said he was convinced that trial by judge alone was more likely to bring a just result. He did not believe public confidence in the Times on the one hand, or the Daily Mail (owned by Associated Newspapers) on the other would depend on the result of the action.

"In my view, it is not of any exceptional importance to the public. The case has nothing to do with extending or limiting the freedom of the press."

One disadvantage of a trial by jury was that if it reached a wrong result through misunderstanding there was no way of correcting it unless the verdict could be seen to be perverse. The fact that a judge had to give reasons for his decision was a point in favour of trial by judge alone.

Lord Justice Cairns added : "At the end of it all the question is : which mode of trial is most conducive to justice?

"Justice, of course, means justice to both sides. I see no good reason for supposing that one mode of trial rather than the other is likely to result in success for one side rather than the other."

—*The Guardian* (14 February 1972)

NOTICE

In re Donnchadh O Buachalla a Bankrupt

Mr. Donnchadh O Buachalla who practised at 69 Merrion Square was adjudicated a bankrupt on 11 January 1973. His office and clients' papers are under the control of the Official Assignee. The Court has made a general order giving the Official Assignee liberty to hand over original deeds and documents to solicitors for former clients of the bankrupt on certain conditions. These conditions include the signing of an undertaking that any costs found to be due will be paid to the Official Assignee in due course. Any solicitor seeking documents on behalf of former clients of the bankrupt should communicate with the Official Assignee.

INTERNATIONAL STANDARDS NOT APPLIED TO EMERGENCY LAWS (Contd. from page 94)

"A referendum would be required in order to abolish trial by jury in criminal cases because it would involve an amendment of the Constitution. This would be most unlikely to secure a majority vote. It is, therefore, intolerable to see the quiet erosion of this constitutional right through the back door of the Special Criminal Court. It is to be hoped that either the Court itself will refuse to accept these cases or else that the constitutionality of the procedure will be challenged.

"The recent amending Act allowed the belief of a Chief Superintendent to be evidence of membership of the I.R.A. This belief should not be accepted without a preliminary inquiry by the Special Criminal Court into whether there were adequate reasons for it.

"If the Chief Superintendent pleads privilege and does not wish to reveal his sources, the minimum requirement should be that he would write down the names of his informants and the detailed evidence on which he bases this belief, so that the judges can assess whether it is based on sufficient evidence to be taken into account.

"No court should admit evidence in the form of a belief not based on personal knowledge but on 'reports from confidential sources' as happened in the O Bradaigh case. It is the responsibility of the judges to weigh the evidence in coming to a decision. They cannot weigh a belief based on secret knowledge hidden from them."

—*The Irish Times* (3 February 1973)

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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Contents

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EDITORIAL

A Sentencing Policy

One of the reforms that require to be investigated by Mr. Cooney, the Minister for Justice, would seem to be that of an equitable sentencing policy in criminal cases. As the circumstances of each case are necessarily different, it would hardly be possible to lay down hard and fast rules. But there is little doubt that, in order to avoid if possible the unavoidable discrepancies that exist between District Justices on the one hand and Circuit Judges on the other in imposing punishment for similar offences, it would be wise to lay down some broad guidelines which should normally be followed. Professor Rupert Cross has studied the problem in England in detail and has suggested some useful reforms, such as annual conferences between all District Justices and separate annual conferences between Circuit Judges, with detailed agendas to consider the matter. This is certainly an area where standard sentences for standard crimes would seem to be beneficial.

THE SOCIETY

Proceedings of the Council

5th APRIL 1973

The President in the chair, also present: Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Nicholas S. Hughes, Thomas Jackson, Jnr., John B. Jermyn, John Maher, Gerald J. Moloney, Eunan McCarron, Patrick J. McEllin, Brendan A. McGrath, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Dermot G. O'Donovan, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, Mrs Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

The following was among the business transacted.

Stock Exchange commissions

Following the integration of the Dublin and U.K. Stock Exchanges Dublin stockbrokers are now offering commission to solicitors for the introduction of business. The Council discussed the propriety of acceptance of commissions of this kind and the matter was referred to the Privileges Committee.

Resignation of Vice-President

Mr. Thomas J. Fitzpatrick, Vice-President, wrote tendering his resignation as Vice-President following his appointment as Minister for Lands. It was unanimously resolved to accept Mr. Fitzpatrick's resignation and to thank him for his services. It was also unanimously resolved that Mr. Patrick C. Moore be appointed junior Vice-President in place of Mr. Fitzpatrick.

Appointment of Assistant-Secretary

Mr. Patrick Cafferky, B.C.L., LL.B. (N.U.I.), was appointed as Assistant-Secretary in place of Mr. Joseph G. Finnegan who recently resigned. It was announted that Mr. Cafferky would take up duty on April 30th.

Building Society's letter

A member who acted for a client who sought a loan from a building society and forwarded to the Society a letter which the client received from the building society containing the following statement:

> Please insert the solicitor's full name and address. If you have not got a solicitor we suggest you would find it beneficial to use the society's solicitor. Please return the acceptance offer signed and leave the solicitor's name and address blank.

The Council on a report from a committee were of the opinion that the letter i sopen to serious objection and that the building society should be requested to delete from any letter issued by them an invitation to engage the building society's solicitor and substitute a request to the applicant for the loan to state the name and address of his own solicitor. It was also decided that in the event of the building society's declining to accept the Society's recommendation the solicitors who act for this particular building society should be notified of the Society's views.

Professional privilege

A member acted for the vendor of property. There are a number of charges on the L folio which together amount to less than the purchase money but there is also a mortgage registered in the Registry of Deeds only which was registered after the opening of the L folio. This if added to the register charges would esceed the amount of the purchase money. Member enquired whether in answer to requisitions he should disclose the existence of the Registry of Deeds mortgage. The mistake appears to have arisen by an error made by a

solicitor who registered the mortgage in the Registry of Deeds instead of the Land Registry. All the mortgages are judgment mortgages. The Council on a report from a committee stated that in their opinion the solicitor for the vendor is not entitled to disclose the Registry of Deeds mortgage which does not appear to affect the title without first obtaining the permission of the client.

Payment of Land Registry fees

A letter was received from the Department of Justice stating that the Minister proposes that in future fees payable to the Land Registry will be accepted in cash by means of money order, postal order or cheque drawn to the order of the Land Registry or alternatively Land Registry stamp. A detailed system is at present being worked out which will be brought into operation as soon as possible.

Department of Social Welfare—fees payable to solicitors

The Secretary on receipt of a letter from members wrote to the Department drawing attention to the inadequacy of the fee of £2.10 for attendance by a solicitor on behalf of a client on a Social Welfare application. It was stated that these applications may last for periods between half an hour and an hour. A reply from the Department is awaited. As far as it is known the fee has never been reviewed. The Council on a report from a committee stated that the fee should be increased to at least £5.25. The committee will consider the matter further when a reply is received from the Department of Social Welfare.

Estate Duty Office—delays

Members complained about delays in making Estate Duty assessments. Some thought that Dublin practitioners received priority over country practitioners of having their assessments made on the spot over the counter. The correspondence received from the Estate Duty Office pointed out that the office has always been a public office which means that any member of the public is entitled to come in and have his business transacted. This applies to all solicitors city or country and to the town agents for country solicitors. The restriction of public callers within the time 11 a.m. to 4 p.m. is intended to leave time for dealing with the cases by post. It was suggested on behalf of the office that it would be better if all public callers made prior appointments as is the position in London, Edinburgh and Belfast. The staff in the office would welcome such a restriction and think it would expedite work as it can be very upsetting at times to put aside a case half dealt with to take up a different case from a public caller. The Council accept that the Estate Duty Office would work more efficiently if public callers were seen by appointment only. It was decided to suggest to members that such a system should be introduced and brought to the attention of members in the Society's *Gazette*.

Estate Duty—provisional assessments

The Secretary had been in communication with the head of the Estate Duty Office about the question of provisional assessments of death duties. It was decided that the Society should request the Department of Finance to meet representatives of the Society with a view to having assessments made on the figures presented in the Inland Revenue Affidavit and schedule of assets leaving any changes in value as the result of subsequent investigation to be dealt with by the corrective affidavit.

Fees for letting agreements

A member asked for information on the scale of fees for letting agreements as opposed to leases. The legal position is that a solicitor is entitled to charge the full commission scale fee under the Solicitors' Remuneration General Orders applicable to a lease at a rack rent. The Council on a report from a committee decided that they would not recommend a fee for these short-term letting agreements. Solicitors should in each case charge a fee that is fair and reasonable having regard to all the circumstances of the case.

Land Registry maps

On a report from a committee the Council decided to recommend that in all cases the vendor of registered property should furnish the purchaser with a Land Registry map as part of the title.

SOLICITORS' REPORTS TO BANKS ON TITLE

Discussions took place between representatives of the Allied Irish Bank and the Bank of Ireland on the forms of certificate of title used by these banks in the form of a report on the state of the title. The Council take the view that members who are instructed to investigate and report on title for either group should not refuse this work unless for a good reason. As a whole the profession gains by the transfer of this work to the profession provided that the fees received are adequate.

The Bank of Ireland use no set form of report but the law agent for the bank asks the solicitor for the borrower to certify that the customer has a good marketable title.

The Allied Irish Banks use a detailed form of report on certificate of title drawing the attention of the solicitor to a number of matters to which answers are required. These are inter alia :

(a) that the property is free from any mortgage, etc.;

(b) that there are no leases, sub-leases, etc., other than those disclosed;

(c) that searches have been directed in the Registry of Deeds and the Land Registry and satisfactory explanations have been obtained;

(d) that the solicitor is satisfied from enquiries made that there is no unauthorised development within the meaning of the Planning Acts and that any necessary permissions have been obtained;

(e) that the receipt for the last scale of rent has been produced and that there is no evidence of any breach or non-performance by the lessee of any of the covenants or conditions;

(f) that there is no onerous or restrictive covenant other than those mentioned in the schedule to the

report;

(g) that the solicitor is satisfied from the examinations of the document specified in Part 5 of the schedule and from the investigation that the customer has a good marketable title.

The Council having examined the forms of certificate and report were of the opinion that there is no objection to the detailed form required by the Allied Irish group. However, paragraph (b) above which certifies that there are no leases, sub-leases, etc., other than those disclosed should be amended by a statement that this is based on information supplied by the client. There can be no assurance that a client would not have leased or sub-leased property without the knowledge of the solicitor even where the original title deeds are in the solicitor's possession. Subject to this the Council see no objection to the form of solicitor's report and certificate of title used by the A.I.B. group or to the form used by the Bank of Ireland but members are warned as to the liability which they incur in making these reports. If a solicitor accepts responsibility for this work he is legally liable for any error or mistake which might fall under the heading of negligence.

In one respect the form used by the Allied Irish Bank, although covering everything that is required by the Bank of Ireland report, is unique in that it draws the attention of solicitors to a number of matters upon which their advice is required. Each report contains a statement that from the investigation made into the title the customer has a good marketable title to the property. This is properly solicitors' work and should be properly remunerated by the banks requiring the reports.

DELAYED LOANS BY BUILDING SOCIETIES

A member wrote to the Society stating that he acted for a client who had agreed to purchase a new house in a building estate near Dublin. To enable him to complete the purchase he was obtaining a loan from a Dublin building society.

The loan was approved on the usual conditions by the building society and in due course the title documents were sent to the building society's solicitors. Ultimately after the outstanding points on title had been dealt with our member requested that the loan cheque be issued. At an early stage the client was anxious to go into possession of the house with bridging finance from the bank pending receipt of the loan cheque. Notwithstanding the various requests which had been made to make an appointment to complete the mortgage our member has been informed by the building society's solicitors that they cannot give any indication when the loan cheque will be issued.

The client has now received a letter from his bank manager indicating that he is being pressed by the directors for repayment of the amount advanced by way of a bridging loan. He has given the client a period of two weeks within which to clear up the outstanding overdraft and has indicated that if the matter has not been resolved by then the matter would be taken out of his hands for collection purposes.

The situation caused by delayed advances by building societies is obviously one which imposes great hardship on the client and imposes a duty on the solicitor to warn the client of the danger of dealing with any building society which is slow in making advances after the necessary title formalities have been completed.

Where a solicitor is aware that a particular society falls into this category it is recommended that a letter be sent to the client at an early stage of the transaction warning him of the possible consequences of dealing with the particular society unless there is a firm assurance that the money will be forthcoming as soon as the title has been cleared. It is also essential to warn the client if it is anticipated that the solicitor for the building society will take more than the normal period approximately one month to clear the title. A solicitor who omits to give such a warning to the client might conceivably be held responsible to the client, although this is a matter of opinion. The majority of the building societies co-operate fully with the profession and no difficulty arises and it is to deal with the case of any building society which is slow in clearing the title or in making the advance once the title has been cleared that this warning is issued to the profession.

GAZUMPING

In the April issue of the Society's *Gazette* at page 82 a report appeared of a case in which a member sought advice as to the propriety of sending out several contracts on the instructions of the client to various potential purchasers and getting them to sign the contracts after negotiating the maximum price with each purchaser and subsequently accepting the contract with the highest price and refusing the offers made by the remaining parties.

This practice which has become known in England as gazumping was held to be unprofessional and was disapproved strongly by the Council. It was stated that in order to prevent this practice members should adopt the procedure of exchanging contracts so that neither party will be bound until the other party has signed his part of the contract.

Having again considered the matter the Council wish to bring the matter a stage further. It is the considered view of the Council that where a solicitor for a vendor issues more than one contract for the same property he should at least make it known to the solicitors to whom these contracts are being issued that contracts in similar terms have or are being sent to other purchasers. If this is done the purchasers solicitors would then realise and could convey to their clients that the first contract returned signed would probably be the one accepted by the vendor. This recommendation is in addition to the statement in the last issue of the Society's *Gazette* and mentioned above.

FEBRUARY EXAMINATION RESULTS

Second Irish Examination

At the Second Irish Examination held on the 26th February 1973 the following candidates passed :

Diarmuid Barry, Catherine Bergin, Patrick J. Butler, Hugh Campbell, John J. Carlos, Geraldine Davy, Philomena M. Devins, James M. Devlin, B.A., Ivan J. Durcan, Orlean J. Dyar, B.C.L., Eugene P. Fanning, Grace M. Fitzgerald, Eamon P. D. Gallagher, Geraldine Gaughan, George J. Gill, Brian Glen, John M. M. Griffin.

Edward G. Hall, B.A., H.Dip.Ed., Rosalind E. Hanna, Michael Hanrahan, Michael Hayes, Thomas Hayes, Mary F. Hutchinson, Colin Keane, Charles Kelly, B.A., Eimear O'B. Kelly, Sean T. Kennedy, Alan J. King, B.Comm., Agnes S. Kirwan, Richard Liddy, B.A. H.Dip.Ed., Denis M. Linehan, B.C.L., Hugh F. Ludlow, Ronald J. M. Lynam.

Richard W. Maguire, Derek J. Mathews, Brendan T. Muldowney, Thomas M. S. Mullins, B.C.L., Bryan McAllister, Patrick McCartan, John J. McGlynn, Elizabeth M. Nagle, Joan Nagle, Susan H. Nolan, Patrick O'Connor, M. D. O'Donohoe, Thomas J. O'Halloran, B.C.L., Dermot O'Neill, Anne P. O'Regan, Michael O'Shaughnessy, Eugene C. O'Sullivan, B.A.

Ann Regan, James T. Riordan, Brian J. Roche, B.C.L., Patrick D. Rowan, M.A., Vincent M. G. Shields, Thomas J. Stafford, Michael Staines, Ambrose J. Steen, Terence D. Sweeney, Philip F. Tormey, Michael D. White.

69 candidates attended; 61 candidates passed.

First Law Examination

At the First Law Examination for apprentices to solicitors held from the 12th to 16th February 1973 the following candidates passed :

Ursula A. Bowman, James D. Breen, Cornelius D. M. Brosnan, David B. Browne, Daragh Buckley, Eamonn B. Byrne, Hugh Campbell, Jennifer M. M. Cantillon, B.C.L., Mary Cantrell, Margaret M. Carter, Marie G. Connellan, Denis V. Connolly, Donogh J. M. Crowley, Vincent Crowley, Gerard P. Cummiskey, Anastasia M. Cunningham.

James McCartan Daly, Anne M. Delaney, Roderic Dolan, John D. Dunne, B.C.L., Anthony H. Ensor, John R. Fetherstonhaugh, Hugh M. Fitzpatrick, John W. Gaynor, Sylvia Geraghty, B.A., Mary W. Griffin, Daniel Gormley, Padraig E. S. Halpenny, Dermot V. Hewson, Seamus Hughes, Anne E. Kennedy, Alan J. King.

Maurice J. Linehan, Helen Lucey, Noel Malone, John V. Morahan, B.C.L., Deirdre Morris, B.C.L., Desmond Mullaney, Sean M. MacBride, Neasa MacDonagh, Michael J. K. McCarthy, Roderick V. McCrann, B.C.L., Fiona McGuire, Matthew J. Nagle, Dermot J. Neilan.

James D. O'Brien, John J. O'Brien, Cornelius O'Connor, John G. O'Donovan, B.C.L., Michael J. O'Malley, John J. O'Shee, Geraldine Pearse, Joseph Philpott, B.C.L., Hilary J. Prentice, James Purcell.

Brian P. Redden, B.C.L., Peter J. Redmond, John C. Reidy, Margaret V. Ryan, Rosemary Ryan, B.C.L., Alan Shatter, Edward M. Sheehan, B.C.L., Michael J. Sheery, Vincent M. Shields, Brian F. Swift, William J. B. Synnott, Vincent Toher, Michael P. Walsh, Roderick Walsh, Brian Whelan.

125 candidates attended; 71 candidates passed.

Second Law Examination

At the Second Law Examination for apprentices to solicitors held from 13th to 17th February 1973 the following candidates passed :

Passed with Merit. Alvin T. M. Price, B.C.L., Dermot G. Byron, B.C.L., Anne Hughes, B.C.L.

Passed. Denis J. M. Barror, B.C.L., Patrick A. Butler, B.C.L., Anne Colley, B.C.L., Patrick J. Daly, B.C.L., Gerard J. Doherty, B.C.L., Gerard A. Doyle, David Ellis, Daniel Fagan, Deirdre Nic Fhionnlaoich, B.C.L., Raymond Finucane, B.C.L., Daniel Gormley, Caroline I. Halley, Stephen C. Hamilton, Peter C. Hayes, B.A. (Mod.), Edward Hickey, Margaret G. Hickey, B.C.L., Liam Hipwell, Michael J. Horan, William Jolley, Michael Keane, Catherine Kelly, B.C.L., Edward A. Kelly, B.C.L., Jean M. Kelly, B.C.L., Raymond D. Kelly, B.C.L., Agnes S. Kirwan, John B. Lysaght.

Stephen P. Maher, Elizabeth Mullan, Thomas M. J. Mullins, B.C.L., Justin J. G. MacCarty, Kathleen P. McDonell, B.C.L., Madeline McGrath, B.C.L., LL.B., Laurence McMorrow, Kieran O'Brien, Orlaith M. O'Brien, Daniel O'Connell, B.C.L., Carroll O'Daly, B.A., Martina O'Gorman, Leonie M. O'Hagan, B.C.L., LL.B., Thomas J. O'Halloran, B.C.L.

Donal O hUadhaigh, Margaret M. O'Kane, Dermot O'Neill, Mary R. O'Sullivan, John B. Quinn, James T. Riordan, B.C.L., John V. Shannon, B.C.L., Bryan Sheridan, Patrick Sweeney, B.C.L., Paul D. Traynor, Patrick White, B.C.L.

73 candidates attended; 54 candidates passed.

Paper No. 8: Criminal Law and Evidence

The following candidates who were required to attend this examination as part of the Third Law Examination passed :

Terence F. Casey, Carmel M. C. Deeny, B.A.

2 candidates attended; 2 candidates passed.

Third Law Examination

At the Third Law Examination for apprentices to solicitors held from the 12th to the 19th February 1973 the following candidates passed :

Passed with Merit. Daire Hogan.

Passed. Robert P. Barrett, B.C.L., Rosemary P. Bolger, Robert Bolton, Barry St. John Bowman, Francis V. Burke, B.A., Declan C. Carroll, B.C.L., Hugh A. Carty, B.C.L., Patrick F. Clyne, B.A., LL.B., Mary E. A. Crowley, Carmel M. C. Deeny, B.A., Paula Desmond, B.C.L., Gerard D. Diamond, Peter M. G. Douglas, B.C.L., Orlean J. Dyar, B.C.L.

William M. J. Earley, B.A., David B. B. Ensor, B.A., B.Comm., John W. T. Finn, R. Edmund Fry, B.A., Joseph Haugh, Esther Hogan, Harry P. Hunt, Patrick Hurley, Barbara Hussey, B.C.L., Michael G. Irvine, B.B.S., B.A.

Patrick T. Kennedy, Sean T. Kennedy, Rosalind O'Neill Kiely, B.C.L., Laurence P. Kirwan, B.C.L., Elizabeth M. Lawlor, B.C.L., Charles J. Maguire, Stephen O'Connell Miley, Patrick C. Moriarty, B.C.L., Colm MacGeehin, Brian R. McLoughlin, B.A., H.Dip. in Ed.

Joan Nagle, B.C.L., Jacinta M. Noonan, James P. A. O'Boyle, B.C.L., Nancy O'Driscoll, B.C.L., Kieran O'Gorman, B.C.L., Michael H. O'Neill, Michael T. Quigley, B.C.L., Aideen A. Rooney, Michael H. Traynor B.C.L.

58 candidates attended; 44 candidates passed.

By order Eric A. Plunkett (Secretary)

THE ENFORCEMENT OF HUMAN RIGHTS S.A.D.S.I INAUGURAL

PART I

The Inaugural Meeting of the 89th Session of the Solicitors Apprentices Debating Society was held in the Library, Solicitors' Buildings, Dublin, on 23rd March 1973 at 8 p.m.

Mr. T. V. O'Connor, President, took the chair, and the Records Secretary, Mr. Denis Barron, B.C.L., read a humorous account of the 88th Inaugural Meeting. Having referred to *"De Bello Mallico"* which meant that the bell tolled for Des O'Malley, who came to the meeting with his foot soldiers known as *"Brachii Specialii"*, and *"Gardii O'Malii"*—friends of the great general. The women opposing him shouted *"Brutalitas Gardiorum"* and, having been driven back shouted *"Desmondus delendus est"*. Then O'Mallius erroneously said: *"Fiat Justitia ruat caelum"* which translated means "I'll be Minister for Justice even if the heavens fall". The customary awards for Oratory, Legal Debate, Impromptu and Irish Debate were then distributed.

The Auditor, **Mr. Bryan C. Sheridan,** then read his Inaugural Address on "The Enforcement of Human Rights", as follows.

Mr. President, Ladies and Gentlemen.

1973 marks the twenty-fifth anniversary of the adoption by the United Nations of the Universal Declaration of Human Rights in 1948, the twentieth anniversary of the entry into force of the European Convention on Human Rights and Fundamental Freedoms in 1953, and the fifteenth anniversary of the achievement by the European Court of Human Rights of its competence to hear cases under the Convention.

These afford a timely excuse for a review of Human Rights Law and Practice.

While the concepts are much older, it was really in the "Enlightenment" that, as d'Entreves puts it, Natural Law became more a "theory of rights than a theory of law". From this period date the Virginian Declaration of Rights of Man, the American Declaration of Independence and Declaration des Droits de l'Homme et du Citoyen which together form the precedent for the inclusion in nation's constitutions of recitals of the freedoms their citizens should enjoy.

Human Rights after the Second World War

It was in the period after the Second World War that Human Rights and especially the idea of universal enforcement of Human Rights came into its own. Consequently it is on this period I intend to concentrate.

It was the reaction to the denials of, and outrages against, Human Rights in the Second War that brought about the specific inclusion of promotion and encouragement of respect for Human Rights in the Charter of the United Nations Organisation. That war for many proved the necessity of respect for Human Rights as a prerequisite for world peace.

At the height of the war, in the Atlantic Charter of 14th August 1941, which was later endorsed by forty-seven nations, Roosevelt and Churchill expressed the hope that peace when achieved would "afford assurances that all men in all lands may live out their lives in freedom from fear and want".

The Declaration of the United Nations signed on 1st January 1942 by twenty-six countries at war and later endorsed by twenty-one others, declared that victory was essential to "preserve human rights and justice in their own lands as well as in others".

The Charter of the United Nations

The promotion of respect for Human Rights formed part of the 1944 Dumbarton Oaks proposals which became the basis upon which the San Francisco Conference of 1945 drew up, and opened for signature, the Charter of the United Nations Organisation.

In the Preamble to the Charter the peoples of the United Nations "express their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

The encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion is declared by Article 1 of the Charter to be one of the purposes of the United Nations.

The initiation of studies and the making of recommendations to assist in the realisation of human rights, is given to the General Assembly by Article 13 and to the Economic and Social Council by Article 62.

All members pledge themselves to take joint and separate action in co-operation with the U.N. for the achievement of universal respect for, and observance of, human rights and fundamental freedoms.

The Economic and Social Council was to set up a Commission for the Promotion of Human Rights and this was done in 1946.

At the San Francisco Conference, and indeed even before, the idea of drafting an International Bill of Rights was put forward. The first object of the Commission on Human Rights was to be the preparation of such a Bill. When work on this was started it was decided that the Bill of Rights would be in two parts, a Declaration and later a Covenant, containing measures of implementation.

The Universal Declaration of Human Rights

Thus in 1948 the Universal Declaration of Human Rights was presented to the General Assembly by the Chairman of the Commission, Mrs Eleanor Roosevelt, and on December 10th of that year was adopted by resolution of the Assembly. Of fifty-eight States then members of the United Nations, forty-eight voted in favour, none voted against, eight abstained, and two were absent.

Inasmuch as it is merely declaratory and sets standards to which governments should conform the Declaration resembles the Declaration des Droits de l'Homme but it is original in the scope of rights covered. For as well as listing what might be called the traditional rights such as life, liberty, and person, the Universal

Declaration also deals with rights such as that to nationality, to marry and to found a family, to take part in government, to education and to an adequate standard of living which in itself, implies freedom from hunger and the right to health.

Though having no legal force even in international law, the Declaration as a common standard for all nations must be taken to have exerted a considerable influence on the world. It has been used as the justification for various international actions by the U.N. It has inspired many international agreements both inside and outside the world body and it has influenced national constitutions and laws adopted since 1948. The United Nations gives a list of countries in whose constitutions devotion to the ideals of the Declaration are expressed: Algeria, Burundi, Cameroun, Chad, Democratic Republic of the Congo, Republic of the Congo, Dahomey, Gabon, Guinea, Ivory Coast, Malagassy Republic, Mali, Mauritania, Niger, Senegal, Togo and Upper Volta. Two things strike me about this list.

First, with the exception of the Republic of the Congo which was Belgian, they were all French colonies and their constitutions would follow the French tradition of mere declarations of rights but without any enforcement machinery.

Secondly, they are all African, and with few exceptions, the history of Human Rights in Africa post-independence has not been happy.

Nonetheless as distinguished an authority as Mr. Sean MacBride has repeatedly called the Declaration the most important document in the history of Human Rights and indeed of Man. But as the German constitutional lawyer, George Jellinek once observed, the political history of ideas must not be political literary history but must always be considered in relation to the history of constitutional realities. "Ubi remedium ibi jus" may not be a desirable principle on which to build a dynamic legal system but the availability of a remedy is the test of a system's effectiveness.

I leave for the time being the United Nations who were to spend the next eighteen years drafting the second part of the International Bill of Rights—the Covenants, and turn to Europe.

Origins of the European Movement

Perhaps it was inevitable that Europeans after the war should have an immediate sense of the link between peace and the observance of human rights. Certainly the pioneers of the United Europe Movement were in no doubt that this was the basis on which a successful unity would be built.

The Congress of Europe held at The Hague in May 1948 with 713 delegates from sixteen countries (including Ireland), laid the basis for the formation of the Council of Europe. In the "Message to Europeans" issued at the close of the Conference, the delegates declared.

"We desire a Charter of Human Rights, guaranteeing liberty of thought, assembly and expression as well as the right to form a political opposition."

"We desire a Court of Justice with adequate sanction for the implementation of this Charter."

The Statute of the Council of Europe was signed in London a year later on 5th May 1949. It came into force on August 3rd of the same year. Article 3 of the Statute laid down the conditions of membership of the Council. They include acceptance of the principles of the rule of law and enjoyment in the member's territory of human rights and fundamental freedoms.

The European Convention

At the first debate of the Assembly of the new organisation, the question of a European Charter of Rights arose. It was decided to refer the question to the Committee on Legal and Administrative Questions. They took the United Nations Declaration as their starting point and listed ten rights, which they felt should be guaranteed. For the next two years, drafts of a convention were referred from Committee to Assembly, from Assembly to Committee of Ministers. Throughout this process can be seen the enthusiasm of the Assembly for the idea of an international guarantee of enforceable rights being checked by the political caution of the Committee of Ministers. There were many compromises, even then it was not possible to get an agreed text, and in the end it was really the Committee of Ministers' draft that was signed in Rome on 4th November 1950.

The Convention was considerably weaker than many had hoped for and in particular the right of individual petition and the acceptance of the jurisdiction of the Court were optional. Sir David Maxwell-Fyfe (later to become Lord Chancellor Kilmuir) tells in his memoirs how the then President of the Consultative Assembly, Paul Henri Spaak, announced the signing of the Convention. "The Convention of Human Rights will be signed by fifteen countries at 3 p.m. at Palazzo Barberini. It is not a very good Convention, but it is a lovely palace."

Perhaps to the vision of a Spaak, a Monnet or a Schumann the Convention was but a poor step, but to us, looking back, it appears as an important and promising development.

The parties to the Convention pledged themselves to secure to everyone, not just citizens, the rights and freedoms defined in the Convention. These were the right to life, freedom from torture, freedom from slavery or servitude, the right to liberty and security of persons, to a fair trial in the determination of one's civil rights and obligations and on any criminal charge, freedom from ex post facto legislation or penalties, the right to respect for private and family life, the right to freedom of thought, conscience and religion, the right to freedom of expression, peaceful assembly, association, to marry and to found a family. Those whose rights were violated were to have an effective remedy before a national authority and the rights and freedoms guaranteed were to be secured without discrimination on any ground.

In time of war or other public emergency threatening the life of the nation, any party could derogate from its obligations, but only to the extent strictly required by the exigencies of the situation and provided the measures were not inconsistent with its other obligations under International Law. There can be no derogation from the articles on torture, slavery or ex post facto legislation. It was decided in the case of *Lawless v. Ireland* that the derogating government must satisfy the Commission and the Court of the seriousness of the situation. It should be observed that this has brought about a restriction on the practice if not the law on internment under the Offences Against the State Acts in this jurisdiction.

However, it is not in the rights guaranteed but in the measures it contains for their implementation, that the originality and value of the Convention lie.

The organs of the Convention

Two organs were set up, the European Commission and the European Court of Human Rights. Any State

party to the Convention can refer to the Commission a breach of the Convention by another State party.

But the most dramatic feature of the implementation provisions is Article 25. An individual, or group of individuals, claiming to be the victim of a violation of the Convention by a State party, may complain by petition to the Commission. Thus, it must now be accepted that the individual has a standing in international law. He is no longer dependent for protection on the intervention of his own or indeed of any government. The Convention has dispensed with the requirement of nationality. Its rights are expressly guaranteed to all persons, in contrast for example, with the Constitution of Ireland, where rights are guaranteed to the citizen.

To secure acceptance of the Convention, it was found necessary to make the right of individual petition optional—it may be accepted by a declaration of a State party.

The Commission became competent to hear individual petitions on the deposit of the Sixth Declaration on 5th July 1955. Ireland's declaration was made on the day we ratified the Convention itself, 25th February 1953. At present eleven countries have made the necessary declaration—Austria, Belgium, Denmark, West Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom. The signatories who have not accepted the right of individual petition are Cyprus, Italy, Malta and Turkey.

This has been the cornerstone of the Convention machinery.

Up to the end of August 1972 there have been ten cases brought by one member State against another. In fact these fall into four groups:

(a) Two by Greece against the United Kingdom, arising out of incidents in Cyprus in 1956-57.

(b) One by Austria against Italy in 1960.

(c) Five applications against Greece by some or all of Denmark, Norway, Sweden and the Netherlands from 1967-70.

(d) Two by Ireland against the United Kingdom in December 1971 and March 1972.

Procedure in Individual cases

The number of individual petitions up to August 1972 was 5,740. While, of these, only 114 were declared admissible and dealt with by the Court or the Committee of Ministers, or are still pending, the importance of the right of individual petition in the day-to-day working of the Convention is clear. This is reinforced, when we remember that many of the cases brought are test cases, whose outcome can have an effect far wider than the individual case.

The task of the Commission is to establish the facts of an application and then to try and effect a friendly settlement between the parties on the basis of respect for human rights. If this is achieved, a brief report of the facts and the solution reached is drawn up, if not, the Commission gives its opinion as to whether on the facts, a breach of the Convention has taken place. The Commission's report are confidential and only published if the case is referred to the Court or if the Committee of Ministers or Commission itself decides.

The report is transmitted to the Committee of Ministers of the Council of Europe and two things may then happen. The case may be referred to the European Court of Human Rights either by the Commission or the State concerned but not, be it noted, by an individual, or if it is not referred to the Court within three months, the Committee of Ministers must take a decision on the case.

The optional jurisdiction of the European Court

As I mentioned already, the jurisdiction of the Court was made optional in the same way as the right of individual petition. The Court achieved its competence to hear cases in 1958. It is accepted at present by the same eleven countries who have accepted the right of individual petition. The first case to come before the Court was that of *Lawless v. Ireland.* Besides the substantive issue involved this case is procedurally important in that it upheld the right of the Commission to obtain and communicate to the Court the views of the applicant or the Commission's report, as well as any other views of the applicant in the course of the proceedings. In a later case, *De Wilde, Ooms and Versyh v. Belgium* the vagrancy cases, the Court allowed the applicant's lawyer to be present, and on call of the Commission delegates to make a short statement on certain factual points. Thus while not an actual party to proceedings before the Court, practice has allowed a not insignificant degree of representation for the individual applicant.

If it finds against the State and the internal law of that State allows for only partial reparation to be made, the Court may, under Article 50, award just satisfaction to the injured party. Applications for "just satisfaction" at the successful close of a case for an injured party are becoming a feature of cases before the Court. Thus last June D.M. 20,000 were awarded to the applicant in the case of *Ringeisen v. Austria* for wrongful detention contrary to Article 5 (3) right of detained person to be brought promptly before a judge. It is the duty of the Committee of Ministers to supervise the execution of the Court's judgement.

EUROPEAN SECTION

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

The Court is now producing its bi-weekly Newsletter entitled: *Proceedings of the Court of Justice of the European Communities* in English. No. 1 covers 8th to 12th January and No. 2 22nd to 27th January. The duplicated Newsletters not only summarise cases but also report on visits, meetings and changes in the composition of the Court. The composition of the Court is now as follows:

President, Judge Robert Lecourt (France).

President of the 1st Chamber, Judge Riccardo Monaco (Italy).

President of the 2nd Chamber, Judge Pierre Pescatore (Luxembourg).

Judge Andre Donner (Netherlands).

Judge Josse Mertens de Willmars (Belgium).

Judge Hans Kutscher (Federal Republic of Germany).

Judge Cearbhall O Dalaigh (Ireland).

Judge Max Sorensen (Denmark).

Judge Alexander John Mackenzie Stuart (United Kingdom).

Advocate-General Karl Roemer (Federal Republic of Germany).

Advocate-General Alberto Trabucchi (Italy).

Advocate-General Henri Mayras (France).

Advocate-General Jean-Pierre Warner (United Kingdom).

The working languages of the Court of Justice are, in alphabetical order: Danish, Dutch, English, French, German, Italian. Simultaneous interpretation in these languages is provided at public sittings.

As a general rule the Court of Justice holds public sittings on Tuesdays, Wednesdays and Thursdays, except during judicial vacations (July 15th to September 15th) and Christmas and Easter vacations. The public is admitted to these sittings. The new address of the Court is: Court of Justice of the European Communities, Luxembourg-Kirchberg, Tel. 476-21.

On January 10th, Presidents and Procurators-General of the Supreme Courts of the nine member States met for an exchange of views and decided to meet annually or every eighteen months to hold discussion groups on predetermined subjects. They will meet in October 1973 to exchange views on references for preliminary rulings and problems for the Courts, arising from the bringing up-to-date of national legislation and the evolution of the law.

CONTINENTAL CAN JUDGMENT

Proceedings of the Court of Justice of the European Communities: No. 5/73
Case 6/72: Continental Can: A very important judgment on competition

The Court of Justice of the European Communities has just given its judgment on the problem of the abuse of a dominant position posed by the firm Continental Can. This American company, which manufactures metal packaging, had first acquired a majority of the capital of an important German company manufacturing lightweight metal packaging, and then through its European subsidiary, Europemballage, acquired a majority shareholding in the principal Dutch undertaking in the same industry.

The Commission considered that this second takeover practically eliminated competition in that sector and decided that Continental Can should put an end to this infringement of Article 6 of the Treaty. Continental Can brought an action against this decision. That undertaking submitted to the Court that Article 86 did not permit of the sanctioning as an abuse of a dominant position the acquisition by an undertaking, even when in a dominant position, of a majority shareholding in another undertaking in the same sector, even though competition was thereby reduced.

After dismissing various pleas on procedural matters raised by Continental Can against the decision of the Commission, the Court of Justice settled this question in the first part of its judgment.

In considering the spirit, the general scheme and the wording of Article 86 in the context of the system and the objectives of the Treaty, the Court emphasises that that Article is based on a system ensuring that competition is neither distorted nor eliminated within the Common Market. It notes that the prohibition of cartel agreements laid down by Article 85 would have no meaning if Article 86 allowed those actions to become lawful when they result in a merger of undertakings. Such a contradiction would open up a loophole in the competition rules of the Treaty capable of compromising the proper functioning of the Common Market. The Court goes on to rule that **for an undertaking in a dominant position to reinforce that position to the point where the degree of domination thus attained substantially impedes competition, that is, only permits of the existence of undertakings dependent, as regards their behaviour, on the dominant undertaking, is capable of constituting an abuse.**

In the second part of the judgment it is noted that to apply these principles to the case in point, it is of paramount importance to define the limits of the market in question. The Court holds that the decision of the Commission did not in this case define the limits of the market in which Continental Can held a dominant posi-

tion. Was it each of the markets in metal cans for meat products, for fish products and in metal caps? Or was it the whole of the market in metal packaging? Are those markets subject to competition from glass or plastic products? On these various points the Court points out uncertainties, and indeed contradictions, in the decision, and annuls it on that ground.

THE PROTECTION OF HUMAN RIGHTS IN THE EUROPEAN COMMUNITIES

by PIERRE PESCATORE, Judge of the European Community Court

(Reprinted by kind permission of the Editors of the "Common Market Law Review" and of the publishers, Messrs Sweet and Maxwell)

This document has two objects: to give information on the state of the problem of protecting basic human rights in the European Community; and to show in terms of methods used that it is possible to ensure appropriate protection by judicial means, even in the absence of any previous "declaration of rights".*

At first sight it might be doubted whether there is any relationship at all between Community Law and the problem of protecting basic rights. It is in fact difficult to imagine how the functioning of a body whose object is essentially economic and social can conflict with human rights. No doubt such considerations explain why the creators of the Community included no clause in the Treaties of Paris and Rome dealing with the protection of these rights.

In fact, it must be conceded that the way the Community works cannot raise the acute problems that arise in the case of a State in certain ages and under certain régimes. How could it be thought that bodies essentially confined to the economic and social fields might encroach on values such as respect for human life, personal liberty, freedom of conscience, freedom of opinion and of political action which lie at the root of concern for the protection of basic rights against the State?

However, further consideration is necessary. The functioning of a power-machine such as the Community, which takes real political action in its own field and which in so doing legislates and takes decisions, can raise problems concerning basic rights. These broadly refer to that body of prerogatives usually called "economic and social rights", representing such benefits as freedom of movement, freedom to trade, occupational freedom and the guarantees given to private property. All these benefits are, admittedly, less basic than those connected with the most intimate sphere of the individual in his relations with political society, but it is nonetheless the case that in a developed society such as Western Europe they need to be defined in terms of their relationship to the general interest and, once defined, to be suitably protected.

1. First Contacts with the Problem of Protecting Basic Rights

(1) The problem of basic rights arose for the first time *in the case law* of the Court of Justice and this is a very typical way: to evade the provisions made by the Community authorities, some litigants invoked the guarantees given by their national constitutions.

Thus, in the *Stork* case, settled by judgment dated 4 February 1959,[1] the applicant company, who considered its interests to be affected by a reorganizational measure imposed on the Ruhr coal-mining industry by the High Authority of the ECSC, had pleaded an alleged violation of Articles 2 and 12 of the German Basic Law concerning, respectively, the free development of the individual and occupational freedom. However, the Court rejected this argument saying that the Community institutions had only to observe Community Law and it was not for them to decide on rules of internal law, including constitutional law.

An identical problem arose in the *Ruhrkohlen-Verkaufsgesellschaft* case, settled by judgment dated 8 July 1960.[2] Here, also, the applicant firms contested a commercial regulation imposed by the High Authority on the Ruhrkohlen-Verkaufsgesellschaft, this time invoking Article 14 of the German Basic Law relating to legal guarantees of private property.

The Court reacted in the same way as in the preceding case, saying that it was not for the Court, as judge of the legality of the decisions taken by the High Authority, to ensure respect for internal law, even constitutional law, in force in one or other of the member States; the Court could therefore neither interpret nor apply Article 14 of the German Basic Law when examining the legality of a decision taken by the High Authority.

In the *Sgarlata* case, settled by judgment dated 1 April 1965,[3] dealing with an objection raised by a group of Italian citrus-fruit growers to the validity of a Community agricultural regulation, the applicants contested the finding of inadmissibility of their action (in fact the EEC Treaty excludes in principle individual actions against regulations), invoking the "basic principles governing all member countries". Here again the Court avoided going into the merits of the case and simply referred to the express provisions of the Treaty.

These judicial decisions, stemming from concern for the autonomy and primacy of Community Law, were certainly correct in the sense that the introduction of appraisal criteria drawn from the constitutional law of one member State would result in compromising both the unity and the efficacy of Community Law. At the same time, these early decisions might seem unsatisfactory: they reject the argument put forward of an alleged violation of the standards of the national constitution, but are silent on the question of whether, on the basis of Community Law, there might be similar guarantees they ought to take into account. This purely defensive attitude of the Court might seem to substantiate the idea that Community Law, while tending to reject the guarantees provided in the national constitu-

tions, took no account of guarantees owed to basic rights.

(2) These are precisely the considerations at the root of a *doctrinal discussion* that has developed in Germany particularly and which, in turn, has given rise to judicial dispute in that country. Since Community Law is not concerned with the protection of basic rights and, moreover, the Community's institutional structure—typified by an overwhelming "executive" element—is said not to correspond to the canons of a democratically organized State, it would be legitimate to appeal to the provisions of the national constitution with a view to giving the basic rights that protection which apparently is lacking in the Community's legal system. Such notions not only justify the introduction of national concepts, but they result once again in the affirmation of the primacy of national constitutional concepts and provisions over Community Law. This left the door wide open for challenging yet again the very bases of Community Law. To prevent such developments, it became urgent to draw up, within the Communities, a system for protecting basic rights.

II. The Inapplicability of International Pacts within the Community

(1) The first thing that springs to mind is to find a solution in international pacts relating to basic rights: the European Convention for the Protection of Human Rights and the recent United Nations pacts. However, for the present at least, these instruments offer no solution, as neither the one nor the others are in force for all of the member States of the Community. As for the European Convention, we know that the French Republic has up to now withheld ratification; hence we cannot consider it as being a rule common to the six member States until France takes the decisive step. And the United Nations pacts are still too recent for the process of ratification to be sufficiently advanced; here also there is a special problem in that Germany is still excluded from the United Nations. Of course, the instruments mentioned could, if need be, provide guidance and inspiration, but they cannot be considered as formally constituting an integral part of the law applicable within the Community.

(2) This being said, it is interesting to forecast the problems that will arise when the European Convention comes into force for all member States. It is to be expected that there will be some overlapping, though less on the substantive definition of rights than on procedural guarantees. This problem of conflict will demand analysis in depth when the time comes. In this context two observations will suffice. First, it would seem to us foolish to sacrifice the advantages of a well-developed system of judicial control such as exists within the Community to the system set up by the European Convention, which is much less effective; remember how precarious are the rights accorded to individuals, and the manifold political factors still involved in the process of dealing with cases under the Convention. Secondly, from a geographical point of view the Community represents a "sub-system" in relation to the Council of Europe, and it would appear necessary to require that all judicial remedies within the Community should be exhausted before a case may be brought before the institutions set up by the European Convention, as is provided by Article 26 of that Convention. In this respect, the situation of the Community is no different from that of the States adhering to the Convention.

III. Recent Case Law of the Court of Justice

Recently the Court of Justice has had occasion to return to the problem of the defence of basic rights within the Community. It would appear that without resiling from its previous case law, it has modified its attitude on one essential point.

(1) The first case, that of *Stauder*, settled by the judgment of 12 November 1969,[4] shows how a problem is resolved.

It happened at the time that the Community had to face the problem of the disposal of considerable farm surpluses in particular of butter. The Commission had authorized member States to allow the sale of butter at a reduced price to, among others, those receiving social assistance; however, in order to prevent fraud, it had laid down that butter should be handed over by the trade only on the presentation of an individualized voucher. One of these beneficiaries, a citizen of Ulm in Germany, felt it an affront to his human dignity to be forced to disclose to a shopkeeper, whenever he wanted to take advantage of the benefit, that he was a socially assisted person. He therefore lodged a complaint before the competent court, *i.e.* the administrative court of Stuttgart, against the validity of this system of identification. In its turn the court referred the case to the Court of the European Communities under the procedure for preliminary rulings under Article 177 of the EEC Treaty, asking whether it was considered compatible with the general principles of Community Law that, by virtue of a Commission decision, the issuing of butter at a reduced price to a beneficiary of social assistance should be dependent on his divulging his name.

After considering the case, the Court found that as a result of a technical hitch in drafting the decision, the *German text did not agree with other versions* and it was this that had given rise to the whole dispute. It was thus possible to solve the problem on the basis of the principles of interpretation applicable in cases of disagreement between different linguistic versions of the same text. The Court added, however, at the end of its judgment "that, as interpreted, the provision at issue does not reveal any element jeopardizing basic individual rights implicit in the general principles of Community Law, which the Court ensures shall be observed". By that it clearly shows what would have been its attitude should a threat to basic rights have been effectively sustained.

(2) The chance to go further into the matter was not long in coming. This was the *Internationale Handelsgesellschaft* case, settled by a judgment dated 17 December 1970,[5] concerning the system known as "Agricultural deposits". It will suffice to explain here that this is the system, necessary to the functioning of farming regulations, intended to enable the Commission, as well as the competent national authorities, to exercise reasonable control over the functioning of the agricultural markets. This deposit mechanism, though in principle protecting freedom of trade, involves it in some constraints and burdens. Some German firms challenged the system before the competent German court, *i.e.* the Administrative Court of Frankfurt-on-Main, which saw fit to rule that the deposit system was contrary to certain basic principles of German constitutional law which, in its opinion, should be safeguarded by Community Law to the extent that Community Law should give way to the principles of the German Community Basic Law. More especially, the Administrative Court thought that the deposit

system was contrary to the principles of freedom of action and disposal, of economic freedom and of proportionality resulting, in its opinion, from Articles 2 and 14 of the German Basic Law. After making several statements along these lines the court, recognizing that the disputes against the Community agricultural regulations gave rise to legal uncertainty, decided to submit the matter to the Community Court by way of a request for a preliminary ruling.

This submission to the Court provided the opportunity for it to give an explicit ruling on the matter:

> "The uniform effectiveness of Community Law would be adversely affected if, in decisions on the validity of any action by the Community institutions, rules or principles of national law were adduced. The validity of such actions can be judged only according to Community Law. **National legal provisions, however framed, cannot override law stemming from the Treaty, and thus flowing from an autonomous source, without disregard for its character as Community Law and without the legal basis of the Community itself being called into question.** Consequently, the validity of such Community action or its effect in a member State cannot be called in question by pleading that there has been infringement either of basic rights in the form given them by the constitution of that State, or of principles of the national constitutional structure.
>
> However, the question arises whether any similar guarantee inherent in Community Law has been disregarded. **Respect for basic rights is an integral part of the general principles of law of which the Court of Justice ensures observance. Protection of these rights, although inspired by the constitutional traditions common to Member States, must be ensured within the framework of the structure and objectives of the Community.** Hence, in the light of the doubts expressed by the Administrative Court, it is necessary to consider whether the deposit system has violated any basic rights whose observance must be ensured in the Community legal system."

The way the Court's argument is poised will have been noted. The first part conforms with the previous judgments in *Stork, Ruhrkohlen-Verkaufsgesellschaft* and *Sgarlata* mentioned above: it strongly emphasizes the autonomy of the Community's legal system and hence rejects the introduction into Community Law of all concepts drawn from national constitutional law. But this attitude is supplemented by a second set of ideas, and this is new: where a threat to basic rights has been alleged, the Court declares that it should be considered whether any guarantee inherent in Community Law has been disregarded, as respect for basic rights must be assured within the Community in conformity with the constitutional traditions common to member States. Here, therefore, the Court recognizes that the Community should consider as its own the constitutional traditions of member States, and that it thereby participates in the common concepts of values —democracy, liberty, respect for the individual—that underlie the political system of Western Europe. Theoretically the idea by which these concepts are introduced in Community Law is that of "general principles of law", it being understood that it is for the Court of Justice to define their actual content.

Conforming to the principles it had just enunciated, the Court of Justice continued its judgment by making a close analysis of the disputed farming system, to reach the conclusion that, on the whole, it is a matter of ordinary economic discipline aiming to regulate the Community's external trade with a minimum of restrictions. Thus it would appear that, in reality, no basic prerogative was at issue.

IV. Conclusions and the Tasks Ahead

(1) The novel concept emerging from what has been said is that it is possible to build up a protective system of basic rights independent of any "declaration of rights". However, such a construction is conceivable only within the context of a judicial authority solidly organized, invested with the appropriate judicial authority solidly organized, invested with the appropriate judicial authority and powers. In the Community everything derives from the basic attribution of powers to the Court of Justice, expressed in these terms: "The Court of Justice shall ensure that the law is observed in the interpretation and implementation of this Treaty" (Article 164 of the EEC Treaty; similar to Articles 31, ECSC Treaty and 136, Euratom Treaty). In this formula, notice the task of ensuring the respect for law, which harks back to a legal context much wider than the law written into the treaties and acts of application. **From the start, the Court has taken a broad view of its mission, and this is shown particularly by the frequent recourse to "general principles of law" and to the concept of "common legal traditions" in Member States.** It is precisely this that has inspired the recent decisions on the guarantee of basic rights.

Hence it would appear that as there are no written provisions concerning the respect for basic rights in the Community's constitution, this jurisprudential development has been made possible thanks only to the institution of a solidly framed system of legal redress, whose implementation is in the hands of a judicial institution invested with adequate powers and minded to make constructive use of them.

(2) However, it can also be said that this construction is only in its infancy: an affirmation of principles in the *Stauder* judgment; a first attempt at applying them in the *International Hendelsgesellschaft* judgment, to find that at this juncture the argument of basic rights had been wrongly invoked. Thus the task of defining the material content of the guarantees given to basic rights in the Community system still remains.

The Court has said that, in this task, it will be guided by the "traditions common to member States". In its work of comparing and reconciling, it will be compelled by force of circumstances to defer every time to the highest standard of protection, since it is difficult to see how Community law can maintain its authority if it fails to reach a level of protection considered essential in any individual member State. For once, the method of reconciling and levelling will be in an upward direction, that is to say, towards solutions giving the best protection to individual rights.

However, these remarks should not in any way be taken as minimizing the magnitude or the difficulties of the task, whose course the Court has set in its recent judgments. Above all, it is to be hoped that the material provisions of the European Convention for the Protection of Human Rights may eventually come to be considered as forming a part of the law common to member States, for this international instrument ex-

plicitly represents the best possible combination of their constitutional traditions to which the Court has referred.

—(Reprinted from *Common Market Law Review.*)
March 1972

* *Bibliography*:

Pierre Pescatore, "Les droits de l'homme et l'intégration européenne", 4 Cah.dr.europ. 1968, 629-673; German version in (1969) *Integration,* 103-136 (These articles contain an exhaustive bibliography). A summary has been published in (1970) A.J.I.L. 343-351 under the title " undamental rights and freedoms in the system of the European Communities".

Joachim Martens, "Die rechtsstraatliche Struktur der Europäischen Wirtschaftsgemeinschaft", 5 EuR. 1970, 209-231.

Hans Heinrich Rupp, "Die Grundrechte und das europäische Gemeinschaftsrecht" (1970) N.J.W. 353-359.

Gottfried Zieger, "Das Grundrechtsproblem in den Europäischen Gemeinschaften", *Recht und Staat,* Vol. 384/385, Tübingen, 1970, 59.

Note that all the sources above were published before the judgment in the *Internationale Handelsgesellschaft* case and therefore cannot take this latest development into account.

References to Judgments

1. *Stork* v. *High Authority,* Case 1/58, *Recueil* V, 43.
2. *Ruhrkohlen-Verkaufsgesellschaft and others* v. *High Authority,* Cases 36-38/59 and 40/59, *Recueil* VI, 857. ...
3. *Sgarlata and others* v. *EEC Commission,* Case 40/64, *Recueil* XI, 279; [1966] C.M.L.R. 314; 3 C.M.L.Rev *Recueil* XI, 279; [1966] C.M.L.R. 314; 3 C.M.L.Rev. 1965-66, 91.
4. *Stauder* v. *City of Ulm,* Case 29/69, *Recueil* XV, 419; [1970] C.M.L.R. 112; 7 C.M.L.Rev. 1970, 342.
5. *Internationale Handelsgesellschaft mbH* v. *Vorratstelle für Getreide und Futtermittel, Frankfurt/Main,* Case 11/70, *Recueil* XVI, 1125; C.M.L.Rev. 1971, 250 *et seq.*

NEW DUBLIN COURTS ARE PLANNED

A new Dublin Metropolitan District Court building to replace the present Chancery Street complex, which the Government acknowledge as unsatisfactory and overcrowded, is to be built on a 2½ acre site at Smithfield.

The new premises, on the site of Irish Distillers Limited, also will house the Children's Court, ancillary buildings, including a Garda station. The Children's Court is at present in an upstairs room in Dublin Castle.

Finance Minister Mr. Richie Ryan has approved plans of the Office of Public Works to hold an architectural competition for the buildings.

A statement, issued through the Government Information Bureau last night, said the move had been taken to meet the severe and increasing overcrowding in the Dublin Metropolitan Courts and the unsatisfactory condition of some of the existing Court buildings.

The new Metropolitan Court buildings would, added the statement, represent a further large and important State building in the capital city.

Because of the specialised nature of the new complex and its significance as a public building, an architectural competition was felt to be the most appropriate way of securing the best possible design.

Details will be made public after arrangement for the competition have been undertaken.

Irish Independent (5th April 1973)

JUDGE O DALAIGH URGES WIDER LEGAL AID

Ireland's urgent need for an all-embracing legal aid system arose in a conversation I had yesterday with our new Judge on the European Court, former Chief Justice Carbhall O Dalaigh.

He pointed out that there is provision in the rules of the European Court for granting legal aid, where a person bringing a case before the Court needs such aid.

The present position in Irelan is that legal aid is only granted in criminal cases upon application to a District Justice.

Judge O Dalaigh then explained how the European Court protects the ordinary individual. A woman farmer in Italy, slaughtered her cows with a view to getting compensation under a Common Market directive. The Italian Government did not pay up and she brought an action in the local Italian Court.

The Justice sent to Luxembourg for an interpretation of the E.E.C. law and the Court found, in effect, that the Community directives were self-executing, and if the Italian Government had not voted the necessary money to compensate the woman, they were in duty bound to do so.

Free legal aid, he added, was granted to the woman in the case.

Judge O Dalaigh's conclusion was that now governments in the E.E.C. should ensure that they had the machinery to ensure speedy implementation of Community directives. Otherwise, he pointed out, they could find themselves brought before the Court by either the Commission itself for failure to comply, or by some private national in his own country.

Irish Independent (20th January 1973)

SOLICITORS GOLFING SOCIETY

Officers for 1973

President: Thomas V. O'Connor (President I.L.S.I.).
Captain: S. Victor Crawford.
Secretary: Henry N. Robinson.
Treasurer: David Bell.

Outings: Thursday, 28th June 1973, for President's Prize, at Milltown. Firday, 28th September 1973, for Captain's Prize, at Hermitage.

UNREPORTED IRISH CASES

Injunction granted for breach of copyright in pirating book.

Appeal against order of Murnaghan J. made on 22nd October 1969 in an action brought by the plaintiff for breach of copyright, by the defendant publishing in 1966 a new sourcebook entitled *New Intermediate History.*

Murnaghan J. had refused an injunction, but had assessed damages at £251. There is little doubt that the defendant had made complete and long extracts from works published by the plaintiff. The plaintiff publisher bore the expense of publication, and the author was paid a stipulated royalty on copies sold.

It was first contended that clause seven of the agreement between the plaintiff and the original author, by which that author was allegedly required to assign the copyright in all future publications, was null and void. This contention is unsustainable as the clause referred to a manuscript accepted for publication by the publisher as a book in respect of which no special contract was made out. It was then contended that the sum of £250 which Murnaghan J. had awarded to the plaintiff by way of additional damages for breach of copyright under Section 22 (4) of the Copyright Act 1963 should not have been awarded. Inasmuch as the infringement of copyright was flagrant, entailing as it did the copying of 69 out of 234 pages in the earlier book, and inasmuch as the defendant denied financial benefit from this infringement, effective relief would have been available to the plaintiff in the ordinary way without resort to the additional penal damages under Section 22 (4).

Murnaghan J. had declined to grant an injunction because it would in effect require the withdrawal of the whole work of defendants. But an injunction seems to be the most appropriate way to safeguard plaintiff's rights, and damages can be as satisfactorily attended to after an inquiry as to loss. Accordingly there were no circumstances in this case to warrant an award of additional damages. The Supreme Court (O Dalaigh C.J., Walsh and Fitzgerald JJ.) per the Chief Justice then granted an injunction restraining the publication of the infringing material, and directed an inquiry as to damages.

[Folens v. O Dubhghaill; Supreme Court; unreported; 15th May 1972]

Security of costs fixed at £500 on an appeal by foreign shipping company against amount of bail.

Appeal by Kinvarra Shipping Ltd. against the refusal of the President to grant an order of prohibition directed to Judge Neylon sitting as the Judge of the Cork Local Admiralty Court; this Court is seized of a claim by Verolme Dockyard for £11,350 against the plaintiff shipping company for work done and supplies furnished to the "Kinvarra". A warrant for the arrest of this vessel, registered in Liberia, was issued on 25th Nov. 1969, and executed by the local Admiralty Marshal. On 5th December 1969 a bail bond for £11,500 was issued by the shipping company and the ship was released, the Verolme Company then moved to have the proceedings in the Local Admiralty Court transferred to the High Court in Dublin, on the ground that the legislation purporting to establish the Cork Local Admiralty Court was repugnant to the Constitution, which counsel did not pursue.

In reply to this the foreign shipping company applied for prohibition challenging the lawful evidence of the Local Cork Admiralty Court.

Judge Neylon contends that the foreign shipping company has no assets within the jurisdiction. The Chief Justice stated that it was quite reasonable in the circumstances that the foreign shipping company should be asked for security for costs, particularly as the purpose of the proceedings was to nullify the bail bond, and the order for security would not prevent the shipping company from pursuing its appeal. By analogy with the Company's Act provision for "sufficient security", the security to be fixed on appeals where the appellant is a company which has no assets within the juristiction should be "sufficient". The Chief Justice's personal estimate is £500, but the Master will measure the security if the parties do not agree.

[The State (Kinvarra Shipping Co.) v. Judge Neylon and Verolme Dockyard; Supreme Court (O Dalaigh C.J., Fitzgerald and McLoughlin JJ. (per the Chief Justice; unreported; 24th July 1972]

Criminal law: The definition of "wounding" includes a breach of the whole skin.

Appeal from sentence by Judge McGivern in Dublin Circuit Court against eighteen months imprisonment for wounding with intent to cause grievous bodily harm or to maim, disfigure or disable, contrary to Section 18 of the Offences against the Person Act 1861. The appeal was dismissed by the Court of Criminal Appeal and the Attorney-General certified that the following point of law of exceptional importance should be determined by the Supreme Court: *Whether or not a wound, for the purposes of the Offences against the Person Act 1861, must be of such a nature as to involve a severance or penetration of the entire* skin. The 1861 Act does not contain a definition of "wounding", but Archbold divides the all-inclusive term "wound" into incised, punctured, lacerated, contused and gunshot. In *McLaughlin's case* (1838) Lord Coleridge said: "I am inclined to understand that, if it is necessary to constitute a wound, that the skin must be broken, it must be the whole skin." The question should accordingly be answered in the affirmative, as there is no reason why McLaughlin's case should not be followed.

However, the Court, in examining the medical evidence in this case, came to the conclusion that this evidence established, that the facial injuries were superficial, and that the whole skin was not broken. There was accordingly no evidence before the jury of a "wounding" within Section 18 of the 1861 Act. The Court will therefore allow the appeal and quash the conviction. However, the Court will record a conviction for common assault, which ought to have been the proper verdict, and a sentence of twelve months imprisonment will be substituted.

[People (Attorney-General) v. Messitt; unreported; Supreme Court (O Dalaigh C.J., Walsh and Fitzgerald JJ.); 4th December 1972]

Acquisition of ground rent relating to premises includes relevant right of way.

By lease of 29 December 1948, C.I.E. demised to Auto Services Ltd., lands at Adelaide Road, Dublin, for a term of twenty-one years expiring on 31 December 1969. The lease contained a grant of a right of way at all reasonable times as delineated on the map. The interest of the lease was subsequently acquired by the defendants, Hardwicke Ltd., and on 17 February 1964 the lease was assigned to Smiths (Harcourt St.) Ltd., as lessees, who are the plaintiffs in this case.

By notice dated 29 September 1969 the plaintiffs informed the defendants of their intention to acquire the fee simple in the lands demised by the lessee without reference to the right of way, under Section 3 of the Landlord and Tenant (Ground Rents) Act, 1967.

Section 6 of that Act provides that, once notice is given, the parties concerned shall without unreasonable delay take all necessary steps to effect a conveyance free from incumbrances of the fee simple.

On 31 October 1969 the solicitors for defendant wrote to solicitors for the plaintiffs stating that defendants were unwilling save under terms to agree to the acquisition of the fee simple. The plaintiffs served a Notice of Application upon the County Registrar declaring them to be entitled to the fee simple. At the statutory arbitration, having heard the parties, the County Registrar found that the plaintiffs were entitled to acquire the fee simple, and the agreed price was £11,250.

At this stage the defendants tried to contend that only the land without the apportenant right of way had been acquired, which would have been of much less value to the plaintiffs, despite the fact that their valuer had negotiated on the basis that the right of way had been included. The award of the County Registrar had been made on 15 December 1969 but it was only on 3 July 1970 that defendant's solicitors clearly indicated that the plaintiffs were not entitled to acquire the fee simple in the right of way, on the grounds (1) that an incorporal hereditament could not be acquired under the Act, and (2) that in their notice the plaintiffs had not indicated that they had intended to acquire the right of way. It was contended that Section 3 of the 1967 Act only applied to land. If this contention were correct, no right of way could be leased under the Landlord and Tenant Act 1931 as amended.

In the 1967 Act, the word "land" is to be construed in accordance with the Interpretation Act 1937, and therefore must necessarily include incorporal hereditaments, and accordingly the Act of 1967 does enable a tenant to enlarge into a fee simple his interest in land including a right of way.

There was little doubt but that the notice that had been served under Section 4 of the 1967 Act included a description, in which sufficient particulars had been given to identify the property, and the effect of the service of this notice was to give rise to a statutory contract of sale between the vendor and purchaser. Undoubtedly the purchaser wished to acquire the fee simple in the lands described together with the right appurtenant under the lease and the County Registrar's award fr £11,250 entitles them to do so upon payment of this sum. There was also a discussion about hte pleadings.

[Smiths (Harcourt St.) Ltd. v. Hardwicke Ltd.; unreported; O'Keeffe P.; 30th July 1971]

Sisters of Charity allowed to build private nursing home in Elm Park.

The trustees of the Irish Sisters of Charity have succeeded in their action against the Attorney-General, in which they sought the High Court's permission to apply the net proceeds of the old St. Vincent's Hospital and other property at St. Stephen's Green and Leeson Street towards the building of their new private nursing home at Elm Park, Dublin. A sum of more than £1,250,000 was involved.

After a three-day hearing, Mr. Justice Kenny held that the old St. Vincent's Hospital was purchased out of the Order's funds as distinct from money used for maintenance. He said there was no charity known as St. Vincent's Hospital separate from the religious purposes of the Order of Charity, and there was no obligation on them to use the buildings for the nursing of the sick poor.

The buildings, he said, were held on trust for the Order for their charitable purposes and the funds were impressed with the same trust.

On the question of the private nursing home, he said he did not have to decide if this was charitable. The question would have arisen if this was a *cy-pres* application.

Mr. Justice Kenny said that the summons was brought to determine what should be done with the funds and the Court was asked to decide whether the trusts which affected these properties were in favour of the Sisters of Charity or St. Vincent's Hospital. When Mother Mary Aikenhead founded the Order the purpose was the sanctification of members by nursing the sick poor. In 1834, No. 56 St. Stephen's Green was purchased with money given by a member of the Order. In the following year it was opened as a hospital and the Sisters lived there. The building was conveyed to members of the Order, and in 1887 No. 57 was bought with the money of Sister Clifford.

Mr. Justice Kenny referred to paragraph 12 of the affidavit of the Mother General of the Order in which she stated that the hospital had been purchased "with monies provided by our congregation". This, he said, was corroborated by the 1834 prospectus of the order which stated : "The Institution to be established by the Sisters of Charity".

He would declare that the plaintiffs hold the proceeds of the sale of the buildings referred to in the summons on trust for the charitable purposes of the Religious Sisters of Charity in Ireland. How this was to be applied was a matter for the trustees.

He allowed both sides their costs out of the funds.

[Gleeson v. Attorney-General; *The Irish Times,* 10th April 1973]

Rules for sealing blood samples with a stopper under the Road Traffic Act not complied with.

The Supreme Court has affirmed the decision of Mr. Justice Pringle, reported in the February *Gazette* at page 58, in which it was held that the rules for sealing a defendant's blood sample, when he has been given a blood test in a Garda Station to determine the amount of alcohol which appears as a result of this test, must be very strictly complied with. It is understood that this is a test case which will affect many other cases.

[Attorney-General (Nagle) v. Hollingsworth; Supreme Court; unreported; 2 May 1973]

ENGLISH CURRENT LAW DIGEST

Arbitration

Before Lord Denning, the Master of the Rolls, Lord Justice Megaw and Lord Justice Scarman.

The Court of Appeal held that the time provisions for making a claim under the Centrocon arbitration clause did not apply to claims for general average contribution where the charterparty in question contained a specific provision that "general average shall be payable according to York—Antwerp Rules, 1950, and to be settled in London".

Their Lordships dismissed an appeal by the Government of India from the decision of Mr. Justice Mocatta who had held in favour of Norwegian shipowners, E. B. Aaby's Rederi A/S, that their claim for £5,995 general average contribution was not time-barred. In dismissing the appeal their Lordships founded on the construction of the charterparty in a manner contrary to that of the judge, though agreeing with him on the nature of an undertaking given by the Government of India in correspondence arising out of a peril at sea.

E. B. Aaby's Rederi A/S v. Union of India; C.A. 20/3/73.

Categories of sentences

The Court of Appeal laid down guidelines for sentencing motorists guilty of causing death by dangerous driving.

Lord Justice Lawton, sitting with Lord Justice Scarman and Mr. Justice Eveleigh, said that some variations in penalties were inevitable, but there were limits to permissible variations. Cases fell into two broad categories: (1) those in which the accident had arisen through momentary inattention or misjudgment; and (2) those in which a person had driven in a manner which showed a selfish disregard for the safety of other road users, or a degree of recklessness. Cases where an accident had been caused or contributed to by a person's consumption of alcohol or drugs formed a subdivision of the second category.

Offenders, too, could be put into categories. A substantial number had good driving records; a fair number had records revealing a propensity to disregard speed restrictions or road signs, or to drive carelessly; and a few had records which showed that they had no regard whatsoever for either the traffic law or the rights and safety of other road users.

An offender convicted because of momentary inattention or misjudgment who had a good record should normally be fined and disqualified from driving for the minimum statutory period or a period not greatly exceeding it. If the driving record was indifferent, the period of disqualification should be longer—say two to four years—and if the record was bad, the offender should be kept off the road for a long time. Where a fatal accident had been caused through a selfish disregard for the safety of other road users, or of passengers or by reckless driving, a custodial sentence with a long period of disqualification might well be appropriate—and if that time of driving was coupled with a bad record the period of disqualification should be such as would relieve the public of a potential danger for a very long period indeed.

Lawton L.J., applying these principles, reduced a sentence of four years' disqualification and a fine of £75 to one of 12 months and a fine of £50 in an appeal by John Guilfoyle, aged 19, of Wakefield, a driver with a good record, who had caused an accident by his momentary inattention. His Lordship said that it was in the public interest that the appellant should be required to take a driving test before regaining a full licence as an interruption of 12 months in his driving career would be substantial, and therefore an order to that effect should stand. In general, the longer the period of disqualification, the more important it was that there should be a driving test before the driver again had a full licence.

Regina v. Guilfoyle; C.A.; 10/3/1973.

Company Laws

Before Mr. Justice Plowman.

There had been a rule of practice in the Companies Court for thirty years not to appoint an accountant of less than five years' standing liquidator in compulsory winding up. It was a good working rule, but the overall discretion of the Court to make exceptions remained.

His Lordship so said in a judgment on a motion by First Finsbury Trust Ltd., of Crutched Friars, EC, a creditor of Icknield Development Ltd., reversing the decision of Mr. Registrar Berkeley on January 31st not to appoint Mr. Roger William Cork, chartered accountant, liquidator of the company on the ground that he did not have five years' experience.

In re Icknield Development Ltd.; Chancery Division; 14/3/1973.

Contract

Before Sir John Pennycuick, the Vice-Chancellor.

His Lordship declared that a contract created in 1970 between a local education authority and a direct grant school for the authority to take up places and pay for a quarter of the total number of pupils admitted during the preceding educational year, in the year 1971-1972 and to continue to take up these places after 1972, was a continuing arrangement which could only have been validly determined by a three-year notice; that a notice of 22 months was insufficient to determine the arrangement; and that the local authority was bound to take up and pay for such places for the educational year 1973-1974.

His Lordship granted the declaration sought by the Birkenhead School Ltd. in an action against Birkenhead Corporation as the local education authority but refused to grant a mandatory order of specific performance of the contract by the authority.

Birkenhead School Ltd. v. Birkenhead County Borough; Chancery Division; 15/3/1973.

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Wilberforce, Lord Simon of Glaisdale and Lord Kilbrandon. Speeches delivered April 4th.

The House of Lords, Lord Wilberforce dissenting, held that a subclause in a distributorship agreement between German manufacturers and English sellers which was described as a "condition" did not in the context of the particular contract have the effect that any breach of it, however small, would entitle the German firm immediately to repudiate the whole contract. But their Lordships unanimously held that it was not permissible in English law to construe a written commercial contract by reference to the conduct of the parties after the agreement had been made.

The majority of the House dismissed an appeal by L. Schuler AG, of Goeppingen, Federal German Republic, from the decision of the Court of Appeal (the Master of the Rolls and Lord Justice Edmund Davies, Lord Justice Stephenson dissenting) (*The Times*, 27th April 1972; [1972] 1 WLR 840) that they were not entitled to repudicate an agreement made with Wickman Machine Tool Sales Ltd., of Coventry, by reason of Wickmans' breaches of a "condition" in clause 7 (b) to fulfil a weekly visiting obligation for the purpose of soliciting orders for Schulers' panel presses.

In 1963 Schulers granted Wickmans the sole selling rights for, inter alia, panel presses made by them until December 1967. Clause 7 (a) of the agreement required Wickmans to use their best endeavours to promote the sale of Schuler products in the designated territory. Clause 7 (b) provided that "It shall be condition of this agreement that (1) Schuler shall send its representatives to visit" the six largest United Kingdom motor manufacturers "at least once in every week" to solicit orders for panel presses, and (ii) that the visits should be by one or two named representatives. No other of the 20 clauses of the agreement was described as a "condition".

For the first eight months there was a fairly extensive failure by Wickmans to make the visits; but the evidence was that the breaches were treated by Schulers as remediable under clause 11 (a) (I), which provided that either party could terminate the agreement if the other committed a "material breach" of its obligations and failed to remedy it within 60 days of being requred to do so. In the next six months there was an improvement, though there were further failures to visit, some for good reasons.

In July 1964 Schulers claimed the right to terminate the contract, and did so in October 1964. Wickmans claimed damages for wrongful repudiation; and on a reference to arbitration, the arbitrator construed "condition" in clause 7 (b) as referable to the provisions for remedy in clause 11 (a) (I) and held that Schulers were not entitled to terminate the agreement.

Mr Justice Mocatta on a case stated held that the introduction of the words "It shall be condition ..." in the one subclause gave Schulers a right to repudiate the whole contract if

Wickmans committed only one isolated breach of the visiting obligation.

The majority of the Court of Appeal allowed Wickmans' appeal, holding that in its context the meaning of "condition" was ambiguous and interpreting it by looking at the way in which the parties themselves had treated breaches of it before the termination.

L. Schuler AG v. Wickman Machine Tool Sales Ltd.; House of Lords; 6/4/1973.

Crime

Before the Lord Chief Justice, Lord Justice James and Mr. Justice Nield.

Contravention of the Trade Descriptions Act, 1968, does not normally merit even a suspended prison sentence unless it is accompanied by dishonesty, the Court of Appeal said when barying a sentence on B. J. Haesler, of Parkstone, Dorset, for offences in respect of a motor car. A fine of £75 on each of three counts was substituted for a sentence of six months' imprisonment suspended for three years.

In dismissing an appeal against conviction the Court held that the omission of the words "ex Channel Islands" fromt he log book amounted to a false trade description. It was also held (applying the principle in *Hall v. Wickens Motors (Gloucester) Ltd.* [1972] 1 WLR 1418) that the delivery of the service book 56 days after the car, during which the purchaser had repeatedly asked for it, was associated with the sale of the car, and that entries in the service book amounted to a false trade description.

Regina v. Haesler; C.A.; 23/3/1973.

Before Lord Justice Stephenson, Mr. Justice Park and Mr. Justice Kilner Brown. Judgment delivered March 16th.

Giving "evaded" its ordinary meaning, there is no reason why ad ebtor cannot dishonestly obtain the advantage of having the payment of his debt evaded by his deception of falsely pretending that his cheque is a good and valid order to pay without his creditor agreeing to cancel or forgive the debt either in whole or in part; all that must be found is that as a result of the deception the creditor has done or has refrained from doing something which enables the debtor to get out of payment, even without the creditor appreciating that that is the effect of what he was doing or not doing.

Their Lordships so held when dismissing an appeal by E. B. Fazackerley, 31, of Southport, against his conviction at Liverpool Crown Court (Judge Davies, QC) on five counts of obtaining a pecuniary advantage (evasion of a debt) by deception, contrary to section 16 of the Theft Act, 1968. He was sentenced to concurrent terms of two years' imprisonment on each count.

Section 16 provides: "(1) Aperson who by any deception dishonestly obtains for himself ... any pecuniary advantage shall on conviction ... be liable to imprisonment ... (2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where (a) any debt ... for which he ... is ... liable ... is reduced or in whole or in part evaded or deferred ..."

Regina v. Fazackerley; C.A.; 21/3/1973.

Before Lord Justice Roskill, Mr. Justice Talbot and Mr. Justice Boreham.

It was not sufficient for a conviction of taking a motor vehicle or other conveyance without authority, contrary to Section 12 (1) of the Theft Act, 1968, that there had been an unauthorised taking of possession or control adverse to the rights of the true owner. Some element of movement of the conveyance, however small, was also essential.

The Court of Appeal so held when allowing appeals by Stephen Bogacki, Howard John Tillwach and Robert Charles Cox against conviction at Middlesex Crown Court (Judge Salmon) last July of attempting to take a motor vehicle without authority. The convictions were quashed.

Regina v. Bogacki and Others; C.A.; 20/3/1973.

Before Lord Wilberforce, Viscount Dilhorne, Lord Pearson, Lord Kilbrandon and Lord Salmon. Opinions delivered on March 21st.

Where an agreement has been made abroad to commit in England a crime under English law and acts in furtherance of that agreement are committed in England, the English Courts have jurisdiction to try the parties to the agreement on a charge of conspiracy.

Their Lordships allowed an appeal by the Director of Public Prosecutions from the decision of the Court of Appeal([1972] 3 WLR 33; *The Times*, May 10th) quashing the convictions of the respondents, R. L. Doot, M. A. Fay, J. R. Loving, T. Shannahan and J. W. Watts, at Winchester Assizes (Mr. Justice Lawson) on Count 1 of an indictment charging them with conspiring to import dangerous drugs (cannabis resin). By other counts, each respondent was charged with, and pleaded guilty to, importing prohibited goods contrary to Section 304 of the Customs and Excise Act, 1952.

Following a ruling by Mr. Justice Lawson that the Court had jurisdiction to try the count of conspiracy, the first four respondents pleaded guilty to that count without prejudice to their contention that the Court had no jurisdiction. Shannahan pleaded not guilty but was convicted. The respondents were sentenced to terms of imprisonment or fines, and were recommended for deportation.

The Court of Appeal held that the offence of conspiracy was completed when the agreement was made; that in the present case the acts done by the respondents following the agreement were not further agreements but overt acts evidencing the conspiracy and that accordingly the English Courts had no jurisdiction.

The Court certified as a point of law of general public importance involved in their decision "Whether an agreement made outside the jurisdiction of the English Courts to import a dangerous drug into England and carried out by importing it into England was a conspiracy which could be tried in England", and gave leave to the prosecution to appeal.

Director of Public Prosecutions v. Doot; House of Lords; 23/3/1973.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Bridge.

A motorist who listened to fire brigade messages on his car radio out of interest but without authority was guilty of an offence under Section 5 (b) (i) of the Wireless Telegraphy Act, 1949, even though he intended no mischief.

Paul v. Ministry of Posts and Telecommunications; 5/3/73.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Willis. Judgment delivered April 2nd.

Defendants who are charged on separate informations with offences arising out of the same set of facts, the joint action of the defendants causing the offences, must be tried separately in the absence of consent to be tried jointly.

Their Lordships so held when allowing appeals by case stated by M. Aldus and W. J. Straw against their convictions by Barnard Castle justices last August of driving without reasonable consideration for other road users, contrary to Section 3 (2) of the Road Traffic Act, 1960. They had been each fined £15 with costs and their licences endorsed.

Aldus and Another v. Watson; 5/4/1973.

Damages

Before Lord Denning, the Master of the Rolls, Lord Justice Stamp and Lord Justice James.

The Court of Appeal reduced an award to a man injured in a road accident of £41,252 damages including inter$st to £18,698 after admitting fresh evidence that after the trial of the action, in which the quantum of damages was the only issue, and entry of a notice of appeal in time by the defendant, the injured man, who had become addicted to pain-killing drugs, died on an overdose of drugs.

Their Lordships allowed an appeal by the defendant, Mr. J. Sheppard, of Dawley, Shropshire, from Mr. Justice Park, who, at Bristol last June, awarded to Mr. D. A. McCann, of Shirehampton, Bristol, the total of £41,252. Mr. McCann died on October 22nd, and the appeal was brought with his widow and her co-administrator of his estate as respondents.

McCann v. Sheppard; C.A.; 16/3/1973.

Domicile

Before Sir John Pennycuick, the Vice-Chancellor.

In order to establish that a person has changed his domicile of origin to a domicile of choice, proof of an intention to remain permanently in the country of choice has to be of an especially high standard. The Vice-Chancellor so held when dismissing an appeal by Mr. L. C. C. Buswell, who has residences in London, Sussex and South Africa, from a decision of the special commissioners that the Crown had discharged the onus of showing that he had acquired a domicile of choice in the United Kingdom for the purpose of assessing his liability to income tax.

Mr. Buswell was born in Johannesburg in 1921 and had a domicile of origin in South Africa. In 1928 he came with his parents to England, where he was educated. He remained in this country until 1941, when he was called up and obtained

a posting in the Indian Army. He remained in India until 1952, when he returned to England, mainly on account of is father's health. On obtaining employment in England he received a questionnaire from the Inland Revenue and, in reply to one question, stated that he proposed to remain permanently in the United Kingdom. From 1955 he held a British Indian passport and a South African passport.

In 1960 Mr. Buswell bought a residence in London, and in 1961 married an Englishwoman who received a large income from overseas. After the marriage they purchased a property in Sussex and in 1968 they visited South Africa and purchased a property there on which they spent approximately £115,000. Since then they had visited South Africa for three months each year. Mr. Buswell and his wife had an intention to go to South Africa in 1976 to live permanently. Because of the education of their two children and because of Mr. Buswell's elderly mother, who was still living in England, it was not convenient for them to go at an earlier date.

Mr. Buswell was assessed to income tax for the years 1961-2 to 1967-68 on the basis that he was domiciled in the United Kingdom. He appealed against the assessment, contending that he was not domiciled in the United Kingdom and accordingly was entitled to have his liability to tax in respect of his overseas income computed in accordance with Section 132 (3) of the Income Tax Act, 1952. The special commissioeers upheld the assessment, and Mr. Buswell appealed, submitting that his domicile of origin was South Africa and that he had not acquired a domicile of choice in the United Kingdom.

Buswell v. Inland Revenue Commissioners; C.A.; 30/3/1973.

Evidence

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Bridge. Judgment delivered on March 9th.

A man who paid £14,000 in 1963 to a resident in a scheduled territory was bound to answer a question by the Treasury whether he knew that the payment was made in association with the acquisition of property in France by his brother-in-law and sister, who had been convicted in 1971 of making a payment of £3,000 to a person resident in the scheduled territories, contrary to Section 7 (1) (A) of the Exchange Control Act, 1947, and of failing to offer 138,300 French francs (the proceeds of the £14,000) to an authorised dealer, contrary to Section 2 (1) of the Act. He was also bound to answer the question whether he knew of the existence of the property in France and that his sister had paid the £3,000 for repairs to it.

The Court so held when deciding that the Chief Metropolitan Magistrate (Sir Frank Milton) was wrong to dismiss an information against T. M. Ellis, of Grosvenor Street, London, alleging that he had refused to give information required by the Treasury for the purpose of securing compliance with or detecting evasion of the 1947 Act, contrary to paragraph 1 (1) of Part I and paragraph 1 (1) of Part II of the Fifth Schedule to the Act.

Director of Public Prosecutions v. Ellis; 13/3/1973.

Family

Before Mr. Justice Bagnall. Judgment delivered March 5th.

When considering financial provision for a wife after dissolution of marriage it would not be just to have regard to the conduct of the parties unless there was substantial disparity between them. Financial support for a wife would only be reduced if it could be shown that she had wilfully persisted in a course of conduct calculated to destroy a marriage in circumstances where the other party was substantially blameless. Those conditions would be satisfied in few cases.

Mr. Justice Bagnall so said in giving judgment in open court after a hearing in chambers an application for financial provision by Mrs. A. P. Harnett, 43, a teacher, of Aldersham, Hertfordshire. Her husband, Mr. M. Harnett, 43, salesman, of Butts Hill Road, Woodley, Berkshire, had opposed the application.

Harnett v. Harnett; 6/3/1973.

BOOK REVIEWS

Borrie (Gordon) and Lowe (Nigel)—The Law of Contempt. 8vo; pp. xliv plus 401; London, Butterworth, 1970; £12.

This is the first publication of the Institute of Judicial Administration attached to Birmingham University where Professor Borrie is Director; his colleague, Mr. Lowe is a Lecturer in Sheffield. The law of contempt, particularly if not made in the face of the Court, has always given rise to difficulties, and a textbook written by experts such as these authors on this intricate subject is a great boon to practitioners. Even punishment in the face of the Court, as Lord Goddard said in *Parashuram* (1945) AC, should be used sparingly and only in serious cases; its usefulness depends upon the wisdom and restraint with which it is exercised; an example was when a Judge was personally assaulted by a criminal in the Court of Appeal in London a month ago. In general, a publication which has the tendency to prejudice a fair trial will amount to contempt; but this will depend on the facts of the case. The most serious case in England was *R. v. Bolam ex parte Haigh* (1949) where the editor of the *Daily Mirror* was imprisoned, and the proprietors were heavily fined for describing the accused as a vampire. In *R. v. Kray* (1969) the accused had been found guilty in one trial and now faced fresh charges. Lawton J. said that fair and accurate reports of the previous trial could be made, but this did not involve further discreditable allegations.

Civil proceedings should also be conducted free from prejudice and the press are entitled to make fair comments. The main test is publication which tends to prevent the Court from hearing all the evidence: in Ireland, the Press will tend to be protected if it does not exaggerate the facts, and if it does not infringe the statutory restrictions, which permit certain actions to be tried *in camera.*

It is often difficult to determine whether a public action which is likely to prejudice a fair criminal trial can only amount to contempt if proceedings are pending or imminent, but *R. v. Clarke ex parte Crippen* (1910) clearly decided that contempt can be committed at any time after an arrest resulting from a warrant has been made; as against this, the Australian case of *James v. Robinson* (1963) acquitted the defendant newspaper of contempt on the ground that the accused murderer in Perth had not been arrested. In civil proceedings, the action is pending when the proceedings have been issued.

As regards actions criticising Courts amounting to contempt Lord Russell had said in *R. v. Gray* (1900) that any writing published calculated to bring a Court into contempt or to lower its authority is a contempt; while in 1968 the Court of Appeal stated in relation to a criticism by the present Lord Chancellor that "the authority and reputation of our Courts are not so frail that their judgment had to be shielded from criticism". The criticism of O'Byrne J's conduct of a case in

the Central Criminal Court which led to Mr. Sean T. O'Kelly being fined in 1928, is mentioned in a footnote, as is that of *Ross Connolly* (1947). In the case of *re Haughey* (1971) I.R. 217, the High Court convicted the applicant of contempt and sentenced him to imprisonment, despite the fact that the certificate from the Dail Committee investigating the disposal of Red Cross funds had not stated in full detail the applicant's alleged offence; the Supreme Court, apart from finding the procedure unconstitutional, accordingly allowed the appeal and discharged the accused on this ground, and stated that he should also have been tried summarily. In the *Hibernia Review case,* unreported, Pringle J. fined the journal and its editor £50 each for contempt on 16th May 1972 and the writer Mac Aonghusa £100 for protesting against the jail treatment of a prisoner on remand. It would not have been possible for the learned authors to consider those cases, but their detailed comments in a future edition would be welcome in considering contempt by publication.

The whole subject appears to be subjective and nebulous, but the learned authors have written an erudite and masterly volume which will remain the leading work. It will be recalled that the last volume of Ozwald on Contempt was published as long ago as 1907.

Finally I would commend the nebulous Section 4 of the Offences against the State (Amendment) Act 1972 for detailed comment by the learned authors (see the February *Gazette,* page 40).

Lasok (Domnic) and Bridge (J. W.)—Introduction to the Law and Institutions of the European Communities. 8vo; pp. xxi plus 314; London, Butterworth, 1973; £3.20 paperback.

Those of us who had the pleasure of listening to Prof. Lasok and to Mr. Bridge, who teach European Community Law in Exeter, in the course of a seminar organised by the Young Solicitors' Society in the Burlington Hotel, Dublin, in September 1972, will be pleased that their interesting lectures are now available in extended printed form. This work is most absorbing, but it is not for the amateur, because it assumes the reader has some knowledge of Community Law. The work is divided into four main parts: Part 1 deals with the Nature of the European Communities and of Community Law, describing first the European Community and its Law and later the Concept and Status of the European Community followed by the Nature and Challenge of Community Law, and a stimulating chapter on the Primary and Secondary Sources of Community Law It is emphasised that those who practice Community Law will require specialisation so that a reciprocal right of Establishment of lawyers can be made.

Part 2 called the Law of the Institutions deals in detail with the Commission, the Council of Ministers, the Assembly and the Court of Justice.

Part 3 deals with the intricate subject of the relationship between Community Law and the Municipal Law of Member States. In dealing with the Implementation of Community Law, it is emphasised that, in case of conflict, it is essential for municipal Courts to follow Community Law first, and that is why the decisions of the Community Court are so important.

The last part—the Law of the Economy—deals with such matters as Agriculture, Transport, Free Movement of Goods, etc. The involved language problem is also fully discussed.

Interesting procedural defences, such as *"Detournement de Pouvoir", "Faute de Service"* and *"Exception d'Illegalite"* are fully discussed, as is the nature of Regulations and Directives. One must always remember that the listed Community Regulations, even though made before 1973, are binding as Irish Law by virtue of the Schedule to the European Communities Act 1972, and in case of conflict in the text of the Treaties the Irish Superior Courts will have to request the European Community Court to give a preliminary ruling on Community Law before proceeding with the case. Points like these, stressed by the learned authors cannot be too much emphasised. This work will greatly enhance the knowledge of members who want to improve accurately what they have learnt in a preliminary way about European Community Law.

Kelly's Draftsman. 13th edition by R. W. Ramage. 8vo; pp. lxxxvi plus 911; index pp. 74; London, Butterworth, 1973; £7.00.

This is the centenary edition of this famous practical work which first appeared in 1873. Older practitioners will remember Mr. Reid's 7th edition of 1929 which, though in a smaller format still contained 734 pages and 85 index pages; in view of the new English Property Acts, most of the precedents there had to be rewritten. Mr. W. J. Williams was the editor of *all* editions from the 9th to the 12th inclusive, which has ensured the continuous usefulness of these precedents. In the 9th edition (1950) owing to the larger format at present in use, 30 per cent of material was added; but the number of pages in the text was reduced to 667. In the 11th edition (1962), the number of text pages had increased to 794, and this had increased in the 12th edition (1967) to 869; thus there are approximately 40 more pages in this edition. Mr. Ramage has wisely abandoned the word "shall" save as an expression of legal obligation. Conveyancing practitioners will be well used to the precedents contained in previous editions, and it is therefore only necessary to draw their attention to changes. There are 14 new prescribed notices under the Leasehold Reform Act 1971 which may possibly be adopted to our legislation. There are also new forms of (1) Release to a Borrower of part of the property comprised in the mortgage; (2) Collateral Mortgage by way of further Security for an existing advance, (3) Agreement for letting a Caravan, (4) Mortgage of Policy of Life Assurance as collateral Security to a Mortgage of Land, (5) Power of Attorney executed at the direction of a Donor, (6) Deed executed by a company in liquidation, (7) Notice given in respect of unsolicited goods, and (8) Certificate to be endorsed of Facsimile Powers of Attorney as Proof of their Contents. The printing, contents and lay-out of this edition are, as usual, excellent, but it will be for the Irish conveyancing practitioner to decide whether he should get this new edition when the previous edition had been published at £3.75.

Heydon (J. D.)—Economic Torts. 8vo; pp. xxiii plus 99; London, Sweet & Maxwell, 1973 (Modern Legal Studies Series); Paperback; 90p.

The idea of the Modern Legal Studies Series is to write short scholarly monographs in different areas of law by writing about new legal topics, or about specified topics in law subjects, and thus helping social science. The subject of "Economic Torts" has assumed great impor-

tance, particularly since the House of Lords decision in *Rookes v. Barnard* (1964) AC). It is important to realise that "Economic Torts" arises primarily from one's relations with others : in discussing the old action *per quod servitium amisit,* it is surprising that Kingsmill Moore J's famous judgment in *A.-G. v. Ryan's Car Hire Ltd.* (1965) I.R. 642, is omitted amongst the numerous well-laid-out notes. The notions of conspiracy, and inducement of breach of contract as causing loss by lawful means particularly on the part of trade unions, has become exceptionally important, with the result that the Courts in Ireland tend to prevent the economic chaos that is such an unjustified common feature in Britain today by granting injunctions against picketing; in this connection it is surprising that *Cooper v. Millea* (1938) I.R., which was approved by the House of Lords in *Rookes v. Barnard* should have been recently criticised in the Supreme Court. The notion of intimidation as causing loss by unlawful means is rightly condemned, as a serious tort which ultimately induced the British Government to introduce the Industrial Relations Act 1971. Finally there is a useful note on the torts of injurious falsehood, deceit, and passing off. The author commends for the future the decision of the New York Supreme Appeals Court in *Morrison v. National Broadcasting Co.* (1965). Here the plaintiff, a young university teacher, was induced to participate as a contestant in a television quiz by the defendant's false representation that it was not rigged, which it was; the public discovered this, and the plaintiff lost reputation and employment. There was no specific head of the law of torts under which he could sue, yet the Court eventually awarded him damages on the novel ground that it was a "violation of strong and prevalent moral standards" not to find for him. As an Oxford don Dr. Heydon has produced a very learned summary of this intricate subject; he has taken full cognisance of the Irish case of *James McMahon Ltd. v. Dunne* (1965). Strongly recommended.

Woods (James W.; compiler)—District Court Handbook. Obtainable from Mr. Woods, District Court Clerk, The Courthouse, Washington Street, Cork; £2.75.

Mr. Woods is to be congratulated upon producing a practical volume relating to the procedure of the District Court which will be of inestimable value to all practitioners in that Court. This Handbook is most comprehensive, including amongst the main titles in alphabetical order—Affiliation Orders (including 1971 Act); Procedure on Appeals from the District Court; Appellate Jurisdiction of the District Court against Section 33 of Road Traffic Act 1961 re Certificates of Competency and against refusal to grant a lottery or a street permit and against fire precaution notices of a sanitary authority.—Auctioneers and Houseagent Acts 1947 and 1967—Bankers Books Evidence Act 1879—Appeal against Refusal of Certificate under the Betting Act 1931.—Civil Proceedings including Civil Processes and Costs : —Criminal Jurisdiction including Summary Jurisdiction—Dance Licences under the 1935 Act—Procedure under the Enforcement of Courts Orders Acts 1926 and 1940 :—Certificates for Salmon and Trout Licences under the Fisheries' Acts :—Game Dealers' Licences under the Game Preservation Act 1930—Gaming Certificates and Lottery Permits under the Act of 1956—General Dealer's Licences under the 1903 Act—The Various Licences under the Intoxicating Liquor Acts—Certificates under the Registration of Clubs (Ireland) Act 1904—Applicant's Declaration of Fidelity to the Nation before Justice under Irish Nationality and Citizenship Act 1956—Legal Aid Certificates—Maintenance Orders under the Married Women (Maintenance in case of Desertion) Act 1886 as amended—Moneylenders Certificates under the 1933 Act—Music and Singing Licences under Part 4 of the Public Health (Amendment) Act 1890 as amended—Pawnbrokers Certificates under the 1964 Act—Petroleum Licences under the 1871 Act—Small controlled Dwellings in Boroughs under the Rent Restrictin Act 1960 as amended.—Statutory Applications under the Road Traffic Acts 1961 and 1968—Remission and Exemption of District Court Fees—and finally Vacation Periods in the District Court as set out in the District Court Districts (Amendment) Order 1970.

From thss list it will be noted that Mr. Woods has given us a thorough and comprehensive grasp of every aspect of District Court Practice. He is to be praised for his immense industry, and, in order not to complicate his work unduly, he has wisely refrained from citing the relevant cases which will in any event be found on the criminal side in Mr. Crotty's book. This Handbook is an *absolute must* for all practitioners who handle District Court work.

DELAYS IN THE VALUATION OFFICE

Representations were recently made on behalf of the Society to the Commissioner of Valuation about unreasonable delays in the Valuation Office. In a particular case the matter was first referred to the Valuation Office in November 1971 and had not been dealt with by January 1973. Intervening correspondence had produced no result. The Valuation Commissioners in reply stated that there was considerable delay in dealing with the matters. Regrettably delay in dealing with Revenue Cases has been a common occurrence in that office for some time past. This has been due to unavoidable hold-ups in recruitment of staff both professional and clerical and to rapid turnover of clerical staff with resultant scarcity of persons experienced in co-ordinating documentation for these cases. The consequent arrears of undischarged cases has of itself added to the difficulty of identifying and associating relevant papers. The Commissioner and his senior officials are now taking special measures which should very soon substantially reduce the arrears and speed the discharge of these cases. It has been laid down as standard practice in the office that all communications are to be acknowledged soon after receipt especially when for one reason or another there might be prospects of delay in issuing a definitive reply. An instruction has issued that an acknowledgement is to be sent to every correspondent in the arrears range as soon as its correspondence is given a reference number.

ENGLISH PROFESSIONAL CASES

Bates v. Lord Hailsham

Chancery Division; Megarry J; 19th, 20th July, 1972.

Ex-parte motion for injunction to prevent the Lord Chancellor from making professional rules rejected.

The plaintiff was a solicitor and a member of the National Executive Committee of the British Legal Association ("the Association"). To that Association about 2,900 of the 26,000 solicitors with practising certificates belonged. On 1st May 1972 the Lord Chancellor announced at a press conference that it was proposed to abolish the scale fees prescribed under Sch 1 to the Solicitors' Remuneration Order 1883, as amended, and to apply the quantum meruit system under Sch 2 to all conveyancing transactions. Anticipating the draft order that the Lord Chancellor was required by s 56(3) of the Solicitors Act 1957 to send to the Council of the Law Society ("the Council") before any such order regulating the remuneration of solicitors in respect of non-contentious business was made by the Statutory Committee under s 56(2), the Association sent out a circular to all solicitors about the proposals. On or about 6th June the Law Society received a draft of the proposed order, for consideration by the Council and for the submission of observations within a month for consideration by the Committee, as provided by s 56. The date of the meeting of the Committee for the making of the order was fixed for 19th July at 4.30 p.m. On 21st June the draft order was published in full in the Law Society's Gazette. On 11th July the Association sent printed submissions to the committee. These concluded with a request that the order should not be approved at that juncture and that the Lord Chancellor should seek further consultations with the profession and professional organisations. On 14th July the Association despatched letters to each member of the committee seeking further time and suggesting a deferment of the final decision "for perhaps two months". On 17th July the Association sent out a circular making a series of accusations against the Lord Chancellor and the Law Society. On 18th July the Lord Chancellor wrote to the Association saying that he saw no reason for postponing the meeting of the Committee or for refraining from making an order in such terms as the Committee approved. On the same day the plaintiff issued a writ against the members of the Committee. He contended that the draft sent to the Law Society had been prepared by the Lord Chancellor's department and had not been considered by the Committee, and claimed (i) a declaration that any order made by the Committee under s 56 would be ultra vires and void unless the draft had been considered by the Committee and an opportunity had been given for representations on the proposed order to be made by the Association and other representative bodies, and (ii) an injunction restraining the committee from making an order until those steps had been taken. At 2.00 p.m. on 19th July the plaintiff moved exparte for an injunction to stop the committee making an order at its meeting at 4.30 p.m.

Held—The motion would be dismissed for the following reasons—

(i) The Committee's function under s 56 was of a legislative and not an administrative, executive or quasi-judicial nature, and so it was not bound by rules of natural justice or by any general duty of fairness to consult all bodies that would be affected by the order it made under the powers delegated to it by s 56. It was only required, under s 56, to consider before making the order the written submissions of the Council, so that even when a momentous change, such as that proposed in May by the Lord Chancellor, was to be made it was not required to extend the time limit or to provide an opportunity for representations by bodies other than the Council.

(ii) In any event the delay in applying for the injunction had not been sufficiently explained. Ex parte injunctions were for cases of real urgency, where there had been a true impossibility of giving notice of motion.

Duchess of Argyll v. Beuselinck

Before Mr. Justice Megarry, 3 May 1972.

Defendant solicitor not guilty of negligence for not advising client about tax liability.

The plaintiff was desirous of getting her life story published and entered into a contract with L.I.P. Ltd. to act as her literary agents for the publication of a series of articles. She gave a retainer to the defendant, who was a solicitor and an author, in general terms in relation to the proposed memoirs. He was brought into the matter primarily to "vet" the proposed publications for libel, although he soon introduced the question of copyright. He found that what was in contemplation was to be "a minor industry" for the exploitation of the plaintiff's memoirs. Thoughts of income tax passed through his mind, but in the face of her resolute refusal to sell the diaries and other material on which the story was to be based he did not raise the matter further with her. On the eve of his departure abroad, L.I.P. Ltd. sent him a draft agreement with a newspaper group for the publication of a number of articles, but he was not allowed to take it away. He went abroad and received an urgent call from L.I.P. Ltd. to get the agreement approved at once. This approval was given by his articled clerk for whose action he admitted full responsibility. The form of the agreement involved the plaintiff in a considerable tax liability. She now claimed damages from the defendant on the grounds that he was negligent in that (i) if he had given her the advice which he ought to have given her, her tax liability would have been substantially reduced; and (ii) he had failed to advise her that the terms of the agreement should be considered by an experienced tax Counsel or an experienced accountant, or both.

Held—by Megarry, J., that whether or not the duty of care owed by the defendant was that of the average prudent solicitor, or that of the defendant himself, who had a reputation in the world of authorship, in the circumstances, especially his justifiable expectation that what appeared to be in contemplation was a "minor industry" for the multiple exploitation of the plaintiff's memoirs and the fact that someone else's draft agreement was put before him for approval, the defendant was not guilty of negligence.

Judgment for defendant.

Per Megarry, J.: No doubt the inexperienced solicitor is liable if he fails to attain the standard of a reasonably competent solicitor. If the client engages an expert, and doubtless expects commensurate fees, is he not entitled to expect something more than the standard of the reasonably com-

petent? I am speaking not merely of those expert in a particular branch of the law, as contrasted with a general practitioner, but also of those of long experience and great skill as contrasted with those practising in the same field of the law but being of a more ordinary calibre and having less experience. The essence of the contract of retainer, it may be said, is that the client is retaining the particular solicitor or firm in question, and he is therefore entitled to expect from that solicitor or firm a standard of care and skill commensurate with the skill and experience which that solicitor or firm has. The uniform standard of care postulated for the world at large in tort hardly seems appropriate when the duty is not one imposed by the law of tort but arises from a contractual obligation existing between the client and the particular solicitor or firm in question ...

This was an action by the plaintiff, Margaret, Duchess of Argyll, against the defendant, Mr. Oscar Albert Beuselinck, who was a solicitor, claiming damages for negligence on the ground that he had failed to give her the advice which he ought to have done in relation to her entering into a contract with literary agents for the publication of her life story, thereby involving her in liability to tax.

NEW LEGAL AID SYSTEM URGED AS START TO LAW REFORM

by MARY LELAND

The urgent need for a comprehensive scheme of free legal aid and advice in civil and criminal cases in Ireland was stressed by members of the Free Legal Advisory Bureau in Cork yesterday at a conference to introduce its annual report.

The bureau is operated by law students from UCC, who are now pressing for a meeting between the Minister for Justice and the three F.L.A. centres, in Cork, Galway and Dublin.

Introducing the report, which deals with the many areas of activity of the bureau in Cork, Mr. Finbarr Murphy, B.C.L., criticised the existing legal aid scheme in Ireland and he indicated other areas in the legal system in which reform is urgently needed, beginning with that of legal education itself.

Under the existing system legal aid in Ireland was available only for criminal cases, Mr. Murphy said, and only covered representation in the Courts where the defendant was judged to have insufficient means to afford independent representation, and where the Court thought it essential in the interests of justice because of the gravity of the charge or other exceptional circumstances.

"It is always essential in the interests of justice that a person be represented in Court," Mr. Murphy said. "We feel that the criteria under which the system is applied are restrictively interpreted by the Courts, and we would urge that these two provisos be dropped altogether. We consider it unjust that the granting of a Legal Aid District Court Certificate should be the final and unappealable decision of the District Court, and we also criticise the fact that under the Criminal Procedures Act of 1967 preliminary hearings are excluded from legal aid, except in cases of a charge of murder. As preliminary hearings are a critically important stage of a criminal procedure this restriction is unjust."

Because most people were unaware of the existence of the scheme, Mr. Murphy said, a person being arrested or charged should be told immediately that they could have free legal aid. He also urged the extension of the scheme to cover civil cases, and he pointed out that the retrictive nature of the present system was in fact hindering the process of law reform, particularly in those social areas where it was most needed.

Lack of information deplored

Dealing with the work carried out by the Cork bureau, Mr. Murphy said that they had found it impossible to obtain essential information from the Department of Justice. "It's like trying to get blood out of a stone," he said. "When we went to the Department repeated letters received no answers at all. When we went to the District Court in Cork for information on juvenile cases they were not prepared to help either, possibly because they were afraid their jobs might be placed on the line. We have not been able to get reliable figures for the District Court sessions when cases involving children come before the Distirct Justice. However, although information is not forthcoming from official sources, a rough estimate finds the number of children passing through the District Court in Cork to be between 350 and 500 a year. This can be broken down into about seven to ten new cases each week but we have not been able to discover how many of these were professionally represented."

Need for law reform

Discussing the need for law reform, Mr. Murphy said that such reform was hindered by the fact that the people who were affected by the faulty areas of the law were not in a position to go to a solicitor and as a result many solicitors lacked expert knowledge of these particular areas. He agreed that there was no doubt that the legal profession was reluctant to advocate law reform, although they were the people who knew the law. "Lawyers generally tend to administer the law as it exists," he said, "and the legal profession in Ireland is a very introverted one, with the people most likely to go into law being the sons and daughters of solicitors and barristers."

He foresaw a crisis in legal education if there was a sharp increase in the number of people wanting to be apprenticed to solicitors. Under the Irish system of education a solicitor could only have two apprentices at a time, and no-one could begin the course without being apprenticed. "The numbers taking law at college have in fact been increasing because of the education grants but a university degree does not make you a professional lawyer unless you also go either to the Kings Inns or to the Four Courts. It is a long and anachronistic system." He added that in many firms in Cork, however, the student had merely to pay the apprenticeship fee, ranging from £300 to £1,000—and need not attend the office for the five years of the apprenticeship. Some solicitors required no payment at all, but those who took high fees usually demanded attendance as well.

The Irish Times (3rd April 1973)

LIBRARY ACQUISITIONS TO 1st MAY, 1973

PART 1: ACQUISITIONS

Atkin (Lord): Encyclopaedia of Court Forms in Civil Proceedings—second edition.
Volume 5—Appeals in all Courts.
Volume 15—(Discontinuance, Discovery, Distress and District Registers)—1972.
Volume 18—(Ecclesiastical Law, Elections, Equitable Remedies and Evidence)—1972.
Volume 19—(Execution and Enforcement of Judgments and Orders)—1973.
Atiyah (P. S.): Introduction to Law of Contrast—second edition—1971.
Atkin: Court Forms—Volume 5—second edition—1973.
Ball (W.): Irish Legislative Systems, 19.
Belfast and Ulster Directory—1972.
Biom-Cooper (C. L.) and G. Drewry: Final Appeal Procedure Acts—1871.
Bowman (E. G.) and E. L. Tyler: Elements of Conveyancing 1972 (two copies).
Bradbury (M.): Law Relating to Business—1971.
Buckham (J.): Practice of the Court of Chancery in Ireland—1859.
Butterworth: Digest of Tax Cases—1968-1972.
Capellett (M.) and J. Perrillo: Civil Procedure in Italy—1965.
Cawtra (Bruce): Need to Notify Restrictive Agreements in EEC—1972.
Charlesworth (J.) and W. Cain: Company Law, tenth edition, 1972.
Chorley (Lord) and O. C. Giles: Shipping Law, sixth edition, 1970.
Cross (R.) and P. Asterley Jones: Introduction to Criminal Law, seventh edition, 1972.
Current Law Case Citator—1947-1971.
Current Law Yearbook—1971.
De Voil: Value Added Tax, 1972.
Emden and Gill: Building Contracts, Supplement to seventh edition, 1972.
Encyclopaedia of Forms and Precedents
Vol. 20 (Service Contracts and Settlements), 1971.
Vol. 21 (Shipping Documents, Shops, Solicitors, Stamp Duties and Stock Exchange), 1972.
Vol. 22 (Site Development, Superannuation Schemes, Theatres, Trade MUARKS, Trade Unions, Trusts and Town and Country Planning), 1973.
Vol. 23 (Water, Gas and Electricity—Waters and Watercourses—Wills), 1972.
Service Volume—Additional Precedents from all Volumes.
Vol. 24 (General Index), 1973.
English and Empire Digest—*green band re-issue*
Vol. 12—Contract—1973.
Vol. 27 (two volumes)—Husband and Wife—1972.
Vol. 28 (1)—Income Tax—1972.
Vol. 28 (2)—Industrial Societies, Infants and Children, —and Injunctions—1972.
English and Empire Digest Supplement 1972.
Fridman (J.): Modern Tort Cases, 1971.
Glover, (W.): Registration of Title, 1933.
Hogg (M.): Liability against the Crown, 1972.
Hoopes (J.): The Rule against Perpetuities, 1933.
Inc. Council of Law Reporting for Ireland: Digest of the Irish Cases from 1959 to 1970, ed. by E. Ryan, 1973 (two copies).
Ireland: Committee of Inquiry on Motor Insurance Report, 1973.
Irish Catholic Directory—1972.
International Law List—1973.
James (S.) : General Princples of the Law of Torts—second edition, 1964.
Ivamy (E. R. Hardy): Fire and Motor Insurance—second edition, 1973.
Kerr: Forensic Medicine.
Kerr (W.): The Law and Practice as to Receivers—fourteenth edition, 1972.
Knight (M.): Criminal Appeals—1970.
Kahn-Freund (O.), Claudine Levy and Bernard Rudden: A Source Book of French Law—System—Methods—Outlines of Contract, 1973.
The Law List—1972.
McGregor (J.): Law of Damages—thirteenth edition, 1973.
MacLeod (J.): Law of Sale and Hire Purchase, 1972.
Maudsley (J.) and W. Burn: Trusts and Trustees—Cases and Materials, 1972.
Megarry (R. E.): The Rent Acts—tenth edition, three volumes, 1967.
Melville (J.): Precedents on Intellectual Property—second edition, 1972.
Millner (J.): Negligence in Modern Law, 1967.
Moloney (H.) and J. B. Lee: Law relating to Compensation for Criminal Injuries, 1912.
Napley (D.): The Technique of Persuasion, 1970.
North (W.): Occupiers Liability, 1971.
Oberdorfer (W.), J. Gleiss and V. Hirsch: Common Market Cartel Law, 1971.
Peney-Davey (D.): Student's Casebook on Family Law, 1967.
Phipson (E.): "Manual of the Law of Evidence—tenth edition, 1972.
Roberton (A. H.): Human Rights in the World, 1972.
Ryan (E.): Notes of Irish Cases (1959-1968), 1970.
Sergeant (W.): The Law of Stamp Duties—sixth edition, 1972.
Sandes (R.): Criminal Law and Procedure in Eire, 1951.
Scottish Law Directory, 1973.
Scott (J.): Casebook on Torts, 1973.
Short (F. H.) and F. Mellor: Practice of the Crown Side, 1908.
Shuttleworth (W.): Check Lists for Solicitors, 1973.
Stubbs Directory—1971-1972.
Stubbs: Buyers National Guide, 1973.
Sweet and Maxwell: Statute Law—The Key to Clarity, 1973.
Thom: Dublin Street Directory, 1972.
Wall (E. H.): The European Communities Act 1972, 1973.
Wilcox (M. W.): The Decision to Prosecute, 1972.
Wilkinson (H. W.): Personal Property, 1971 (three copies).
Williams (J.): The Judicial Interpretation of Section 4 of the Statute of Frauds, 1932.
Whitaker's Almanack, 1972.

PART 2: DONATIONS

Notable British Trials Series
William Burke and William Hare (1828)—ed. by W. Roughead—third edition, 1948.

Frederick Bywaters and Edith Thompson (1922)—ed. by Filson Young—second edition, 1951.
Timothy J. Evans and John Halliday Christie (1950)—ed. by F. Tennyson Jesse—first edition, 1957.
John George Haigh (1949)—ed. by Macdonald Critchley—first edition, 1951 (1955).
Neville George Clevely Heath (1946)—ed. by Macdonald Critchley—first edition, 1951 (1955).
William Palmer (1856—ed. by E. R. Watson—third edition, 1952.
Oscar Slater (1909)—ed. by William Roughead—fourth edition, 1950.
George Joseph Smith (1915)—ed. by Eric R. Watson, 1922 (1949).
Madeleine Smith (1857)—ed. by F. Tennyson Jesse—second edition, 1927 (1949).
Oscar Wilde (1895)—ed. by H. Montgomery Hyde—first edition, 1948 (1960).
Grundy (W.): Tax Havens (1970).
Stubbs: Buyers National Guide (1973).
Hill (D. J.): Freight Forwarders (1972).
Woods (James): District Court Handbook (1973).

PART 3: EXCHANGES
Calendars of following Institutions.
University of Manchester, 1972-73.
Dublin University (Trinity College), 1972-73.
Edinburgh University, 1972-73.
Queen's University, Belfast, 1972-73.
Irish Law Directory and Diary, 1973.

CORPORATE BODIES' SOLICITORS' ASSOCIATION COMMITTEE FOR 1973

At the annual general meeting of the above association held on the 14th March 1973 the following officers and committee were elected :

Chairman, Roderick B. McConnell.
Hon. Secretary : Bernadette O'Brien.
Hon. Treasurer, Maurice J. Kenny.
Committee : William Conway, Charles Hyland, Brendan A. McGrath, and E. Rory O'Connor.

THE CIRCUIT COURT

TRINITY SITTINGS 1973—South-Eastern Circuit, County Kilkenny

Solicitors and others concerned are requested to take notice that the Trinity Sittings of the Circuit Court at Kilkenny, advertised to commence on 12th June 1973 have been advanced one week, by order of the President of the Circuit Court.

The Trinity Sittings will now open on Tuesday, 5th June 1973. Solicitors are advised to note this change on the annual sittings list.

MINORITY SHAREHOLDERS

S. 205 of the Companies Act 1963 gives minority shareholders a right to apply to the High Court if the affairs of the company are being conducted or the powers of the directors are being exercised oppressively or in disregard of their interests as members of the company. There appears to have been little or no litigation on this section. Members who have had personal experience of circumstances involving serious use of this section are asked to let John Temple Lang of 51 Fitzwilliam Square, Dublin, know if in their opinion this is due to the cost of litigation or the uncertainty of the outcome in such circumstances, or to the fact that the wording of the section facilitated a satisfactory settlement.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

An application has been received from the registered owner mentioned in the schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original certificate is in existence and is in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Dated this 30th day of April 1973.

D. L. McALLISTER,
Registrar of Titles

Cenreral Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: William Tennant-Jackson; Folio No.: 195; Lands: Knockboy; County: Carlow; Area: 35a. 1r. 19p.

(2) Registered Owner: Joseph Rooney; Folio No.: 5853L; Lands. The Leasehold Interest in the property situated in part of the townland of Commons in the barony of Upperecross; County: Dublin; Area: 1r. 13p.

(3) Registered Onwer: John Doyle; Folio No.: 1116; Lands: Ballynalour; County: Carlow; Area: 51a. 3r. 37p.; Lands: Bahana; Area: 3a. 3r. 0p.

(4) Registered Owner: James Cullen; Folio No.: 11059; Lands: Forestalstown; County: Kilkenny; Area (1): 52a. 0r. 20p; Area (2): 1/12th part of 2a. 1r. 0p.

(5) Registered Owner: Johanna Kennedy; Folio No. 26003; Lands: Shanbally; Area: 29a. 1r. 10p.; Lands: Newtown; Area: 9a. 1r. 19p.; Lands: Newtown; Area: 1/20th part of 1a. 3r. 10p.; County: Limerick.

(6) Registered Owner: The Condensed Milk Company of Ireland (1928) Ltd.; Folio No.: 682; Lands: Gormanstown; County: Limerick; Area: 22½p.

(7) Registered Owner: James Tully; Folio No.: (1) 870, Co. Cavan; Lands 1 (a): Killybandrick; Area 1 (a): 4a. 2r. 0p.; Lands 1 (b): Drumbrawn; Area: 1 (b): 0a. 3r.; Folio No.: (2) 871, Co. Cavan; Lands 2 (a): Killybandrick; Area 2 (a): 13a. 3r. 32p.; Lands 2 (b): Drumbrawn; Area 2 (b): 0a. 1r. 23p.; County Cavan.

(8) Registered Owner: Margaret Carroll; Folio No.: 11921, Co. Cavan; Lands: Derryhum; Area: 15a. 3r. 32p.; County: Cavan.

LOST WILL

Martha McMahon, deceased, late of 3 Sandymount Avenue, Dublin 4. Will any person having any knowledge of a will of the above-mentioned deceased who died on the 1st January 1973 please communicate with Messrs Cafferky and O'Grady, Solicitors, 140 St. Stephen's Green, Dublin 2.

Re: John Regan late of 9 Cabra Road, Phibsboro, Dublin 7. Bachelor, deceased. Any information concerning any will made by deceased is sought by the undersigned: Thomas P. Burke, Carrick-on-Shannon.

FOR SALE

The following Law Books are for sale in good condition:
Ringwood—Law of Torts, 5th edition, 1924.
Williams—Law of Real Property, 21st edition, 1910.
Megarry—Manual of Real Property, 3rd edition, 1962.
Crossley-Vaines—Law of Personal Property, 4th edition, 1967.
Philip James—Law of Torts, 2nd edition, 1964.
Apply to C. Gavan Duffy, Law Society.

NOTICE OF PARTNERSHIP

Richard J. Branigan, formerly practising as L. F. Branigan & Sons, wishes to announce that **Mr. John P. Feran,** Solicitor, Termonfeckin, Co. Louth, has joined him in partnership and that the practice will now be carried on under the style of **Branigan, Feran & Co.,** at 45 Laurence Street, Drogheda, Co. Louth. Dated this 1st day of May 1973.

OBITUARY

Patrick J. Loftus, Solicitor, died on 30th March 1973. Mr. Loftus was admitted a solicitor in Michaelmas Term 1926, and practised under the style of Messrs Bourke, Carrig and Loftus in Ballina, Co. Mayo, until he was appointed a District Justice.

Patrick J. Mulligan died on 10th April 1973. Mr. Mulligan was admitted in Michaelmas Term, 1918, and had practised in Ballina, Co. Mayo. The most famous case with which he was associated was a case of restraint in trade in a solicitor's practice in 1925 which he endeavoured unsuccessfully to enforce in the Supreme Court; however, Chief Justice Kennedy castigated the other solicitor in the case.

Thomas Reilly died on 2nd April 1973. Mr. Reilly was admitted in Michaelmas Term, 1942, and practised under the style of James Reilly & Son, at 4 Brighton Place, Clonmel, Co. Tipperary.

Directory of Surveyors, Auctioneers, Valuers, Land and Estate Agents

CORK

LISNEY & SON, Estate Agents, Auctioneers, Valuers and Surveyors, 35 Grand Parade, Cork. Telephone: (021) 25079.

DUBLIN

ADAM, JAMES & SONS, Auctioneers, Valuation Surveyors, Estate Agents. Also Fine Art Sales, Valuations. 26 St. Stephen's Green, Dublin 2. Telephone: 638811. (Estd. 1877).

ARRAN AUCTIONEERS (AA) LTD., Auctioneers - Valuers - Estate Agents. Telephone: 66543/62866, 35 Fitzwilliam Place, Dublin 2.

BRIERLEY & CO. (W. John M. Brierley, A.R.I.C.S., M.I.A.V.I., Philip L. Chambers, A.R.I.C.S.), Auctioneers, Surveyors, Valuers and Estate Agents, 18 Dawson Street, Dublin 2. Telephone: 60990.

COSTELLO & FITZSIMONS LTD., Auctioneers and Valuers. Specialists in sale of businesses as going concerns. Also Estate Agents for Investment Properties and Flats. 58 Haddington Road, Dublin 4. Telephone: 61861/694971.

DILLON ASSOCIATES LTD., Estate Agents, Valuers, Auctioneers, 21 Northumberland Road, Ballsbridge, Dublin 4. Telephone 677571/67048.

FINNEGAN MENTON, Estate Agents, Auctioneers, Valuers and Surveyors, 17 Merrion Row, Dublin 2. Telephone 63914.

GILBERT & SON LIMITED, Auctioneers, Estate Agents, Valuers, M.I.A.V.I., M.I.R.E.F., 25 Lower Baggot Street, Dublin 2. Telephone 63557/63558.

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JACKSON-STOPS & McCABE, Surveyors, Auctioneers, Estate Agents and Valuers. Estate House, 8 Dawson Street, Dublin 2. Telephone: 771177.

JONES, LANG, WOOTTON, Chartered Surveyors, 60/63 Dawson Street, Dublin 2. Telephone: 771501. Telex: 4126.

LISNEY & SON, Estate Agents, Auctioneers, Valuers and Surveyors, 23 St. Stephen's Green, Dublin 2, and 35 Grand Parade, Cork, and 9 Eyre Square, Galway. Telephone: Dublin 64471.

MORGAN SCALES & CO. (Desmond G. Scales F.I.A.V.I.), Auctioneers, Valuers, Estate Agents and Managers. 24 South Frederick Street, Dublin 2. Telephone: 60701 and Rathmines 973870.

O'CONNELL & LYONS LTD., Auctioneers, Valuers and Estate Agents, 455 South Circular Road, Rialto, Dublin 2. Telephone 755694.

TOWN AND COUNTRY AUCTIONS LTD., M.I.A.V.I., M.I.R.E.F., Auctioneers, Estate Agents and Valuers. 2 Clare Street, Dublin 2. Telephone 60820/60791.

GALWAY

LISNEY & SON, Estate Agents, Auctioneers, Valuers and Surveyors, 9 Eyre Square, Galway. Telephone: (091) 3107.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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Contents

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IMPORTANT NOTICE TO APPRENTICES AND INTENDING APPRENTICES

Limitation of places in Law Faculty University College Dublin

The Council have been informed that owing to the number of students seeking admission to the Law Faculty in University College, Dublin, it is necessary to impose a quota on admissions. It is a condition precedent to entry for the Society's professional examinations that the candidate should have attended the law faculty of an Irish university either as a degree or a non-degree student. These lectures are in the law of real property, contract and tort for the first law examination and equity for the second law examination. Apprentices and intending apprentices should note the following matters:

(a) A student will not be admitted to the first Irish or the Preliminary Examination unless he produces a petition and memorial signed by himself and by the intended master who is qualified to accept him as an apprentice.

(b) Students are advised to ensure that they will be admitted to a place in the Law Faculty of an Irish University before registering indentures of apprenticeship.

(c) An apprentice will not be permitted to attend the Society's First Law Examination until he has produced a certificate of credit from a University for attendance at lectures in the Law of Property, the Law of Contract and the Law of Tort and will not be admitted to the Second Law Examination until he has produced a certificate of credit for attendance at lectures on Equity.

The quota for degree entry to the Faculty of Law at U.C.D. is approximately 140. In addition to this the College authorities are prepared to allot a quota of 30 places for non-degree entrants for solicitors' apprentices. Fifteen of the thirty places will be filled by the College from students who qualify from the Matriculation or Leaving Certificate in order of merit. The remaining fifteen places will be filled by nomination from the Law Society.

The fifteen Law Society places will be filled in the following order. First from apprentices already serving under indentures by date of registration. Next from applicants for service under indentures in the order of lodgment of the petition and memorial provided that the candidates have passed the first Irish and Preliminary Examinations or obtained exemption from the Preliminary Examination.

The Society has not been informed of any limitation or quota for entry into the Law Faculties at other colleges.

Any apprentice at present serving under indentures who has not already obtained a place in a university law faculty as a degree or non-degree student and who wishes to be included in the Law Society's nomination list should write at once to the Society giving the date and other particulars of his indentures of apprenticeship.

An apprentice who registers indentures without first reserving a place in a university law faculty may later be unavoidably postponed from entry for the Society's examinations in law until he has obtained such a place.

NEW SCOTS COURTS SYSTEM

A new system of "Justices' Courts", to replace JP and Burgh Courts after the reorganisation of local government in May, 1975, is proposed for Scotland in a Government White Paper.

The Government proposes to take responsibility for administering the first level of summary justice out of the hands of local authorities. In Burgh Courts at present cases are heard by one lay magistrate, who is a senior member of the town council.

The new courts will be an integral part of the system of Crown Courts, as a junior partner to the Sheriff Court and the High Court. They will, however, retain the Scottish tradition of laymen taking part in the process of criminal justice.

Each will consist of a bench of three Lay Justices, appointed by the Secretary of State for Scotland on behalf of the Queen, and serving without payment. The Justices will be appointed for each new local authority district in much the same way as members of children's panels. They will be selected from all sections of the community, and, the White Paper emphasises, political party membership will be disregarded.

The Justices' Court will have a wider jurisdiction than the existing JP and Burgh Courts. It will be able to try road traffic offences such as speeding and careless driving, and a wider range of common law offences. The maximum power of fine will normally be £100, and the maximum custodial sentence 60 days.

The more serious road traffic offences will continue to be heard by the Sheriff, and, although able to endorse driving licences, the Justices' Court will not have power to disqualify from driving.

In the larger centres of population the Government intends to appoint Stipendiary Magistrates, paid by the Secretary of State, to help to cope with the heavier burden of work in Justices' Courts.

(*The Guardian*, 30/3/1973)

EDITORIAL

The patience of a Judge

The following leading article from the *Guardian* on 11 May 1973 is published without comment.

The need to re-try the Barn Restaurant murder case is, as Mr. Justice Melford Stevenson has pointed out, a public misfortune—and an expensive one; but the case also draws attention to a more general public issue which ought to be brought into the open. To raise the issue is not to cast any reflection on the conduct of this particular trial. No-one with experience of the criminal court, however, can doubt that some judges have earned a reputation for being prosecution-minded, for interventions and comments which can harry the defence. In one or two extreme cases the Appeal Court has set aside verdicts on the ground of excessive intervention from the bench, but these are rare exceptions. More generally the question is one of court-room atmosphere—and it is by no means clear that an impatient judge actually assists the prosecution; a clever defence counsel can secure the sympathy of the jury against such interventions and so bias their judgment in favour of the defence. What is clear is that a judge who fails to maintain judicial detachment does not help to ensure that justice is done.

If a problem so well known to lawyers is so little debated, it is because it is not easy to suggest how the situation can be improved without in some way derogating from the treasured principle of judicial independence; but surely there is no need for the authorities to be entirely helpless. Judges, after all, recognise that their different temperaments could lead to a dangerous inconsistency in sentencing policy, and they regularly meet to discuss this question. A similar attempt to produce more uniform standards of conduct in court could produce a noticeable improvement, for the present feeling of judges that their conduct is immune from comment encourages the indulgence of temperament. Only three weeks ago the Lord Chancellor read a wise lecture to magistrates on the judicial temperament—which means a deliberate attempt to suppress one's own inclinations; the Lord Chief Justice might give a similar lead to judges.

Secondly, the authorities should recognise the human strain which is put on those judges who hear only criminal cases. To ask a man to maintain an open-minded impartiality for year after year of listening to the details of mean and hurtful crimes is asking him to be rather more than human; it is nearly always after long service that judges acquire a reputation for impatience. It might be wise to limit the period over which any judge is exposed to an unbroken succession of criminal trials; a spell hearing the tangled civil disputes which are brought to court, where there is no temptation to feel driven by the need to defend society against the wrong-doer, might relieve the strain.

If such steps did not relieve the situation, then attention should be given to the more radical demands of reforming lawyers—for a complaints procedure apart from the courts of appeal, and for some power to secure the early retirement of judges whose conduct is too generally criticised. But to urge such steps before the problem has even been officially recognised is premature; we should first ask that the judiciary should make a greater effort to regulate its own conduct.

THE SOCIETY

Ordinary General Meeting

An Ordinary General Meeting was held at the Great Southern Hotel Killarney on Saturday, 12 May 1973. The President took the chair.

By permission of the meeting the notice convening the meeting and the minutes of the last general meeting of the Society were taken as read.

Mr. Donal E. Browne addressing the meeting on behalf of Mr. Gerald Baily the President of the Kerry Law Society who was unavoidably absent welcomed the Society to Killarney.

On the proposal of the President seconded by Mr. Gerard M. Doyle the following members of the Society were appointed as scrutineers of the ballot for the election of the Council for the year 1973/'74: R. J. Branigan, T. Jackson, B. P. McCormack, A. J. McDonald, R. Tierney.

The President addressing the meeting said :

Ladies and Gentlemen,

It falls to my lot as President for this year to address you on the occasion of this biennial meeting at Killarney. It has been customary in the past for the President to comment on current events affecting the profession and its clients. I propose to depart a little from this practice during this address and to make some comments on a matter that must affect us all, practitioners and clients alike, namely the future of our profession. Where do we stand? Where are we going? What is likely to be the business of the profession in 10, 20 or

30 years ahead? What will then be our function in the community?

I am exercising my Presidential privilege of expressing my own opinions. Others may disagree with some of them. I am conscious of the dangers of prophecy but one of the compensations for attempting to peer into the crystal ball is that the prophet himself in this instance may have passed on before the truth or falsity of his predictions have come to be realised. It was remarked by one of my predecessors that if an attorney of the year 1875 could return to the scene of his labours today he would recognise little change. The typewriter perhaps has replaced the old fashioned scrivener; the telephone, to some an abominable and time-wasting distraction, has replaced the office messenger or handwritten and hand-delivered messages; dictaphones are now reducing the demand for shorthand typists, and the profession has responded, tardily perhaps, to the demand for mechanisation, but nevertheless the speed of change has become more perceptible within the past ten years and may accelerate in the future. The outside world is changing and we must change with it, not merely in our methods of work but in our whole outlook and philosophical approach to change. Otherwise, we shall fall behind other professions and avocations which are more perceptive to the needs of the public. I have no doubt that our profession will not fail in that respect and that we can and will adapt ourselves to the demands of the future.

Legal Education

The starting point in any consideration of our future needs must be our system of legal education and closely allied to this problem is the number entering the profession and the question of adequate or excessive manpower. Traditionally, since the early thirties the number of practising Solicitors has been approximately 1,300 in the Republic and the intake of apprentices has varied from 30 to 40 per annum. During the past ten or twelve years there has been an increased demand for qualified lawyers either as assistants or partners, particularly in country districts where the demand has been unsatisfied. Higher salaries and possibly more attractions for the young men or woman have drawn them more and more to the cities—particularly Dublin, with the result that country offices have, to some extent, been starved of manpower. Allied to this, the disappearance of the male law clerk and his replacement by female employees has added to the difficulty of delegation of the more routine tasks because female workers, due to marriage and other factors, seldom acquire the expertise and experience of the permanent male managing clerk. This has increased the demand for the qualified assistant solicitor and the demand for mechanisation so that routine tasks may be completed more speedily. The number of apprentices entering into Indentures has increased fourfold during the past ten years so that the number of practitioners now standing at about 1,450 may well be increased to 1,700 or more during the next 5 years. Can the profession absorb that number or is it likely that there will be a surplus of manpower in the profession—an unused capacity with all the undesirable consequences following from it? At the moment it is possible only to state the problem and to point out that it has complex components following from our entry into the EEC, with the consequent freedom of interchange between lawyers of the nine member countries, the advance or recession of commercial business on which our profession depends and factors affecting particular localities such as mobility of the population, which is daily causing a shift in the number of residents from the more remote rural areas to Dublin, Cork and the larger towns. It is likely that the demand for legal services in the more remote towns will fall off with a consequent increase of demand in Cities particularly Dublin and the areas of industrial development.

Knowledge of Community Law essential

We must be prepared to adapt our system of legal education to the needs of the future, as we enter upon the vast and partly unexplored field of the changes required by our entry into the European Economic Community. The lawyer of the future, particularly the solicitor who is consulted at the outset of a case, must be equipped with sufficient knowledge of the Treaty of Rome, and the numerous directives and regulations flowing from it, to detect the existence of an international problem and if he cannot solve it himself to consult an expert. Here, our present system of education is inadequate and must be remedied without delay. We have concentrated in the past on the familiar fields of the Common Law, Property, Contract and Tort, Equity and the more specialised fields of Company and Tax-law, Conveyancing, succession law and the other subjects taught in our professional law school in the Society. A university degree is still optional and the student who does not take a degree may be admitted as a Solicitor completely innocent of Constitutioned Law, International Law, public or private, or Comparative Law. As you know the Society has had before the Department of Justice since 1969 proposals for a complete reform of the system of legal education which would enable the Society itself to prescribe the system by statutory regulation with judicial concurrence from time to time and to make the necessary changes to meet altered conditions without the necessity of new legislation each time. A more flexible system is needed. If the Society could obtain these powers, regulations would be made providing for a university degree, probably in law, before entering into articles of apprenticeship, followed by an intensive period of training and examinations in the professional law school. The third stage before admission would be a wholetime paid period of articles in a solicitor's office leading to admission, or, alternatively admission to the roll with a limited practising certificate under which service as an assistant solicitor for a prescribed period would be necessary before admission to full practice. These proposals, as I have indicated, were submitted to the Department of Justice in 1969. They had already been submitted to the Commission of Higher Education as a memorandum from the Council in 1961. It is interesting to note that our proposals substantially anticipated the Ormrod Report published in England a few years ago and depressing to record that after a lapse of 12 years they have made little or no progress towards the statute book.

Wider Legal Curriculum in Universities

It would be an essential part of any scheme of legal education in the Universities that the Law of the EEC, Private International Law, and Comparative Law should be included in the curriculum. This would involve changes in the syllabus, and possibly the elimination of some less important subjects but Irish Constitutional Law must be retained. This is a matter for

discussion between the University authorities and the Society.

It has always seemed to me that our syllabus in the Society's Law School omits one important subject—namely Business Methods and Office Organisation. A Solicitor's office can no longer be run on Dickensian principles of filing, accounting and recording and dispatch of business. We must be as up-to-date as other professions. Time-costing and other modern methods must be adopted in large and small offices. The necessary knowledge and discipline must be imparted at student level so that practitioners of the future, whether starting their own offices or entering established firms, will have a complete grasp of the business organisation which alone can enable the practitioner to operate profitably and provide a good service for clients.

Future Organisation of the Profession

How will the profession be organised in the future? This brings up the twin topics of amalgamation of offices and the often-canvassed question of fusion of the two branches. We are already witnessing the growing tendency of amalgamations of offices in the cities particularly Dublin, Cork and Limerick. It has the advantage of division of labour, and specialisation which enables the partners to obtain expertise in particular branches of practice and thereby increase efficiency and speed of work. The busy conveyancer is no longer obliged to interrupt his work to respond to the urgent call of a client to defend him on a running-down charge in a local District Court. In the beginning specialisation can be divided broadly into contentions and non-contentious business, but as it proceeds and the size of the office justifies it, we may expect further specialisation in Conveyancing, Probate, Company Law, Tax Law, Planning Law and contentious work with an ever-increasing facility and expertise in these departments. At first, these developments will be confined to the cities and some of the larger towns. There will still be a demand for the single general practitioner to serve the rural population. But even here there is room for a degree of rationalisation. Assuming an equal level of competence and compatibility, a partnership of two would in my opinion operate more successfully than a single practioner. Problems of sickness and annual leave can be more easily dealt with, avoiding interruption of work. A town with nine individual practitioners would, in my opinon, receive a better service from 3 or 4 offices organised in groups of three.

The Problem of Fusion

What of fusion of the two branches? I think the arguments about this problem commenced about a century ago. We know that the last Minister for Justice frequently spoke in favour of fusion and his statements may have reflected the thinking of his Department. A step towards it was taken by Section 17 of the Courts Act 1971 which gave a right of audience to solicitors in all Courts. There are arguments pro and con. The protagonists say that it is more efficient to have one lawyer operating a case from beginning to end with the aid of assistants if required. There might be an economy of time and work in the abandonment of the present briefing system because the solicitor, advocate, attorney, call him what you will, would carry the facts in his head, or record them on files for use in Court. There might be a saving in advocates' fees and a better distribution of work amongst advocates. At present 80 per cent of litigation is probably handled by 10 to 20 per cent of the Bar. Cases might be settled more easily. It is also said that the system works on the Continent, in the U.S.A. and in parts of Australia. As against this, it is said that no man can be a Jack-of-all-Trades, and that even under a fused system there would still be need for the office practitioner gathering and assembling the facts, and the lawyer or advocate doing legal research and presenting the facts and legal arguments in Court. How would the interests of the poorer client be affected? The best legal talent would undoubtedly gravitate to the firms serving wealthy corporations and indeed the State, while the poor man might have to make do as best he could. It is pointed out that under the present system the poor litigant with a reasonable case may get the services of the best Counsel. The country solicitor might run into difficulties under a fused system. He could operate successfully only if every office, or at least every town, had a fully stocked law library. The Bar Library at present serves this need for counsel throughout the country on the various Circuits. Few solicitors in general practice can afford to spend time on legal research without letting their office work get into arrear. They tend more and more to become men of business and administrators. To my mind, one of the strongest arguments against fusion is the need for a fully independent Bar with freedom from State control. Under the present system, the Attorney-General who is responsible for all State prosecutions is answerable to opinion of the Bar Council and his colleagues in the Law Library of which he is a member. Any deviation from the strict rules of fairness in the conduct of prosecutions would expose him to the powerful influences of his colleagues at the Bar. The ultimate result of a fused system would in my opinion be the appointment of paid full-time public prosecutors answerable not to the profession but to their employer, the State. There would be no powerful check on the conduct of prosecutions by part-time barristers from the Bar Library paid by ordinary fees on briefs. This, I think, could ultimately lead to an undesirable increase in the power of the State to direct advocates as to how prosecutions should be conducted, a diminution of the independence of advocates and of the rights of the accused.

We stand today at a watershed for the profession, Lawyers are traditionally conservative, and slow or indifferent to change. The solicitor of 1870, engaged in the business of chancery suits, family settlements in tail, land law litigation, and the complexity of pleadings in litigation, did not foresee the advent of the internal combustion engine. Conveyancing was then an involved and lengthy operation which was simplified by the system of Registration of Title. Who knows the future of personal injury litigation? Will it continue to occupy the Courts or will it become part of administrative machinery as in the case of the former Workmen's Compensation Code? Will Conveyancing continue to make its present major contribution to Solicitors' earnings, or will it be overtaken by a system of computerised titles? One of the greatest mistakes of the human mind is to assume that because certain things have seemed permanent in the past they will continue so in the future. Just as the internal combustion engine with its attendant litigation replaced the horse-drawn carriage, and registered titles replaced complex conveyancing under the old system, so conditions may and indeed must change with time. The profession must be prepared for such changes.

Change necessary

Do these predictions sound too depressing? Certainly not. With the growth of affluence and better distribution of wealth, there is a growing need for professional legal services and advice. Legal expertise in the field of Company Law, take-overs and mergers is ever in greater demand in urban centres. Throughout the country, solicitors must learn to familiarise themselves with the problems on an ever-growing scale in which the public, their clients, need advice and assistance, problems of Redundancy, Labour Law, Family Law, Private International Law and the problems arising from membership of the E.E.C., commercial relations of all kinds and the difficult field of Tax-Law with its ever-changing facets. Above all, solicitors must learn to cost the value of their own time and charge just as other professions, medicine, dentistry and accountancy do, at rates which will cover the cost of operating their offices, paying reasonable salaries to staff, and provide a reasonable profit for themselves to include interest on capital and the reward for risks undertaken in practice. We have been sheltered so long by our conveyancing practice that we have paid little or no attention to the need to look at changes which the future may bring.

Solicitors as men of business

With the growth of large corporations, an increasing number of solicitors may be absorbed in whole-time law departments of commercial undertakings employing highly skilled technical legal staff as the banks already do. This has been a marked development in England, but less noticeable here because of the comparatively undeveloped state of our industrial sector in the past. This situation however will probably change with the influx of foreign capital under E.E.C. conditions.

Solicitors in the past were men of business as well as lawyers. Our Scottish friends have never lost this tradition and engage actively in house and business property negotiations and sales. The entire business of the sale and the title work is conducted in the solicitors' office or with the aid of a property centre set up, staffed and operated under the supervision of the local Bar Association. Solicitors in the Republic are entitled to act as house and Estate Agents without any licence. Likewise, there is nothing to prohibit a solicitor from applying for and obtaining an Auctioneer's Licence except the Society's Professional Practice Regulations against advertising which were made by the Society and could be changed in like manner. We know that in many rural areas solicitors do in fact carry out very much of the work connected with an auction of property for which they receive no additional fees. It appears to me that the profession in rural areas could provide a first class comprehensive service in negotiating, selling and conveyancing work combined, at rates which would be economic for themselves and satisfactory for the public. I am not saying that these developments will occur overnight but they could form part of the picture of the future development of the profession in conditions where pure title work would assume a decreasing importance.

The planning legislation is another important field to which we have paid too little attention. There is a need for greater expertise and study here, and indeed a gap in our educational system which must certainly be filled when we get the powers which we are seeking from the Government.

Amalgamation with other professions

What of amalgamation with other professions? Some may object to this type of professional supermarket as inimical to the historic traditions of our profession and the personal relationship and confidential privilege which exists between solicitor and client. Under our present legislation, we may not share our earnings with what the Act defines as unqualified persons, meaning thereby any person not holding a practising certificate. Even if it were desired, the position could not be changed without legislation. I do not express any opinion on this rather thorny subject except to say that we are too closely tied by statute and that this and many other matters in the Solicitors Acts should be the subject of enabling powers authorising the Society to deal with them by regulation. The Institute of Chartered Accountants and other professions can deal with such matters autonomously by regulation or bye-law, whereas our profession must approach the Government for legislation which experience shows involves a time-lag of 12 to 15 years. Events will not wait so long.

Professional Indemnity Insurance

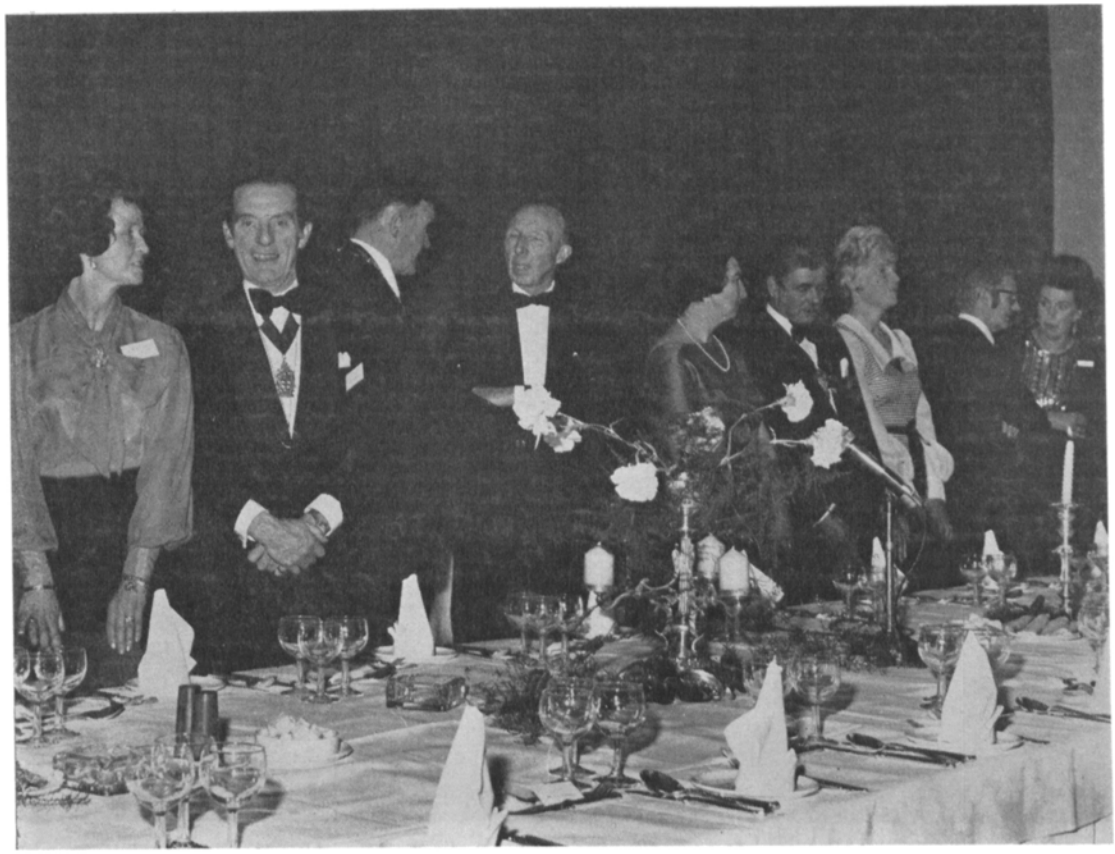
The same observation applies to the problems in practising in corporate form either with limited or unlimited liability. We must never abandon our Accounts Regulations nor seek to limit our liability for moneys which we hold for clients. But, is there a case for limited liability for professional negligence? I think not, because it would in the end be detrimental to our professional standing. The only remedy here is an adequate system of professional indemnity insurance which is becoming continually more costly. The Society has established a group scheme of which about half the offices in the country are members. The day may come when there will be a demand for compulsory insurance against liability for professional negligence similar to the existing system for motorists. The suggestion has been made that Solicitors should be allowed to practise as companies with unlimited liability motivated partly, I think, by possible tax advantages for the larger or more prosperous offices. The view of the Council has been that this would require legislation which might be opposed by the Revenue Commissioners but here again I cannot see the justice of shackling our profession by Statute in a way which applies to no other. It should be a matter for ourselves to prescribe by regulations.

Ladies and gentlemen, I have posed a number of questions concerning the future of our profession without, in most cases, suggesting the solutions. They are merely guides or sign-posts as to the directions on which the profession should be looking. Much depends on associations such as the Kerry Law Society which, to use a hackneyed phrase, is at the grass-roots of the profession. Suggestions from Bar Associations are welcome to the Council, and all the more welcome if aicompanied by some practical indications of the best method of implementing them. I assure you that they will receive the most careful attention. I could continue on this theme but I will resist the temptation leaving the topics and any others which may occur to you open to discussion.

A discussion followed in which Messrs W. B. Allen, Leslie Kearon, T. J. O'Donoghue and David Twomey participated.

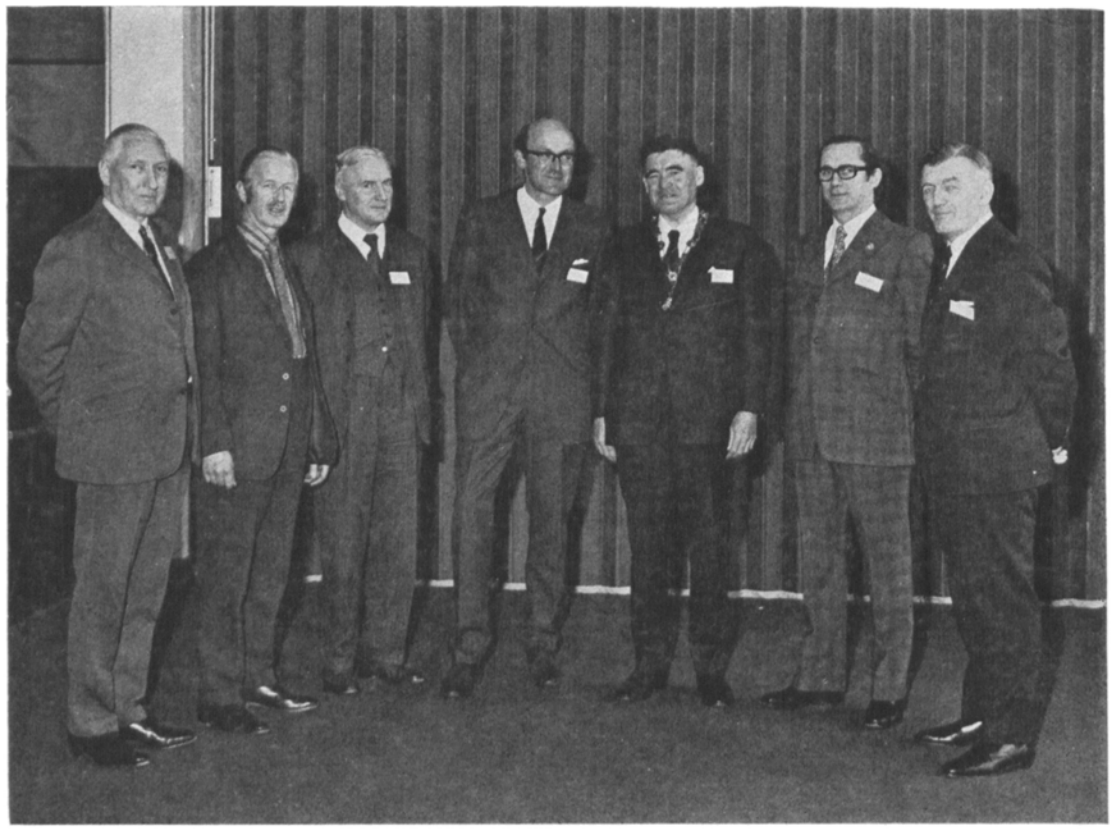
The President in reply dealt with the various points raised.

As there was no further business the President declared the meeting closed.

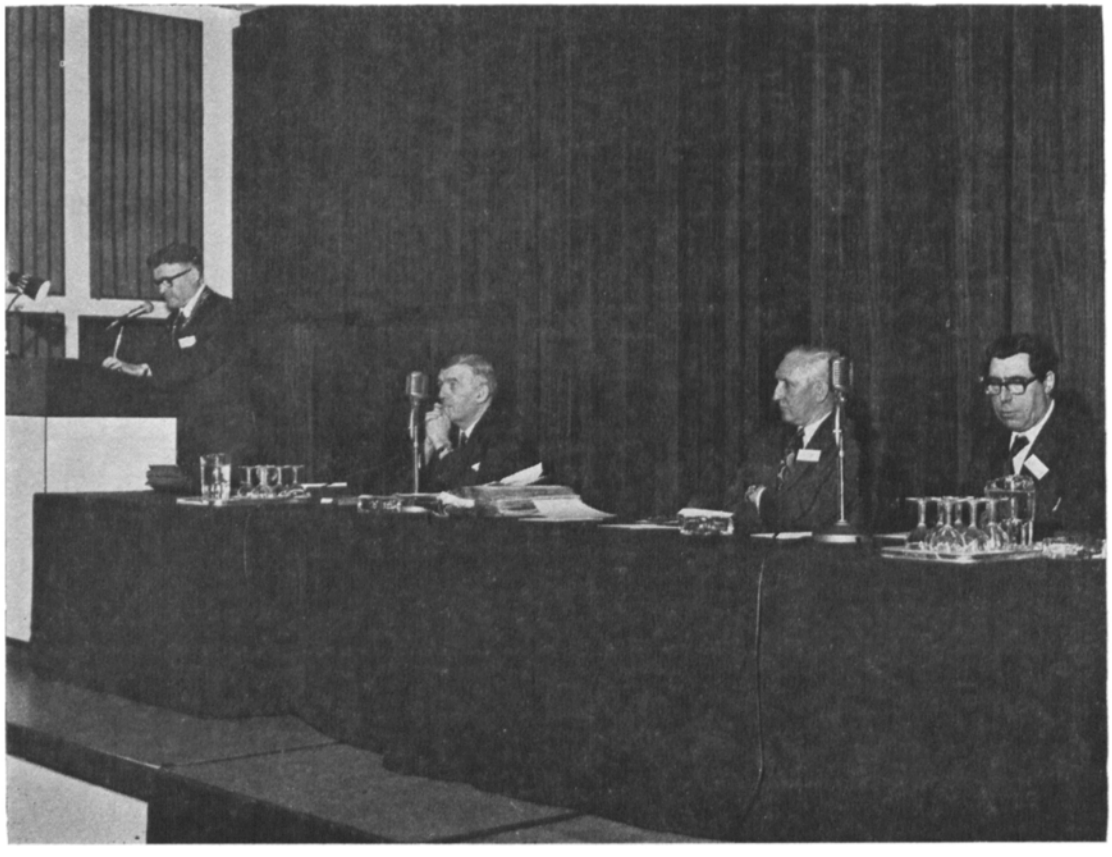


(Left to right): Mrs. T. V. O'Connor; Sir Desmond Heap, President of the Law Society, London; Mr. T. V. O'Connor, President; The Hon. Mr. Justice Barra Ó Briain, President of the Circuit Court; Lady Heap; Mr. James Sutherland, President of the Law Society of Scotland; Mrs. Jemphries; Mr. Harold Horsfall Turner and Mrs. R. B. Laurie.

(Left to right): Mr. T. V. O'Connor, President, and Mr. Eric A. Plunkett, Secretary



(Left to right): Mr. Patrick C. Moore, Vice-President of the Society; Mr. Harold Horsfall Turner, Secretary-General, The Law Society, London; Mr. R. B. Laurie, Secretary, The Law Society of Scotland; Mr. Patrick Jemphries, President, Incorporated Law Society of Northern Ireland; Mr. T. V. O'Connor, President of the Society; Mr. Sydney Lomas, Secretary of the Incorporated Law Society of Northern Ireland and Mr. Eric A. Plunkett, Secretary of the Society.



(Left to right): Mr. T. V. O'Connor, President; Mr. Eric A. Plunkett, Secretary; Mr. Patrick C. Moore, Vice-President and Mr. Donal E. Browne of the Kerry Law Society.

Proceedings of the Council

3rd MAY 1973

The President in the chair also present Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony E. Collins, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, John Maher, Gerald J. Moloney, Patrick C. Moore, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, John J. Nash, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Thomas V. O'Connor, Dermot G. O'Donovan, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Robert McD. Taylor, and Ralph J. Walker.

The following was among the business transacted.

Liability of borrower for mortgagee's costs

This matter was referred to the Dublin Solicitors' Bar Association for a report.

Medical reports

The County Tipperary Bar Association requested the Society to communicate with the Irish Medical Association on difficulties which have arisen in connection with medical reports and to have guidelines laid down for both professions. It was pointed out that medical reports are essential from the point of view of the patient and that failure or delay in furnishing reports can result in serious injustice. Solicitors are prepared to act on the basis that they would be paid if the claim is successful and in the past the medical profession were prepared to give their services on a similar basis. In recent times however a number of doctors insist that the solicitor will accept personal responsibility for medical reports and examinations and in some cases insist on payment in advance.

The Council referred to the existing rulings DR 13 and DR 74 of the Council and it was decided that a deputation be appointed to have a further discussion with the I.M.A. and the I.M.U.

Local Authority—terms of approval of loan

A local authority have used a form of letter approving of loan applications requesting the applicant to communicate with the solicitor for the local authority who would arrange the necessary legal formalities. The committee recognised that the solicitor in question was not a party to the drafting of the letter and attach no responsibility to him but at the same time recommended that an appropriate letter should be written to the local authority and sent to the solicitor for the County Council. The report was approved by the Council.

Land Registry fees

The Council considered on a report from a committee a letter received from the Department of Justice stating that the Minister proposes that in due course fees payable to the Land Registry should be accepted in cash or by means of money order, postal order or cheque drawn to the order of the Land Registry or alternatively by Land Registry stamps. A plan has been worked out and will be brought into operation as soon as possible. It was decided to keep this matter under consideration and to inform the Department of Justice that the proposal is satisfactory and that it ought to be brought into operation at the earliest possible moment.

Cork Local Admiralty and Bankruptcy Courts

The Council on a report from a committee considered correspondence addressed by members to the Secretary of the Department of Justice and the Attorney General referring to doubts about the jurisdiction and constitutionality of the above mentioned local Courts. It was suggested that there is a need for a properly constituted modern admiralty jurisdiction in Court and it is suggested that the necessary legislation should be introduced as quickly as possible to remove any doubts which might have been engendered by recent proceedings concerning the jurisdiction of that Court. Costs should be brought into line with the existing Circuit Court Costs and the whole question of admiralty jurisdcition in Ireland should be revised. It was pointed out that the Cork Local Bankruptcy Court is in the same position. It was decided that the Secretary should write to the Secretary of the Department of Justice reporting these representations.

Purchase of new houses. Costs

A member enquired as to whether the recommended scale of costs on a first lease or purchase of a new house published in the Society's Gazette, May 1972 at page 131, applies to a purchase of the fee simple. The Council on a report from a committee decided that the same scale applies to the purchase of the freehold of the property provided that the title is investigated to complete the registration and vesting of the property in the client.

Undertaking for safe custody and acknowledgement of production

The Council were asked to express an opinion as to whether a vendor who sells one lot held under a common title with other property giving the usual undertaking and acknowledgement to the purchaser is entitled to part with the title deeds to a second purchaser of the balance of the property. The question is whether the undertaking and acknowledgement runs with the land. While recognising that this is a question of law on which the Council could not express a final opinion it was stated that as a matter of common sense and practice it was thought that the liability runs with the land and that a vendor who parts with all interest in the land has no further obligation under the undertaking and acknowledgement.

UNREPORTED IRISH CASES

A High Court appeal from the Circuit Court is final
The question to be determined is whether, once the High Court has given a decision in an appeal from the Circuit Court, does a further appeal lie to the Supreme Court? The plaintiff tenant had a lease of the Gaiety Theatre, Dublin, from the landlord defendant. The plaintiff applied to the Circuit Court for a new tenancy under the Landlord and Tenant Act 1931. This application was granted, and the order was affirmed by the High Court on appeal. The landlord now seeks an extension of time for appealing from the High Court to the Supreme Court.

Section 39 of the Courts of Justice Act 1936 provides that a decision of the High Court on an appeal from the Circuit Court shall be final and conclusive and non-appealable. The appellant has tried to invoke the supreme appellate jurisdiction of the Supreme Court under Art. 34, Section 4 (3) of the Constitution, which be it noted, provides for "such exceptions and subject to such regulations as may be prescribed by law', which exceptions must be found in Irish Statutes passed since 1938. as determined in *The State (Browne) v. Feran* (1967) I.R. Despite the arguments of the appellant, it is clear that Section 48 (I) (b) of the Courts (Supplemental Provisions) Act 1961, which refers to enactments repealed by this Act does not exclude Section 39 of the Courts of Justice Act 1936, and that therefore Section 39 is brought into force anew by the 1961 Act.

It is clear that Section 39 is not excluded by the Constitution because firstly the words "any enactment which has been repealed before the operative date" only applies strictly to statutory repeal. Secondly, as between 1937 and 1961, the only valid Supreme Court that subsisted was the Supreme Court of Saorstat Eireann, and not the Supreme Court established by the present Constitution. It follows that the Supreme Court of Saorstat Eireann could take full cognizance of a Statute of Saorstat Eireann passed before 1938 and notably of Section 39 of the Courts of Justice Act 1936. It follows that the applicant is without any right of appeal to the present Supreme Court and that application for extension of time should consequently be refused.

[Eamonn Andrews Productions Ltd. v. Gaiety Theatre Enterprises Ltd.—Supreme Court (Walsh, Henchy and Griffin JJ.) per Henchy J.—unreported—13 February 1973.]

Court off James Street, Dublin, deemed a highway.
The plaintiff, Mrs. Connell, claims a right of way, for herself and her customers to enter the side door in Nashs Court to the lounge bar of her licensed premises in James' Street, Dublin. This entry is gained by passing under an archway into the Court and is 30 yards from the street. The public house is held under a 99 year lease granted in 1880. The entrance to defendants' dwelling, No. 130 James's Street, is under the archway, whereas the entrance from Jame's street is a lock-up-shop. The defendant in 1966 erected a large gate at the entrance to the archway, with the object of closing off Nash's Court. The plaintiff objected, and moved for an injunction on the ground that Nash's Court was a public highway, and that the plaintiff had a right of way in it. The injunction was duly granted by Teevan J.

The argument that the installation of a lounge bar constitutes an alteration in the use of the licensed premises is rejected. A right of way can only be created by dedication by the owner at large to the public. Since *Bateman v. Bluck* (1852), it has been held that a *cul-de-sac* can be a highway. Expenditure on repairs and lighting are pointers to its being a right of way by dedication, and there is evidence of this. Dixon J., having had evidence that different owners had at different times carried out works of maintenance and repair, had decided on 23 March 1956, in case of *White v. Porter,* that there is no such evidence here. The Corporation had always treated Nash's Court as a public highway, and it had been subject to public lighting; there was also a public street sign over Nash's Court. All this warrants the finding that Nash's Court is a public highway. The appeal is accordingly dismissed.

[Connell v. Porter—unreported—Supreme Court (O'Dalaigh C.J. Walsh and Budd JJ.) per the Chief Justice—18 December 1972.]

Dublin Corporation Decision to Close Market Upheld —Cattle Salesmasters' Appeal Dismissed.
The Supreme Court in a reserved judgment held that the Dublin Corporation was within its rights in deciding to no longer maintain the Dublin Cattle Market. The Court dismissed an appeal brought by a number of cattle salesmasters, who had sought to have that decision nullified.

The plaintiffs in the proceedings were the members of the Dublin Cattle Salesmaster's Association.

The Dublin Corporation has held a market for the sale of cattle, sheep and pigs on the site since 1863.

Delivering the judgment of the court, Mr. Justice Henchy said that for a considerable time it was the premier market in the country for the sale of cattle for export, but in recent times it had fallen into decline. The market had been kept going only with the help of an annual subvention from the rates that had amounted to over £33,000 by 1972.

Mr. Justice Henchy said that the losses had continued despite increases in the rates of tolls collected, reductions in the market area, and the employment of fewer people in the running of the market.

It was said that one of the main reasons for the decline in the fortunes of the market had been the establishment in recent times of cattle marts throughout the country and, in particular, in nearby centres such as Ashbourne, Maynooth and Baltinglass. The corporation was advised that those new outlets were adequate to deal with the number of animals now being offered for sale at the Dublin Cattle Market, that the decline in sales in the market was irreversible, and that, having regard to the steadily increasing burden on the Dublin ratepayers of subsidising the market, it would be desirable to close it down.

The Corporation, taking those matters into account, and having been advised that it was within its discretion to discontinue the market, decided in September, 1971, to close it down from 1 October 1971. That

decision met with strong and immediate reaction from the plaintiffs, who were members of the Dublin Cattle Salesmasters' Association. They contended that the corporation was bound by statute to keep the market open.

The plaintiffs instituted proceedings in the High Court seeking orders which would have the effect, not alone of keeping the market open but of compelling the defendants to provide an auction mart in the market.

The President of the High Court held that there was no legal obligation on the Corporation to keep the market open and dismissed the plaintiffs' claim. From that decision the plaintiffs had appealed to the Supreme Court.

An interlocutory injunction had been granted in the High Court restraining the Corporation from closing the market pending the decision of the Supreme Court. On 31 July 1972 the Supreme Court granted the plaintiffs a further injunction pending the determination of the appeal.

Mr. Justice Henchy, in a long judgment, dealt with the powers given to the Corporation under several sections of the Dublin Improvement Act, 1849, and to the meaning of the section: "It shall be lawful for the Council (the corporation) ... for ever afterwards to maintain and improve" that market place. Was that power, he asked, to be treated as a duty?

He found that the words could not be held to imply an obligation. He said if it were mandatory on the Corporation to maintain the market, then it would also be mandatory to improve it; but, in the absence of clear and unambiguous words, there should not be imputed an intention to impose on the Corporation a perpetual obligation to maintain and improve a market place, regardless of the cost to the ratepayers or the absence of public demand, or its unsuitability.

Mr. Justice Henchy said that in his opinion Section 80 of the Act did no more than its marginal note ("council empowered to provide market places") indicated; it gave a power, and no more than a power, to build, provide, maintain and improve market places.

There was nothing in the wording of the section or in the rights or interests of the public, for whom the discretion was enacted, or in the general context of the statute as a whole, to suggest that the power should be treated as a duty.

Therefore, the Corporation was within its rights in deciding not to maintain a market place any longer on the North Circular Road site and the plaintiffs proceedings, which aimed at nullifying that decision, must fail.

Mr. Justice Walsh and Mr. Justice Griffin agreed with the judgment.

Mr. Niall McCarthy, S.C., for the plaintiffs, asked the court for time to consider his clients' position on the question of damages, in view of their undertaking to pay damages when the injunctions were granted. The Court, which awarded costs to the corporation, gave the plaintiffs until the first day of next term to consider the position.

[Duffy and others v. Dublin Corporation—Supreme Court per Henchy J.—unreported—10 May 1973.]

Planning Permission needed to prove Demolisher's Intentions—Supreme Court gives judgment.

The Supreme Court, in a reserved judgment, held that a landlord must prove that he has obtained the necessary planning permission for redevelopment from the Planning Authority, before it can be held that he has a bona fide intention to pull down and rebuild or reconstruct premises so as to satisfy the provisions of Section 22, Sub-Section (1) of the Landlord and Tenant Act, 1931.

The Court was giving its decision in a case stated by Mr. Justice Butler in the High Court, in which Hugo A Dolan had sought a new tenancy in respect of his licensed premises in Corn Exchange Buildings, Burgh Quay, Dublin.

Mr. Dolan had brought proceedings in the Circuit Court against the Corporation of the Corn Exchange Building Company of Dublin and Vico Estates Ltd., seeking a new tenancy in the premises.

The respondents had disputed Mr. Dolan's claim for a new tenancy, but the court held that Mr. Dolan was entitled to one and directed that he should be given a new lease of 21 years from 15 April 1969, at an annual rent of £430 (exclusive of rates).

Vico Estates and the Corporation appealed from the decision to the High Court when it was stated that under an agreement of August 1970 the Exchange Company agreed to sell the entire of the Corn Exchange Building to Vico Estates, subject to a large number of exiting tenancies, including Mr. Dolan's. On 13 April 1966 the Minister for Local Government, on appeal by the Exchange Company, granted it outline planning permission for the construction of an office block on Burgh Quay. This development envisaged the demolition of Corn Exchange Building.

The High Court was further told that on 3 February 1971 Vico Estates applied to Dublin Corporation for planning approval for the construction of a new office and commercial block on the site of the building, including Mr. Dolan's tenancy. The application was refused, but on 25 May 1971 Vico Estates submitted a revised application which also entailed the pulling down and reconstruction of the interior of the building. The application was still the subject of discussion and correpondence between the Vico Estates' architect and Dublin Corporation.

In his case stated, Mr. Justice Butler found that at all times since they bought the premises, Vico had *bona fide* intended to redevelop it and that it would involve the substantial demolition and reconstruction of the building, including Mr. Dolan's tenancy. He also found that as a matter of probability Vico would obtain the necessary planning permission for such redevelopment and that the company required vacant possession of Mr. Dolan's premises for such redevelopment.

Mr. Justice Butler stated that each party had indicated the intention of asking him to state a case and the questions for the Supreme Court were: (1), In determining whether the conditions existed which were set out in Section 22, Sub-Section (1) of the Act, and which would disentitle Mr. Dolan to a new tenancy under Part III of the Act, should the Court have regard to the circumstances obtaining at (a) the date of service of notice of application to the Court to determine the tenant's right to relief or (b), the date of the hearing of such application.

The court was further asked, Mr. Justice Butler said, to decide if a landlord who had not obtained the necessary planning permission for redevelopment, but who had applied for such permission, could be held to have a *bona fide* intention to pull down and rebuild or reconstruct premises so as to satisfy the provisions of Section 22, Sub-Section (1) (a) of the Act.

Delivering the unanimous judgment of the court, Mr. Justice Henchy said that an applicant would

appear to be entitled to a new tenancy unless precluded by Section 22 (1) (b) of the Landlord and Tenant Act, 1931. That provision stated that he shall not be entitled to a new tenancy where it appears to the court that such landlord requires vacant possession of such tenement for the purpose of carrying out a scheme of development'.

The High Court had asked whether that disentitlement must exist at the date of service of the notice of application to the court or at the date of the hearing. In his (Mr. Justice Henchy's) opinion it must be at the date of the hearing.

Mr. Justice Henchy stated that the High Court had found that, as a matter of probability, the Company would be given planning permission. In his opinion the Section enacted that, subject to the provisions of the Act, the tenant was to get a new tenancy on the termination of his tenancy. In the present case he might be deprived of that right only if vacant possession of the tenement was required for the purpose of development. The development involved pulling down existing buildings and erecting a new one, but the owner could not begin that work until he got planning permission. If and when he got planning permission he would then require vacant possession, but not until then. At best it could be said that vacant possession would be required sometime in the future for a scheme of development. At worst, it might never be required for that purpose.

Until planning permission came to hand, the owner could not possibly require vacant possession for that purpose, so, until then, the landlord could not satisfy the Court that he required vacant possession for the specified purpose.

[Dolan v. Corn Exchange Corporation and Vico Estates—Supreme Court·per Henchy J.—unreported—10 May 1973.]

Silence in Court

At present there is no obligation upon an accused to say anything in his own defence because the law presumes a man innocent unless and until the prosecution can prove his guilt to the jury beyond any reasonable doubt.

The proposed change—one of many contentious proposals by the Committee under active and sympathetic consideration by the Lord Chancellor, Lord Hailsham —recommends that :

- the prosecution and the judge should be able to draw "adverse inferences" to the attention of the jury where an accused chooses to remain silent in court. "It should be regarded as incumbent on him to give evidence."
- the failure of the accused to give evidence denying prosecution allegations should be construed as being capable of corroborating their validity.
- the judge should be able to call formally on the accused to give evidence. This would "have value in demonstrating to the jury that the accused had the right, and the obligation, to give evidence but declined to do so."

The 14 members of the Criminal Law Revision Committee—half of them from the senior judiciary—had adopted as the intellectual basis for these changes a dictum by the 19th century philosopher Jeremy Bentham : "Innocence claims the right of speaking, as guilt invokes the privilege of silence." The net effect would be to transfer the burden of proof to the defence to prove innocence, for a jury would be likely to conclude that a man who remained silent must be guilty.

The traditional view of the right to silence was presented by Lord Devlin in the famous Bodkin Adams murder trial in 1957. "Dr. Adams has the right not to go into the witness box ... and he has not done so. Therefore there is no evidence from Dr. Adams. ... But let me tell you this, that it would be in my judgment, indeed more than my judgment—I can add it as a matter of law—utterly wrong if you were to regard Dr. Adams's silence as contributing in any way toward proof of guilt. It does not and cannot."

In the Ince case, the jurors reported : "We are finding it very difficult to conclude in view of there being no defence."

After nearly seven hours, the judge, Mr. Justice Melford Stevenson, called it a day and ordered a retrial. He had most properly reminded the jury that they should draw no inference of guilt from Ince's refusal to give evidence saying : "Do not allow yourselves to be prejudiced against him because of the things he has said or not said."

Under the present law, a judge—but not the prosecution—can make limited comment on the refusal of an accused to give evidence. But Mr Justice Melford Stevenson discovered the limits in 1968 when his conduct of a case was found by the Court of Appeal to have included a "very strong" comment on the fact that an accused had chosen to remain silent and not give evidence. Accordingly, a manslaughter verdict was substituted for the murder conviction.

Under the new system, this protection would disappear. Ronald Dworkin, professor of Jurisprudence at Oxford University, said yesterday : "Under the new proposals we would have had the spectacle of the judge asking an accused to take the stand, telling the jury that he had a duty to do so and that the jury could draw inferences of guilt if he refused."

The right to silence in court has not been central to the fierce criticism of the Criminal Law Revision Committee report from practising barristers and legal organisations. Abolition of the caution, of silence in the police station and wider hersay evidence, have made the headlines.

But if the prosecution is unable to persuade the jury to convict an accused on just the evidence brought against him, the absolute right to silence in court protects an accused from having to prove his innocenc in any way.

Among the features of the inconclusive Barn Murder trial in Chelmsford Crown Court last week was a rare demonstration of a principle of English justice threatened with abolition under law reform proposals by the Criminal Law Revision Committee. This is known as the "right to silence". George Ince, accused of murder, refused to go into the witness box to give evidence and was eventually acquitted at the second trial.

(Alex Finer, *Spectrum*, 13 May 1973)

ENGLISH CURRENT LAW DIGEST

In reading these cases note should be taken of the differences in English and Irish Statute Law.
All dates relate to dates reported in the "Times" newspaper.

Costs

Before Lord Justice Edmund Davies, Lord Justice Megaw and Sir Seymour Karminski. (Judgments delivered April 10.)

A plaintiff in an action for damages for personal injuries was refused the costs attributable to calling an economist to give evidence, subsequently held by the trial judge and the Court of Appeal to be inadmissible, as to the prospects of future inflation. He was allowed a third only of the costs attributable to calling an actuary and a chartered accountant to put forward actuarial calculations in relation to the assessment of damages.

The plaintiff, Mr. Herbert Mitchell (suing by his wife, Mrs. Hazel Mitchell, as next friend), was severely injured in 1965 in a car accident caused by the admitted negligence of the defendants, Mrs. Patricia Mulholland and her husband, Mr. Anthony Mulholland. At the trial he contended that damages in respect of future loss of earnings and for nursing and medical expenses should be assessed by actuarial calculations supported by other expert evidence and that prospects of inflation should be taken into account. Mr. Justice Nield adopted the conventional method of assessing damages by reference to a multiplier and a multiplicand and awarded the plaintiff £47,757, including post-trial loss of earnings of £17,570 on a multiplicand of £1,255 and a multiplier of 14 years and nursing and medical expenses of £10,496 on a multiplicand of £1,312 and a multiplier of eight years. He ruled that the evidence of, inter alia, the economist, which he had admitted de bene esse, was inadmissible.

The plaintiff appealed to the Court of Appeal, contending, inter alia, that the award was inadequate and that the judge had wrongly excluded or failed to take into account the expert actuarial evidence and the prospect of inflation.

The Court of Appeal (Lord Justice Edmund Davies, Lord Justice Widgery and Sir Gordon Willmer) ([1972] 1 QB 65) held that any element of certainty obtained by use of actuarial evidence, when applied to future contingencies, resulted in such an imprecise mode of assessing damages for loss of future earnings as to present no advantages over the conventional method, which was the best primary basis for assessment, and Lord Justice Edmund Davies and Sir Gordon Willmer held that, while it would be unrealistic to refuse to take into account at all prospects of future inflation, evidence directed to prospects of inflation in relation to earning capacity was in general inadmissible, though in a rare case (of which the instant case was not one) sound and precise evidence might be admitted.

Lord Justice Widgery said that an award of damages for personal injuries should not reflect the possibility of continuing inflation: prudent investment supplied the antidote to cost inflation. Where the plaintiff's prospects were said to be advanced by an anticipated increase in national prosperity the inquiry became too speculative; expert evidence on such matters should be excluded on the ground that the cost involved was out of all proportion to the advantage obtained.

The court on other grounds increased the award to £62,183. The plaintiff was awarded costs. By an oversight, however, the fact that the costs of the three expert witnesses had been specially reserved to the trial judge by Queen's Bench masters was not brought to the attention either of Mr Justice Nield or of the Court of Appeal.

By motion, the plaintiff now asked for those costs.

Mitchell v. Mulholland and Another; Court of Appeal; 12/4/1973.

Crime

Before Lord Widgery, the Lord Chief Justice, Mr. Justice MacKenna and Mr. Justice Bean.

A man whose hookah pipe revealed traces of cannabis resin only discernible by chemical analysis was held to have been rightly convicted of being in possession of cannabis resin contrary to regulation 3 of the Dangerous Drugs (No. 2) Regulations, 1968, and section 13 of the Dangerous Drugs Act, 1965.

Their Lordships, Mr. Justice MacKenna dissenting, dismissed an appeal by Clive Edmund Bocking against his conviction by Beacontree justices of being in possession of at least 20 micrograms of cannabis resin.

Bocking v. Roberts; Queen's Bench Division; 23/5/1973.

The Court of Appeal (Lord Justice Cairns, Lord Justice Stephenson, and Mr. Justice Thesiger) granted an application by Eric Fazackerley that the dismissal of his appeal against convictin for obtaining a pecuniary advantage by deception in evading payment of debts by worthless cheques (*The Times*, March 21) involved a point of low of general public importance under section 33 of the Criminal Appeal Act, 1968.

The point certified was "whether the dishonest offering of a worthless cheque purporting to satisfy a debt for which the drawer is then liable, there being no deception made to the creditor other than the implied representation that the cheque is a good and valid order, and which thereby induces the creditor to believe that he has been paid, constitutes an offence of obtaining a pecuniary advantage by deception in that a debt for which the drawer is then liable is evaded within section 16(1) of the Theft Act 1968."

Leave to appeal was refused for the Appeal Committee of the House of Lords to consider whether leave should be granted for the appeal to be argued in view of leave to appeal having been granted in *R. v. Turner* (*The Times*, March 30) and *Ray v. Sempers* (*The Times*, December 20).

Regina v. Fazackerley; Qeuen's Bench Division; 22/5/1973.

Before Lord Justice Cairns, Mr. Justice Thompson and Mr. Justice Shaw.

Three youths who agreed to hide under a pile of paving stones the body of a girl who had died as the result of horseplay with them were held to have been rightly convicted of a conspiracy to prevent the burial of a corpse.

The court dismissed appeals by Leslie Hunter, Clive Atkinson and Anthony MacKinder against their convictions at Newcastle on Tyne Crown Court (Mr. Justice Willis) for conspiracy to prevent the burial of a corpse. Their Lordships allowed their appeals against conviction for manslaughter and also the appeals of Mr. Hunter and Mr. Atkinson against their conviction of theft of the dead girl's money and trinkets.

Regina v. Hunter, Atkinson, MacKinder; Court of Appeal; 18/5/1973.

Damages

The Court of Appeal decided that a child injured in a road accident whose mother gave up work to look after him was entitled to recover her loss of wages as damages against the driver responsible for the accident. Their Lordships dismissed an appeal by the defendant driver, Mr. Henry Joyce, of Dagenham, against an award of £4,689 damages to Christopher Donnelly, of West Ham, by Deputy Judge Eastham.

Lord Justice Megaw (who sat with Lord Justice Davies and Mr. Justice Walton) said, in the reserved judgment of the court, that the award included £147 in respect of six months' loss of wages by the mother. She had given up her part-time job, for which she was paid £5.66 a week, to look after her son and given him the nursing attention which he required. Part of the loss sustained by the child was the existence of the need for the nursing services rendered by his mother the value of which for the purposes of damages was the proper and reasonable cost of supplying those needs. Accordingly, the child was entitled to recover the £147.

The court's decision on that issue was the same as that in *Cunningham v. Harrison* (*The Times*, May 18).

The defendant's contention that the infant plaintiff could not recover the loss because it was not his loss but the mother's, could not be accepted. Nor could their Lordships accept that only if the infant was under an obligation, legal or moral, to reimburse his mother could he recover damages.

Donnelly v. Joyce; Court of Appeal; 19/5/1973.

Before Lord Denning, the Master of the Rolls, Lord Justice Orr and Lord Justice Lawton.

Damages for personal injuries should not be reduced by reason of ex gratia payments made by the injured person's employer. When a husband is grievously injured and is entitled to damages, it is only right that, if his wife renders services to him instead of a nurse, he should receive compensation for the value of the services that his wife has rendered and he should pay the amount received over to her. There should be

moderation in claims for personal injuries and the reasonable expenses appropriate to a normal person should not be increased by the exceptional personality of the injured person.

The court, in reserved judgments, allowed an appeal by the first defendant, Mrs. Patricia Harrison, of Walton-on-the-Hill, Surrey, against the award of £72,616 damages to the plaintiff, Mr. Ronald Cunningham, of Sutton, Surrey, by Mr. Justice Brabin last December. The damages were reduced to £59,316. A cross-appeal by Mr. Cunningham was dismissed.

Leave to appeal was refused.

Cunningham v. Harrison and Another; Court of Appeal; 18/5/1973.

Extradition

Before Lord Wilberforce, Lord Hodson, Lord Diplock, Lord Simon of Glaisdale and Lord Salmon.

"Offence ... of a political character" in section 3(1) of the Extradition Act, 1870, means an offence of a political character vis-à-vis the state requesting extradition. A fugitive is not protected against surrender where the crime committed by him in the territory of the requesting state was directed against the régime not of that state but of a third state.

Their Lordships (Lord Wilberforce and Lord Simon dissenting) dismissed an appeal by Tzu-tsai Cheng, at present detained in Pentonville prison, from the rejection by the Divisional Court (the Lord Chief Justice, Lord Justice James and Mr. Justice Eveleigh) on January 24 of his application for habeas corpus.

Section 3(1) reads: "A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves to the satisfaction of the police, magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character."

The appellant was convicted by the Supreme Court of New York in May, 1970, of the attempted murder of one Chiang Ching-kuo. After conviction he failed to surrender to his bail and left for Sweden, which subsequently, acceded to the United States' request for extradition. The appellant fell ill on the journey back and landed at London Airport in September, 1972. He was detained by order of the Chief Metropolitan Magistrate (Sir Frank Milton) pursuant to a request by the United States authorities under the 1870 Act for his extradition. He now awaited delivery to the United States.

Cheng v. Governor of Pentonville Prison; House of Lords; 17/5/1973.

Family

Before Lord Denning, the Master of the Rolls, Lord Justice Buckley and Lord Justice Stephenson. Judgments delivered April 13.

A wife who claimed in divorce proceedings a declaration under section 17 of the Married Women's Property Act, 1882, that she had an equitable interest in a house, bought by her husband long before the marriage, was held to have no right of property in the house under that Act, though she might have a claim under the Matrimonial Proceedings and Property Act, 1970.

Their Lordships so held when they allowed an appeal by a former husband, Mr. Cyril Kowalczuk, of Baldock, and remitted to Mr. Registrar Elliot in the Luton District Registry, Family Division, for reconsideration under the 1970 Act his award to the former wife, Mrs. Maria Kowalczuk, of Luton, of a quarter share interest in the house in Baldock, on her application under the 1882 Act.

Kowalczuk v. Kowalczuk; Court of Appeal; 26/4/1973.

Infants

Before Mr. Justice Brightman.

Guardians ad litem for infants under the Variation of Trusts Act, 1958, should not be mere ciphers, his Lordship said when approving an arrangement under the Act. He ruled that the absence of any real consent on the part of the guardians in the present case did not in the circumstances deprive the court of jurisdiction to approve the arrangement.

The application was by Mrs. Olive Whittall, of Yarmouth, Isle of Wight, for approval of an arrangement under the Act, varying trusts declared by her late husband, Arthur Whittall, in a settlement dated November 28, 1953.

Whittall v. Faulkner and Others; Chancery Division; 10/5/1973.

Insurance

Before Lord Denning, the Master of the Rolls, Lord Justice Stamp and Lord Justice James.

Where the risk of a servant's negligence is covered by insurance, his employer should not seek to make the servant liable for it and the courts should not compel him to allow his name to be used to do it.

This was stated by the Master of the Rolls, when the court, Lord Justice Stamp dissenting, allowed an appeal by the fourth party, Mr. Frederick Roberts, of Liverpool, against the decision of Mr. Justice Hollings last April that the third party, Cameron Industrial Services Ltd., of London, were entitled to be subrogated to the right of action of the defendants, Ford Motor Co. Ltd., of Regent Street, London (upon payment to the defendants of the agreed amount of damages and costa) against the fourth party to recover complete idemnity in respect of the claim of the plaintiff, Mr. Eric Morris, of Halewood, Liverpool, against the defendants.

Morris v. Ford Motor Co. Ltd. and Others; Court of Appeal; 28/3/1973.

Before Lord Justice Davies, Lord Justice Megaw and Sir Gordon Willmer. Judgment delivered April 4.

Their Lordships allowed an appeal by the Export Credits Guarantee Department from a decision of Mr. Justice Cooke last June that where an insurance recovery was received in United States dollars after devaluation of sterling in 1967 the Department, as insurers who had paid the amount of the loss in sterling before devaluation, were not entitled to receive any of the excess sum received when the dollars were converted into sterling at the devaluated rate.

His Lordship had given judgment against the Department in favour of the plaintiffs, L. Lucas Ltd., of Finsbury Square, London, in a claim against the Department arising out of a policy of insurance (described as a contract of guarantee).

Their Lordships gave leave to appeal to the House of Lords.

L. Lucas Ltd. and Another v. Export Credits Guarantee Department; Court of Appeal; 6/3/1973.

Landlord and Tenant

Before Mr. Justice Caulfield.

A local authority who were in breach of covenant to repair a house that they had leased and which was included in a clearance area after the authority's medical officer of health had condemned it as unfit for human habitation, were held to have damaged the reversion for which the owners were entitled to damages from the date of a notice of entry under a compulsory purchase order made by the authority.

Mr. Justice Caulfield gave reserved judgment for Hibernian Property Co. Ltd. for £1,465 with interest and costs in their claim for damages against Liverpool Corporation for breach of covenant to repair a house at 2 Uhlan Street, Liverpool, which they held over after expiry of a lease of 1875.

Hibernian Property Co. Ltd., Liverpool Corporation; Queen's Bench Division; 3/4/1973.

Litigant in Person wins Jury Trial

The Court of Appeal (the Master of the Rolls, Lord Justice Stamp and Lord Justice James) allowed an appeal by a litigant in person, Mr. Terence Beesley, of Sidcup, Kent, the plaintiff in an action for damages for professional negligence against John L. Williams, solicitors, a firm, of Southampton Row, London, against the decision of Mr. Justice Forbes last November that the trial of the action should be by judge alone and not with a jury.

The Master of the Rolls said that the case appeared in the Daily Cause List as "Beesley v. A Solicitor". That was wrong. When there was an action for negligence against a solicitor it appeared at first instance and on appeal as an ordinary listed appeal with the solicitor's name appearing. There had been a mistake in the Appeal Office.

The question of trial with a jury had been considered in *Ward v. James* ([1966] 1 QB 273, 295). In addition there were cases where the views of the individual himself and his desire to be tried with a jury should be put into the scale. The complications of the case could be outweighed by the importance to the parties of issues of credibility, honour and integrity. His Lordship would accede to trial with a jury.

Beesley v. Willians; 12/3/1973.

Local Government

Before Lord Justice Russell, Lord Justice James and Mr. Justice Plowman.

A local authority was held to have power under section 15 of the Public Health Act, 1936, in constructing a public surface water sewer, to demolish a bungalow after giving reasonable notice.

The court allowed an appeal by Esher Urban District Council from the decision of Mr. Justice Megarry ([1972] Ch 515) whereby the plaintiffs, Mrs. Marjorie Hutton and her father, Mr. John Holtby, the owners of a bungalow in Queen's

Drive, Thames Ditton, Surrey, obtained a declaration that the council had no power to enter and pull it down or demolish it.

Hutton and Another v. Esher Urban District Council; Court of Appeal; 7/4/1973.

Medical Reports

Before Mr. Justice Bean. Judgment delivered May 17.

A man suing his employer for damages for personal injuries was held to be unreasonable in refusing to submit to a medical examination requested by the employer except on the condition that the report was shown to him immediately without his offering his own medical report in exchange.

Mr. Justice Bean allowed an appeal by the employer, Mr. Frank Burke, of Tottenham, against the refusal of Master Jacob to make an order staying all further proceedings in the action on the ground that Mr. Daniel McGinley, of Kensington, had unreasonably refused to submit himself to a medical examination on behalf of Mr. Burke.

McGinley v. Burke; Queen's Bench Division; 22/5/1973.

Negligence—Damages for Flooding

Before Lord Justice Davies, Lord Justice Stephenson and Lord Justice Lawton.

A council tenant whose house was flooded when the cold water tank burst was entitled to damages against the council because of their failure to keep it in repair.

Their Lordships allowed an appeal by Mr. Jeffrey Sheldon, of West Bromwich, against the dismissal by Judge Harington at West Bromwich County Court last May of his claim for damages against the landlords, West Bromwich Corporation.

Sheldon v. West Bromwich Corporation; Court of Appeal; 27/3/1973.

Planning

Before Lord Hailsham, the Lord Chancellor, Lord Diplock, Lord Simon of Glaisdale and Lord Salmon.

The forecourt of a petrol filling station is not a "building" and accordingly not "business premises" for the purposes of the Town and Country Planning (Control of Advertisements) Regulations, 1969. Advertisements affixed to the forecourt exceeding 4.5 square metres in total area therefore need the express consent of the local authority. But advertisements affixed to canopies over pumps may be exempt.

The House of Lords dismissed an appeal by Heron Service Stations Ltd. from a decision of the Queen's Bench Divisional Court (the Lord Chief Justice, Mr. Justice Shaw and Mr. Justice Wien) holding in favour of the local authority prosecutor for the borough of Hounslow that advertisements exceeding an aggregate are of 4.5 square metres displayed on the forecourt of a filling station contravened regulations 6 and 8 (1) of the 1969 Regulations and section 63 (2) of the Town and Country Planning Act, 1962. The Divisional Court remitted 10 informations to Brentford justices, who had dismissed them, with a direction to convict. Their Lordships held that only nine of the informations should be remitted.

Heron Service Stations Ltd. v. Coupe; 5/4/1973.

Rating Liability

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Ashworth and Mr. Justice Bridge.

An absent husband was held to be liable for rates of a house which he jointly owned with his mother-in-law who lived there with his wife to whom he was paying £5 a week under a maintenance order.

Their Lordships allowed an appeal by Bromley London Borough Council, the rating authority, against the decision of Bromley justices that Mr. Michael Brooks was not liable for the payment of £101 rates on a house in Woodside Avenue, Chislehurst, which became due since the maintenance order was made in July, 1970. An order was made directing the justices to issue a distress warrant for the amount claimed by the rating authority, being half of the total rates, the other half having been paid by the mother-in-law.

Bromley London Borough Council v. Brooks; 12/4/1973.

Redundancy

Before Lord Denning, the Master of the Rolls, Lord Justice Buckley and Lord Justice Orr.

Seven china clay workers who lived 30 miles from their employers' works and had been provided with free bus transport as a term of their contracts of employment were held not to have been dismissed "by reason of redundancy" and not entitled to payments under the Redundancy Payments Act, 1965, when the employers found it uneconomic to continue to provide the bus and the men gave up their jobs as a result.

Their Lordships dismissed appeals by seven workmen from Port Isaac, Cornwall, formerly employed by the Rostowrack China Clay Co. Ltd., of St. Stephen, Cornwall, from the National Industrial Relations Court (Sir John Donaldson presiding) (*The Times*, November 10, 1972; [1973] ICR 50), which had dismissed their appeals from the industrial tribunal's decision that they had not been dismissed by reason of redundancy.

Chapman and Others v. Goonvean and Rostowrack China Clay Co. Ltd.; Court of Appeal; 17/4/1973.

Restraint of Trade—Too Wide and Unreasonable

Before Lord Denning, the Master of the Rolls, Lord Justice Orr and Lord Justice Lawton.

Restrictive covenants in service agreements between a debt collecting agency company and sales representatives and collectors in Birmingham "for a period of six months ... after the determination of the ... employment" not to "solicit business from any person ... firm or companies who shall a any time during the continuance of his employment ... have been a client of the company ... within the area specified ...", the area of restriction being described as "Birmingham/Glasgow/Lrrds/Liverpool/London/Manchester", were held to be too wide and in unreasonable restraint of trade.

The court allowed an appeal by the defendants, Mr. Laurence Batey, of Birmingham; Mr. Philip Carr, of Waterorton; Mr. Anthony Coats, of Great Barr, and Mr. David Groves, of Solihull, against an injunction granted by Mr. Justice Shaw in March to the plaintiffs, Financial Collection Agencies (UK) Ltd., of Lee Green, London, restraining "the defendants and each of them until June 30, 1973, by themselves, their servants or agents from soliciting business on behalf of themselves or of any other person or persons, firm or company from any person or persons firm or companies who shall at any time during the continuance of their respective employment by the plaintiffs have been a client of the plaintiffs."

Financial Collection Agencies (UK) Ltd. v. Batey and Others; Court of Appeal; 3/5/1973.

Road Traffic Acts

Before Lord Justice Edmund Davies, Lord Justice Stephenson and Lord Justice Roskill. Judgments delivered March 6.

In so far as the Highway Code (1968 edition, pages 7 and 35) may be read as indicating that, if traffic indicators and stoplights are both fitted and in good working order, arm signals need never be used it was unwise advice and should not universally be adopted.

This view was expressed by Lord Justice Edmund Davies when the Court of Appeal dismissed an appeal and cross-appeal on an apportionment of damages by Mr. John Willett, the first defendant, and S. J. Harris (Transport) Ltd., the second defendants (owners of a motor van driven by an employee, Mr. Thomas Orr), who had been held liable in negligence for an accident in March, 1967, which caused the death of another motorist, Mr. Rodney Kelly.

Mr. Justice Cumming-Bruce, at Leeds Crown Court in March, 1972, had awarded Mr. Kelly's widow, Mrs. Eileen Goke (now remarried) £23,461 damages on her claims under the Fatal Accidents Acts, 1946-1959, and the Law Reform (Miscellaneous Provisions) Act, 1934, and apportioned the blame as to one-third against Mr. Willett and two-thirds as against Harris Transport.

Goke v. Willett and Another; 7/3/1973.

Before Lord Widgery, the Lord Chief Justice, Lord Justice James and Mr. Justice Nield.

Rationalization of decided cases relating to driving with excess blood-alcohol contrary to section 1 of the Road Safety Act, 1967, was an impossible task, the Lord Chief Justice said when giving judgment on an appeal by a motorist who had been stopped by police during a search for sheep rustlers and was convicted of contravening section 1.

Their Lordships dismissed the appeal of William Herd, aged 37, of Oakworth, Yorkshire, from conviction at Leeds Crown Court (Judge Hartley) last July. He was fined £40 and disqualified for 12 months.

Regina v. Herd; 13/3/1973.

Before Lord Justice Lawton, Lord Justice Scarman and Mr. Justice Phillips.

No excuse for failing to provide a speciment for a laboratory test under section (33) of the Road Safety Act, 1967, can be adjudged reasonable unless the person from whom it is required is physically or mentally unable to provide it or its provision would entail a substantial risk to his health.

Regina v. Lennard; Court of Appeal; 8/3/1973.

Words and Phrases

"Building", see under Planning.

THE ENFORCEMENT OF HUMAN RIGHTS
S.A.D.S.I INAUGURAL

PART II

In the course of his Inaugural Address, the Auditor, Mr. Sheridan, continued as follows :

The Convention as domestic law

In Austria, Belgium, West Germany, Italy, Luxembourg, and the Netherlands, the provisions of the Convention form part of the domestic law of the country and can be iuvoked in national Courts, but only those provisions which are "self executing"—that is sufficiently detailed not to require further legislation. Of the remaining countries all but Malta, Cyprus and Turkey have accepted the right of petition and the jurisdiction of the Court. But in these three countries the only enforcement of the Convention would be a complaint by another State and as we have seen these are seldom lodged.

Whether they do so by internal legislation to bring their laws into line with the Convention, or by direct incorporation is left to themselves, but the Commission and Court have assumed the provisions of the Convention to be obligatory and fully binding on States.

Among the direct effects of the Convention are the changes in the laws of countries brought about because of actual proceedings before the Commission and Court, commencement of proceedings and fear of proceedings. Ireland has not since reintroduced internment. A Bill to amend the law involved in the *De Becker case* was introduced in 1957 but was still pending in 1961 when the hearing before the Court was to take place on Monday, July 3rd. On Friday, June 30th, the Bill was enacted and on Saturday, July 1st, it was published in the Official Gazette which had never before appeared on a Saturday. Norway changed its Constitution to remove a prohibition on Jesuits. Since we signed the Convention with a reservation as to legal aid it is likely that our Criminal Justice (Legal Aid) Act 1962 was to bring our law into line with the Convention. Belgium amended her law on Vagrancy, as did Austria her law on criminal appeals, and Germany those on remand and detention. There must be added to these the number of administrative practices discontinued in member States.

Influence of the European Convention

Indirectly the Convention influenced countries such as Nigeria whose constitutions are based on it as are those of many former British colonies which enjoyed the protection of the Convention under Britain and on losing this on independence wrote the rights guaranteed into their constitutions.

It has served as an example of the acceptance of international control over the actions of national governments and particularly of the effectiveness of regional arrangements on human rights. While universal enforcement of human rights remains the ideal, regional agreements represent both a step towards this and it must be admitted, the most realistic hope in the immediate future. The advantage of the common background possessed by parties in a regional arrangement is obvious.

So far only Central and Southern American States of the Organisation of American States have followed with the American Convention on Human Rights signed in 1969 on behalf of twelve countries. While there had been various noises from Africa and South-East Asia nothing concrete has emerged from there.

On the world level, in 1966 the United Nations General Assembly finally ratified the second part of their Bill of Rights, namely the International Covenants. In the end there emerged two covenants, one on Economic, Social and Cultural Rights, the other on Civil and Political Rights. The latter had also an optional Protocol attached to it containing measures of implementation of sorts. I do not propose to deal with Economic, Social and Cultural Rights. While they are a feature of ever-increasing importance, the method of their enforcement is different and it is even doubtful if some are "rights" in the sense we would understand at all. At European level they are dealt with by the European Social Charter of 1961 and the International Court of Justice has stressed the importance of human rights.

While the rights guaranteed in the Covenant on Civil and Political Rights are more detailed than those in the European Convention, the machinery for enforcement is, to put it mildly, modest. A Human Rights Committee is established which can request State parties to submit reports on the implementation of their obligations. But its recommendations have nothing but moral force. Even the optional Protocol which allows for a right of individual petition provides only for friendly settlements, if these are not achieved the Committee is powerless. There is no equivalent to the Committee of Ministers in the European Convention to enforce findings.

While not wishing to dismiss the United Nations Covenants, while they do represent a significant achievement in an organisation of 180 odd member States and have not been ratified long enough to have their effects properly appreciated, they do seem to be far from an immediate step to the sort of Universal Charter of Human Rights envisaged by Mr. Sean MacBride. He put forward to the seventh Nobel Symposium on Human Rights in Oslo in 1967 the idea of Regional Systems with appeals from the National to the Regional Courts and in some circumstances from the Regional Courts to the Universal Court of Human Rights at the United Nations. This should be the aim of all who believe in the international enforcement of Human Rights. To that end the Government of Ireland should work at the United Nations.

Final suggestions

Finally I would make the following points :

(1) The new Irish Government should, in accordance with the resolution of the Parliamentary Conference at Vienna in 1971, incorporate the provisions of the Convention into our domestic law. Further they should ratify the United Nations Covenants and the optional Protocol. This would end the hypocrisy of our position internationally, where we voted for the Covenants in the General Assembly and then refused to ratify them despite another recommendation of the Vienna Conference.

(2) At this stage, twenty years after the European Convention came into force, the acceptance of the right of individual petition and the jurisdiction of the Court

should be obligatory for all the signatories and certainly for any new parties to the Convention.

(3) The parties entitled to bring applications to the European Commission form at the moment too narrow a category. I would endorse the suggestion by Professor Rory O'Hanlon that certain international organisations should have the right to take cases before the Commission without being victims of a breach themselves. The International Commission of Jurists and Amnesty International would be obvious candidates.

(4) The European Convention would seem to have a part to play in the national situation. Since the White Paper on Northern Ireland has declared the intention of the British Government to grant a Charter of Human Rights to Northern Ireland, would it not be possible for the European Convention to form a common base for Human Rights in all parts of Ireland. Could there not be a Commission of Human Rights for Ireland composed of an equal number of judges from North and South, with if necessary, an independent chairman such as the judge of the European Court of Human Rights, to supervise the implementation of human rights in the country. This does seem to be the sort of co-operation in the context of European unity that would find acceptance in both parts of Ireland. An appeal could lie to the organs of the Convention in Strasbourg.

(5) I would advocate the establishment in the Oireachtas of a Human Rights Committee which would examine proposed legislation and see that it conformed with the standards required by our international obligations. This would be in line with the recommendation of the Consultative Assembly of the Council of Europe last October.

(6) There is a need for a European Ombudsman or Attorney-General for Europe who could initiate proceedings before the European Commission on his own initiative and investigate the implementation by members of their obligations under the Convention. At present under Article 57 the Secretary-General of the Council of Europe may require an account from member States of their implementation of the provisions of the Convention. Though it has been used it does not seem to have realised its full promise and this might lend new life to it. The unwillingness to take proceedings against Greece by some States is stressed.

The spreading of information about the Convention should be maintained. It is surprising that Constitutional Law is not required by the Law Society in their examinations. The Law Society could sponsor a lecture on Human Rights. There are disturbing reports from Greece and Turkey about infringement of Human rights, and the Amnesty campaign against torture should be encouraged.

Mr. Justice Thomas Finlay proposed the customary resolution that the best thanks of the Society are due to the Auditor. He said that the European Convention of Human Rights was an effective and meaningful multi-national binding agreement, which contained basic radical concepts. The concepts of an effective Court, and of the right of individual petition were new. There was a splendid new concept, by which any State could bring before the Commission breaches of human rights: thus the Scandinavian States had presented a well-documented case against Greece, which tried to fight back strenuously, but in the end left the Council of Europe.

Mr. Justice Finlay thought that the European Convention of Human Rights should definitely form part of Irish domestic law: as we had accepted the laws of the Community, this concept of incorporation was nothing new. There was no inconsistency between the Human Rights enumerated in the Irish Constitution and those set out in the European Convention. It would then be easier for an Irish individual to enforce his rights in the domestic Courts of the Republic, instead of having to resort to Strasbourg.

Mr. Justice Finlay also stressed that once an individual applicant had exhausted his domestic remedies and had got the Commission to agree to admit his case—which was the crucial test—from then on he should be granted legal aid, and his costs should be paid out of an international fund. We appear to be obsessed by the European Community to the extent that our rights and duties under the European Convention of Human Rights have been overshadowed.

Mr. Justice Philip O'Donoghue, the Irish Judge of the European Court of Human Rights, said that as he had discovered as a member of the Commission for seven years, and as a Judge for the last year, the importance of the European Convention was precisely that specific rights were enumerated. This was not a new development, but had started with Magna Charta, and with the subsequent recognition of the writ of *Habeas Corpus.* What is called the Continental procedure of *Habeas Corpus* is now contained in Article 5 (4) of the Convention. There was no doubt but that the Convention should be part of domestic law, particularly as many matters were already covered by existing law. It would not be necessary then for the applicant to exhaust all domestic remedies. When Ireland ratified the Convention in 1953 she was one of the few countries who did so without reference to any specified time: it was to be noted that neither Switzerland nor France had yet ratified the Convention. He emphasised how useful it would be if a more constant study of European institutions were undertaken in Irish universities.

Mr. John Temple Lang, solicitor, stated that there was no doubt that some parts of the European Convention should be made part of the Irish Constitution so that they would be subject to judicial review: undoubtedly the subjective Minister's opinion under the 1940 Act would require to be re-considered; the right of privacy as well as many procedural rights arising from the *Haughey case* (1971 I.R.) deserve consideration. The provisions of the Convention should also be the basis for a far-reaching charter of Human Rights as envisaged by the White Paper on Northern Ireland. One of the deficiencies of the Convention appears to be that nothing can prevent the philosophy of a particular religious denomination from being dominant in a particular State. There is no restriction in the Convention upon changing the laws of evidence. It should be clearly understood that the unsubstantiated police evidence permitted by the Offences against the State (Amendment) Act 1972 is a clear infringement of the Convention: there are also serious abuses of the Criminal Law under the Forcible Entry Act. The question of police brutality in the Republic was one of the gravest concern, and should be investigated. The new Government should undoubtedly adopt the Convention, so that eventually an all-Ireland Commission on Human Rights could be established. We should have joined the Scandinavian States in their indictment against Greece and bodies like Amnesty International should be allowed to bring cases against victims of dictatorial regimes.

Community Competition Law

Dr. Alfred Gleiss, of the firm of Messrs Gleiss, Lutz, Hootz, Hirsch & Partner, Stuttgart, Germany, delivered lectures on Community Competition Law and on Merger Control to members of the Society in the Burlington Hotel, Dublin, on Saturday, 27 January 1973. The following summary has been approved by Dr. Gleiss.

(I) Survey on EEC Competition Law

(1) There is no general competition law of the EEC. Articles 85 et seq. contain directly applicable cartel law. In the fields of unfair competition and patent law, trade mark law and the like, national law will continue to apply which will be increasingly influenced by Community Law.

(2) Besides the Community Cartel Law contained in Articles 85 and 86, the national Cartel Laws remain in force. The relation between EEC Cartel Law and national Cartel Law shall be solved pursuant to Article 87 para 2 (e) by a Regulation or a Directive to be issued by the Council. This has not, however, been done yet.

(3) The Court of the European Communities in the so-called "Preliminary Dyestuff decision" of 13 February 1969 has pronounced that the application of the EEC Cartel Law does not exclude in principle the application of national Cartel Law but that in any clash of rules Community Law would have precedence. A decision in a national proceeding must not be inconsistent with a decision of the Commission. If the national decision is passed after the Commission's decision the national authority must "take account" of that of the Commission. In the opposite case, the national authorities "must take appropriate measures"—a somewhat vague dictum.

Thus, because of the same facts, the national authorities as well as the EEC Commission may conduct proceedings and levy fines.

(4) The Cartel Prohibition of Article 85 is applicable to all enterprises active within the EEC, no matter where they are located. Article 85 is not applicable to enterprises of the Coal and Steel Industry; so far, the European Coal and Steel Community (ECSC) Treaty has precedence. It is applicable to agriculture with certain limitations.

(5) Restraint of trade is prohibited only, if it "perceptibly" affects trade between Member States and competition. As per the "Bagatelle Publication" of the Commission, this will not be the case, if the market shares do not exceed 5% and the total annual turnover of the participating enterprises is not more than 15 million units of account (one unit is about 45p).

(6) Article 85 does not distinguish between Horizontal Cartels, i.e. such which are concluded between enterprises of the same economic level, and Vertical "Cartels", i.e. agreements between enterprises of different economic levels (say manufacturer and dealer).

(7) The law relating to the so-called sole distributorship agreements has undergone the greatest degree of development. In the judgment **Grundig/Consten** of 1966, the **Court prohibited "absolute' 'territorial protection,** i.e. the guarantee given by the manufacturer, that a sole distributor will be the only one who may import goods into a specific territory and that third parties shall not sell into this territory.

The group exemption of sole distributorship agreements granted by the Commission's Regulation of 22 March 1967, called in brief Regulation 67/67, is of great importance.

According to it, agreements between manufacturer and dealer from different Member States are admissible, if they contain exclusive obligations to deliver and supply without any export prohibition.

In several individual Decisions, the Commission permitted special distributorship systems, especially the "selective distributorship system" of the Swiss watch maker Omega. In this Decision, the Commission considered it a violation of Article 85, if in the agreements between the manufacturer and the general agents the number of the local retailers is limited, but it granted an exemption under Article 85 para 3, especially, because technically highly developed and relatively expensive products were affected.

(8) In the field of "horizontal" cartels, the Commission came—in spectacular proceedings—to several decisions, especially in the **Quinine and the Dyestuff Judgment of 14 July 1972** the Court defined the meaning of the concerted practices with the formula of "conscious practical co-operation". The objective parallel behaviour of several enterprises is not *per se* a concerted behaviour but an important indication.

(9) At the end of last year, the Commission granted a group exemption agreement for specialization agreements in the field of Horizontal Cartels. Previously in several decisions, it had already exempted specialization agreements, even if concluded by large enterprises. One can conclude from this that the Commission is prepared to accept such agreements, if effective competition remains on the markets concerned. The Regulation on Group (or: Block) Exemptions is applicable only, if the products in none of the Member States exceed market shares of more than 10% and the total turnover of the participating enterprises does not exceed 150 million units of account.

(10) It results from the Commission's fundamental Decision of 23 December 1971 in the **Henkel/Colgate case** that even merely factual restrictions of research can be restraint of trade. This applies to all fields, in which the competition is largely influenced by the results of research.

(11) In its "EEC Cooperation Publication" of 29 July 1968, the Commission has worked out rules for enterprise cooperations, which do not violate Article 85.

(12) *Article 86* prohibits the abuse of market dominance. In this connection there are three important decisions of the Commission. The **GEMA-Decision** of 2 June 1971, the **Continental Can Decision** of 9 December 1971 and the **Decision against Zoja** of 20 December 1972. In the latter decision, the Commission has prohibited a monopolist from refusing to supply a buyer. I shall deal in a special lecture with the problem of application of Article 86 to enterprise cooperation (Continental Can).

(II) Merger Control Under Article 86

(1) The EEC Treaty does not contain regulations which prohibit expressly the merger of enterprises. On the contrary, the Commission again and again has taken initiatives for creating larger units of enterprises, "enterprises of European dimension". In 1971, e.g., it published the draft of the statute of a European joint stock company, in order to make a special legal form available for mergers of enterprises from different

Member States.

(2) Recent declarations of the Commission give the impression that it at present desires international concentrations only in a few sectors, particularly with regard to highly technological products. For all remaining sections, the Commission considers concentration control to be necessary with the possibility of prohibiting concentrations.

(3) In a Study on "The Problem of Concentration of Enterprises in the Common Market" of 1966, the Commission—for the first time—showed the way to control and to influence the concentration of enterprises by means of Article 86 of the EEC-Treaty on the basis of the law as it is. In the Study the Commission takes the view that the acquisition of an enterprise by another one which is in a "market dominant position" may be an abusive exploitation of this position. The exploitation is termed abusive, if, *objectively,* the behaviour of the enterprise is a misbehaviour in view of the aims stipulated in the EEC-Treaty.

(4) In its decision of 9 December 1971 against **Continental Can,** the Commission has—for the first time—converted this theory into practice. The Continental Can Company of New York, the largest packaging manufacturer in the world, since 1969 holds a majority in the largest German packaging manufacturing company. In 1970, it furthermore acquired a majority in the largest packaging manufacturing company of the Benelux-countries, Thomassen and Drijver, Deventer/Holland.

(5) In this decision, the Commission asserted that Continental Can through its German subsidiary held a dominant position on certain markets. The acquisition of the largest Benelux manufacturer was termed an abusive exploitation of that dominant position :

> If, by the merger of a dominant enterprise with another one the dominance is strengthened to such an extent that competition—which would have remained in existence, actually or potentially, despite the initial dominant position—is practically eliminated for the goods concerned in an essential part of the Common Market, then this is a behaviour incompatible with Article 86 of the Treaty.

(6) Continental Can filed a complaint against this decision with the European Court of Justice, among other things on the following grounds :

(a) Abusive exploitation" of a dominant position requires a casual nexus between this position and the act which is qualified as an abuse. There is no connection between Continental's allegedly dominant position in Germany and the acquisition of the shares in the Dutch Company.

(b) The authors of the EEC-Treaty have consciously disregarded the idea of including regulations against mergers. This is apparent if one compares this Treaty with the Treaty of the European Coal and Steel Community (MUV). In view of this it is inadmissible by means of interpretation to insert such provisions into Article 86.

(c) It is undisputed that market dominance as such is permitted. Article 86 starts from this fact, only prohibiting the abuse, not the position; consequently, a mere increase of market power cannot be prohibited.

(d) The application of Article 86 cannot be substantiated with the help of general merely programatic provisions of the EEC-Treaty. Those have no higher rank than Article 86.

(e) Article 86 unlike Article 85 does not empower the Commission to grant an exemption. Therefore, the Commission's theory means a general rigid rule, resulting in legal uncertainty.

(f) If the Commission thinks provisions against mergers necessary, they have to be introduced by changing or amending the Treaty, or, perhaps by a Regulation to be based on Article 235 EEC-Treaty. Article 86 is the wrong way.

(7) In his lecture, Dr. Gleiss could not yet consider the European Court's judgment of 21 February 1973 by which the decision of the Commission was reversed. The Court in essence confirmed the theory of the Commission. According to this judgment, a behaviour is abusive within the meaning of Article 86, "if an enterprise in a dominant position increases it in such a manner that the degree of dominance achieved hinders competition essentially, so that only enterprises remain on the market, which in their behaviour depend on the dominant enterprise".

This means, that not only mergers but also other forms of increase of market power can be an abuse within the sense of Article 86. But the Court reversed the Commission's decision because it failed sufficiently to prove the market dominance of Continental Can in Germany and the restraint on competition effected by the merger.

Decision of professional interest

Local authority liable for erroneous report given by Inspector as to foundations of house.

The decision in this case involves the liability of a local authority in the exercise of its statutory powers and the liability of local authorities for the negligence of their inspectors and employees, etc.

The case is fully reported in the High Court at (1971) 2. All E.R. 1003 and in the Court of Appeal at (1972) I. All E.R. pages 462-490.

In this particular case a Building Inspector of a local authority inspected foundations which required Bye-Law approval by the local authority concerned in October 1958. It was subsequently ascertained that the foundations had been badly laid so as to create a hidden defect and the defective foundations caused damage to the house after the premises had been purchased by a subsequent owner. The subsequent owner Mrs. Dutton, brought an action against the Defendant local authority for damages for the negligence of their Building Inspector in approving for the purpose of the Building Bye-Laws the foundations of the house which had been built by the first-named Defendants, Bognor Regis United Building Co. Ltd., insofar as the walls cracked, the staircase slipped, and the doors and windows would not close.

Mr. Justice Cusack held that Bognor Regis U.D.C. were liable for their Inspector's negligence in not ensuring that the foundations had been properly constructed and laid in conformity with the Statutory Bye-Laws. The Trial Judge awarded the Plaintiff £2,115 damages against the second Defendants, Bognor Regis U.D.C., with interest at 6% from the date of service of the writ. The Court of Appeal (Lord Denning, Sachs and Stamp LJJ.), upheld the decision of the High Court and dismissed the appeal. Leave to appeal to the House of Lords was granted but the appeal was subsequently withdrawn.

[Dutton v. Bognor Regis Building Co. and Bognor Regis Urban District Council—C. A.—(1972) I. All E. R. 462.]

THE VEDEL REPORT ON REFORM OF THE EUROPEAN PARLIAMENT

ERWAN FOUERE comments on the recent important report on the EEC institutions

An extension of the legislative powers of the European Parliament, direct involvement in the appointment of the Commission, implementation of Article 138 of the Rome Treaty providing for direct election of the European Parliament—these are some of the recommendations contained in the recently published Vedel report which recognises the need for an overall strengthening of the powers of the Parliament so as to ensure a greater participation in the institutional framework of the community.

Composition of group

The Vedel group—Professor Georges Vedel of Paris University was its chairman—was established by the Commission towards the end of last year and given the task of examining the future role and powers of the European Parliament consequent on enlargement and its relation with the other community institutions. It was composed of fourteen eminent lawyers and constitutional professors from the six member countries and the four applicants; Senator Mary Robinson was the Irish representative on the group. Over 120 pages long, the report covers a wide area putting forward a considerable amount of recommendations and proposals.

Present position—Council sole decision-making power

It begins by casting a hard look at what the Community has already achieved since 1958, and enumerates the areas where little or no progress has been made so far, or where action on a European Community level is just starting, such as regional policy and economic and monetary union. After setting the context it goes on to examine the position and powers of the Community Institutions set up by the Paris and Rome Treaties, and comes to the conclusion that the Council of Ministers has reached a point where it is now the sole centre of decision-making within the Community, to the detriment of the Commission. The Commission's power of initiative and the substance of its proposals are considerably diminished as a consequence. The Parliament, at present a body with purely consultative powers, is also affected by this preponderance of the Council of Ministers in the decision-making process; the lines of political communication are much more direct with the Commission, on which it has a certain control, than with the Council of Ministers.

The report also points out that the decision-making process as now operating erodes the functions of the National Parliaments without at the same time replacing this function on the Community level—'the logic of any democratic system requires that this decrease in parliamentary powers on a national level should be replaced in some way on the European level'.

Need to strengthen European Parliament

This brings the group to state unequivocally that there is a grave need for the powers of the European Parliament to be strengthened in view of the new areas of activity at European community level, notably economic and monetary union.

The Vedel group's proposals to ameliorate and induce some democratic control into the Community Institutional System are based mainly on an extension of the Legislative Powers of the Parliament. Although the Council of Ministers would continue to be the main legislative organ of the community, in certain cases a power of co-decision would be attributed to the Parliament. The report proposes two stages in this development. In the first stage, the Parliament would receive a power of co-decision with the Council of Ministers in the following matters: revision of the treaties, application of article 235 of the EEC Rome Treaty, (new actions not expressly covered by the treaty but which are required for a proper functioning of the Community), admission of new members, and ratification of international treaties concluded by the community. During this first stage, the European Parliament would also receive a consultative power reinforced by a suspensive veto in areas of community policy dealing with harmonisation of legislation and common policies, transport policy, etc. This would allow the Parliament to demand a second deliberation on a decision taken by the Council of Ministers. The Council of Ministers would then have to proceed with a second deliberation; its subsequent decision would be final and executive.

In the second stage, this suspensive veto power in the areas listed would be turned into a power of co-decision alongside the four main areas where co-decision is allowed already in the first stage.

No timetable provided for direct election

On the question of the method of election of the European Parliament, it is significant that the group were unanimous in stating that direct elections of the European Parliament should not be regarded as a precondition to the strengthening of its powers. As the report says, it is not a change in the method of recruitment of the Parliament which will automatically reinforce its powers. Rather, once the progress towards an increase in the powers of the Parliament has been advanced, the logical follow-up will be the immediate application of article 138 of the Rome Treaty. It is perhaps a pity, however, that the report doesn't bring out a precise timetable for this implementation. But the report does include the opinion of some members of the group who were in favour of an implementation of direct elections by 1978; others felt, however, that the complex preparatory procedure would depend on political circumstances difficult to evaluate in any precise manner. As to the actual method whereby the parliamentatians would be directly elected, the group agreed that, as a transitory measure, the elections could be carried out according to each country's electoral system. Two members of the group, however, came out strongly in favour of a uniform electoral system with the least possible delay. They felt that this would facilitate the creation of political parties on a European level.

It is difficult to know what sort of decision, if any,

will be taken on this question. France has already stated that it doesn't consider the question as being of major importance at the moment. If one is to believe the "meeting of minds" on these questions between President Pompidou and Mr. Heath at their first bilateral meeting last year, the British Government is also of the same opinion. What could happen is that if agreement is not reached at the Summit, some governments (Luxembourg has already stated as much) would propose that member countries should proceed to implement direct elections unilaterally.

Closer co-operation between National Parliaments

There are a number of other areas where the group proposed a wide range of changes no less important than those already mentioned. For example, the report stresses the importance of increased links and closer co-operation between the national parliaments and the European Parliament by means of joint committees, coordination of time-tables, etc. The necessity for increased budgetary powers with reference to the community's decision in 1970 (control by the European Parliament over the community budget from 1975) was also discussed at length.

The Vedel report is now in the hands of the Commission. The reactions to the report have been very favourable, although a number of comments were made inside the Commission to the effect that they felt the report didn't go far enough and was in fact a minimalist approach to the whole question. They were disappointed that the report did not opt for more precise timetables in the changes it proposed.

An important point to note here is that many of the proposals put forward by the Vedel group do not need any changes in the Treaties, and can therefore be implemented without any hindrance—if the governments agree—immediately the enlargement is achieved on the 1st January 1973.

ERWAN FOUERE,
European Community Institute
for University Studies.

LAWYERS POUR ABUSE ON COURT "REFORMS"

by MICHAEL ZANDER

The controversial recommendations of the Criminal Law Revision Committee on the rights of the accused are severely criticised in an unusually outspoken report by a group of barristers and solicitors who work for the organisation Release.

They say the committee's report is like the prescription of a doctor who misreads all his patient's symptoms, ignores any scientific method of treatment, prescribes treatment which bears no relation to his illness, and which is likely to make the patient sicker than before.

Release gives advice in over 1,600 criminal cases a year, mainly in the magistrates' courts, and the report accuses the committee of having completely failed to consider the effect of its recommendations in summary trials.

The lawyers suggest that the committee was entirely wrong to proceed on the assumption that the present rules are loaded in favour of the accused.

In many ways the accused suffered considerable disadvantages, especially in the magistrates' courts: he did not have advance information on the evidence against him; unless he had legal aid, which was rare for summary trials, he normally lacked the means to prepare his case; in the police station he was usually denied access to a solicitor; in a significant number of cases the police distorted or even fabricated evidence and were normally believed in preference to the defendant; and many magistrates appeared to think that to reject police evidence was to undermine the authority of the law.

The committee's recommendation to abolish the suspect's right of silence in the police station would greatly increase the danger of an innocent man being convicted and would place dangerous new powers in the hands of the police. The proposal was unacceptable unless safeguards were developed such as tape recorders in the police station or duty solicitors, unless the interrogation took place before an examining magistrate or some equivalent.

Independent evidence of interrogations would also assist with the unsatisfactory situation regarding alleged confessions.

Release rejects the proposal to make previous convictions admissible where the accused admits the basic facts but denies that he had the necessary criminal intent. This, it says, would amount to a denial of justice for a defendant with a record.

The problem would be particularly acute in summary trials because the magistrates would have to decide whether evidence of previous convictions was admissible. The decision would normally go against the defendant, particularly if he was unrepresented. Even if the magistrates ruled against the evidence there was no requirement that the case be passed to another bench unaware of the record.

The proposal that hearsay evidence should be more readily admissible is also criticised. The safeguard that the defendant be informed in advance of any such evidence was not to apply to magistrates' courts and this raised the prospect of an unrepresented defendant being faced with statements from witnesses whom he had never seen and had no chance to cross-examine.

The proposal opened vast new areas for abuse in police officers getting written statements from one co-accused for use against another.

Release Lawyers, "Guilty Until Proved Innocent?" 40p. Release, 1 Elgin Avenue, London W.9.

The Guardian (30th March 1973)

Local Authority Solicitors Association

A Seminar was held by the Local Authority Solicitor's Association in the Clarence Hote, Dublin, on Friday 13 April 1973. The programme was as follows:

9.30 a.m.—Address of Mr. Peter Prentice, Senior Vice-President, Law Society, who declared the seminar open.

10.00 a.m.—A Paper entitled "Aspects of Compensation for Compulsory Purchase".
Speaker: Matthew Purcell, M.A., LL.B., former Solicitor to Dublin County Council.

11.45 a.m.—Aspects of Planning Control.
Speaker: Donal M. King, Solicitor, Cork County Council.
The lunch was preceded by a Reception in City Hall, at which Mr. Matthew Macken, Dublin City and County Manager was host.

1.00 p.m.—Lunch at which the President of the Law Society attended.

2.30 p.m.—"The implications of the decision in Dutton v. Bognor Regis U.D.C." (1972) 1 AER 462.
Patrick P. O'Sullivan, Solicitor, Dublin. A note of this case appears in the Gazette at page — — —

4.00 p.m.—Open forum at which Mr. Brendan Kiernan, B.L., Legal Adviser and Mr. Michael Murphy, B.L., Assistant Legal Adviser Department of Local Government attended.

7.00 p.m.—Dinner.

Mr. Prentice, Senior Vice-President of the Law Society, speaking at the lunch on behalf of the guests, stated that he was deputising for the President of the Incorporated Law Society of Ireland, who sent his very best wishes to the members of the Association present and greatly regretted his inability to be present.

The Seminar which the Association described as their second venture, was much more to Mr. Prentice's mind an established fact than a venture and was of such excellence that the event is worthy of being repeated each year. The benefits of a Seminar, Mr. Prentice said, for those engaged in or practising in Local Government is that the members can discuss and talk over problems and this is all the more important in the Local Government Code which was described by the late Mr. Justice Gavan Duffy in the case of *Devanney v. Dublin Board of Assistance* (1949) ILTR 113 as "the vast domain of services under our local governing bodies where the relevant law is hard to ascertain and sometimes hard to construe". The late Mr. Justice Gavan Duffy recognising the complexities of the local government law described it as "terra incognita" and I think that this is an apt description.

Mr. Prentice referred to the absence of suitable text books on various local government subjects. He stated that there was no publication on "Public Health" since Vanston's "Public Health" was published in 1913 and that Street's "Local Government", which was published in 1955, needs revision. Mr. Prentice suggested that the Association might think well of recording their discussions and publishing the papers read at the Seminars, that these could be extremely valuable to the members of the profession in general, and that he felt that if the papers were given to the Editor of the Law Society's Gazette, that the Editor would be most pleased to publish them and this would be done free of cost to the Association.

He thanked Mr. Macken, the City and County Manager, Dublin, for attending the Seminar and referred to the friendly relation between the Incorporated Law Society and the County Manager's Association. In 1956 an agreement had been entered into between these parties which had placed Solicitors in the local authority service in parity with Engineers and Doctors and this agreement has stood the test of time and is still greatly appreciated.

He also welcomed Mr. William Dundon, newly appointed Law Agent to Dublin Corporation, and wished him well in his new and onerous post.

The guests at the luncheon included Mr. Liam J. Lysaght, Chief State Solicitor, Mr. Patrick Morrissey, Assistant City and County Manager, Mr. Eric A. Plunkett, Secretary of the Law Society, Mr. Brendan Kiernan, B.L., Legal Adviser, Department of Local Government and Mr. M. Murphy, B.L., Assistant Legal Adviser of the same Department.

Mr. William Dundon formally welcomed the guests on behalf of the Association.

The Association's Annual General Meeting was also held on that day and the following Officers were elected:

Chairman: Michael J. Leech.
Secretary and Treasurer: Dermot Loftus.
Committee: Messrs. Timothy Murphy, Peter A. Fitzpatrick, Donal M. King, Henry Murray and William Dundon.

The chairman, Mr. Leech, in the course of the proceedings read a letter of apology for non attendance from Mr. John A. Young, City Solicitor, Belfast Corporation, who wished the Seminar every success.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

A application has been received from the registered owner mentioned in the schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the schedule which original land certificate is stated to have been lost or in original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that th original certificate is in existence and is in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is days from the date of publication of this notice that the being held.

Dated this 30th day of June 1973.

D. L. McALLISTER,
Registrar of Titles
General Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Peter Callan; Folio No.: 13934. Meath; Lands: Corratober; Area: 9a. 1r. 1p.; County: Meath.

(2) Registered Owner: Pigs and Bacon Commission; Folio No.: 25366, Limerick; Lands: Creggane; Area: 32a. 2r. 17p.; County: Limerick.

(3) Registered Owner: Michael Desmond Murphy; Folio No.: 21298, Mayo; Lands: (1) Breaghwy; Area: (1) 10a. 2r. 20p.; Lands: (2) Carrowkeribly; Area: (2) 2a. 1r. 16p.; County: Mayo.

(4) Registered Owner: Thomas Bolger; Folio No.: 7122L, Dublin; Lands: The Leasehold interest in the property situate to the east of Clanshage Road in the Parish of Coolock District of Coolock West and City of Dublin; Ara: 16p.; County: Dublin.

(5) Registered Owner: William John O'Connell; Folio No.: 30L, Waterford; Lands: The Leasehold estate in the dwellinghouse and premises situate on the North side of Morrisons Avenue, Parish of Trinity Without and City of Waterford; Area: Measures in front to the said Avenue 78 feet in the rere and 85 feet and in depth from front to the rere on the West side 78 feet and the East side 83 feet 6 inches; County: Waterford.

(6) Registered Owner: Patrick Browne; Folio No.: 11899, Waterford; Lands: Kilgrovan; Area: 1r. 99p.; County: Waterford.

(7) Registered Owners: Louis St. John McCarthy and Viola McCarthy; Folio No.: 3364L, Dublin; Lands: The Leasehold estate in part of the land of Newlands in the Barony of Uppercross with the dwellinghouse and premises thereon known as Silverdene situate on the South side of the road leading from Rathcoole and Dublin; Area: Measures in front to the said road 35 feet in the rere 35 feet and in depth from front to rere 200 feet; County: Dublin.

(8) Registered Owner: John Marron; Folio No.: 1464, Monaghan; Lands: Lisnashannagh and Drumerer; Area: 8a. 0r. 10p. Folio No.: 5371, Monaghan; Lands: Lisnashannagh and Drumerer; Area: 4a. 2r. 0p. Folio No.: 925, Monaghan; Lands: Lisnashannagh and Drumerer; Area: 0a. 3r. 10p. Lands: Lisnashannagh and Drumerer; Area: 15a. 1r. 10p.; County: Monaghan.

(9) Registered Limited Owner: Cornelius Mulcahy; Folio No.: 10313, Cork; Lands: Shandrum; Area: 52a. 1r. 22p.; County: Cork.

(10) Registered Limited Owner: Mark Ernest Bell; Folio No.: 10234, Kings; Lands: (1) Skehanagh; Area: (1) 62a. 0r. 35p.; Lands: (2) Moyclare; Area: (2) 5a. 1r. 30p.; County: Kings.

(11) Registered Owner: Emily Jane Hatton; Folio No.: 20383, Wexford; Lands: Ballyeden; Area: (1) 14a. 2r. 37p.; Area: (2) 30a. 2r. 18p.; Area: (3) 1a. 2r. 20p.; County: Wexford.

SEMINAR ON EEC COMPANY LAW

The EEC Committee of the Council have proposed that a Seminar on European Community Company Law should be held in a provincial venue during a weekend next October. It would be appreciated if members and Secretaries of Bar Associations would indicate as soon as possible and not later than the 15th July next, which weekend would suit them best, by writing to the Secretary.

BOOK REVIEWS

It is regretted that due to lack of space the Book Reviews have had to be postponed to the July/August issue. It is hoped to give much more space than usual to book reviews in that issue.

ADJOURNMENT OF OPENING DATE OF TRINITY SITTINGS 1973 IN NAAS

By order of Judge Kenneth Deale, then Circuit Court Judge for the Eastern Circuit, the opening date of the Trinity Sittings for the Naas Division of the County of Kildare has been adjourned from Thursday, 19th July, to Monday, 23rd July 1973.

Patrick J. O'Neill,
County Registrar, for County Kildare.

OBITUARY

Mr. Michael Francis Graham died on 22nd May 1973 at his residence, "Riarkeevin", Strand Road, Sutton, Co. Dublin.

Mr. William Robert McFerran died on May 23rd 1973 at his residence, "The Peak", Killiney, Co. Dublin. Mr. McFerran was admitted in Trinity Term 1920 and practiced under the style of H. & W. Stanley, first in Molesworth Street, and subsequently at 6 Fitzwilliam Square, Dublin.

Office of the Revenue Commissioners,
Estate Duty Branch,
Dublin 2.

June, 1973

NOTICE

Re Estate Duty Forms: A (x) — Inland Revenue Affidavit.
B1 (x) — Estate Duty Account.
B2 (x) — Corrective Affidavit.
B3 (x) — Corrective Account.

Original Inland Revenue Affidavits and Accounts received in this Branch for the first time on and after 31st July next must be on the 'x' version of the appropriate form if the deceased died on or after 19th July, 1972.

For copy Affidavits or accounts the old forms (i.e. A, B1, B2, and B3) may be used while supplies last.

COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES
LUXEMBOURG

RESEARCH POST FOR LAWYER

The European Court of Justice wishes to recruit a lawyer for its Library and Research Division. Duties will include carrying out legal research at the request of Members of the Court, and research and analysis of documentation dealing with both English and Community law.

Candidates must be of British or Irish nationality, and not more than thirty years of age. They should have good academic qualifications and preferably research experience, especially in the field of comparative law or Community law.

Candidates must possess a thorough knowledge of the English language and a satisfactory knowledge of one of the other official languages of the Communities (Danish, Dutch, French, German, Italian).

Minimum net salary (after deduction of tax and social security contributions) **£4,500 per annum.** In addition family allowances are payable where appropriate.

Interested persons are invited to write to the PERSONNEL DEPARTMENT OF THE COURT OF JUSTICE, CASE POSTALE 96, LUXEMBOURG for further information and an application form, which should be returned not later than 6 July 1973.

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

JULY/AUGUST 1973
Vol. 67 No. 7

Contents

The Gazette is published during the first week of each month; material for publication should be in the Editor's hands before the 10th of the previous month if it is intended that it should appear in the following issue. Acceptance of material for publication is not a guarantee that it will in factbe included in any partuicular issue since this must depend on the space available.

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EDITORIAL

Lack of Right of Appeal for Accused pleading Guilty remedied

When Senator Mary Robinson introduced the Criminal Procedure (Amendment) Bill 1973 in the Senate on 11 July 1972 she agreed to withdraw the Bill, on the understanding that the Minister for Justice would introduce a similar Bill which has since been printed. The Bill arose out of the short judgment of the Supreme Court given recently in the case of *The State* (Hunt) *v. Governor of Portlaoise,* in which they affirmed Finlay J's decision in the High Court, reported in 107 I.L.T.R. (1973) at page 53. The applicant was charged with attempted robbery in the District Court and pleaded guilty. As the District Justice had no jurisdiction to try the case, he made an order under Section 13 (2) (b) of the Criminal Procedure Act 1967 sending the accused forward for sentence to the appropriate Circuit Court, which imposed a sentence of two years. The applicant in January 1972 purported to serve a notice of appeal to the Court of Criminal Appeal under Section 31 of the Courts of Justice Act 1924 for leave to appeal against the severity of the sentence. The Court of Criminal Appeal on 23 March 1972 ordered that the application be struck out on the ground of want of jurisdiction. The case of Anthony O'Brien, who received a similar two-year sentence under similar circumstances, was treated in the same way. The applicants' then applied to the High Court for an Order of Habeas Corpus on the ground that there was no right of appeal from this plea of guilty in the District Court and from the subsequent sentence in the Circuit Court. Mr. Justice Finlay was unable to agree with Mr. Justice Butler's decision in *The State* (Andrew Murphy) *v. Governor of Portlaoise,* given on 23 November 1971 where it was apparently held that the applicant had a constitutional right of appeal from any decision of the Circuit Court. Mr. Justice Finlay in a clear and reasoned judgment briefly held that Article 34 (3) (4) of the Constitution, which provides that "The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law" does not confer a universal right of appeal from the Circuit Court, and Section 13 (2) (b) of the Criminal Procedure Act 1967 is not inconsistent with Article 34 (3) (4).

The last word "law" in Article 34 (3) (4) is to be construed as "statute law", and not "constitutional law". It was pointed out that there is no moral or legal duty on a person when charged with an indictable offence before the District Court to signify his desire to plead guilty and that Section 13 (2) (b) does not come into operation until he does so. The accused appealed to the Supreme Court against the refusal of the grant of Habeus Corpus, but, despite a very able constitutional argument by Mr. Sean MacBride, S.C., lasting several days, that Court dismissed the appeal in an exceptionally short judgment.

This is the background which led to the introduction of Senator Robinson's Criminal Procedure Bill 1973 although she only cited in argument the case of *The People v. Tyrrell,* 1970 I.R. 294, where the Court of Criminal Appeal had found that it had no jurisdiction in similar circumstances. In jurisprudence, the better legal opinion appears to follow American rather than British precedent, and to state that it is essential to give full and detailed reasons for making decisions in constitutional cases. Be that as it may, Section 1 of the Criminal Procedure (Amendment) Act 1973, introduced by the Minister for Justice, now reads as follows: "In the case of a person sent forward by the District Court under Section 13 (2) of the Criminal Procedure Act 1967, whether before or after the passing of the Act, an appeal shall lie against the sentence, as if he had been sentenced after conviction or indictment." In other words, the Minister deserves praise for agreeing to remedy the manifest injustice of the present position. The Minister is also to be commended for extending legal aid under the same Bill to all cases of preliminary examination of indictable offences in the District Court under Part 2 of the Criminal Procedure Act 1967.

THE SOCIETY

Proceedings of the Council

MAY 31st

The President in the chair also present Messrs Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, John B. Jermyn, Francis J. Lanigan, John Maher, Patrick C. Moore, Eunan McCarron, Brendan A. McGrath, John J. Nash, George A. Nolan, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

The following was among the business transacted.

Medical witnesses expenses

A medical practitioner wrote to the Society stating that a member had failed to pay medico-legal fees for furnishing reports and also fees for treatment of the client who was a patient of the medical practitioner as a result of a road accident following which he recovered substantial damages in legal proceedings in which the member acted for him. There was a conflict as to whether the client was entitled to treatment as a public patient in the hospital or whether he was treated privately. The committee having investigated the facts came to the conclusion that they could not resolve the question whether the patient was treated as a public patient or not and in any event in the absence of a personal undertaking by the solicitor he would not be legally responsible for payment of these fees. It would also appear that the solicitor gave no personal undertaking with regard to the payment of fees for medical reports but he had paid the fees allowed by the Taxing Master. It was decided that the Council should take no action in the matter.

Solicitor as director of an auctioneering firm

A member wrote stating that he had been requested by his clients to become a director of a firm of auctioneers. In order to comply with the Companies Acts his name would have to appear on the notepaper but would not appear in the title of the company. The word solicitor would not appear after his name on the company's stationery. He enquired whether there was any objection on the part of the Society. The Council on a report from a committee stated that no objection should be taken to member's joining the board of the auctioneering firm on condition that he is not described on the stationery as a solicitor and that he undertake not to act in a conveyancing matter for any client introduced by or through the firm.

Sale of practice by solicitor entering the State service

A member who had been appointed to a public position enquired whether there would be any objection on the part of the Society to his winding up his existing work and handing over any papers or documents in possession to a colleague who might be willing to accept them. A committee reported that in the Society's Gazette of March 1958 the Council expressed the opinion that where a practising solicitor was appointed County Registrar there is no objection to his continuing the practice for a short period with the permission of the Department of Justice pending its disposal. The Council endorsed this report and stated that there is no objection to the continuance of the practice for a limited period on the conditions mentioned.

Instructions from Resident's Association in conveyancing matters

Members act for builders on a housing estate who have agreed with the residents en bloc to sell the fee simple at a special purchase price. Members will also act for the builders. The local Residents' Association are anxious to instruct a single solicitor. Various solicitors acted upon the individual purchases when the estate was being developed. It was stated that the title is straightforward and that there will be no conflict of interest. They enquired whether they might comply with a request from the vendors to act for the members of the Residents' Association. The Council on a report from a committee stated that if the clients wish to consult members individually or any other solicitor of their choice they may do so. The instructions should not come from the Residents' Association. The costs should be charged on the commission scale of schedule 2 at the option of the solicitor.

Sharing stockbrokers commission

The Council received a report from a committee and a statement is published in this issue of the Gazette at page 158, below.

Press articles by solicitors

A member was asked to write articles under his name for a Sunday newspaper reconstructing actual legal cases in simple terms using characters with fictitious names. He stated that the articles would be over his signature but without his professional description. He asked for clearance. The Council in reply stated on the facts submitted there is no objection.

Exchange of properties

Member acts for a client who is exchanging premises in London for a hotel in Ireland. The client will be paying £13,000 for equality of exchange being made up of £8,000 in cash and £5,000 worth of equipment and furniture. The value of the hotel premises is £26,000. In reply to a query as to the correct basis of charge the Council stated that assuming that there is full investigation of title and the preparation, drawing, engrossment and separate registration and stamping of two deeds (because the properties are in two different countries) the basis of charge would be the appropriate scale fee on a value of £26,000 as solicitor for the vendor.

"Improper Assents"

Members wrote commenting on the article under the heading "Improper Assents in the Land Registry" in the March 1973 issue of the Society's Gazette. They stated that on the example of a deceased intestate leaving six next of kin and five of them signing an agreement for natural love and affection or for financial consideration to transfer and release their interest in the lands to the sixth party it would have been necessary to execute, stamp and produce to the Land Registry a formal deed before the lands could be transferred to the sixth party. They asked the Society to consider whether the legal personal representative is entitled to act on the agreement (which does not carry a stamp) and is sent to the sixth party to be registered as final owner. Must the personal representative insist on the legal transfer being entered into and stamped and would it be considered improper for the solicitor to act in connection with such assent in pursuance of such agreement which requires no stamp as distinct from a formal duly stamped transfer? The Council on a report from a committee stated that the correct course for a solicitor to take is to have a properly drawn up agreement of release and transfer under seal executed by all beneficiaries entitled to take who are transferring their portion of the estate to a fellow beneficiary whether for financial consideration or otherwise. It is wrong for a solicitor to lodge an "improper" assent. This is of particular importance in the case of voluntary releases as the standard form of requisition on title asks whether there were any voluntary transfers on title. A solicitor would be placed in a very troublesome predicament in answering this question in the event of a voluntary transfer by way of improper assent being effected and forming part of the title.

Duty solicitors for cases in the Children's Court

At the suggestion of a member it was decided to refer this matter to the Dublin Solicitors' Bar Association for discussion with practitioners in that Court.

Second Irish examination

It was decided to reverse a previous decision of the Council and that in future there will be two first Irish examinations yearly one in February and the second in July.

District Court Rules Committee

Mr. Richard Knight was re-appointed as the Society's representative on the District Court Rules committee for five years with effect from 24th April 1973.

Incorporated Council of Law Reporting

Mr. John Buckley was appointed as one of the Society's representatives on the Council.

SHARING STOCKBROKERS' COMMISSION

The Council received an enquiry from members as to whether there is any professional objection to sharing stockbrokers' commission following the integration of the Stock Exchanges of the Republic and the United Kingdom. Irish stockbrokers now follow the English practice of allowing a commission of 20% of the stockbrokers commission to solicitors and other persons placing business with them provided that the person taking the commission is included in the general register kept pursuant to Rule 212(2) (b) of the Stock Exchange. There is only one Stock Exchange in England and Ireland of which the Dublin Exchange is the Irish unit and a common set of rules apply throughout.

An applicant for inclusion in the general register applies on a form which may be obtained from the Stock Exchange and pays an annual registration fee of £10.50. Paragraph 3 of the form provides that no part of the commission shall directly or indirectly be returned or allowed to the principal or any other person but this undertaking does not preclude the applicant from agreeing to waive in whole or in part the charges which he would otherwise be entitled to make for services rendered specifically and exclusively in connection with the purchase or the sale of stocks or shares in respect of which such share of commission arises. The stockbrokers bought or sold note contains a statement that the commission is shared.

The Council on a report from a committee decided that there is no objection to applications by solicitors for inclusion in the general register of the Stock Exchange kept pursuant to Rule 212(2) (b) and accepting the commission, now 20% of the stockbrokers' commission in respect of business transacted on behalf of clients. All Stockbrokers in the U.K. and Ireland follow the same rules.

DUBLIN SOLICITORS' BAR ASSOCIATION

The following matters were before recent meetings of the Council.

(1) **Registry of Deeds delays**

On a report from a sub-committee it was agreed to make representations to the Department of Justice for the employment of additional staff in the Registry of Deeds, including the appointment of an additional Assistant Registrar or Chief Clerk, to enable the registration of documents to be completed more speedily and to enable the time taken for completing Negative Searches to be reduced from the present unsatisfactory period.

(2) **Charging of Outlay by Builders to Purchasers' Solicitors**

On a report from a sub-committee following their consideration of Counsel's opinion received by the Law Society on this question, it was agreed to make representation to the Law Society and to the Department of Justice seeking an amendation of the provisions of Section 33 of the Landlord & Tenant (Ground Rents) Act 1967, so as to oblige Lessors to furnish good marketable title to prospective House Purchasers, where the transaction is carried on by way of Lease, without any charge.

Admission Ceremony

The President of the Society, Mr. T. V. O'Connor, in presenting parchments to newly-admitted solicitors on Thursday, 7 June 1973 in the Library of Solicitors Buildings, said :

Ladies and Gentlemen,

My first pleasure and privilege today as this year's President of the Law Society is to congratulate all you former apprentices on your admission as Solicitors. This important event in your lives represents the fruits of years of intense study and anxiety. You have now reached the goal and end of your student days and are enjoying the happy reward that comes from your years of labour. It is a great occasion both for yourselves and also for your parents and friends and may I on behalf of the Council of the Law Society and on my own behalf bid you and them a warm welcome to this ceremony. This profession of ours despite adverse criticism which has existed from time immemorial ranks high in public esteem. One of the reasons for this is no doubt that the public recognise that our profession has been and will continue to be perhaps the only bulwark between the ordinary citizen and the encroachment on that citizen's rights and liberties by an acquisitive state and by acquisitive public authorities. It is the duty as well as the privilege and the right of a lawyer to stand in as that bulwark and often irrespective of the reward or fee paid to himself.

Having congratulated and welcomed you young Solicitors, it is not out of place, I hope, for me to put a few considerations before you with a view to guiding you in your lives and work. Most of you will, shortly, I presume, be working in offices; and in a sense it is only then that you will begin to learn the ordinary practice and procedure and business administration which are such important parts of the life of a Solicitor.

Some of you have offices prepared and ready to receive you and in that respect you are fortunate but others will be tempted to set up in practice on their own. Whilst I have known many Solicitors who set out starting on their own becoming very proficient, on balance I think it is better for any young Solicitor to seek some established office, for a while at least, there to spend some time in acquiring the "know-how" as regards getting work done, correspondence replied to, and how to get on with other people whether they be clients or fellow-members of the staff of the office. I say this even if the amount of salary offered, for a start, may be considered by present day standards to be on the low side.

Many of you will have difficulties from time to time in regard to ethical standards and in regard to how to do certain work. In our profession there is a great "Esprit de Corps" and you would be well advised in any such case to consult either a senior colleague or the Secretary or one of the officials in the Incorporated Law Society's office in order to remove doubts and set your mind at ease. Always remember that there is no need to confess ignorance to a client but at the same time never be above asking for advice from those competent to give it in any matter of doubt and never affect to understand when you do not understand thoroughly.

There is, I know, no need whatever for me to stress the most important rule of all for any Solicitor (or for that matter for any professional man) and that is to be scrupulously exact down to the smallest item in money matters, etc. in your account of them, and it is important always to be straightforward and sincere, and also I need hardly tell you that you must never fail in an engagement made and that you must observe rigid punctuality and on that account please be slow to promise a client or anyone else unless it is clear that you can punctually fulfil the appointment. Our profession is an old and honourable one and amongst you young Solicitors here today there are some who will in time perhaps make that profession still more honourable, some who will set a headline not only for his colleagues but for the community at large. I wish each and all of you young Solicitors the very best of luck, success and every happiness throughout your lives.

You are aware that the first priority of our Society since we entered the E.E.C. is to establish the effect of our membership of that body on our own domestic laws and we are bound to ensure that we are equipped to deal with any problem that might be presented by a client involving community laws or regulations. I suggest that in the near future you might devote some of your time to browsing amongst the Common Market Law Reports, which our Society has acquired and thereby getting to know something about the Community Laws and Regulations. You must remember that these Laws and Regulations will in time penetrate into our national system and it is clear that the European Economic Community Law will become part and parcel of the stock-in-trade of all lawyers practising within the community and that includes ourselves, the lawyers of Ireland.

It may well be that many of you here will in the course of a few years be found practising in France or Germany or Italy while your counterparts in those countries may well be practising here. For that reason may I suggest that, if you already have not got fluency in a continental language, you should consider taking steps at once to making yourself fluent in one of those languages without too much delay.

In conclusion having congratulated yourselves and having congratulated your parents who have gone to such expense, and in some cases difficulty, in putting you through an arduous professional course, there are a few things I would recommend to you. You should consider joining the Incorporated Law Society which controls our profession and has many facilities to offer. I also advise you to join the Society of Young Solicitors, a body which holds seminars, useful and enjoyable, in different parts of the country, and also to join your local Bar Association. I would also suggest that you join the Solicitors Benevolent Association which is a body of long-standing and which has helped many Solicitors and their widows and dependents in time of financial stress, and it operates throughout the 32 counties, and there are so many persons who through no fault of their own are thrown back on the resources of the Benevolent Association. There is now formed in Dublin a body called F.L.A.C. (Free Legal Aid Centres) and it is a most charitable and worthy body and one through which Solicitors, particularly in Dublin, can show that they are concerned for the welfare of their fellow human beings, and their unselfishness.

I thank you all for coming here today and wish you the best of luck and I hope everyone of you will be a brilliant success in the great profession which it is your privilege now to join the ranks of.

Presentation of Parchments

Parchments were then delivered to the following newly qualified solicitors :

Maurice Bannon, 35 Oulton Road, Clontarf, Dublin 3; Robert P. Barrett, B.C.L. (N.U.I.), "Moyne", Model Farm Road, Cork; Robert Bolton, 24 Lakelands Park, Terenure, Dublin 6; Barry St. J. Bowman, 133 St. Laurence Road, Clontarf, Dublin 3; Francis V. Burke, B.A. (N.U.I.), "Orbsen", Cornamona, Co. Galway; Declan C. Carroll, B.C.L. (N.U.I.), "Linden", Fermoy, Co. Cork; Mary E. A. Crowley, Ardvarna, Taylor's Hill, Galway; Patrick Curran, 78 Temple Road, Blackrock, Co. Dublin; Paula Desmond, B.C.L. (N.U.I.), Kilbeg, Bandon, Co. Cork; Gerard D. Diamond, 42 Woodbine Road, Blackrock, Co. Dublin; Peter M. G. Douglas, B.C.L. (N.U.I.), Rock Road, Blackrock, Dundalk, Co. Louth; Patrick J. M. Durcan, B.C.L. (N.U.I.), Clew Bay House, Rosbeg, Westport, Co. Mayo; Bertrand G. French, B.Sc., "Ardilea", Westminster Road, Foxrock, Co. Dublin; Edmund Fry, B.A., "Kinlough", Kerrymount Avenue, Foxrock, Co. Dublin; Rory Harman, B.C.L. (N.U.I.), 55 Shantalla Drive, Beaumont, Dublin 9; Goretti Hickey, B.C.L. (N.U.I.), "Shalimar", Hettyfield, Douglas, Co. Cork; Harry P. Hunt, 12 Casement Street, Cavan; Patrick M. Hurley, B.C.L. (N.U.I.), "Thomond", Ashbourne Avenue, Limerick.

Sean T. Kennedy, "Craighlea", Carrickmacross, Co. Monaghan; Laurence P. Kirwan, B.C.L. (N.U.I.), Moongate, Clonard Road, Wexford; Mary E. Lawler, B.C.L. (N.U.I.), Milford, Co. Donegal; Colm MacGeehin, 3 Hollybank Road, Drumcondra, Dublin 9; George D. R. Mills, B.C.L. (N.U.I.), Belvedere Lawn, Douglas Road, Cork; John L. Mulvey, 123, Lower Baggot Street, Dublin 2; Michael F. Nolan, B.C.L. (N.U.I.), Kilkee, Co. Clare; Jacinta Noonan, B.C.L. (N.U.I.), Castletown, Athboy, Co. Louth; James P. A. O'Boyle, B.C.L. (N.U.I.), 3 Orwell Park, Rathgar, Dublin 6; Nancy O'Driscoll, B.C.L. (N.U.I.), Kilcrea, Ovens, Co. Cork; Sean M. O'Floinn, B.A., 132 Foxrock Park, Foxrock, Co. Dublin; James R. Osborne, B.A. (T.C.D.), Knocknagreana, Milford, Co. Donegal; Aideen A. Rooney, Grianach, Murrough, Co. Galway.

VOLUNTEER CAN RECOVER FROM SOLICITOR FOR NEGLIGENT ADVICE

In 1938 H, the life tenant under a marriage settlement, exercised her special power of appointment by appointing irrevocably that after her death and meanwhile subject to her life interest the trustees should hold one third of the trust fund in favour of her daughter, T, absolutely. In 1940 she made an exactly similar appointment in favour of her other daughter, F. In each case the daughter assigned her share to her own marriage settlement trustees. In 1962 H purported to appoint 750 shares of £10 each in a family banking concern irrevocably to her son, E, and on the same day released her life interest in respect of the shares, which were later transferred to E. H died in 1965. The trustees of T and F's marriage settlements claimed that the 1962 appointment was effective only with regard to 250 of the 750 shares. Certain dealings had occurred with the shares consequent on the public flotation of the banking concern, and it was alleged that E had received between £90,000 and £106,000 to which he was not entitled. The defendants had been retained by E 'to act in relation to his acquisition as beneficial owner of the shares', and they drew up the 1962 appointment and the release. The claim by T and F's trustees was compromised, £25,000 and costs being paid to each set of trustees. E, since deceased, commenced proceedings against the defendants alleging negligence and claiming as damages the sums paid under the compromise. The defendants under RSC ord 18, r 19, sought out the paragraph of the statement of claim in which such damages were claimed. The action was carried on by E's executor.

Brightman J said that the defendants contended that a plaintiff was not entitled to require his allegedly negligent adviser to place him, by an award of damages, in the position he would have occupied if the advice given had been factually correct. It was said that a volunteer could not recover from a solicitor who negligently advised him in that capacity the amount of any diminution in value of a gift suffered in consequence, because he, the client, was no worse off. Here, if E had been properly advised, he could have sought to make some arrangement with his sisters and their trustees. It seemed to his lordship that the defendants had not discharged the duty incumbent upon them if they were to succeed on their claim to strike out. It might be that the full amount required to satisfy T and F's trustees would not be recoverable at the trial, but his lordship dissented from the defendants' basic proposition; he did not accept that a volunteer could not recover from a solicitor negligently advising him the diminution in value of the subject matter of the gift suffered as a result of the negligent advice. In those circumstances it would not be proper to exercise the court's power to strike out. His lordship expressed no view as to whether the plaintiff would or would not be able to recover the damages claimed. Summons dismissed.

(Montagu v. Bird & Bird—Brightman J.—6 June 1973.)

UNREPORTED IRISH CASES

Court rules against picket by musicians

Mr Justice Kenny in the High Court yesterday ruled that a number of people were not entitled to picket the Addison Lodge licensed premises and guest house, at Botanic Road, Glasnevin, Dublin.

He granted a permanent injunction to the owners of the premises, Addison Lodge Ltd., restraining picketing by John Brady, Tony Bannon, Victor Prouse and Peter Pringle.

When the case was last in Court on May 1, Mr. Justice Kenny would not grant an injunction against John Flahive, district secretary, Irish Federation of Musicians, because he had not taken part in the picketing of the premises.

On that occasion there was the affidavit of James J. Freyne, a director of the plaintiff company, who referred to the hiring by the company of musicians for their cabaret and entertainment each night of the week. He received a letter from Mr. Flahive demanding that on each occasion the company required the services of musicians it should only hire members of the union.

Subsequently the premises were picketed. The picket, he claimed, was aimed at compelling him to force his employees, who were not members of the union, to join the union for only in that way could the company retain the employees in its employment and comply with the defendants' demands.

Mr. Justice Kenny granted an interim injunction and yesterday the company applied for and was granted an interlocutory injunction. The hearing of the motion was treated as the hearing of the action.

In an affidavit to the court, Mr. Flahive stated that the union was trying to ensure that the members would not be employed along with non-union members. The difficulties that had arisen concerned a number of issues; that employment by the company of the union members, including the defendants, at the premises under conditions which often compelled them to work with non-union members contrary to the rules of the union; he had received numerous complaints from members of the union working at the premises about this.

The members would then have to decide whether to perform, in breach of the rules, or not to perform. The union members on such occasions preferred not to embarrass the plaintiff and the guests.

Mr. Liam Hamilton, S.C., for the plaintiffs, submitted that the defendants were attempting to force the plaintiffs to employ only trade-union labour, which would have the effect of preventing the plaintiffs from adding non-union labour. The plaintiffs were willing at all times to employ union labour but they did not want this to be imposed on them. There was no trade dispute, and the plaintiffs were entitled to an order restraining picketing.

Mr. Patrick J. Bourke, S.C., who appeared for the defendants, said that the union gave notice of their intention to put on a picket. There were no threats used, no illegal activities alleged against the defendants and no request that non-union musicians should join the union, but that the plaintiffs should readjust their system to only employ union members. He submitted that this was a trade dispute.

Mr. Hamilton submitted that there was coercion on the plaintiffs to secure the dismissal of employees who were not members of the union.

[Addeson Lodge v. Brady—Kenny J.—unreported—5 May 1973.]

Suspension of art student is lifted.

The suspension imposed on a student of the National College of Art has been lifted, and the action brought in the High Court arising out of the suspension has been settled.

The terms of settlement were announced to Mr. Justice Pringle in the High Court late yesterday. They include a provision for the setting up of a board, presided over by a member of the Bar, to investigate specific complaints involving certain of the students.

On Friday last the student, Patrick D. Murphy, of Chelmsford Road, Ranelagh, Dublin, was granted liberty to serve short notice of motion for an interlocutory injunction restraining the college board from conducting any assessment or evaluation of the work of the students in the School of Painting until the validity of his purported suspension or expulsion from the college had been determined by the court.

When the case was called yesterday, the parties asked for time to continue their negotiations and later, when the court sat, Mr. Justice Pringle was told that the matter had been settled on the terms set out in a document which had been prepared.

In this document it was stated that Mr. Murphy agreed to accept the conditions of assessment laid down in the School of Painting. The defendants agreed to arrange for an assessment of Mr. Murphy's work as a third year student in the School of Painting to be held in the week beginning Monday, June 18 next, the assessors to be Professor John F. Kelly and two external assessors to be appointed by the college. This assessment is to be based on the third year programme given to Mr. Murphy in October, 1972, and is to be based exclusively on the standard of Mr. Murphy's work.

The document stated that the parties accepted that there had been a misunderstanding on the part of Mr. Murphy during the academic year as to the programme which third year students were to pursue. For that reason, the defendants, while reserving their right to insist on Mr. Murphy presenting his work for assessment in accordance with a document presented to him in March, 1973, would not insist on Mr. Murphy complying with the specific requirements as to quota of that document, provided that his work reached a standard appropriatet o that of a student who had completed his third year in the School of Painting.

The agreement also provided that the defendants should notify the Minister for Education that Mr. Murphy was restored as a student of good standing in the college, and request that his scholarship be restored to him and that he be refunded all monies which would have accrued due to him in the normal course during the period of his suspension.

The consent was entered into without admission of liability.

Mr. Donal Barrington, S.C., who with Senator Mary

Robinson appeared for the student, said that there was a large number of students affected by the dispute. A number of them were in the same position as Mr. Murphy, and the same terms of settlement applied. There was a number of other students whom the college had specific complaints against. These would be heard by a board presided over by a member of the Bar.

Mr. Justice Pringle made no order as to costs.

[Murphy v. National College of Art—Pringle J.—unreported—5 June 1973.]

Section 49 2(a) of Statute of Limitations is unconstitutional inasmuch as it infringes Article 40(3) of the Constitution.

The infant plaintiff boy, who was 11 years old at the time, was injured in a motor accident in September 1963; he was a passenger in a motor car, the property of his father, the second defendant, when another motor car, the property of the first named defendant, collided with it in Co. Tipperary. The present proceedings, in which the boy claimed damages for personal injuries through his mother, were not issued until 25 January 1968, i.e. more than three years after the accrual of the plaintiff's right of action. Each defendant accordingly pleaded that the infant plaintiff's claim was barred by the Statute of Limitations.

Murnaghan J., by order of 10 March 1969 set down for trial that this question should be determined as a preliminary issue without further pleadings before a Judge alone. Meanwhile the infant plaintiff challenged the constitutionality of Section 49(2) (a) (ii) of the Statute of Limitations and the matter was argued before **O'Keeffe P.,** who, having delivered a reserved judgment on 9 July 1970, rejected the plaintiff's contention. Under Section 49(1) (a), a person under disability at the date of the accrual of his right of action is normally given six years from the cesser of his disability within which to bring his action, but there follow a number of limitations on this general extension. Section 49(2) (a) of the Act relates specificially the actions for damages for personal injuries, negligence, nuisance or breach of duty.

Sub-Paragraph (1) of Section 49(2) (a) reduces the period of limitation in such cases from six years to three years. The impugned Sub-Paragraph (ii) of Section 49(2) (a) reads as follows:

"This section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent." The word "parent" is then defined as—father, mother, grandfather, grandmother, stepfather or stepmother—and applies equally to an illegitimate or to an adopted child.

It was first contended that the impugned Section 49(2) (a) (ii) was repugnant to Article 40(1) of the Constitution, which provides that "All citizens shall, as human persons, be held equal before the law". It was contended that the Act differentiated unfairly between infants under disability in the custody of a parent who are allowed the same limited limitation as an adult, and those infants under disability not in custody of a parent, who can wait until their infancy ceases, when the limitation for adults begins to run. The Court held unanimously that the principle of equality before the law enunciated in Art. 40(1) of the Constitution was not infringed by the impugned paragraph, as the purpose of the provision would appear to attempt to establish equality between the two groups. A diversity of arrangement does not effect discrimination between citizens in their legal rights, for the legal rights are identical in the same circumstances. O'Keeffe P. was upheld on this point, in so far as he had decided that it was not unequal, to differentiate as between particular classes of infants.

On the other hand, it was contended that the impugned sub-section was repugnant to Article 40(3) of the Constitution particularly Sub-section 2, by which the State undertook by its laws to protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen. It was contended that the right to sue for personal injuries is a *chose-in-action* and is accordingly a "property right" under this subsection. The limitation of "parental custody" means custody at the time when the right of action accrues, and thus the limitation period accrues immediately a child is injured as a result of the negligence of a parent. The broad division between infants in "parental custody" and infants not in such custody is not calculated to consider the question that infant's rights should be given reasonable protection. The infant appellant has a *locus standi* to challenge the constitutional propriety of the inpugned sub-section (1) because the parent, to whom the infant might reasonably look for protection, is permitted to raise the Statute against the infant—and (2) because, if a question of the constitutionality of a statute is raised, it is the duty of the Court to consider the full scope of the statutory provision. It is clear that Section 49(2) (a) (ii) of the Statute of Limitations 1957 fails to match up to the guarantee contained in Article 40(3) of the Constitution; accordingly the Court will declare this paragraph to be invalid. On this point O'Keeffe P. was reversed.

[Thomas O'Brien, an Infant v. Michael Keogh and Joseph O'Brien—Full Supreme Court per O Dalaigh C.J.—unreported—28 July 1972.]

Plaintiff's declaration that contract for sale had been rescinded refused, as they had not made title in accordance with the contract.

By a written contract of 20 April 1972, in which the plaintiffs adopted the printed form of the Law Society, they agreed to sell three lots of land at Sandymount, Dublin. The purchase price of lot 1 was £50,000, for which a deposit of £10,000 was paid. The purchase price of lot 2 was £40,000, and of lot 3—£60,000. The three lots were held by the plaintiffs under a lease of 31 July 1970 for 10 years at a rent of £1 per annum. Clause 3 of the printed *general conditions* related to completion on the closing date and to payment of interest by the purchaser if this was not done, giving the vendor an option of taking rent and profits instead of interest. No closing date was specified, but clause 6 of the *special* conditions provided that the purchase of lot 1 was to be completed before 30 June 1972 when the balance of £40,000 was to be paid. On the other hand the closing date for lot 2 was postponed to 30 June 1973, and that for lot 3 to 30 June 1974. The interest payable was to be 12½%. A further clause provided that, if the purchase of lot 1 were not completed on 30 June 1972, the Vendor would be entitled to rescind the contract for the sale of the whole property comprising the three lots forthwith in which event the deposit would be forfeited. For all purposes, time was to be deemed of the essence of the contract. The time for delivering requisitions was extended by

the plaintiffs to June 22, and were duly answered on July 4. One answer read that ejectment proceedings were being taken against an obstructive tenant, who had no interest in the premises. This tenant had resided on the premises as a result of a complicated mortgage suit decided years previously. When the contract was signed in April, all the parties knew that this difficult tenant was in possession of a house on the property. The engrossment of the deed of conveyance was sent on July 7, and the draft statutory declaration that the premises were part of the Pembroke Estate which would indemnify the purchaser against all charges in the freehold title, was only sent on July 31. In the result, time ceased to be of the essence o fthe contract. There was some dispute as to the title to the access of the property, but nevertheless on August 15, the defendants agreed to close the sale. The final statutory declaration was only sent on August 22, and on September 4, the plaintiffs rescinded the contract because the sale had not been completed. The plaintiffs now claim a declaration that this contract has been validly rescinded, and the deposit forfeited: Yet, by not producing the essential statutory declaration in final draft until August 22, the plaintiffs could not show title in accordance with the contract. It is not possible to make time the essence of the contract, when it is not already so, by merely serving a subsequent notice to that effect. The notice given by the plaintiffs on August 11 to compel the defendants to complete the contract was completely invalid, as neither the defendants nor the plaintiffs had been guilty of unreasonable delay, and the plaintiffs had not shown proper title at that date. Thus the attempt to regard the contract as made on Sept. 4 was ineffective. Accordingly the plaintiff's claim for a declaration will be dismissed with costs, and an order will be made for specific performance of the contract of 20 April 1972. The defendants will pay interest from 30 June 1972 to date of completion.

[Healy Ballsbridge Ltd., v. Alliance Property Corporation Ltd.—Kenny J.—unreported—1 February 1973.]

Election for East Mayo Constituency in February 1973 held valid.

The Petitioner claims to have the election in the constituency of East Mayo held on 28 February 1973 declared void, or in the alternative, for a complete recount of the ballot papers. He alleges that in many respects the electoral law was not complied with. There is no complaint against any candidate or his agent, or against the returning officer and his staff, or against the Gardai involved, nor that the ballot papers were tampered with.

(1) The petitioner alleged that, when he was voting in Ballyhaunis N.S., there was no proper place to mark the ballot paper, and he had to mark his on a window sill. It was held that the strict rule had not been complied with, but that arrangements had been made for the voters to cast their votes conveniently.

(2) It was alleged that at Ballina Courthouse there were too few voting compartments—3 instead of 6. Held that this did not inconvenience the poll nor detract from the secrecy of the ballot.

(3) It was alleged that a boy of 12 had been appointed as a polling clerk at Callow N.S., and a girl of 15 had similarly been appointed at Culheens N.S. In this matter the Returning Officer has an unfettered discretion which should nevertheless be exercised responsibly. It was not responsible to appoint a boy of 12, and the girl of 15 should not have been appointed without inquiry as to her maturity and competence.

(4) It was alleged that at the Polling Station in the Bar Room at Ballina Courthouse the personation agent of one of the candidates was allowed to carry out the duties of Presiding Officer; there was no evidence that these cards were obtained in any way illegally.

(6) It was alleged that at Ballina N.S., someone wearing a party emblem was allowed to enter the polling station, to intercept voters and take their cards and finally to give their numbers to the Presiding Officers. There is evidence that this person did canvass voters, but that, save on three occasions when he accompanied illiterate voters, he did not enter the polling station. The petitioner queried the appointment of presiding officers as well as of personation officers, and this led to unpleasantness which was to be deprecated. There was however no breach of any statutory provision relating to the conduct of the election.

(7) The Court is fully satisfied that, while the Count for this Constituency was going on in Swinford Town Hall, there were periods when the Deputy Returning Officer was absent, but nevertheless the ballot papers were properly guarded by the Gardai, and no one saw, touched or interfered with them. The Returning Officer should have placed all ballot papers and boxes under his own seal, and it was unwise of him to have permitted the agreed presence of representatives of candidates.

(8) It was alleged that in a re-count, the intermediate transfers were not checked. The Deputy Returning Officer satisfied the Court that he had carried out the re-count in accordance with precedent, and that there had been a proper compliance with the regulations. It was unfortunate however that the Deputy Returning Officer had not carried out all the statutory requirements. The Petition is accordingly dismissed.

[Re Election Petition for East Mayo Constituency—Dillon-Leetch v. Calleary and others—High Court (Butler and Gannon JJ)—unreported—Ballina Courthouse, 4 May 1973.]

Public have no right to attend local authority meetings.

The following judgment was delivered by Justice Delap in January 1973.

Both Defendants were charged with (i) Forcible Entry and (ii) Forcible Occupation of the Town Hall, Dun Laoghaire, on 4 September 1972. Both Defendants were members of a group calling itself The Dun Laoghaire Housing Action Group and they entered the Town Hall when a meeting of the Corporation was in progress and they interrupted the deliberations of the Councillors, distributed leaflets in the Council Chamber and refused to leave when requested to do so by the Cathaoirleach and later by Sergeant Mulqueen, Dun Laoghaire.

At the hearing, one of the Defendants contended that he entered the Town Hall in Dun Laoghaire because he felt that as a citizen of Dun Laoghaire he was entitled to attend any meeting of the Corporation and he contended that the system of obtaining admission by way of invitation from a Councillor was not democratic or in order. The matter is of considerable importance in this case because a Statutory Defence to the offence of forcible entry of land or a vehicle is provided in the Act itself which provides that a person

who enters in pursuance of a bona fide claim of right does not commit an offence.

The White Paper on Local Government Re-Organisation (Prl. 1572) which was laid before each house of the Oireachtas in February, 1971 states as a bald fact on Page 60 (Chapter 16. 6. 1.) "The Public have no general or absolute right to be present at local authority meetings; it is a matter for each local authority to decide whether or not to admit them. ...". No authority is given for this statement but in Street on "Local Government" at page 75 Note (b) to Section 15 Local Government Act, 1902 states that the provisions of the Procedure of Councils Order 1699 and Section 167 of the Grand Jury Act which made open to the public all meetings relating to proposals are absolute but their enactment indicates that the public have no general right of admission.

The note refers to the case of **Tenby Corporation v. Nason (1908)** 1 Ch. 507. In that case the Defendant claimed a right to attend meetings of the borough Council of Tenby in any of three capacities:

(a) As a burgess of the Borough,

(b) as a Press Representative, and

(c) as a member of the public.

The first claim was not pressed (and the second claim does not concern us in this case but there is also a reference to it at page 160 of the White Paper on Local Government re-organisation). It was held on Appeal confirming a lower Court decision by Cosens Hardy M.R. at page 467 "I am clearly of opinion that there is not such right as the Defendant claimed and that no member of the public, be he burgess or not, has a right to attend meetings of the Council unless by express or implied permission of the Council itself." Buckley L.J. at page 468 states "No person had simply as a member of the public the right to say "open that door I will come in". He goes on to say at page 469 "It seems to me that the burgess is not entitled to say "I will come in and hear your deliberation".

That decision in Tenby Corporation v. Mason seems to me to be still relevant in this country and I could find no decisions or statutory provisions to the contrary.

With regard to the argument that the system of admittance by ticket or invitation is not democratic or in order, Section 62 of the Local Government Act, 1955 gives a local Authority power to make Standing Orders for the regulation of its meetings and procedure. In pursuance of this express Statutory authority the Corporation of Dun Laoghaire have adopted such Standing Orders on the 7th day of October, 1963 and Standing Order no. 47 (page 9) regulates and specifies the method of admittance of visitors which is the method objected to by the Defendant. I can find no justification for the argument that this method is either unlawful or undemocratic.

In view of the complexity of the law on the subject the Defendants may have genuinely but mistakenly believed that they had a right as citizens to enter the meeting and although the actual method of entry revealed a certain amount of clever planning I am disposed to give them the benefit of the doubt on the forcible entry charge and hold that they entered in pursuance of a bona fide belief and I shall dismiss that charge.

With regard to the charge of forcible occupation I am satisfied that by their antics and interruptions in the Council Chamber the Defendants prevented the members of the Corporation from carrying on their meeting as they were entitled to and furthermore they did not desist from interfering and leave the building peaceably when requested to do so firstly by the Cathaoirleach and then by Sergeant Mulqueen who was in uniform. I am perfectly satisfied that the Defendants entered the Town Hall with the express intention of disrupting this meeting. They allege that they were concerned with the housing needs of people in the Dun Laoghaire Borough but I am sure that the duly elected members of the Council are equally concerned and I cannot see how premeditated publicity stunts which prevent the democratically elected Council from getting on with its business can further the aims of the group which they represent. I am concerned by the statement made in Court by one of the Defendants that further meetings will be disrupted adding "that they needed to be disrupted" I must attempt to ensure that this threat will not materialise as far as the Defendants are concerned and in addition to the monetary penalty I shall impose for the offence of forcible occupation on which they are being convicted I shall direct that each Defendant shall within 14 days enter into a bond in the Defendants Bond of £100 and a surety of £100 to keep the peace and be of good behaviour for a period of 12 months in default of entering the bond 14 days imprisonment and the following conditions shall be inserted in the bond.

1. Not to enter the Town Hall, Dun Laoghaire during the duration of the bond, and
2. Not to picket, molest or interfere in any way, by word or deed with any member, officer or employee of Dun Laoghaire Corporation when going to or coming from any meeting of the Dun Laoghaire Corporation.

[Attorney General v. Eugene Keogh and Aifan Griffin—unreported.]

The property qualifications for jurors and the limited right of women to act as jurors are not unconstitutional.

The women Plaintiffs are charged with obstructing police officers in the due execution of their duty, and have elected to have the charges against them tried by a jury. However they fear that they would not get a fair trial from a jury confined to property holders. Accordingly they claim that some provisions of Section 2 and 3 of the Juries Act 1927 are inconsistent with the Constitution and invalid, and request a Declaration accordingly.

The questions to be answered are:

(1) **Is there a presumption that the Juries Act 1927 is consistent with the Constitution?**

Counsel for plaintiffs contend that the Juries Act 1927 was a Pre-Constitution Act, and therefore there was no presumption of Constitutionalism in accordance with *The State (Sheerin) v. Kennedy* (1966) 1.R. The Attorney-General contended that this Act was constitutional as the People, in enacting the Constitution must be presumed to have taken over the existing law, including the 1927 Act, unless proved inconsistent with the 1937 Constitution. However, O Dalaigh C.J. in *McMahon v. Attorney General* (1972) I.L.T.R. 106—had stated that "the Constitution of Ireland does not offer any presumption of Constitutionality to the Statute Roll of Saorstat Eireann." Accordingly the contention of the plaintiffs is well sustained, and **there is no presumption of constitutionality in favour of the Juries Act 1927.**

Before considering the five submissions by which Section 2 and 3 of the Juries Act would be deemed unconstitutional, it is necessary to summarise them.

Section 2 of the Juries Act 1927 states that the Minister for Justice may by order prescribe for every jury district the rateable value of land which is the minimum rating qualifications for jurors in that district. Furthermore the Minister may prescribe different rateable values in respect of different classes of land, and he may from time to time vary such rateable values. The Jurors (Minimum Rating Qualification) Order 1927—S.1, No. 92 of 1927—showed a considerable variation between the jury districts in different countries; for instance the minimum qualifications for land in Co. Waterford is £15 PLV, while that in Co. Wexford is £40 PLV.

Section 3 of the Juries Act 1927 provides that, every Irish Citizen between the ages of 21 and 65, shall be liable to serve as a juror if the minimum rateable qualification in respect of his premises exceeds the Minimum laid down by the order, unless he is disqualified or exempt. A juror is disqualified if he is not entered as a Dail or Local Government elector for the jury district concerned. A juror is exempt if he is serving in the Army, or if he is a clergyman, a member of the legal profession, a member of the Oireachtas, etc. There are some exempted persons who are entitled to serve on application and these include women. The submissions put forward were:

(1) **Sections 2 and 3 of the Juries Act 1927 violated the right of citizens to participate equally in the running of a democratic State.** This was due to the exclusion of citizens who have not the necessary property qualifications and to the exclusion of women. The following Articles of the Constitution were relied upon:

(a) **Article 5** (Ireland a democratic State).
(b) **Article 9** (2)—(No person may be excluded from Irish Nationality by reason of their sex.)
(c) **Article 38** (5)—(Right to trial by jury.)
(d) **Article 40** (1)—(Equality before the law.)
(e) **Article 40** (3)—(Protection from unjust attack.)

It was contended that citizens had a right to serve on juries and a right in respect of ordinary criminal cases to be tried by a jury. There was therefore a right for men and women to serve on a jury, which was a special personal right not specifically enumerated by the onstitution (see dictum of Kenny J. in *Ryan v. Attorney General* (1965) I.R. 313). It would be contended that serving on a jury is an obligation rather than a right, but in any event this whole submission was unsustainable. Democracy does not mean that every citizen has a right to take part personally in the government of the country, nor does it mean that every citizen has a right to act as juror. Since 1871, there has always been a property qualification, and a restriction on women to serve as jurors; in fact, women may only serve since 1919. A citizen on a criminal charge has not got a right to be tried by a jury selected at random, but only a right to be tried by a jury selected at random from citizens compellable to serve as jurors.

(2) **The exemption of women from liability to serve on juries save on application, is inconsistent with Article 40 (1) of the Constitution, as being a discrimination on the ground of sex alone, and not on that of capacity, physical or moral, nor on that of social function.**

It was contended that the effect of Sections 2 and 3 of the Juries Act 1927 was as if the Act made all Christians compellable to serve as jurors, which Jews would not be compellable, save on special application. In *Hartley's* case—21 December 1967— O Dalaigh C.J. had stated, in relation to Article 40(1) that a diversity of arrangements in relation to extradition does not effect discrimination between citizens in their legal rights. In the *Nicolaou case*—11966 1.R. 639—it was stressed that Article 40(1) does not either envisage or guarantee equal measures in all things to all citizens. In *O'Brien v. Keogh and O'Brien*—24 July 1972—it was held that Article 40(1) does not require identical treatment of all persons without recognition of differences in relevant circumstances—it only forbids invidious discrimination. The right to serve as a juror is not a right relating to the essential attributes of women as human persons, but, as in the Quinn's supermarket case, should be regarded on the same basis as their trading activities. Accordingly this submission fails. It is further contended, that: **There is an invidious discrimination against women as litigants in that they are likely to have their cases tried by an all male jury.** It has not been established that women will not get as fair a trial before an all-male jury rather than before a mixed jury. This contention fails.

(3) **The property qualification under the Juries Act 1927 infringes Article 40(1) of the Constitution, in that it discriminates either in favour of, or against, property owners or from a property owners according as to whether one regards jury service as a right or as a burden.** This contention is, for reasons previously stated, quite unsustainable.

(4) **Section 2 of the Juries Act 1927, inasmuch as it authorises the Minister to prescribe and vary the minimum rating qualifications for jurors is unconstitutional:**

(a) on the ground that legislative power, which is vested solely and exclusively in the Oireachtas, is delegated to the Minister. In fact, in this case the Minister is simply implementing the policy and provisions of the Act as laid down by the Legislature;

(b) on the ground that the Minister's powers are arbitrary and, as the legislation was enacted before the Constitution of 1937, the Minister would not be bound to act in accordance with the Constitution. This contention cannot be sustained.

(5) **Sections 2 and 3 of the Juries Act 1927 are inconsistent with Article 40(3) o fthe Constitution, because they failed to defend and vindicate the personal rights of the citizen.**

As the alleged rights of the plaintiffs as citizens to serve on a jury, nor their alleged right to be tried selected at random from all citizens, are not "personal rights" protected by Article 40, it follows that this contention must also fail. Accordingly the Declarations sought will be refused, and the actions will be dismissed with costs.

[Mairin De Burca and Mary Anderson v. Attorney General—Pringle J—unreported—1 June 1973.]

ENGLISH CURRENT LAW DIGEST

In reading these cases note should be taken of the differences in English and Irish Statute Law.
All dates relate to dates reported in the "Times" newspaper.

Aliens

Before Lord Denning, the Master of the Rolls, Lord Justice Buckley and Lord Justice Stephenson.

The Immigration Act, 1971, operates retrospectively to enable the Secretary of State for the Home Department in the exercise of his unfettered discretion to detain and remove from the United Kingdom persons who entered in breach of the immigration laws in force before or after the passing of the Act, even where such persons have been here for so long that they could not longer have been prosecuted for illegal entry under the pre-1971 legislation.

But persons claiming that they are not "illegal entrants" are entitled to apply for a writ of habeas corpus in preference to the appeal procedure under the new Act which is available only after they have been removed from the United Kingdom.

The court (Lord Justice Buckley dissenting in the first two cases) dismissed an appeal by Mr. Mohammed Azam, aged 28, of Port Talbot, from the refusal of the Queen's Bench Divisional Court (the Lord Chief Justice, Mr. Justice Cusack and Mr. Justice Croom-Johnson) (*The Times*) February 24; [1973[1 WLR 528) to grant him a writ of habeas corpus; and appeals by Mr. Gurbax Singh Khera, aged 33, of Wolverhampton, and by Mr. Malkit Singh Sidhu, aged 43, of Solihull, from the Divisional Court (the Lord Chief Justice, Lord Justice James and Mr. Justice Nield) on March 21, also refusing them writs of habeas corpus on the ground that the detention in prison was lawful because they were "illegal entrants" under the 1971 Act.

Regina v. Secretary of State for the Home Department and Another. Ex parte Azam, Ex Parte Khera, Ex Parte Sidhu; Court of Appeal; 4/5/1973.

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Cusack and Mr. Justice Mars-Jones.

When an immigration officer is not satisfied by the claim of a Commonwealth immigrant returning to the United Kingdom that he was resident here before March, 1968, the immigrant has the onus of proving his right to be here. The authorities do not have to prove that the immigrant was not then resident in this country.

Their Lordships dismissed an application by Mohammed Ashraf Mugal for a writ of habeas corpus ad subjiciendum to secure his release from detention after being refused leave to enter the United Kingdom in March at Manchester airport under section 3(1)(a) of the Immigration Act, 1971, directions having been given for his removal to Pakistan. He had been released on bail pending the hearing. Their Lordships refused an application for bail pending appeal.

Regina v. Secretary of State for the Home Department; Ex Parte Mugal; 15/6/1973.

Before Lord Wilberforce, Lord Hodson, Lord Pearson, Lord Kilbrandon and Lord Salmon.

The Immigration Act, 1971, is effective to operate retroactively and treat as "illegal entrants" liable to detention and removal all Commonwealth citizens who entered the United Kingdom and are here in breach of the immigration laws in force both before and after the new Act, even where such persons could no longer have been prosecuted for illegal entry under the pre-1971 legislation and have established themselves in the community. But Lord Wilberforce said that though the Act had to be construed as having retroactive effect, it also made provision for the Secretary of State for the Home Department to consider each case and give full weight to human factors in deciding whether or not an individual illegal entrant should remain here.

The House of Lords, Lord Salmon dissenting on the question whether two of the appellants were "settled" here when the Act came into force, dismissed appeals by Mr. Mohammed Azam, aged 28, of Port Talbot; Mr. Gurbax Singh Bhera, aged 33, of Wolverhampton; and Mr. Maliit Singh Sidhu, aged 43, of Solihull, from the Court of Appeal (the Master of the Rolls and Lord Justice Stephenson, Lord Justice Buckley dissenting in the first two cases) (*The Times,* May 4; [1973] 2 WLR 949) upholding the refusal of the Queen's Bench Divisional Court to grant them orders of habeas corpus on the ground that their detention on orders made by the immigration authorities was lawful under the 1971 Act.

Azam v. Secretary of State for the Home Department and Another; Khera v. Same; Sidhu v. Same; 12/6/1973.

Cost:

A successful defendant is normally to be awarded costs out of central funds when the court has power to make such an award, the Lord Chief Justice stated when giving a practice direction in the Queen's Bench Divisional Court.

His Lordship, stating that the direction was given after consultation with the judges of the Queen's Bench and Family Divisions, said:

Although the award of costs must always remain a matter for the court's discretion, in the light of the circumstances of the particular case, it should be accepted as normal practice that when the court has power to award costs out of central funds it should do so in favour of a successful defendant, unless there are positive reasons for making a different order. Examples of such reasons are:

(a) Where the prosecution has acted spitefully or without reasonable cause. Here the defendant's costs should be paid by the prosecutor.

(b) Where the defendant's own conduct has brought suspicion on himself and has misled the prosecution into thinking that the case against him is stronger than it really is. In such circumstances the defendant can properly be left to pay his own costs.

(c) Where there is ample evidence to support a verdict of guilty but the defendant is entitled to an acquittal on account of some procedural irregularity. Here again the defendant can properly be left to pay his own costs.

(d) Where the defendant is acquitted on one charge but convicted on another. Here the court should make whatever order seems just having regard to the relative importance of the two charges, and to the defendant's conduct generally.

6/6/1973.

Crime

"Road Traffic Acts"

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Cusack and Mr. Justice Mars-Jones.

The court dismissed an appeal by Godfrey Frederick Jacobs, a surveyor, of Loughton, Essex, against mandatory disqualification from driving after he had pleaded guilty to offences against section 1(1) of the Road Safety Act, 1967, and section 4 of the Road Traffic Act, 1960, as amended. Their Lordships said that an objective test was to be applied when considering whether the defence of "special reason" within section 93(1) of the Road Traffic Act, 1972, for not disqualifying applied to a domestic emergency.

Jacobs v. Reed; Queen's Bench Division; 7/6/1973.

Road Traffic Acts

Before Lord Widgery, the Lord Chief Justice, Lord Justice James, Mr. Justice Ashworth, Mr. Justice Willis and Mr. Justice Griffiths.

A five-judge court of the Queen's Bench Division, in a reserved judgment, summarized the collective effect of irreconcilable decisions on "driving" for the purposes of the Road Safety Act, 1967, when dismissing a police prosecutor's appeal from justices who had dismissed an information against a motorist for driving with excess blood-alcohol.

The information, under section 1(1) of the Act, had been preferred against Kenneth James Knowles, a van driver, who had 174 milligrammes of alcohol in 100 millilitres of urine after driving on a road in Weymouth. It was dismissed by Weymouth and Melcombe Regis Justices.

Edkins v. Knowles; Queen's Bench Division; 5/5/1973.

Before Lord Justice Cairns, Mr. Justice Browne and Mr. Justice Shaw.

"Is malice a forethought in the crime of murder established by proof beyond reasonable doubt that when doing the act which led to the death of another the accused knew that it

was highly probable that that act would result in death or serious bodily harm?"

This point was certified by the court—which also gave leave to appeal to the House of Lords—when it dismissed an appeal by Pearl Kathleen Hyam, now in prison, against conviction at Warwick Crown Court (Mr. Justice Ackner) last November on two counts of murder.

Regina v. Hyam; Court of Appeal; 19/6/1973.

Lord Justice Edmund Davies, in the Court of Appeal, said that in a summing-up, when special pleas such as provocation or self-defence were raised, it was not sufficient to give a general direction to the jury upon the burden of proof and the standard of proof.

The appeal before their Lordships was the third case in three days in which the court had had to deal with the same kind of defect in a summing-up, and he repeated the hope that trial judges would observe the warning which was given by Lord Justice Winn in *R. v. Wheeler* [(1967) 52 Cr App R 28, 30-31]. It was most desirable, and in most cases essential, that the jury be told that it was for the Crown to destroy the validity of such a plea and not for the accused to establish it.

Regina v. Cameron; Court of Appeal; 13/6/1973.

Shipping

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Wilberforce, Lord Simon of Glaisdale and Lord Kilbrandon.

The House of Lords decided by a three-to-two majority that the time had come to give a more liberal interpretation to the circumstances in which the English courts should grant an application to stay an action in rem begun by a foreign plaintiff in the English Admiralty Court, and stayed the action of a Dutch barge owner on the ground that it would be vexatious and oppressive in all the circumstances to the Dutch defendants to have the claim against them tried here, when the Antwerp Commercial Court was the more appropriate forum.

Their Lordships allowed, Lord Morris and Lord Simon dissenting, an interlocutory appeal by the Holland America Line, the Dutch owners of the container vessel, the Atlantic Star, from the refusal of the Court of Appeal (the Master of the Rolls, Lord Justice Phillimore and Lord Justice Cairns (*The Times,* August 3; [1972] 3 WLR 746) to stay an action begun here.

In fog on January 28, 1970, the Atlantic Star was going up the river to Antwerp without tugs when she collided with a Dutch barge, the Bona Spes, moored outside a Belgian dumb barge against the quay. Both barges were sunk with their cargoes; two men on the Belgian barge were drowned, and port installations were damaged. A surveyor appointed by the Antwerp Commercial Court on the application of the barge owners, made a report the trend of which was that the collision was caused by the difficulties resulting from sudden fog.

The Belgian barge owners and the Belgian accident insurers began actions in the Antwerp court. The owners of the cargoes also began proceedings; and proceedings by the port authority in the same court were anticipated.

In June, 1971, the Dutch owner of the Bona Spes decided to begin an action in rem in the Admiralty Court against the Atlantic Star which was due in Liverpool. To avoid arrest, Holland America accepted service of the writ, entered a conditional appearance, arranged security of £80,000 in respect of the claim, and applied to the Admiralty Court to stay the action.

In January, 1972, the Bona Spes owner initiated proceedings against Holland America in the Antwerp Court to preserve the Belgian time limit in the event of his action in England being stayed.

Mr. Justice Brandon found that the Antwerp court was the more appropriate forum for the trial but refused the stay, in the exercise of his discretion and on the established principles that it would deprive the Dutch plaintiff of an advantage which he reasonably believed he would have if his claim were tried in England and that Holland America had not shown that the inconvenience to them would be oppressive. The Court of Appeal, Lord Justice Phillimore with some reservation, upheld that decision.

The Atlantic Star; 11/4/1973.

Specific Performances

Before Mr. Justice Brightman. (Judgment delivered March 7.)

Mr. Justice Brightman held that the court had jurisdiction to make a supplemental order for an inquiry as to damages in favour of purchasers who had not sought an order for the inquiry when they had obtained an order for specific performance. His Lordship was delivering a reserved judgment on a claim by Mr. Holman Lancelot Ford-Hunt and his wife, of Sidcup, Kent, against Mr. Raghbir Singh, of Bexley, Kent, for an inquiry as to the damage which they had suffered by reason of his delay in completing a contract for the sale to them of his home in Upper Holly Hill Road, Belvedere, Bexley.

Ford-Hunt and Another v. Singh; Chancery Division; 8/3/1973.

Statute of Frauds

Before Lord Justice Russell, Lord Justice Buckley and Lord Justice Orr. (Judgments delivered April 10.)

A vendor who entered into an open oral contract to sell his cottage was held to be bound thereby, it being sufficient for the purposes of section 40 o fthe Law of Property Act, 1925, that subsequent correspondence between solicitors, though not acknowledging the existence of a contract, contained the terms which had been orally agreed.

The court, Lord Justice Russell dissenting, so held in dismissing an appeal by the defendant, Mr. Stuart Martin Jones, of Dingleberry Cottage, Yarningdale Common, Claverdon, Warwickshire, from a decision of Mr. Justice Ungoed-Thomas last July ordering specific performance of his agreement to sell Dingleberry Cottage to the plaintiff, Mr. Joseph Law, of Hoo Hill, Alcester, Warwickshire.

Mr. Justice Ungoed-Thomas found that the parties had entered into an oral, albeit unenforceable, contract on 17 February 1972 for the sale by the defendant to the plaintiff of the cottage at £6,500, there being no intention that that agreement should be subject to contract. On February 18 the defendant's solicitors wrote to the plaintiff's solicitors: "We understand you act for Mr. J. Law in connection with his proposed purchase of [Dingleberry Cottage] for £6,500 subject to contract. We have been instructed on behalf of the vendor and we are obtaining his title deeds and shall submit a contract to you as soon as possible."

On February 25 the defendant's solicitors, referring to that letter sent a draft contract to the plaintiff's solicitors for approval, the receipt of which was acknowledged on March 7 when "preliminary enquiries" were forwarded. The judge found that on March 13 the parties agreed orally on an increased price of £7,000, the defendant assuring the plaintixff that he would not go back on his word; that it was his bond; and that the house was then the plaintiff's.

On March 17 the defendant's solicitors wrote to the plaintiff's solicitors: "Further to our letter of March 10 we herewith enclose our replies to your preliminary enquiries. We understand that an increase in the consideration has been mutually agreed and we shall therefore be obliged if you would amend the contract in your possession to read a purchase price of £7,000."

On March 27 the plaintiff's solicitors forwarded his part of the contract duly signed, completion having been fixed for April 21. But on April 13 the defendant wrote to the plaintiff telling him that he was putting the cottage up for auction because of the rise in prices that had taken place.

Law v. Jones; Court of Appeal; 13/4/1973.

Before Lord Justice Russell, Lord Justice Buckley and Lord Justice Orr. (Judgments delivered March 21.)

Where a defendant pleads that a memorandum in writing does not sufficiently set out the terms of an oral agreement for the sale of land, as required by section 40 of the Law of Property Act, 1925, and gives particulars of that agreement, it is not an abuse of the process of the court for the plaintiff to bring a second action in which he relies on the defendant's pleadings as constituting a memorandum in writing.

Their Lordships so held in dismissing an interlocutory appeal by the defendant, Mr. Arthur Albert Elphick, of Ongar Road, Brentwood, from the refusal of Mr. Justice Foster last November to dismiss a second action brought by the plaintiff, Mr. John Francis Hardy, of Steeple Road, Southminster, Essex, on the ground that it was an abuse of the process of the court.

Hardy v. Elphick; Court of Appeal; 27/3/1973.

BOOK REVIEWS

Castel (J. G.)—Conflict of Laws: Cases, Notes and Material. Second edition. 8vo; pp. xxvi plus 1,104. Butterworth Toronto, 1968.

This is the second edition of Dr. Castel's famous work on a most intricate subject which first appeared in 1960. Dr. Castel is Professor of Law in Osgoode Hall Law School attached to York University in the suburbs of Toronto; he has produced a most learned tome in which all the difficult problems relating to the involved subject of conflict of laws are fully discussed. It would be quite impossible to treat in detail of all the subjects, such as Domicile, Domestic Relations, Status and Capacity, Infants, Administration and succession, Contracts, Torts, Jurisdiction *in Personam* and Foreign Judgments—which the learned author has considered in depth.

In the chapter on Contracts, for instance, the case of *Vita Food Products Inc. v. Unus Shipping Inc.*—(Privy Council)—(1939) A, C.—which broadly states that the expressed intention in general determines the proper law of the contract—takes up 7 pages. Then Morrison and Cheshire's criticism of this Judgment in "A Proper Law of Contract" described in 56 Law Quarterly Review are fully set out in two pages. The next cases covered are the Assunzione—(1954) I All E R (3½ pages), *Ether v. Kerleaz*—(1960) Ontario Reports (with notes—10 pages). *Columinares v. Imperial Life Assurance Co. of Canada*—(1966) I Ontario Reports (4 pages), *Auten v. Auten* (1954), New York Court of Appeals (3 pages), *P. O. Navigation Co. v. Shand*—(1865), 12 Law Times (2 pages), *Jacobs v. Credit Lyonnais*—(1884), 12 Q. B. D. (3½ pages), *Chatenay v. Brazilian Submarine Telegraph Co.* (1891) I.Q.B. (3 pages), followed by 3 Canadian cases—total of 50 pages. This will give some idea of the vast amount of case law—Canadian, American and English—contained in these pages, and it is vital to emphasise the most important points of each decision, as well as the articles in legal journals which are referred to. It would not be possible to praise Dr. Castel too highly for his immense learning and erudition and the great care with which he has selected the most interesting cases. It will repay the practitioner to consult this work if he has any deep problems of private international law.

Ivamy (E. R. Hardy)—Fire and Motor Insurance. Second edition. 8vo; pp. xxxviii plus 498; London, Butterworths, 1973.

Professor Ivamy is a well-known expert on Insurance Law, and, apart from the first edition of this volume published in 1968, we are indebted to him for two recent editions of his "General Principles of Insurance", and he has also published a book on "Marine Insurance". The first edition of this work contained 452 pages, and it will be noted that the new edition has been expanded by 45 pages. First the author describes the characteristics of a contract of fire insurance as a personal contract of indemnity, normally entire and indivisible, which implies good faith. Having dealt with insurance interest he emphasises in England that some persons like tenants for life and owners of small buildings must insure and there follows a list of persons who may optionally insure, such as vendors and purchasers, trustees and beneficiaries, personal representatives, etc.

One of the most interesting chapters is that on non-disclosure and misrepresentation. First examples of material and immaterial details relating to such matters as the personal details of the proposer, the locality where the property is to be insured, and the value of such property are given. Ample case law is quoted to illustrate each section. There are altogether 22 chapters in the Fire Insurance Section covering 186 pages.

In dealing with non-disclosure and misrepresentation in connection with motor insurance, many more factors have to be considered, such as the driving experience of the proposer, the previous convictions, the details of the car concerned, and the question of previous accidents; all these sections are fully annotated by case-law. Other interesting points such as restriction of driving by named driver, or as to type of use, are covered in the "Exceptions of the Policy", while the "Conditions of the Policy", such as maintaining the vehicle in an efficient condition, and use of care to avoid accidents are fully explored. There is also a useful new chapter on "Compulsory Motor Insurance" which considers the definitions of words like "Use", "Cause or Permit", "Motor Vehicle" and "Road". The Appendices contain most useful specimen proposal forms, including Lloyds policies for fire insurance, and specimen motor insurance policies, as well as "Third Party Risks Regulations, and Agreements made by the British Insurer's Motor Bureau in relation to compensation for victims of untraced drivers, as well as to those of uninsured drivers.

The most recent English case law is fully considered, such as (I) *Balatsikos v. Car Mutual Insurance Co.* (1970) 2 Lloyds Reports 314, a decision of the Supreme Court of Victoria as to misrepresentation as to length of time in which insurance was held, which was not upheld; and (2) *G. F. P. Units v. Monkfield* (1972) 2 Lloyd Reports, 79, where the insurers were held not liable where an employee had taken the master's car for a joyride, and the policy restricted the driver to the master and his wife.

It will be seen that Professor Ivamy with his usual thorough expertise and learning has greatly facilitated the task of any practitioner who has to consider problems of fire insurance or of motor insurance.

Archbold (J. F.)—Pleading, Evidence and Practice in Criminal Cases. 38th edition by T. R. Fitzwalter Butler and Stephen Mitchell. 8vo; pp. ccx plus 1663. London, Sweet & Maxwell, 1973. £15.50.

When one considers that the first edition of Archbold was published in 1822, more than 150 years ago, and that the last edition published by him was in 1829, it is remarkable that his name should still survive in respect of this work, as Mr. Butler, Chancellor of Peterborough and the late Mr. Marston Garsia have been in charge of all editions for the past 30 years since the 31st in 1943. Mr. Butler and Mr. Garsia have modernised the text so much that, with great respect to them, it would seem appropriate that this modern

text book should be associated with them.

Practitioners in Criminal Courts who have used previous editions of Archbold will be well aware of its general lay-out. As usual this learned work has reflected the developments in English criminal statutory law and in English case law, comprehensively, since the last edition in 1969. But the learned authors must be even more commended for having revised a substantial part of the text. There have not been great changes in Book I, which deals generally with procedure for indictment and trial. It is satisfactory to note that in considering evidence the stated law regarding "Corroboration" and "Confessions" has not been changed, and there is a new chapter on "Identification".

There is however much new material in Book 2 dealing with specific offences particularly in the parts relating to offences involving companies, firearms and offensive weapons, the use of violence upon persons and property, indictable road traffic offences, contempt and conspiracy.

Part 3 of Book I deals as usual with the principles of criminal appeals, while Part 4 of the same book deals with problems of evidence such as hearsay rule, privilege and evidence of similar facts and of identification.

Book 2 as usual deals in detail with the various criminal offences—such as theft, offences against property, offences against the person, dangerous drugs, offences against public justice and against the public peace, offences against public trade and public order and morality as well as conspiracy and incitement. All the relevant up to date English law will be found therein.

The learned editors are to be commended for carrying out with such learning and diligence a revision which will make this edition memorable. It is a pity that no funds are available for Irish authors to carry out a similar task.

Parry (Anthony) and Hardy (Stephen)—EEC Law. 8vo; pp. xlvi plus 511; London, Sweet & Maxwell, 1973; £4.50 (Paperback).

This is the latest comprehensive volume on European Community Law, and, except for its curt title, is excellently written. The two learned authors have the advantage of having obtained the special *licence en Droit Européen* of Brussels, and have thus had the opportunity of studying the Community at close quarters. The book is divided into 8 parts and 38 chapters. The General structure of the Community is described in Part 1, while Part 2 covers the Council, the Commission and the European Parliament. There is an invaluable introductory chapter relating to the scope and method including where to find Community Law and publications.

Part 3 deals with the Court of Justice; detailing the composition and the procedure of the Court; then the bases of jurisdiction of each of the Community Treaties, the effect and nature of each judgment, the method of proceeding against Member States, for failure to observe the Treaties; actions for review of legality of acts by the Council of Ministers and by the Commission. There is a most useful chapter on the concept of the Supremacy of Community Law which should be closely studied. The intricate question of the direct applicability of Community Law in relation to the rights of individuals is fully considered, together with all relevant case law—and this includes the direct applicability of regulations, decisions and directives. The reception of Community Law in the national Courts of the original Six members is also described.

Part 4 deals with the Foundations of the Community including the Free Movement of Goods, Agriculture, Right of Establishment and Transport. Part 5 deals with Community policies including Rules on Competition and on Taxation as well as the problem of the harmonisation of laws, as well as Economic and Regional Policies. Part 6 deals with the Finances of the Community, Part 7 with External Relations, and Part 8 with the European Communities Act 1972.

Members will benefit much from the learning and erudition upon this intricate branch of law displayed by the learned authors. It is interesting to note that misuse of powers or *détournement de pouvoir* is the most important of the bases of illegality in the three Treaties. This detailed account of Community Law will repay intensive study which members should undertake.

Cross (Rupert) and P. Asterley Jones—Cases on Criminal Law. Fourth edition; 8vo; pp. xxxiii, 365; London, Butterworth, 1968; £2.40.

This is a companion volume to the "Introduction of Criminal Law" published by the same learned authors which is such a boon to students of criminal laws. This edition includes 40 new cases, but, what is more important, no less than 78 cases contained in the 3rd edition have been excluded due to the new English Theft Act. The new cases include—*R. v. Gill* (1963) about duress, *R. v. King* (1963) and *R. v. Gould* (1968), defences to bigamy, *R. v. Evans* (1962) and *R. v. Ball* (1966) about dangerous driving, *A. G. of South Australia v. Brown* (1960) about irresistible impulse, *Broadhurst v. R.* (1964) about drunkenness, *Mohan v. R.* (1967) and *Thambiah v. R.* (1965), about aiding and abetting, and *Davy v. Lee* (1967) about attempts.

There are not merely useful extracts from the judgments, but also enlightening comments on some of the cases. As there has been no Irish textbook on criminal law since Sandes' book in 1951 (which is out of print), students who master these cases will have had the advantage of absorbing Professor Cross's and Mr. Jones's erudition.

A. J. Easson—Cases and Materials in Revenue Law. 8vo; pp. xxx, 544; London, Sweet & Maxwell, 1973; Bound £7; Paper £4.50.

The learned author is a solicitor, and is also a lecturer in law in the University of Southampton. As he rightly remarks, in few areas of law are the changes so regular and so substantial as in revenue law. In fact this reviewer would say that revenue law has been deliberately kept obscure and complicated. There is no doubt but that a current case will be but a minute loophole in some complex legislation. Mr. Easson has successfully attempted to provide a collection of materials to illustrate the basic principles of this mundane subject.

The work is divided into Four Parts. Part 1 deals with the principles of Revenue Law, including tax avoidance. Part 2 deals with Taxes on Incomes and Gains, including the Schedules and the question of Trade, profession or vocation. Part 3 deals with Taxable Persons, including the question of Domicile and Residence, and Part 4 deals with Estate Duty, includ-

ing Exemption and Reliefs. In considering Tax avoidance, we can but agree in the Russell L.J. in Rallis Settlements (1963) that "it is not right to level something a "device" and then strain to see that it fails". And in Weston's Trusts (1908), the Court refused to sanction a scheme of Tax avoidance on the ground that the family were going to live in Jersey.

Mr. Esson has compiled this intricate material with lucidity and learning, and students of this intricate subject have cause to be most grateful to him.

Cheshire (G.C.) and C.H.S. Fifoot. Cases on the Law of Contract. Sixth Edition; 8vo; Pp. xxvi, 514; London, Butterworth, 1973; Casebound £6.75; Paperback £5.80.

Smith (John C. and J.A.C. Thomas)—A Casebook on Contract. Fifth Edition; 8vo.; Pp. xxvii, 592; London, Sweet & Maxwell, 1973; Cloth, £5.75; Paperback, £3.75.

The fact that the second Casebook on the interesting but at times complicated subject of Contract has undergone no less than five editions between 1957 and 1973 has undoubtedly shown how successfully Professor Smith and Professor Thomas have undertaken this venture, inasmuchas Cheshire and Fifoot in the sixth edition of their Contract Cases published also in 1973 have listed the actual cases under headings, they would seem easier to find. But Professor Smith and Professor Thomas have listed the cases in capitals in the list of Cases and provided us with an Index, which Dr. Cheshire has omitted.

Smith and Thomas have divided their work into five sections as follows:

(1) The Formation of a Contract, including offer, acceptance and terms.
(2) Consideration and Priority.
(3) Obligations arising from the Contract—such as questions of misrepresentative implied terms, mistake and frustrations.
(4) Rights and Remedies of the Injured Party including Rescission, Damages, Specific Performance and Rectification.
(5) Vitiating Factors—such as, Incapacity, unenforcable Contracts, and Void and Illegal Contracts.

While we must admire the erudition and scientific legal learning displayed by the learned authors, it may be stressed that the work could have been shortened if some early 19th century and earlier decisions, which may have been important in their day, but which hardly relate to modern conditions, could have been omitted. Messrs Cheshire and Fifoot are to be highly commended for having precisely achieved this aim of Concentration upon modern cases. While Smith and Thomas have managed to give us extracts from no less than 218 judgments, Cheshire and Fifoot appear to have confined themselves to 100 cases. It might be useful to select as an example a case which is fully considered in the two casebooks. *Take Oscar Chess Ltd. v. Williams* (1957) 1 All E.R. Smith and Thomas summarise Denning L.J's Judgment in 3 pages, while Cheshire and Fifoot take 5 pages, but admittedly the size of the book is shorter. Morris L.J.'s dissenting judgment is disposed of in 8 lines in Smith and Thomas, while Cheshire devotes more than 4 pages to this judgment. Thus it will ultimately depend on whether the reader wishes to study the case in detail as in Cheshire, or to read several cases more briefly on the same subject in Smith and Thomas. Whichever the Practitioner chooses, he will find that the learned authors of the two works have chosen their material with skill and care, and have occasionally interspersed the cases with useful comments.

M. Storz, A.A. CC.A., F.T.II.—The Taxation of Businesses and Business Transactions. Oyez Publications; Price £2.50.

The paperback is designed as a short hand guide to the problems relating to the taxation of companies and certain business transactions. The work also discusses further problems of business transactions carried out by other bodies corporate, partnerships, sole traders and individuals so, in relation to the latter, individuals, it deals with Schedule D. Case 1 and 2 and the treatment of trading.

The treatment of capital expenditure and receipts is dealt with in Part II of the book, and Part III deals with such topics as hiring of plant and machinery, transactions associated with loans and credits, dealings and transactions in land.

Chapter 20 purports to give the case law relating to transactions in land but, as in the remainder of the book no reference is given and the cases which support the description are not named. It follows that the value of this to lawyers is strictly limited. But a student of Accountancy would benefit from the uncomplicated simple descriptions of various tax problems as an introduction to the subject.

BRIAN DEMPSEY

ALLIED IRISH BANKS LTD. UNDERTAKING

A member submitted to the Society for consideration the undermentioned form of undertaking which he was asked to sign by the Allied Irish Banks Ltd.

"Received from the Allied Irish Banks Limited the documents hereunder specified which I/we undertake to return on demand. I/we promise to hold the said documents in trust for the said bank and not to do any act which would enable the property dealt with by them to be mortgaged or assigned without the bank's consent or their lien thereon to be in any way postponed or prejudiced. In default I/we further undertake to be accountable to the bank for the proceeds of any sale or mortgage transaction which may have been concluded and for the full amount of the claim against the said documents."

It was pointed out that by signing this undertaking the solicitor accepts the full liability for the full amount of his client's indebtedness to the bank even although it exceeds the proceeds of sale or the value of the property. The Council took the matter up with the Allied Irish Bank but the bank was unwilling to alter the form of the undertaking. It was decided to bring the matter to the notice of members so that they may themselves negotiate suitable forms of undertaking when dealing with the bank and that any member signing the undertaking in the form mentioned above may be fully aware of this consequent liability.

EUROPEAN SECTION

Rules of Procedure of European Cartel Law

The following is a summary of the first lecture by Dr. Horst Helm of Stuttgart at the Seminar on E.E.C. Law held by the Society at the Burlington Hotel on Saturday, 27th January 1973.

I

(1) Procedure is of primary importance in dealing with European cartel law. The rules of procedure are principally dealt with in the Regulation 17 of 6 February 1962, which has automatically applied to the three new Member States since 1 January 1973.

(2) There are three possible principal procedures to apply European cartel law:

(a) Procedure for obtaining a Negative Clearance or an Exemption under Art. 85 (3) of the EEC Treaty, which is instituted by the notification of the agreement to the Commission in Brussels (below II).

(b) Prohibitory procedure which the Commission may institute of its own accord under Art. 3 of Regulation 17 (below III).

(c) Procedure by which the Commission may impose fines under Art. 15 of Regulation 17 (below IV).

(3) European cartel law is directly applicable in the three new Member States as of 1 January 1973. In particular the national courts have to observe the European cartel prohibition (below V).

II

(1) The granting of a Negative Clearance or an Exemption under Art. 85 (3) of the EEC Treaty on principle requires notification of the agreement to the Commission.

(2) Under Art. 4(2) of Regulation 17, however, certain types of agreements are exempted from notification. Among these are agreements in which only enterprises from one Member State participate and which do not concern the import or export between Member States, for instance (1) rationalization cartels or (2) exclusive distributorship agreements between Irish enterprises. The same rule applies to (3) resale price maintenance, (4) the fixing of resale conditions, (5) licence agreements relating to patents or trademarks, (6) the development or uniform application of standards or types, (7) agreements whose object is only joint research and development as well as (8) specialization cartels between medium-sized enterprises.

Based on the European Court's jurisdiction up to the "Bilger" judgment of 18 March 1970, Dr Helm explained that non-notifiable agreements, even if they violate Art. 85 of the EEC Treaty, are effective for the past and can be nullified by the Commission, a national authority or a court only with effect for the future. (This legal situation has decisively changed by the **2nd "de Haecht" judgment** of the European Court of 6 February 1973. According to this judgment agreements violating Art. 85 of the EEC Treaty are void in any case, even if they fall under Art. 4(2) of Regulation 17. But the principles of the "Bilger" judgment remain valid for "old cartels", that means agreements concluded prior to the coming into force of Regulation 17.

(3) Agreements which are not listed in Art. 4(2) of Regulation 17 have to be notified in order to be granted an exemption under Art. 85(3) of the EEC Treaty. Therefore it is absolutely necessary that such agreements are notified. Without notification they are irreparably void for the past.

Referring to the **Portelange** judgment of the European Court Dr. Helm took the view that notification leads to provisional validity of the agreement, even if it violates Art. 85 of the EEC Treaty. (According to the **2nd "de Haecht"** judgment of the European Court of 6 February 1973 this applies only to agreements concluded prior to the coming into force of Regulation 17. Agreements concluded after that date do not become provisionally valid despite notification in Brussels, if they violate Art. 85 of the EEC Treaty.)

(4) Art. 25(2) of Regulation 17 deals with agreements which existed on 1 January 1973 and which have violated European cartel law for the first time on account of Ireland, England and Denmark entering into Common Market. They have to be notified to the Commission within a period of six months, that means until 30 June 1973. Punctual notification makes these "old agreements" temporarily valid, even for the past, as of 1 January 1973.

If the deadline for a notifiable agreement is not observed, this agreement is void for the past. Notification may also be effected subsequently, but in that case an exemption is possible only for the future. Irish enterprises have to decide before 30 June 1973 which of their agreements might violate European cartel law, and send due notification of the relevant agreements. In case of doubt, it is wiser to send notification of all agreements possibly coming under European cartel law. As there will be thousands of agreements, it will take a long time before the Commission can consider them.

It is to be stressed that Art. 25 Regulation 17 only applies to agreements which come under EEC cartel law for the first time as a result of Britain, Ireland and Denmark joining the Common Market. Agreements affecting competition in the Europe of the Six, fell under Art. 85 of the EEC Treaty already before 1 January 1973.

(5) Notification must be effected on a special form obtainable from the Commission. Ten copies must be submitted. Notification by one party of the agreement is sufficient.

(6) If the Commission considers that the specified agreement does not come within Art. 85(1) EEC Treaty, or that an exemption may be granted, it publishes the essential contents of the agreement in the Official Journal, and calls upon all parties concerned

to raise their objections within a prescribed period (Art. 19(3) Regulation 17).

Before reaching a decision, the Commission must hear the Advisory Committee on Cartels and Monopolies, and there is a representative of each Member State on this Committee (Art. 10(4) of Regulation 17). Unless new facts arise, the Commission will then grant either a Negative Clearance or an Exemption.

According to Art. 8 of Regulation 17, an exemption is only granted for a fixed period, but it may be extended. It can be subject to specified conditions.

(7) If the Commission decides, mostly after unofficial discussions with the companies concerned, that the agreement does violate European cartel law, and that no exemption can be granted, then, by virtue of Art. 2(1) Regulation 99/63, the companies are informed in writing of the so-called points of complaint. A minimum of 2 weeks is granted to the companies to lodge a written reply, in which, by virtue of Art. 3 and 7 Regulation 99/63, they may submit new evidence, or apply for an oral hearing. At any time during the course of the procedure, the companies may negotiate with the Commission alterations in their contract, in order to conform with EEC law. Otherwise the decision of the Commission will state that the agreement violates Art. 85(1) EEC Treaty and that exemption under Art. 85(3) is refused.

III

The Commission may, by virtue of Art. 3 Regulation 17, compel the companies concerned to terminate violations of Art. 85 and 86 of the Treaty. The Commission will act thus, if the companies concerned practise a notifiable cartel without having informed the Commission or if they are alleged to have exploited abusively a dominant position.

IV

(1) The Commission may also, by virtue of Art. 15(2) Regulation 17, impose fines in case of wilful and negligent violations of Art. 85 or 86 EEC Treaty. The fines may be between one thousand and one million Accounting Units (1 Accounting Unit is about 50 pence) or, beyond this amount, up to 10 per cent of the turnover achieved by the individual company during the last business year. No fines can be imposed if the parties live up to an agreement which has been notified in Brussels. However, under Art. 15(6) of Regulation 17, if the Commission informs the companies that, after preliminary examination, it considers that the agreement does violate European cartel law and that probably no exemption will be granted, the enterprises practise the respective agreement at their own risk. They can be punished later on if they continue their violation of Art. 85 after the receipt of that notice.

(2) Up to now, the Commission has imposed fines in three cases under Art 15(2) namely (1) the Quinine Case, where the total fine amounted to 435.000 Accounting Units (2) the Tar Color Case where the Commission imposed fines of 50.000 Accounting Units each and one of 40.000 Accounting Units, and (3) the Sugar Case where fines amounting to 9 million Accounting Unites were imposed on 16 enterprises.

(3) It must be noted that there is no limitation period stated in Regulation 17 for imposing these fines. The Commission has suggested to modify the Regulation 17 and to introduce a time-limit of 5 years with regard to violations of Art. 85 EEC Treaty.

(4) The Commission's procedure is approximately the same as that dealing with the notification of agreements. The Commission first serves on the companies concerned a notice specifying the detailed points of complaint. The companies can comment upon this.

The Commission is entitled to request information from the enterprises, to visit their premises and to inspect their books and records.

(5) An appeal against the fine may, by virtue of Art. 17 Regulation 17 be filed with the European Court within two months. The Court may either diminish or increase the fine according to the circumstances.

V

(1) It cannot be stressed too much that European cartel law is directly applicable in all Member States.

(2) If, however, agreements concluded prior to the coming into force of Regulation 17 have become provisionally valid by due notification, the courts cannot declare them void under EEC cartel law. A national court is compelled to allow the complaint of a party who sues for performance of such an agreement. In such cases, the other party will inform the Commission of this procedure immediately, in order that it will declare the agreement void.

(3) Non-notifiable agreements concluded prior to the coming into force of Regulation 17 can be declared void by a national court only with effect for the future. With regard to the past it must be adjudged that the defendant did perform the agreement.

(4) As to all remaining cases the national court has to observe the nullity of the agreement under Art. 85(2) EEC Treaty. (According to the 2nd de Haecht judgment of 6 February 1973 this applies to all "new agreements" concluded after the coming into force of Regulation 17, irrespective of whether they have been notified or exempted from notification.)

FREE LEGAL ADVICE BUREAUS

Meath Solicitors' Association is to establish a free legal advice bureau and two members will sit in the Community Centre, Navan, from 8 p.m. to 10 p.m. each Wednesday, commencing Wednesday next.

The service will be extended to other towns in the county should the demand and the necessity arise.

The purpose of the scheme is to provide a free source of legal advice regarding social, domestic or other problems. No actual work will be undertaken by the two solicitors at the centre. Their function is to advise without making any charge for the service provided.

Should it transpire that any actual legal work arises from the problems presented, or the advice given by the members of the profession involved, on any particular occasion, it will then be a matter for the parties attending the Centre to consult their own usual legal adviser. A spokesman for the association emphasised that the members in attendance on any particular night will not be attached to the same legal firm.

The Cork free legal advice bureau, opened in 1969, has found that by far the greater number of enquiries are in relation to landlord and tenant and property cases, with criminal cases, marital problems and hire-purchase troubles coming next. Ninety-five per cent of their clients come from working-class areas, and about 15 per cent have to be re-directed to solicitors because of the technical nature of the problem.

Meath Chronicle (19 May 1973)

THE INTERNATIONAL BAR ASSOCIATION

Twenty-five years ago the IBA was founded on the initiative of the American Bar Association—the realisation of the aspirations of many members of the legal profession anxious to advance the administration of Justice and the Rule of Law throughout the world and to maintain the high standards of the profession. The Incorporated Law Society has been a member since the early 1950's and has therefore supported the IBA almost from its inception.

The objects of the Association, as stated in its Constitution are to establish and maintain permanent relations and exchanges between bar associations throughout the world and their members; to discuss problems of professional organisation and status; to advance the science of jurisprudence; by common study of practical legal problems to promote uniformity and definition in appropriate field of law; to promote the administration of justice under law among peoples of the world; in execution of these objects to promote in their legal aspects the principles and aims of the United Nations and to cooperate with, and promote coordination among, international juridical organisations having similar purposes. It is entirely non-political.

Membership is open to all national organisations of the legal profession and each is entitled to one delegate at General meetings for each 1,000 of its members with a maximum of ten. Each also appoints one member of the IBA Council. James O'Donovan now represents the Incorporated Law Society of Ireland on the Council. Recently a new class of "Sustaining" membership has been added for local Bar Associations and Law Societies. At present there are 65 Member Organisations and one Sustaining Member. In addition provision is made for individual participation in the IBA's work by lawyer Patrons and Subscribers of whom there are approximately 3,000.

The Association has since 1948 held biennial conferences in different countries which provide the main opportunity for individuals to meet and talk, to learn of their common problems and of the various solutions being considered or tried. The Twelfth Conference was held in Dublin in 1968 at the invitation of the Incorporated Law Society.

The I.B. Journal is published biannually in May and November and goes to all members, patrons and subscribers. The Journal contains articles contributed by members throughout the world; news of international meetings of interest to the legal profession, including the U.N. Organisation and the Council of Europe with both of which the IBA has non-governmental organisation status; activities of member associations; IBA activities; book reviews, editorials; and is partly supported by advertising. Reports made at the General Meeting together with results of inter-meeting questionnaires sent to members, are published in the Journal. The Association's Section on Business Law, formed in 1970, which all Patrons and Subscribers are entitled to join, is an active body, with its own Offices and Council, and its 1,000 or so members work through its 20 Committees. These are currently engaged upon such matters as :

—the preparation of an international form of Contract for the Sale of Goods;
—an international survey of the procedures for the arrest and forced sales of ships;
—environmental pollution;
—a survey of national laws and regulations governing the issue of and trading in securities; and
—a review of the European Common Market Bankruptcy Convention and digests of the laws affecting unpaid sellers and insolvency.

The work of the Section Committees has become so extensive that it is now publishing biannually in January and July its own Journal, the "International Business Lawyer", and a Directory of its members.

The Council of the IBA, subject to the authority and direction of the General Meeting and between its meetings, is the administrative body of the IBA. In addition to the delegates, ex-officio councillors are the President, the Secretary-General, Treasurer, and four Honorary Life Members of the Council. It meets at least once a year and in alternate years three times.

At its Conferences, many topics of concern to lawyers outside the field of business law have been discussed (e.g. the Administration of Foreign Estates, Foreign Divorces, Pollution, Consumer Protection and the Role of the Law in a Permissive Society), and subsequently several draft Conventions have been submitted to the United Nations. One of the results of consideration by a Standing Committee was the establishment of the International Legal Aid Association as an independent body.

Special meetings of bar association presidents or other officers have been held at IBA Conferences. In Tokyo 1970 secretaries of bar associations and law societies discussed ways and means whereby help could be given by members in developed countries to those in less developed countries. In Monte Carlo 1972 the presidents and batonniers discussed many mutual problems, including attempts, overt or subtle, made by governments to restrict the free exercise of the legal profession. Because of the information conveyed and the concern expressed, a questionnaire has been prepared and sent to each member organisation to clarify the scope and seriousness of this problem.

The multiplicity of national requirements for use of Powers of Attorney has been under discussion at many of the IBA meetings. One of its committees has now prepared a draft of a proposed treaty on this subject, with the hope of its ultimate submission to the United Nations Organisation. The draft has been sent to each member organisation for study and report. If adopted by the UN it may enable lawyers anywhere to prepare a Power of Attorney for use in any foreign country which ratifies the treaty.

An International Code of Professional Ethics, adopted some 15 years ago by the IBA, is now being updated in order to conform with the changes made by member organisations in their national codes of ethics.

The next Conference of the IBA will be held in Vancouver, British Columbia, Canada, July 28 to August 2, 1974. In 1976 the Conference will be in Stockholm and in 1978 in Canberra, Australia.

Further details of the Association may be obtained from Sir Thomas Lund, The Director-General, 14 Waterloo Place, London SW1, England.

Proposed Regulations to give effect to EEC Requirements on Company Law

European Communities (Companies) Order 1973
S.I. No. 163, 1973

Scope of the proposed Regulations

The Regulations will apply to companies registered under the Companies Act, 1963 with limited liability and to unregistered companies with limited liability to which Section 377(1) of the Companies Act, 1963 applies. The Regulations will not apply to unlimited companies.

The purpose of the proposed Regulations is to give effect to an E.E.C. Directive adopted by the Council in 1968 which provides for the harmonisation throughout the Community of safeguards for members and other persons dealing with a company. Many requirements of the Directive are already provided for in the Companies Act, 1963 and the Regulations will give effect only to those requirements not already provided for. In the case of unregistered companies, the Act applies only to a very limited extent and the Regulations will apply to such companies various other provisions of the Act. The Regulations will take effect from 1 July 1973.

Information on Business Letters and Order Forms

Order forms should be taken as meaning forms which a company makes available for other persons to order goods or services from it, including newspaper coupons but not invoices or delivery notes.

Business letters and order forms must show:

(1) *The place of registration of the company,* e.g., "Registered in Dublin, Ireland".

(2) *The number under which the company is registered,* i.e., the number on the Certificate of Incorporation or, in the case of an unregistered company, the number under which its documents of constitution are registered in the Companies Registration Office.

(3) *The address of the registered office.* Where this is already shown the fact that it is the registered office must be indicated. Where the address shown is not that of the registered office, then the address of the registered office must be stated.

(4) In the case o fa company exempt from using the word "limited" or "teoranta" in its name, the fact that it is a limited company. This applies to a company holding a licence under Section 24 of the Companies Act, 1963 or previous Acts to omit the word "limited" or "teoranta" in its name and to an unregistered company. The Regulations do not, however, alter the right of such a company to omit the word "limited" or "teoranta" in its name.

(5) Where a company is being wound up, the fact that it is so.

(6) *Paid up share capital.* This is not obligatory but where there is a reference to the share capital it must be to the paid up share capital.

The additional information may be printed, typed or stamped but most companies will find it more convenient to have the information printed when new supplies of business letters and order forms are being requisitioned.

Publication in Iris Oifigiúil

The Regulations will impose on companies an obligation to publish a notice in Iris Oifigiúil when the following documents and particulars have been delivered to or issued by the Registrar:

(a) any certificate of incorporation of the company;
(b) the memorandum and articles of association, or the charter, statutes or other instrument constituting or defining the constitution of the company (in the regulations included in the term "memorandum and articles of association");
(c) any document making or evidencing an alteration however slight in its memorandum or articles of association;
(d) every amended text of its memorandum and articles of association, however slight;
(e) any return relating to its register of directors, or notification of a change among its directors;
(f) any return relating to the persons, other than the board of directors, authorised to enter into transactions binding the company, or notification of a change among such persons;
(g) its annual return;
(h) any notice of the situation of its registered office, or of any change therein;
(i) any copy of a winding up order in respect of the company;
(j) any order for the dissolution of the company on a winding up;
(k) any return by a liquidator of the final meeting of the company on a winding up.

In general, a company may not rely on such documents or particulars against third parties until the notice in Iris Oifigiúil has been published. Although the responsibility for publication rests with individual companies, the Registrar, as a service to companies, will arrange for such publication in Iris Oifigiúil. The Registrar has no obligation to do this and he accepts no responsibility for omissions or errors in publication. The onus is on individual companies to satisfy themselves that correct publication has been effected.

Alterations in Memorandum and Articles of Association

Where a company alters its Memorandum or Articles *after the commencement* of the *Regulations* it must deliver to the Registrar in addition to the alteration a copy of the text of the Memorandum and Articles as so altered. This does not apply in respect of alterations effected *before* the commencement of the Regulations and a company is not obliged to deliver the amended text in regard to such alterations. An unregistered company must, within one month from the commencement of the Regulations or within one month of its incorporation, as the case may be, deliver to the Registrar a certified copy of its documents o fconstitution as amended to date.

This Order may be obtained from Government Publications Sales Office, Henry St. Arcade, Dublin 1, for 4p and postage.

Company Audits—Auditors' Enquiries

The Society has been in consultation with the Institute of Chartered Accountants as to the information which may be required by an accountant from a solicitor in connection with the audit of a company which is a client of the auditor and the solicitor. In the past solicitors have been receiving from auditors fairly detailed enquiries as to possible liabilities of the company known to the solicitor concerned which ought to be included as a liability in the company accounts. Solicitors have been reluctant to answer these enquiries because of the possible legal liability which might accrue from any error or omission and the difficulty of ascertaining at any given time with any reasonable degree of accuracy the actual or contingent liabilities of the company for which the solicitor acts.

The Society and the Institute in dealing with this matter have had regard to two desirable aims, first that the solicitor should comply as far as possible with the reasonable requirements of the accountant and supply any information within his knowledge which ought to influence the auditors in certifying the company accounts or matters to which attention should be drawn in the accounts and, secondly, the avoidance of liability for error or omission and the simplification of the work as far as possible in the solicitor's office. It is of course realised that solicitors in dealing with this matter should render the maximum service as efficiently as possible to enable the auditors to prepare and certify the accounts in accordance with the Companies Acts.

With this end in view the following form of letter has been agreed between the Institute and the Society. It will be noted that—

(1) the letter is from the client to the solicitor,
(2) the estimates of liabilities are submitted by the directors of the company to the solicitor and he is asked to state whether or not he agrees with them,
(3) if the solicitor disagrees with the directors' estimate he inserts his own figures,
(4) the solicitor is asked to give an estimate of the costs and outlay due to him at the audit date and the amount of monies held by him on behalf of the company at the same date.

It is expressly stated that the estimates are given or accepted on the basis that the solicitor will not incur any liability for loss or damage suffered by any person in the event of the estimates being incorrect.

The Council are of the opinion that solicitors may safely comply with auditors requirements on the basis of the following letter.

From:
Client (Name and Address)
To:
Solicitor (Name and Address)

Date

Dear Sir(s),

Re : Balance Sheet at.....

(1) In connection with the preparation and audit of our accounts as at the date mentioned above the directors of the Company have made estimates of the amounts of the ultimate liabilities (including costs) which might be incurred, and are regarded a smaterial, in relation to the matters set out in Schedule 1, on which you have been consulted.

We should be obliged if you would confirm that in your opinion these estimates are reasonable and, where you take a different view, please insert your own estimate.

If you leave any of the directors' estimates unchanged, it will be taken that you agree with the same.

It is agreed that any estimates given or accepted by you are given or accepted on the basis that you will not incur any liability whatever for any loss or damage which may be suffered by any person by reason of any such estimates being incorrect either on the basis of facts presently known or facts subsequently coming to light.

(2) Would you please estimate in Schedule 2 the amount of costs and outlay due or accrued to you by the Company as at the balance sheet date, together with your costs for dealing with this query form, so far as is possible without necessarily drawing a bill of costs and without any commitment on your part to the amount so estimated.

(3) Would you please indicate in Schedule 3 the amount of any monies held by you on behalf of the Company as at the balance sheet date.

(4) This letter and form are submitted in duplicate. Please retain the copy and send the completed original direct to our Auditors :

.....
.....
.....

Yours faithfully,

.....
Director/Secretary

Auditor's Name	Auditor's Address	Form No.
Client's Name	Client's Address	Audit period ended

Schedule 1—Estimate of liabilities Matter	Directors' Estimate £	Solicitors' Estimate £
Schedule 2—Costs and outlay accrued due by client at the balance sheet date (estimated)	£	
Schedule 3—Monies held by Solicitor on behalf of client	£	

Date .....

Signed .....
Solicitors

LAND ACT 1965 (ADDITIONAL CATEGORIES OF QUALIFIED PERSONS) REGULATIONS 1972

Regulations made under Section 45 of Land Act 1965

The Minister for Lands, has made Regulations, under Section 45 Land Act, 1965, entitled "Land Act, 1965 (Additional Categories of Qualified Persons) Regulations, 1972". Section 45, Land Act, 1965, restricts the vesting of interests in certain land in persons—principally non-Irish citizens—who are not qualified persons as defined in the section.

The Council of the European Economic Community has issued five Directives on certain rights of establishment on land in respect of nationals of member States of the Community which will apply here when we become members of the EEC on 1 January 1973.

The Directives provide for:

(a) the right of nationals of one member State to acquire farms in other member countries which have been abandoned or left uncultivated for more than two years. Abandoned or uncultivated land is defined as a cultivable holding which has lain fallow (other than for rotation purposes) for more than two years. In this connection grass is regarded as a crop. The presence or absence of buildings on the land is immaterial; 20-4-63 (1326/63), official Journal November 1972.

(b) the right of nationals of one member State who have worked as paid agricultural workers in another member State for an unbroken period of at least two years to acquire farms in that State. It is not considered this class of worker would be sufficiently numerous or wealthy to present a problem for the Land Commission or other interested Irish parties; 20-4-63 (1323/63) official Journal November 1972.

(c) the right of a national of a member State to change farms in another State if he has been established in farming for more than two years in that member State. This simply means that if the beneficiary is already legitimately established in farming here for more than two years, he has the right to sell his holding and buy an alternative farm; 10-8-67 (190/1). Official Journal November 1972.

(d) the right of access by a national of one member State who is established or who is establishing himself in farming in another member State, to the rural lease system in that State. In this country there is, of course, no formal rural lease system such as obtains in Continental countries. Lettings of land here are generally made for a period of eleven months. Lettings for a period of a year or over require the consent of the Land Commission under Section 12, Land Act, 1965; 10-8-67 (190/3). Official Journal November 1972.

(e) the right of nationals of a member State who are self-employed in forestry and logging to buy wooded land or forest soils for forestry purposes in another member State. It is not envisaged that the operation of the Directive will create difficulty for the Forest and Wildlife Service in maintaining its planting objective of 25,000 acres annually. 31-10-67 (263//6). Official Journal November 1972.

The effect of the Regulations made by the Minister is to exempt from the restrictions of Section 45, Land Act, 1965, the beneficiaries of these Directives by declaring them to be qualified persons for the purposes of the Section.

It must be emphasised that full right of establishment in agricultural land does not yet operate in the EEC. The Directives referred to above represent measures of only very limited scope and it is not considered that the admission of the beneficiaries of these Directives as qualified persons for the purposes of Section 45, Land Act, 1965, will create any significant problem for this country.

RECENT INCREASES IN SOLICITORS' REMUNERATION

Schedule 2 Solicitors Remuneration General Order 1884/1972.

Non-contentious business other than commission scale fees.

By the Solicitors Remuneration General Order 1972 (S.I. No. 227 of 1972) the fees chargeable under schedule 2 items 2 to 20 were increased, with effect from 18th May 1972, on the fees prescribed by the Solicitors Remuneration General Order 1964 (S.I. No. 128 of 1964). Commission scale fees on sales, purchases, leases and mortgages are not affected.

Superior Courts

By the Rules of the Superior Courts (No. 1) 1972 (S.I. No. 300 of 1972) the fees in Appendix W., parts 1, 5, 6 and 7 were increased by 20%, with effect from 5th September 1972, on the fees prescribed by the Principal Rules as increased by the Rules of the Superior Courts 1964 (S.I. No. 166 of 1964). The increases apply to part 1 general proceedings in the High Court, part 5 bankruptcy, part 6 Circuit Court appeals, part 7 commissioners for oaths. Fees not affected are part 3, judgment in default, and part 4, non-contentious probate matters.

Curcuit Court

By the Circuit Court Rules (No. 3) 1972 (S.I. No. 322 of 1972) the costs in proceedings in the Circuit Court were increased, with effect from 27th November 1972, by 20% on the costs prescribed by the Circuit Court Rules (No. 2) 1967 (S.I. No. 118 of 1967). The new scales also cover the increased jurisdiction of the Circuit Court under the Courts Act 1971.

District Court

By the District Court (Costs) Rules 1972 (S.I. No. 175 of 1972) the costs of proceedings in the District Court were increased by 20% on the scales of costs prescribed by the District Court (Costs) Rules 1964 (S.I. No. 279 of 1964) with effect from 7th July 1972. The new scales also cover the increased jurisdiction of the District Court under the Courts Act 1971.

Land Registry

By the Land Registration Rules 1972 (S.I. No. 230 of 1972) the costs of voluntary transfers, applications under rules 33 to 35 and costs under rules 121(6) were increased with effect from 31st August 1972 by 30% on the costs prescribed by the Land Registration Rules 1966 (S.I. No. 266 of 1966). The commission scale fees on sales, purchases, leases and mortgages are not affected.

SOME RECENT OBSERVATIONS ON THE PRIVILEGE RELATIONSHIP BETWEEN CLIENT AND SOLICITOR

By ERIC A. PLUNKETT, Secretary

The principles of professional privilege are fully set out in Cross on Evidence, 3rd edition, 1967, as follows.

> Communications passing between a client and his legal adviser together in some cases with communications passing between these personel and third parties may not be given in evidence without the consent of the client if they were made either:
>
> (1) with reference to litigation that was actually taking place or was in contemplation of the client or,
>
> (2) if they were made to enable the client to obtain, or the adviser to give, legal advice.

This principle is many centuries old and was established in the interests of the administration of justice as well as of the client, so that any person seeking legal advice would be unimpeded by the consideration that his communications with his solicitor or documents arising in the course of such communications would afterwards be disclosed in public. It is part of the rule that the public should have unimpeded access to the Courts and to legal advice. One obvious exception to the principle is the case in which the client seeks legal advice for the purpose of committing a fraud or a crime. Any communications made or received or documents arising in the course of such communications are not entitled to professional privilege and are on the same footing as any communications made between other parties.

In the recent case of *Regina v. Barton* (1973 1 WLR 115) the defendant was a legal executive charged with fraudulent conversion and other offences alleged to have been committed in the course of his employment with a firm of solicitors. The defence served on a solicitor, a partner in the firm, a subpoena to give evidence at the trial and to produce certain documents which had come into existence while the solicitor was acting as solicitor to the executors or administrators of the estates of deceased persons. The solicitor on the advice of the English Law Society took the point that the documents were protected by legal professional privilege. Caulfield J. in the course of his judgment held that the rules of natural justice require that any documents in the possession or control of a solicitor which are both relevant and admissible to prove that a defendant was innocent of the alleged criminal charge are not privileged in a criminal trial and accordingly the solicitor should produce the relevant and admissible documents. No cases are referred to in the judgment.

The Court held that the solicitor had acted perfectly properly throughout in taking the advice of the Law Society and raising the claim to privilege on the instructions of the client. He was given an opportunity of representation by counsel who had made submissions to the Court on behalf of the claim to privilege. The privilege is one that is claimed by the client. The Judge stated that there is no previous authority on the point which is a novel one and that he was obliged to consider the matter on basic principles. He enunciated the principle as stated above and held that it must be restricted to the particular facts in a criminal trial and on what he conceived to be the rules of natural justice. He said that he could not conceive that the law would permit a solicitor or other person to screen from a jury information which if disclosed to the jury would perhaps enable a man either to establish his innocence or to resist an allegation by the Crown.

The decision as reported has far reaching implications on the law relating to a client's right to the maintenance of professional secrecy by his legal adviser and it remains to be seen how it will be interpreted by the Courts on the facts of particular cases. It could, conceivably, unless protected by proper safeguards, lead to many applications for the production of documents as well as the disclosure of professional information which have heretofore been regarded as privileged and frivolous applications by persons charged with criminal offences for the disclosure of privileged information by solicitors for other persons.

NUMBERING OF LAND REGISTRY FOLIOS

Land Registry, Central Office,
Dublin
14 June 1973

Dear Sir,

On and from Monday 18 instant all *new* freehold folios and freehold folios *revised* on and after that date will be numbered consecutively beginning with No. 1F et seq.

I think it is desirable that this fact should be drawn to the attention of solicitors in your Journal. It should also be stressed that freehold folios revised after the above date will not be numbered with the same number which was allotted to the closed folios: for instance, Folio 200 could if revised, be numbered as Folio 2F. I enclose specimens of the proposed new folios.

You will see that the folio is in three parts as usual; but is smaller than its predecessor and can be easily folded. The flap on the third page is intended (when it is possible to get round to this stage) to affix a field plan thereto. See Rule 174(1)(b). Where such filed plan is so attached, then when a land certificate is applied for in respect of the folio in question it will be issued with a copy of the filed plan attached thereto. See in this regard Rule 155(1).

Finally, you will note that folio type F.1 relates to freehold property purchased under the Land Purchase Acts. Folio type F.2 relates to freehold property not so purchased; and folio type F.3 relates to freehold property purchased under the Labourers Acts.

Yours faithfully,

D. McAllister, Registrar

The Secretary,
Incorporated Law Society of Ireland.

LAW SOCIETY TO GO TO LAW OVER COURTHOUSE

In a bid to get a proper courthouse for the city, the Waterford Law Society is to take High Court proceedings against Waterford Corporation.

For almost three years now no regular sittings have been held in the 130-year-old courthouse because of its dilapidated and dangerous condition, and for the first time since 1919 it was not used as the local centre for the counting of votes in this year's General Election.

Sittings of the Waterford district, civil and children's Courts are now held eight miles away in Tramore, while sessions of the Waterford Circuit Court and the High Court on circuit take place in Dungarvan, 28 miles from the city.

Waterford Corporation recently acquired the 18th-century meeting house of the Society of Friends, which it is reconstructing as a temporary District Court at a cost of £10,000. The secretary of the Waterford Law Society said, however, that it would be unworkable because of inadequate parking facilities, and that this measure merely represented another temporary expedient.

The Irish Times (6 June 1973)

RULES OF SUPERIOR COURTS (No.1)—1973

S.I. No. 220 of 1973

These Rules provide (1) that an application for release under Section 50 of the Extradition Act 1965 (No. 17 of 1965) shall be made by special summons and (2) that the summons shall be served on the person (the Commissioner of the Garda Siochana, a Deputy Commissioner or an Assistant Commissioner) who, under section 43 of the Act, endorsed the warrant on foot of which the District Court, under Section 47 of the Act, ordered the delivery over of the person named or described in the warrant.

The Rules can be purchased from the Government Publications Sale Office, Dublin, for 2½p plus postage.

BACK TO THE BREATHALYSER

The breathalyser is with us again—this time with a vengeance and the loophole in the regulations governing blood samples has been smoothed out by the Minister for Local Government, Mr. James Tully.

Mr. Tully spelled out his message in clear simple terms last night. "The Minister wishes to take this opportunity to warn those who may think they can continue to drink and drive with impunity that the measures taken by him have been designed to enable Gardai to enforce the law related to drinking and driving effectively."

Thousands of motorists charged under the special blood-test regulations of the 1968 Road Traffic Act have smiled as District Justices dismissed charges following a High Court and then a Supreme Court ruling that the manner in which the blood tests were being carried out was not in line with the regulations.

The problem was in the sealing of the bottles used by Garda doctors for blood samples. The bottles, supplied by the Medical Bureau of Road Safety, were on hand in all Garda stations. The doctor had to break a seal on the bottle in the defendant's presence and take the blood sample. The blood was then put in the bottle which contained anti-coagulant and preservative and was supposed to be sealed by the doctor.

In practice, however, the "sealing" or "stopping" consisted only of screwing back the top on the bottle before it was placed in a self-sealing envelope and sent to the Medical Bureau.

Now, however, the bottles have been supplied with a self-sealing strip which complies with the regulations. These new bottles have not yet been supplied to Garda stations but are expected within the next few days.

Mr. Tully, in his announcement, advised the public that he had taken steps to enable the breathalyser procedures to operate effectively.

Irish Independent (15 June 1973)

EXEMPTION AND REDUCTION IN STAMP DUTIES

The attention of members is being drawn to the Imposition of Duties (No. 206) (Stamp Duty on Certain Instruments) Order 1973 S.I. No. 140 of 1973 which came into operation on 1 June 1973 and affects any instrument executed on or after that date.

This Order provides for exemption from and reduction of the rates of stamp duty chargeable on transfers of houses and lands. It also provides for exemption from stamp duty on mortgages up to £10,000 and for the increase from ten to fifteen per cent of the rate of stamp duty chargeable on contracts for the construction of office buildings. It can be purchased at the Government Publications Sales Office, G.P.O. Arcade, Dublin 1. Price £0.7½.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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Contents

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EDITORIAL

A Perverse Judgment—Thalidomide Actions

The following leading article is transcribed verbatim from *The Guardian* of 19 July 1973.

Five years ago more than 200 writs were issued against the Distillers Company by parents of thalidomide children. In the Court of Appeal on February 16 Lord Denning found that these actions "had gone soundly to sleep and had been asleep for the last four years." No one had awakened ghem because both sides were hoping for a settlement. The court therefore removed an injunction placed by a lower court on the *Sunday Times* forbidding publication of an article on the way in which the drug had been developed and distributed.

Yesterday the House of Lords unanimously reversed the appeal court's judgment and reimposed the ban. After 12 years it is still not permissible to discuss in public the circumstances in which thalidomide came to be prescribed with such disastrous results. This is plainly contrary to the public interest because if—and the word if must be stressed—avoidable mistakes were made it is important both for assessing present compensation and for the future marketing of drugs that they should be known about. At the time publication was proposed a satisfactory settlement of the injured children's compensation had not been reached. It is conceivable that the *Sunday Times* article could at least have further expedited a settlement since, as Lord Justice Phillimore said in the Court of Appeal in support of Lord Denning, the so-called litigation was somewhat unreal. It was shadow boxing dressed up as litigation.

Lord Diplock answered this criticism yesterday by saying that litigants are entitled to the same freedom from interference in negotiating the settlement of a civil action as they are from interference in the trial of it. This must ordinarily be true, but in the case of the Distillers it is clear that the gap between the offer of £3.25 millions and the recent settlement at £26 millions was bridged only because of the adverse publicity which Distillers were receiving. In the eyes of most people greater justice, not less, resulted from the action of the *Sunday Times* in publishing its article of 24 September 1972, to which the article in dispute was to have been a sequel. Indeed Lord Reid, delivering judgment yesterday, commented : "If we regard this material solely from the point of view of its likely effect on Distillers I do not think that its publication in 1972 would have added much to the pressure on them created, or at least begun, by the article of September 24. From Distillers' point of view the damage had already been done. I doubt whether the subsequent course of events would have been very different in their effect on Distillers if the matter had been published." Yet neither Distillers nor the Attorney-General pursued the *Sunday Times* for contempt in the earlier article. And, surprisingly, Lord Reid yesterday found against that newspaper.

Lord Reid's is not an entirely illiberal judgment in spite of its perverse conclusion. Discussing the sub judice rules he says that "Surely public policy does not require that a system of stop and go shall apply to public discussion." And again : "There must be absolute prohibition of interference with a fair trial but beyond that there must be a balancing of relevant considerations." And again : "As a general rule where the only matter to be considered is pressure put on a litigant, fair and temperate criticism is legitimate, but anything which goes beyond that may well involve contempt of court." And most importantly : "If the law is to be developed in accord with public policy we must not be too legalistic in our general approach. No doubt public policy is an unruly horse to ride, but in a chapter of the law so intimately connected with public policy as contempt of court we must not be too pedestrian." These sentiments are sound and difficult to reconcile with the renewed injunction. It looks as though the law lords dislike Lord Denning's judgment.

Lord Reid's emphasis is quite alien to that of Lord Morris of Borth-y-Gest who says : "There can be no such thing as a justifiable contempt of court." Lord Reid in fact gives instances where "contempt," narrowly defined, would be justifiable. Lords Morris and Diplock are contemptuous of "trial by newspaper", but this is an Aunt Sally. No responsible newspaper would disagree with them. Trials should be settled in court by appropriate and fair procedures. But this does not mean that the administration of justice owes nothing to what happens outside the courtroom. Justice, it might be said, is divisible, and the role of the newspaper is in providing evidence and occasionally in pointing to malfunctions of the law. There has not, in recent years, been a clearer case of this than the thalidomide case. It was not the judicial process which won the children their £26 millions. It was the busy world outside.

The New Director-General

Mr. James J. Ivers, M.Econ.Sc., M.B.A., has been appointed Director-General to the Society with effect from 1 October 1973; he was born in Cork, and is 45 years of age.

Mr. Ivers has had a varied and interesting career. In 1944 he was a clerk with the Great Southern Railways in Waterford, and was successively Clerical Officer and Executive Officer in the Department of Industry and Commerce, from 1945 to 1950; from 1950 to 1958 he was an Administrative Officer in the Department of Health. Mr. Ivers then left the Civil Service to take on a very successful business career.

From 1958 to 1970, Mr. Ivers was General Secretary of the Irish Dental Association, and in 1970 was appointed as Chief Executive Officer of the North Western Health Board in Manorhamilton, Co. Leitrim. He had a very successful academic career in University College, Dublin, securing the B.Comm. Degree with Honours in 1967, the M.Econ.Sc. Degree with First Class Honours in 1968, and the Master of Business Administration Degree with First Class Honours in 1970.

Mr. Ivers holds various other posts. He is a foundation member, as well as a Council member, of the Irish Institute of Public Administration; he is Chairman of the General Medical Services (Payments) Board and of the Health Staff Advisory Board in the Institute of Public Administration; he is also a member of the Local Government staff negotiating Committee, as well as being Honorary Treasurer of Irish Credit Union, and a member of the Credit Union Advisory Committee in the Department of Industry and Commerce.

The new post of Director General was created on the retirement of Mr. Eric A. Plunkett, B.A. (N.U.I.), who has been Secretary of the Society since 1942. Mr. Plunkett will continue to act as part-time consultant to the Council. He qualified in 1931 and practised in Dublin until his appointment as Secretary.

THE SOCIETY

Proceedings of the Council

JUNE 28

The President in the chair, also present: Messrs. Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Christopher Hogan, Thomas Jackson, Jnr., John B. Jermyn, Francis J. Lanigan, John Maher, Patrick C. Moore, Eunan McCarron, Brendan A. McGrath, John J. Nash, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Dermot G. O'Donovan, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Ralph J. Walker.

The following was among the business transacted.

Preliminary examination

It was proposed by motion on notice that the compulsory subjects at the preliminary examination should be English and Mathematics and that Latin should be an optional and not, as at present, a required subject. After a general discussion the motion was put to the meeting and declared lost by 12 votes against 11.

Solicitors apprentices and Social Welfare Insurance

The Secretary drew attention to the position which arises under the Social Welfare Acts which apparently imposes an obligation on persons employing apprentices to make Social Welfare contributions. In the case of unpaid solicitors' apprentices the entire burden of the contribution would fall upon the solicitor unless the indentures of apprenticeship contain a covenant by the apprentice or preferably his guardian to indemnify the solicitor against such liability. Where an apprentice is not paid a salary there is no means of deducting the employee's contribution. Even where a premium is charged for the apprenticeship the amount would probably be less than the total of the Social Welfare contributions over a period of apprenticeship. In the Society's Gazette for December 1953, page 54, the following statement appears:

> The Council were advised that the master of a solicitor's apprentice is liable to make contributions under the Social Welfare Act 1952 even although the apprentice is not in receipt of a salary. Following representations made to the Minister that apprentices other than those serving under Section 16 of the 1898 Act should be excluded the Minister made the Social Welfare (Employments of Inconsiderable Extent) (No. 2) Regulations 1953 (S.I. No. 290 of 1953). The regulations provide that employment other than employment which is under a contract of service and is for the purpose of the employer's trade or business in any one or more employments for less than eighteen hours in a contribution week where the employed person is not mainly dependent for his livelihood solely on the remuneration received from such employment is to be excluded from the provisions as to compulsory insurance.

The Secretary stated that he raised the matter because he thought it possible that these regulations may have been annulled by later Social Welfare legislation. The matter was adjourned for further consideration. In the meantime it was decided that the attention of the profession should be drawn to the position so that in case of any doubt appropriate provisions may be made in indentures of apprenticeship.

Comparative law and International law

The Council approved a report from the Court of Examiners that in any revised system of legal education the universities should be requested to include comparative law and private international law on the course for the B.C.L. degree for solicitors' apprentices.

Admission of aliens as apprentices

The Court of Examiners reported that applications had been received from foreign nationals for admission to apprenticeship. It was decided that these applications should be dealt with on the basis of reciprocity and that where the country of origin of the applicant will admit a citizen of the Republic to the legal profession without requiring him to take out citizenship the same facilities should be extended here to the indi-vidual applicants. Letters had been written to the Swedish Bar Association and to the American Bar Association to ascertain the position in Sweden and the U.S.A. It was found that in Sweden a member of the Bar Association must be a Swedish citizen. The position in the U.S.A. varies between the different States.

Admission to the first Irish and preliminary examinations

It was decided that entries should not be accepted from applicants unless accompanied by a petition and memorial signed by the applicant and by a solicitor qualified to accept an apprentice.

Restriction of places in the Law School, U.C.D.

The Society was notified that the admission office at the law faculty U.C.D. had imposed a limit on the number of places to be allotted to students owing to considerations of space and lecturing facilities. The Society had been notified that approximately thirty places are available in the law school for non-degree students who are solicitors' apprentices. Of these fifteen will be filled by the law faculty at U.C.D. on the basis of merit. The remaining fifteen will be filled by nomination from the Society. It was decided that the order of priority for nomination by the Society for non-degree places will be as follows: first apprentices already under indentures who have not obtained entry to the law school. Next apprentices lodging petitions and memorials in order of receipt subject to passing the first Irish and preliminary examination or being exempted from the last mentioned examination.

Building Society terms of offer of advance

A standard letter used by a building society con-

tained a statement requesting the applicant to insert his solicitor's full name and address and that if the applicant had not a solicitor he might find it beneficial to use the Society's solicitor. The Society wrote to the solicitor for the building society and to the society itself stating that this statement would involve the solicitor in a contravention of the Professional Practice Regulations. The building society agreed to amend the terms of the letter in accordance with the Society's request.

Commission scale fee probate and administration matters

The Council on a report from a committee considered several requests for guidance. In one case the deceased's assets amounted to £15,000 and life interests and other assets passing amounted to £40,000. Estate Duty was charged on the aggregate of £55,000 and member asked whether he could charge a commission scale fee on £55,000. The Council in reply pointed out that the commission scale fee is not an official scale but is to be used as a rough guideline or yardstick. It would depend largely on the amount of the work done by the solicitor in relation to the life interest and if the solicitor did no work in that connection it was felt that the appropriate scale fee should be charged only on the basis of an estate for £15,000.

In another case the deceased held a house jointly with a sister. The question was whether the value of the deceased's interest in the house should be added to the value of the absolute estate in assessing the scale fee. The Council were of the opinion that if the scale fee is applicable it would be correct to include one half of the value of the house together with all other assets in determining the amount in which the commission is payable.

It was stated that in both cases the adoption of the commission scale fee is by agreement with the client and that the costs thereby produced are intended to approximate to the fees which would be chargeable under schedule 2 and other appropriate regulations, the object being to avoid the inconvenience and expense of drawing detailed bills of cost.

JULY 26

The President in the Chair, also present, Messrs. W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, James R. C. Green, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, Jnr., Francis J. Lanigan, John Maher, Patrick C. Moore, Eunan McCarron, Patrick McEllin, Patrick McEntee, Brendan A. McGrath, John J. Nash, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Rory O'Connor, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, David R. Pigot, Mrs. Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

The following was among the business transacted.

Interest on monies lodged in Court

It was pointed out that Court lodgments may remain in the Government bank for a long period earning no interest to the party. It was stated that the Superior Courts Rules Committee is at present considering a rule providing for the investment of such monies.

Practice by solicitors as unlimited companies

By direction of the Council a case was sent to counsel for advice as to the legal position in this matter.

Advertisement of sale in solicitors' office

A press advertisement drafted and inserted by an auctioneer without reference to the solicitor stated that the auctioneer and interested parties would attend at the office of the solicitor on a named date when the property would be sold and the contract executed. The auctioneer and interested parties attended at the office of the solicitor who read the conditions of sale. The property was sold and the contract executed. The Council on a report from a solicitor stated that the advertisement inserted by the auctioneer was open to objection on professional grounds. It was recognised that the solicitor was not responsible.

Road Traffic Prosecutions

On a report from a committee the Council stated that the minimum fee of ten gns. paid by insurance companies to a solicitor for conducting the defence of the insured party and supplying a report of the proceedings is inadequate. The committee took the view that the minimum fee should now be fifteen gns. It was decided to negotiate a fresh agreement with the Accident Offices Association.

Dublin Corporation certificates as to roads and services

The Council considered a report of a meeting between representatives of the Council and representatives of the local authorities concerned which will be printed in the Society's Gazette in due course.

COMMITTEE ON COURT PRACTICE AND PROCEDURE

The following Interim Reports have recently been issued :

(1) 12th Interim Report on Courts Organisation. (Price 17½p plus 12½p postage).
(2) 17th Interim Report on Court Fees. (Price 9p plus 3p postage).
(3) 18th Interim Report on Execution of Money, Judgments, Orders and Decrees. (Price 10p plus 3p postage.

All these publications which will be summarised later, can be obtained from the Government Publications Sale Office, G.P.O. Buildings, Dublin 1.

UNREPORTED IRISH CASES

Motor-Rally navigator's appeal fails

In a reserved judgment yesterday, the Supreme Court, Dublin, dismissed an appeal by a Co. Longford man, who had sued the driver of a car which was taking part in a motor rally, while he was acting as navigator in the same car.

Alan McComiskey, of Longford, brought an action in the High Court against John McDermott, of Nutley Park, Dublin, in which he claimed damages for personal injuries arising out of an accident when the car, in which he claimed he was travelling as a passenger on 25 October 1968, at Carrigower, Co. Wicklow, crashed and overturned.

It was stated that Mr. McComiskey, who was a medical student at the time, had lost the last two inches of his left ring finger, and it was claimed that this was a matter of grave seriousness to him in his profession.

Judgment was given in the High Court against Mr. McComiskey, when the jury held that his claim was defeated because he had impliedly agreed to waive his legal right in respect of any negligence of Mr. McDermott causing injury to him.

The jury also held that Mr. McDermott was not negligent. From those findings, Mr. McComiskey appealed to the Supreme Court.

Mr. Justice Henchy, delivering the majority judgment of the Supreme Court, said that in October, 1968, Mr. McComiskey and Mr. McDermott were students in U.C.D. Their common interest was motorcars and, more particularly, the sport of motor rallying. In a rally each car was manned by a team consisting of a driver and a navigator whose task was to guide the driver by reference to a map and to act as timekeeper.

They decided to enter as a team in a rally for novices that was being held on the night of 25 October 1968 by the Dublin University Motor Club. Mr. McDermott had been rallying for three years, but this was only Mr. McComiskey's second rally. They were to compete in Mr. McDermott's car. Mr. McDermott was to be the driver and Mr. McComiskey, with the help of a special lamp, a half-inch road map and a compass, was to be the navigator.

They started off from Kilmacanogue, Co. Wicklow, on what was a dark, wet night. The cars moved off at one-minute intervals, and were expected to pass 35 checkpoints. To cover the route, of which the teams were informed only shortly before starting, without incurring penalties, the drivers would have to maintain an average speed of 35 miles an hour.

Mr. McComiskey and Mr. McDermott had negotiated four checkpoints without incurring penalties when they found themselves on a narrow secondary road in the Wicklow hills. Mr. McComiskey advised Mr. McDermott that in a matter of seconds they would arrive at the fifth checkpoint. Just then they came to a sharp lefth-hand bend.

Mr. McDermott said that when he came around the bend he saw, about 45 yards downhill ahead, two cars blocking the road. It transpired later that this was the next checkpoint, and one of the cars, which was not blocking the road, was that of an official who was checking the competitors' cars as they arrived there, and the other car, which was causing the obstruction, was that of a competitor. Mr. McDermott braked as soon as he saw the obstruction, but because of the muddy downhill road the braking was not effective, and, believing that he could not pull up before he would get to the two parked cars, he released the brake and directed his car into the ditch at the right hand side of the road. The car overturned and Mr. McComiskey was injured.

Mr. Justice Henchy said that when Mr. McDermott purchased this car in England it had attached to the instrument facia a notice to the effect that passengers travelled in the car at their own risk. Mr. McDermott had not bothered to remove the notice. Mr. McComiskey was present when the car was bought by Mr. McDermott and consequently knew of the notice. The only reference made to it before the accident was on one occasion when Mr. McDermott jokingly said to Mr. McComiskey that unless he removed the notice no one would sit in the car.

Mr. McComiskey denied in evidence that he took the notice seriously when he travelled as a passenger in the car, and Mr. McDermott, although his defence formally pleaded that Mr. McComiskey had waived his right to sue, failed to state in evidence that he was relying on the notice when he carried Mr. McComiskey as a passenger.

Mr. Justice Henchy said that Mr. McComiskey said in evidence that he disregarded that, and Mr. McDermott failed to assert that he intended or expected Mr. McCommiskey to treat the notice as a binding or effective one. In these circumstances he considered the jury's verdict that the plaintiff had waived his right to sue to be unsupported by evidence and to be therefore invalid.

On the question of negligence he said he would uphold the jury's evrdict of no negligence. He said he considered that the duty of care owed by Mr. McDermott to Mr. McComiskey was to drive as carefully as a reasonably careful, competitive rally driver would be expected to drive in the prevailing circumstances.

He said the jury's answer in the negative could not be disturbed unless it could be said to be unreasonable. He was unable to say that it was.

Mr. Justice Griffin agreed with the judgment, and Mr. Justice Walsh, in a dissenting judgment, said that he would order a new trial on the issue of Mr. McDermott's negligence and Mr. McComiskey's negligence, and, if the matter should arise, the apportionment of fault.

The appeal was dismissed with costs.

(*The Irish Times,* 27 July 1973.)

Rowdyism in dance-hall area can be factor in refusal of licence

The Supreme Court ruled yesterday that a Circuit Court judge was bound to take into consideration the unruly character and offensive condict of some people who arrived into Clondalkin, Co. Dublin, on the occasion of dances in the local Castaways Club, when he was considering an application for a public dance hall licence.

The Court, in a reserved judgment, was deciding on a case stated from Judge Wellwood on the issue of whether such evidence was admissable in an appeal

brought by Mr. Michael Quinn, of Dangan Park, Kimmage Road West, Dublin, against the refusal of the District Court to grant him a licence.

Mr. Justice Henchy, in his judgment, said that the club was a well-known dance hall. Mr. Quinn and his partners had run public dances there since 1968 under licences and had spent some £5,000 in improving and renovating it. Under the annual public dance-hall licence granted to the applicant in September, 1969, 53,339 people attended public dances there—or presumably that number of tickets were sold. No fault was found with the hall or the way the dances were conducted or supervised. There were no complaints about noise emanating from the hall during dances and adequate precautions were taken by the applicant's staff to prevent disorderly or troublesome persons from entering the premises or being present at dances.

The suitability of Mr. Quinn to hold a public dance hall licence was not questioned, nor was any fault found with those associated with him in running the hall.

Nevertheless, continued Mr. Justice Henchy, when Mr. Quinn applied in 1970 in the District Court for an annual dance-hall licence, his application was refused. He appealed to the Circuit Court against that refusal. The appeal came before Judge Wellwood, who heard evidence that when dances were held on Fridays, Saturdays or Sundays, or on the eves of public holidays, or on public holidays, many people came to the dances, not from Clondalkin but from Dublin and surrounding areas.

Some of them, he said, came by bus, and because of their drunken and offensive conduct, bus crews and members of the travelling public were intimidated, Garda assistance had to be sent for, and bus services were disrupted.

Furthermore, the incursion of such people into Clondalkin, which was largely a residential area, disrupted the lives of local residents because of noisy conduct, disorderly behaviour, shouting, obscene language, urination on public and private property and offences such as assault and malicious damage to property.

While such conduct did not, in the main, take place in the immediate proximity of the hall, and was outside the control of Mr. Quinn, the particular dances in the hall would seem to be the occasion, if not the focal point, of the misconduct.

What the Circuit Court judge asked in the case stated was whether he might treat the misconduct in question as a relevant matter for the purpose of Section 2, sub-section 2 of the Public Dance Halls Act, 1935, notwithstanding that it would not be controlled by Mr. Quinn and was not his fault.

The question was essentially one of statutory interpretation, said Mr. Justice Henchy.

He said that not alone was the District Justice, or the Circuit Court judge on appeal, entitled to have regard to "any other matter which may appear to him to be relevant" (part of the wording of the section), but he was bound to do so.

He said the wording of the question framed by the Circuit Court judge would suggest that the only reason he had to doubt the relevance of the misconduct in question was because it could not be controlled by Mr. Quinn and was not attributable to any act or default on his part.

"The fact that the applicant is in no way to be blamed for the misconduct, and that it is not within his power to control it, are, of account so as to redound against course, matters not to be taken into the character or conduct of the applicant or to reflect any lack of propriety or efficiency in the conduct of dances in the hall. But they are part of the picture presented of the impact which the holding of dances in this hall at weekends and on the eves of public holidays and on public holidays has had on the lives of people who live in the Clondalkin area. As such they must be deemed relevant considerations," said Mr. Justice Henchy.

He said he had no doubt that the sub-section authorised—indeed required—the Circuit Court judge to have regard to evidence tendered as to the effect the grant of a licence had had on the lives of local residents, in their homes, on the streets and, generally speaking, in the pursuit of their lawful occasions.

Such evidence was not to be disregarded, since it was the necessary basis for an assessment by the judge of the likely social and environmental consequences of the grant of a fresh licence, and since it would enable him to balance the merits of the applicant's claim to be given the licence against the adverse effect the grant of it would be likely to have on the personal lives and amenities of local residents.

Mr. Justice Henchy said it was to be noted, however, that the evidence in question might not be looked at in isolation. The sub-section required the judge to have regard to all relevant matters. Thus, if the evidence were that the mischief complained of could be eliminated or substantially alleviated by greater activity on the part of those charged with the maintenance of public order, the judge would be required to give due weight to that factor. But if, after a due appraisal, made in good faith, of all the relevant evidence presented to him, the judge were to grant or refuse the licence, he (Mr. Justice Henchy) did not see how that decision could be challenged as being *ultra vires* the Act.

Mr. Justice Henchy said that although it did not directly arise on the case stated, he would point out that whatever doubts there might have been about the admissibility of the evidence in question for the purpose of Section 2, sub-section 2, it would seem to be clearly admissable for the purpose of Section 4, which gave power to the District Justice or the Circuit Court judge on appeal to grant a licence subject to such conditions and restrictions as he thought proper and, in particular —without prejudice tot he generality of that power— subject to conditions limiting the days on which and the hours during which the dance hall might be used for public dances.

Mr. Justice Walsh and Mr. Justice Griffin agreed with the judgment. The court's decision is now remitted to the Circuit Court judge for consideration in his decision on the appeal.

(*The Irish Times*, 27 July 1973.)

Prison sentence on R.T.E. man quashed—£250 fine substituted on contempt issue

The Court of Criminal Appeal yesterday quashed the sentence of three months' imprisonment imposed by the Special Criminal Court on November 25 last on Kevin O'Kelly, the Radio Telefis Eireann journalist, during the Sean Mac Stiofáin trial. Instead, it was ordered that he should pay a fine of £250 with three months' imprisonment in default.

Mr. O'Kelly was sentenced by the Special Criminal Court for refusing to answer a question put by the Court as to the identity of a man whose voice was on a tape-recorded interview. He was imprisoned but released two days later on bail pending his appeal to the Court of Criminal Appeal.

(*A fuller report will appear in the November issue.*)

ENGLISH CURRENT LAW DIGEST

In reading these cases note should be taken of the differences in English and Irish Statute Law.

Companies

Banking

The defendants, all three directors of L. & R. Agencies Ltd., who purported to sign, on behalf of the company, a cheque which had omitted the connecting ampersand in its name, were held not to have complied with section 108(1)(c) of the Companies Act, 1948, which requires that "every company shall have its name mentioned in legible characters ... in all cheques ... purporting to be signed by or on behalf of the company", and therefore were personally liable under section 108(4)(b) to the plaintiff holder of the cheque for the amount shown on it.

Mr. Justice MacKenna, in the Queen's Bench Division, said that it would not be consistent with earlier authorities if he were to hold that a description was sufficient which totally omitted the connecting ampersand. "L. R. Agencies" was not the same thing in sense as "L. & R. Agencies". The omission of a word seemed a worse defect than its transposition or abbreviation.

Hendon v. Aldeman and Others; Queen's Bench Division; 16/6/1973.

Compensation

Negligence

Before Lord Denning, Master of the Rolls, Lord Justice Megaw and Lord Justice Scarman.

The Criminal Injuries Compensation Board, who administer the scheme for ex-gratia payments to victims of crimes of violence, were held to have erred in law in rejecting a claim to compensation by the widow of a police constable killed on duty by deciding that his death was not directly attributable to the attempted prevention of an offence but to his foolhardy driving. The constable was killed in a collision with another police car when he crossed on red traffic lights on his way to a Territorial Army headquarters in response to an emergency radio call that it was suspected that a break-in was about to be made. No break-in in fact took place.

The court allowed an appeal by Mrs. Lynda Ince, widow of Constable Michael Ince, aged 25, of Stevenage, Hertfordshire, from the decision of the Queen's Bench Divisional Court on November 17 and granted her an order of certiorari to quash the board's decision. The case was remitted to the board for reconsideration.

Regina v. Criminal Injuries Compensation Board; Ex parte Ince; Court of Appeal; 21/7/1973.

Contempt of Court

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Diplock, Lord Simon of Glaisdale and Lord Cross of Chelsea.

The publication of a proposed article in *The Sunday Times* consisting of detailed evidence and argument intended to show that Distillers Company (Biochemicals) Ltd., the manufacturers and distributors in this country of a product containing thalidomide, did not exercise due care to see that it was safe before they put it on the market would be a contempt of court so long as any outstanding claims in pending proceedings against them have not been tried or compromised in a negotiated settlement.

The terms of the injunction originally granted by the Queen's Bench Divisional Court on November 17, 1972, restraining publication will be settled by the House of Lords on July 25.

Their Lordships allowed an appeal by the Attorney General from the Court of Appeal (the Master of the Rolls, Lord Justice Phillimore and Lord Justice Scarman) (*The Times*, February 17) [1973] 2 WLR 452), which had allowed an appeal by Times Newspapers Ltd., publishers of *The Sunday Times*, and discharged the original injunction.

Attorney General v. Times Newspapers Ltd.; House of Lords; 19 July 1973.

Contract

Before Lord Denning, Master of the Rolls, Lord Justice Cairns and Lord Justice Roskill. Judgments delivered July 4.

A claim for freight is an exception to the general rule that when there is a claim for services rendered and a cross-claim for damages for alleged breach of contract in the performances of the services the cross-claim can be relied on as a true defence (other than by way of set-off) which cannot be defeated by the plaintiff's reliance on any period of limitation. When the claim is for freight, a cross-claim for damages said to have been caused to the goods by the fault of the shipowners can only be raised by way of set-off or counterclaim and is subject to the limitation provision in Article III, rule 6 of the Hague Rules when incorporated in the contract of carriage.

The Court of Appeal dismissed an appeal by Polish charterers, P. H. Z. Rolimpex, from Mr. Justice Mocatta, who affirmed the award of the umpire, Mr. K. S. Rokison, that the claim of the Norwegian shipowners, Henriksens Rederi A/S, to the unpaid balance of freight, found to be £2,476, succeeded and that the charterers' claim for cargo short delivered and damaged was barred by the time limit of one year in the Hague Rules.

Leave to appeal was refused.

Article III, rule 6, says: "... the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods. ..."

Henriksens Rederi A/S v. T. H. Z. Rolimpex; Court of Appeal; 10/7/1973.

Copyright

Before Lord Justice Russell, Lord Justice Stamp and Lord Justice James. Judgment delivered July 4.

Suites of chairs and sofas manufactured by the plaintiffs were perfectly ordinary pieces of furniture bought or treated rather for their functional utility than for any appeal to aesthetic taste and the prototypes were not "works of artistic craftmanship" within section 3(1)(c) of the Copyright Act, 1956, capable of being the subject matter of copyright.

The court so held in allowing an appeal by the defendants, Restawile Upholstery (Lancs.) Ltd., of Radcliffe, manufacturers of a suite of chairs and sofas known as the Amazon, from the decision of Mr. Justice Graham (*The Times*, November 2, 1972; [1973] 1 WLR 144) giving judgment for the plaintiffs, George Hensher Ltd., on their claim for the infringement of their copyright in a suite of chairs and a sofa known as the Bronx and certain variants manufactured by them.

George Hensher Ltd. v. Restawile Upholstery (Lancs.) Ltd.; Court of Appeal; 6/7/1973.

Criminal Law

Before Lord Widgery, Lord Chief Justice, Lord Justice Lawton and Mr. Justice Milmo.

Justices who disqualified a motorist for one month instead of the mandatory 12 months because he had "done the decent thing" in reporting to the police an accident in which only his own car was involved, were clearly wrong, the Lord Chief Justice said when giving judgment on an appeal by the police prosecutor.

Their Lordships allowed an appeal from justices at Wigton, Cumberland, who, on convicting Joseph Armstrong, a lorry driver, of Wigton, on a charge of driving with excess blood-alcohol contrary to section 6 of the Road Traffic Act, 1962, fined him £25 and disqualified him for one month.

Kerr v. Armstrong; Queen's Bench Division; 22/6/1973.

Before Lord Justice Roskill, Mr. Justice Thompson and Mr. Justice Stocker. Judgment delivered June 29.

A person who fails to say, after arrest and caution by the police, that he has an alibi should not be criticized for his silence, the Court of Appeal held in a judgment in an appeal by Leslie Stewart Lewis, of Bristol, against his conviction at Bristol Crown Court (recorder: Mr. Richard Yorke, QC) of theft and going equipped for theft.

Regina v. Lewis; Court of Appeal; 3/7/1973.

Convictions of the Federal Steam Navigation Co. Ltd., owners of the motor vessel Huntingdon, and her master, Derek Ernest Moran, for discharging a mixture containing fuel oil contrary to section 1(1) of the Oil in Navigable Waters Act, 1955, as amended in 1963, were upheld by the Court of Appeal. Their Lordships rejected a submission that there could only be a conviction of either owners or master but not of

both. It was the first prosecution in the United Kingdom under the section.

Both owners and master pleaded guilty at the Central Criminal Court (Judge King-Hamilton) in October, 1972. The owners were fined £2,500 and the master £500.

Section 1(1), as amended, provides: "If any oil to which this section applies is discharged from a British ship registered in the United Kingdom into a part of the sea which is a prohibited sea area or if any mixture [of oil and water]is discharged from such a ship into such a part of the sea ... the owner *or* master ... shall be guilty of an offence. . ."

Regina v. Federal Steam Navigation Co. Ltd.; Regina v. Moran; Court of Appeal; 11/7/1973.

Before Lord Widgery, Lord Chief Justice, Mr. Justice Milmo and Mr. Justice Wien.

Their Lordships stated the considerations to be borne in mind on sentencing young offenders for grave crimes. Applications for leave to appeal against custodial sentences of 20 and 10 years on three offenders aged 15 and 16 were dismissed. Mr. Justice Croom—Johnson had sentenced the three —in a rolling and mugging case—at Birmingham Crown Court in March—Paul Edwin Storey, aged 16, to 20 years after pleading guilty to attempted murder and robbery of Mr. Robert Keenan, and Mustafa Fuat and James Patrick Joseph Duignan, both aged 15, to 10 years on pleading guilty to wounding Mr. Keenan with intent and robbing him.

Regina v. Storey, Regina v. Fuat, Regina v. Duignan; Court of Appeal; 29/6/1973.

Before Lord Widgery, Lord Chief Justice, Lord Justice Lawton and Mr. Justice Milmo. Judgment delivered June 28.

A charge of conspiracy was not bad in law because as the trial progressed the evidence was consistent with more than one conspiracy; but a conspiracy count was bad if it charged the defendants with having been members of two or more conspiracies.

Their Lordships so held when giving reasons for dismissing the appeals of James Greenfield, John Barker, Hilary Ann Creek and Anna Mendleson, all aged 24, from their convictions at the Central Criminal Court (Mr. Justice James) on counts charging, inter alia, conspiracy to cause explosions (count 1). Their appeals against sentences of 10 years each were also dismissed.

Regina v. Greenfield and Others; Court of Appeal; 3/7/1973.

Before Lord Hailsham of St. Marylebone, Lord Chancellor, Lord Reid, Lord Morris of Borth-y-Gest, Lord Guest and Lord Cross of Chelsea. Speeches delivered July 4.

The House of Lords unanimously decided that a person commits the offence of affray if he alone is unlawfully fighting to the terror of other persons. Their Lordships dismissed an appeal by Vincent Taylor, aged 27, from the dismissal of his appeal by the Court of Appeal (*The Times,* October 10) against conviction of affray by a majority verdict at Nottingham Crown Court.

Taylor v. DPP; House of Lords; 6/7/1973.

Counsel's right to open

Counsel should not be restricted in opening a defendant's case fully to the jury, Lord Justice Roskill said in the Court of Appeal in dismissing appeals by Paul Alexander John Randall and two others against their convictions of possessing explosives, burglary and taking and driving away a motor vehicle at Berkshire Assizes (Mr. Justice Mais) in 1971.

After the close of the case for the Crown, counsel for the defence had submitted that there was no case to go to the jury. The judge ruled against him and counsel, as he was entitled to do by the Criminal Evidence Act, 1865, proceeded to outline his client's case to the jury. Counsel for the Crown objected on the basis that he was not opening his case but was criticizing the prosecution evidence. The judge had stopped counsel for the defence and confined him, for which in the clear absence of impropriety there was no possible justification. Lord Chief Justice Cockburn in *R. v. Wainwright* ([1875] 13 Cox CC 171) made it quite clear that counsel for the defence had the right to open a case fully to the jury as well as to address them fully at the end of evidence.

His Lordship also criticized the way an expert witness, a distinguished scientist from the Royal Observatory, Greenwich, had been treated. The judge had denigrated his evidence and stated it inaccurately to the jury in his summing-up. He had been less courteous than was proper in the circumstances.

Regina v. Randall; Court of Appeal; 11/7/1973.

Before Viscount Hailsham, Lord Chancellor, Lord Morris of Borth-y-Gest, Lord Simon of Glaisdale and Lord Cross of Chelsea.

An agreement to commit a trespass, a civil tort, is indictable as a criminal conspiracy where its execution has as its object the invasion of the public domain, such as the premises of a foreign embassy or a Commonwealth High Commission, or is known and intended to inflict on its victim something more than purely nominal injury and damage. The categories of conspiracy to effect a public mischief are not closed, though their extension should be jealously watched by the courts.

The House of Lords so held in dismissing an appeal by Sheku Gibril Kamara and eight other students from Sierra Leone from the dismissal of their appeals against convictions for conspiracy to trespass and unlawful assembly by the Court of Appeal (Lord Justice Lawton, Mr. Justice Swanwick and Mr. Justice Phillips), (*The Times,* October 13, 1972 [1973] 2 WLR 126).

The students, who held political opinions opposed to the party in power in Sierra Leone, agreed together to occupy the High Commission's premises in London, to call public attention to their grievances. At 8.30 a.m. on January 21, 1971, they went to the premises. When the caretaker opened the door they told him he was under arrest, and one of them threatened him with a toy pistol. He was locked in a room with about 10 other members of the staff. There was pushing and physical holding of individuals, but no blow was struck and no one was injured. Three members of the staff gave evidence that they had been frightened; there was no evidence that anyone outside the premises had been put in fear.

The students were convicted after an 11-day trial at the Central Criminal Court (Judge McKinnon) on an indictment which alleged in count 1 that they had conspired together and with other persons to enter the premises of the High Commission of Sierra Leone in London as trespassers and in count 2 that they had unlawfully assembled with intent to carry out a common purpose in such a manner a to endanger the public peace.

Kamara and Others v. Director of Public Prosecutions; 5/7/1973.

Before Lord Reid, Lord MacDermott, Lord Morris of Borth-y-Gest, Lord Hodson and Lord Pearson. Speeches delivered July 25.

A university student who went into a Chinese restaurant with friends intending to have a meal and pay for it but who changed his mind after eating the meal, remained seated until the waiter had gone out of the room, and then ran out without paying, was engaged in a continuous course of conduct constituting the offence of dishonestly obtaining a pecuniary advantage by deception contrary to section 16(1) of the Theft Act, 1968, and was properly convicted of the offence.

The House of Lords by a majority, Lord Reid and Lord Hodson dissenting, so held in allowing an appeal by the Director of Public Prosecutions from the Queen's Bench Divisional Court (the Lord Chief Justice, Mr. Justice Willis and Mr. Justice Talbot) (*The Times,* December 20, 1972; [1973] 1 WLR 317), which had allowed an appeal by Roger Anthony Ray, of Kirton Lindsay, and quashed his conviction by Gainsborough justices of an offence under section 16(1). He had been fined £1.

The facts as found by the justices were that one evening in September, 1971, the accused and other young men entered the restaurant and four of them, including the accused, ordered a meal.

When he entered the accused had only 10p on him but one of the others had agreed to lend him money to pay for a meal, which he ate without making any complaint to the staff. A discussion then took place between those who had had a meal, including the accused, and they decided not to pay and to run out of the restaurant. Some 10 minutes later, after being in the restaurant for nearly an hour and maintaining the demeanour of ordinary customers, they ran out while the waiter had gone to the kitchen. No payment was offered and no money left for the meals.

Section 16(1) provides that "A person who by any deception dishonestly obtains for himself or another any pecuniary advantage shall on conviction on indictment be liable to imprisonment. . . ." Subsection (2) says that "The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where—(a) any debt or charge for which he makes himself liable or is or may become liable (including one not legally enforceable) is reduced or in whole or in part evaded or deferred. . . ."

Director of Public Prosecutions v. Ray; House of Lords; 27/7/1973.

EUROPEAN SECTION

LECTURE 2

PATENTS AND PATENT LICENSING UNDER EUROPEAN COMMUNITY LAW

by DR. HORST HELM, Stuttgart

(Lecture delivered in Burlington Hotel, Dublin, on 27 January 1973)

I

(1) The first judgment of the European Court dealing with the influence of European cartel law on patents was the *Parke-Davis decision* of 29 February 1968. Here the Parke-Davis Co. instituted proceedings in the Netherlands based on a Dutch patent. The defendant was a company importing the medicament which was the object of the patent from Italy, where patent protection for medical products does not exist, and where consequently the article had been lawfully manufactured.

The European Court held that only national legislation decides on the existence of a patent right, whereas the exercise of this right is subject as much to Community as to national law. In the specific case the Court held that no objection under European cartel law could be sustained in respect of the action of Parke-Davis, as Art. 36 of the Rome Treaty expressly allows restraints to protect industrial property, providing, however, that "such prohibitions or restrictions shall not constitute either a means of arbitrary discrimination or disguised restriction of trade between Member States".

The prohibition of cartels under Art. 85 was inapplicable, as the action of Parke-Davis was not based on a specific agreement restraining competition.

From the Parke-Davis decision the conclusion can be drawn that, by means of a national patent, imports from EEC countries can be stopped, if the products were manufactured there by a third company which is entirely independent from that of the owner of the patent. The question of whether and why there is no patent protection abroad is of no material importance.

(2) The judgment of the European Court of 8 June 1971 called *German Gramophone Co. case* is of much greater importance for the exercise of national protection rights. German copyright law grants the manufacturer of records a special protection right similar to copyright. The Deutsche Grammophon-Gesellschaft instituted proceedings endeavouring to prevent the importation of its own records from France to Germany. These records had been delivered by the company to its French subsidiary which apparently sold them to some firm who re-exported them to Germany.

The European Court in its judgment declined to decide whether the action constituted a violation of Art. 85 of the Treaty; this would require that the action should be based on a cartel agreement. On the contrary, the European Court based its judgment on Art. 36, sentence 2, EEC Treaty. In its opinion a veiled restriction of trade between Member States obtains, if by means of a protection right the import of such products shall be prevented, which the owner of a protection right himself or a third party sold with his approval in another EEC country. The National Courts could not allow such an action to succeed because this might endanger the objectives of the Community Treaty.

(3) The judgment in the *German Gramophone Co.* case was welcomed by the European Commission. It applies as much to copyright as to patents and trademarks. Prior to this judgment the European Court endeavoured in its *Grundig-Consten* and *Sirena* decisions to prevent restraints on imports caused by trade marks with the help of Art. 85 EEC Treaty. This would presuppose the proof that the action on account of the trademark, wa sbased on a licence or purchase agreement. In future, attempts to partition the Common Market by means of protection rights will mainly be stopped with the help of Art. 36 EEC Treaty and less through the application of Articles 85 or 86.

The *German Gramophone Co.* decision has a considerable impact on the exercise of protection rights. Befire this decision the assumption had been that patents could positively be used to prevent the importation of products legitimately sold abroad, even by the patent owner himself or his licensees. The judgment corresponds to the European Court's tendency to react vigorously against all measures tending to erect trade barriers between Community countries.

(4) The decision *German Gramophone Co.* does, however, create problems of interpretation. Under this judgment the owner of an Irish patent can certainly not raise objections against the importation of products from France, which his licensee sold there, and which were exported to Ireland by the licensee's customers. The situation is already different, however, if the Irish patent owner did not grant a licence in France, but sold his French patent to a third party. In such a case it can hardly be said that the products were sold in France with the Irish patent owner's approval.

Most important for practical use is the case in which the foreign licensee does not sell products to a customer in his territory who exports them to Ireland, but instead imports them directly to Ireland himself. It would seem in such a case, that the principles of the decision *German Gramophone Co.* are not applicable, because the products were not marketed abroad and the sale to Ireland was not effected with the approval of the Irish patent owner. How the European Court will decide on such a case can, however, hardly be foreseen.

(5) Dr. Helm was of the opinion that accordingly also licensor and licensee could undertake to refrain from exporting directly into one another's territory. The Commission, on the other hand, in its *Davidson Rubber Co.* decision of 9 June 1972, held the view that a violation of Art. 85 EEC Treaty obtains, if the German, French and Italian licensees of an American patent owner undertook to refrain from exporting into one another's territory. The Commission refused to grant an exemption under Art. 85(3).

II

In the following Dr. Helm dealt with the treatment of licence agreements under European cartel law:

(1) According to Art. 4(2), No. 2b of Regulation 17, certain licence agreements are exempted from notification. Such exemption, however, applies to a very limited number of licence agreements only. For example, the licence agreement must not contain any restraints which would bear on the licensor. Since in the Commission's opinion already any exclusive licence contains a restraint on the licensor, all exclusive licences would, for instance, be notifiable. In any case of doubt, licence agreements should be notified to the Commission in Brussels in order to guarantee the exemption under Art. 85(3).

(2) Presumably still in 1973 the Commission will pass a regulation on group exemptions for licence agreements on patents.

A preliminary announcement was published on December 24, 1962, in which the Commission listed numerous clauses regarding patent licences which it considered unobjectionable, but this announcement is not binding on the Courts. The Commission itself has already deviated from it.

(3) Art. 85 EEC Treaty only applies to licence agreements if they may affect perceptibly trade between Member States and entail a perceptible restraint on competition. Such constituent elements may be absent in licence agreements with firms from countries outside the EEC. This was the case in the Commission's decision of 9.6.1972 *Raymond-Nagoya.* In this case the German subsidiary of a French company granted to a Japanese company an exclusive patent licence for the manufacture in Japan of fastening elements made of plastic attached to motor cars. This agreement contained several clauses, which—if trade between Member States had been affected—would have been considered to be a violation of Art. 85, EEC Treaty. The licence was an exclusive one, the Japanese enterprise was not entitled to export the licenced products into the Common Market, nor was it allowed to challenge the licensed protection rights. The Commission considered the matter in all its aspects and decided that the agreement was not against Art. 85, as it did not affect competition within the Common Market, but only within Japan. A negative clearance was accordingly granted to this agreement.

This decision does not necessarily mean that licence agreements, in which enterprises from third countries are involved as licensees, are never subject to European cartel law. If the company concerned had been Swedish instead of Japanese, it is likely that the decision would have been different. If, for example, in a licence agreement, an Irish company prohibits the Swedish licensee from mnaufacturing and selling competing products, not merely in Sweden, but throughout the Common Market, it is likely that the Swedish licensee could successfully challenge the latter clause, as a violation of Art. 85.

III

In the following Dr. Helm spoke about some typical provision in licence agreements:

(1) If a licensor grants an exclusive licence, he is not entitled to grant any further licences, nor can he exercise the patent personally any longer. Still in its announcement of December 24, 1962, the Commission was of the opinion that an exclusive licence was unobjectionable under cartel law aspects. This position was reconsidered in three recent cases. In the *Burroughs Delplanque* and the *Burroughs-Geha* cases of 22 December 1971, a Swiss enterprise, which was a subsidiary of the American company, Burroughs, granted the French firm Delplanque and the German firm Geha an exclusive manufacturing licence for France and Germany respectively on a carbon paper product. The licensees, however, were allowed to sell this product all over the Common Market—thus the distribution licence was non-exclusive.

In the *Davidson Rubber* decision of 9 June 1972, an American company had granted an exclusive licence for manufacture as well as distribution to a German, French and Italian company respectively. On the Commission's request the enterprises amended their agreements in a way that any of them was allowed to sell the licenced products within the entire Common Market.

In these cases, the Commission took the view that an exclusive licence, even if it relates the exclusivity to the manufacture only, may be subject to Art. 85, because the licensor was no longer able to conclude licensing agreements with other interested parties. Dr. Helm deems this view of the Commission to be wrong; if it were correct then any purchase agreement would contain a restraint on competition.

However, according to the Commission's view the exclusive manufacturing licence need not necessarily violate Art. 85(1). In the *two Burroughs decisions* the Commission did grant a negative clearance, on the assumption that the exclusive manufacturing licence did not come within the European cartel prohibition because the licensees only had a small market share. In the *Davidson Rubber case* the Commission established a violation of Art. 85(1), because the market share of the licensees was considerable, but it granted exemption under Art. 85(3) EEC Treaty for the exclusive licence on the manufacture.

(2) It can be agreed upon in the licence agreement that the licence terminates prior to the patent. The licensee can undertake to pay royalties. He can be prohibited from granting sub-licences.

All restrictions of the licensee covering the period after the expiration of the licensed patents, in particular the obligation to continue to pay royalties, violate Art. 85(1).

(3) The Commission declared the following provisions to be unobjectionable:

(a) The obligation to manufacture minimum quantities of the licensed product.
(b) Payment of a minimum sum for royalties.
(c) The licensee's obligation to observe specific technical quality standards prescribed by the licensor, provided they are indispensable.
(d) The obligation to purchase raw materials or initial products imposed upon the licensee, provided they are indispensable for a perfect utilization of the invention.

(4) In contrast to this, the following provisions violate Art. 85(1):

(a) Provisions under which the licensee, when selling licenced products, has to observe certain prices.
(b) Provisions under which the licensee must neither manufacture nor sell products which compete with manufacture nor sell products which compete with the licenced products. In this case, however, an exemption may in certain circumstances be granted.
(c) In principle there are no objections against provisions under which the licensor and the licensee have to keep each other informed on the improvement or on new applications of the invention or under which they have to grant non-exclusive licences for such inventions. However, a violation of Art. 85(1) obtains, if the licensor reserves the right to apply for a patent in his own name in respect of improvements made by the licensee.
(d) The Commission considers the usual non-content clause by which the licensee undertakes to refrain from challenging the licenced protection rights by an action declaring them null and void or by any other means to be a violation of Art. 85(1); it principally refuses an exemption. In this way the Commission wants to avoid that competition is restricted by licence agreements through fictitious patents, which are only secured by non-contest clauses.

DR. HORST HELM, Stuttgart

E.E.C. Caused "A Legal Revolution"

by John Temple Lang

The EEC has caused a legal revolution in Ireland, John Temple Lang lecturer in law in Trinity College Dublin told the I.C.T.U. summer course in Galway on 16 July 1973 in a lecture on European Law. Rules of Irish law could now be enacted without any action by any Irish governmental body at any stage, and free from the limitations imposed by the human rights clauses in the Constitution. If there was a conflict between Irish law and Community law, Community law would prevail over Irish law, even in the Irish courts. The final ruling on the interpretation of the Community rules which are now part of Irish law would be given by the Community Court in Luxembourg, not by an Irish court. The law giving effect to the EEC Treaty in Ireland had given wide legislative powers to Ministers, including the legal power to amend Acts of the Oireachtas. All of this had been done without any balancing imposition of democratic control, so it was essential that the Irish government and Oireachtas should do everything possible to strengthen the European Parliament as the organ for democratic control in the EEC, and should set up Oireachtas committees to consider draft Community legislation in time to allow Irish officials and advisers to influence the Community's own law-making process.

A still more important legal revolution was the fact that the EEC was both a fertile source of new ideas for reform of Irish law and a strong impetus for law reform here in certain fields. In the economic and social spheres many of our outdated laws would have to be looked at in the light of their effects and whether they are in line with laws elsewhere in the nine member states. Revision of Irish laws to bring them into line with Community standards would provide us with an opportunity to carry out major legal reforms in many spheres—but only if we were ready to do so. It was a great pity that the European Communities Act contemplated implementation of EEC laws largely by Ministerial Order. These Orders would do little more than carry out changes necessitated by EEC rules, and they should not do more, because they are not subject to satisfactory democratic control. But if EEC laws were implemented primarily by Acts of the Oireachtas, the opportunity could be taken to improve Irish economic and social legislation in some of the many ways it now needs updating. Law reform was one of the most neglected fields of government in this country.

The formation of Community standards involved detailed comparisons between the laws of member states, to see which best achieved the purpose intended, national laws had to be "harmonised upwards', and standards raised all round. This needed much hard work and realism, and it is essential to see the practical effects of legal rules and not merely the theory. For example, the dole in rural areas is not an unemployment allowance at all, but an income subsidy for small farmers, but because this is not admitted, it acts as an unnecessary disincentive to work.

It would be a catastrophe if insularity or dislike or fear of the EEC led to trade union failing to take an active part in it. The EEC was a challenge, but also an opportunity for trade unions as well as others interested in law reform to advance their aims.

Company Law Directive on Mergers

For example, the draft Third Company Law Directive on Company Mergers requires advance publication of merger plans, and their assessment by independent experts. It also specifically requires the plan to state the implications of the merger for the employees of the companies involved, requires consultation with the employees, and entitles the employees to make their views known to the shareholders meetings which decide whether to proceed with the merger. Irish law at present requires none of these things. Irish company law as such provides virtually no protection for the interests of workers, consumers or the public. In this respect **the EEC is far less "capitalist' 'in its outlook than Irish law.** Unfortunately the draft directive at present applies only to certain types of merger, and not to the type of merger common in Ireland, through purchase of shares or of a business: clearly the protection for shareholders and workers given by the directive should be extended to all kinds of mergers.

Compare the position of directors considering two offers to buy a factory: one from an asset stripper who would close down the factory, and a lower bid from a buyer who would keep it open. Under Irish law the directors would have a duty to accept the higher offer in the interests of the shareholders, regardless of the interests of the workers. Under Dutch law, for example, the directors would be free to take the lower offer if to do so was in the interests of the employees. A change in Irish law in this respect is far more likely to come about through EEC influence than in any other way.

EEC measures would also require publication of the accounts of private companies, and would lay down the information about the company's affairs which had to be disclosed in them. Although rules of company law are not normally of direct concern to workers, all these rules are, since they will go far to give unions the information they need for collective bargaining.

Worker participation in management

Other EEC measures require two-tier management, with worker representation in the upper, supervisory tier, and for works councils with rights to be consulted and powers of veto over various matters. None of these exist under present Irish law. It was up to Irish trade unions to decide whether they wanted these rights, and if so on what basis.

"Industrial democracy" is a relatively unfamiliar idea in Ireland, and much that has been said about it is vague and not clearly thought out. It involved obligatory consultation between workers and management, joint decision making, workers' rights to initiate proposals and to obtain information, at plant and shop floor level, executive level, and supervisory management level—or it could involve only some of these things, depending on the exact terms of the EEC measures when adopted.

Numerous important legal questions were raised by the draft EEC proposals, and if not answered would have to be resolved by national laws or by the Courts. Would the workers' representatives be part time or full-time, temporary or permanent? How far would they be subject to the workers instructions and how far bound to report back? Would they have the same rights as other supervisory board members to get financial and other information about the company's affairs, and would they have the right to have their own financial advisers examine the company's books for them? How would they be trained, and how paid? What rights would they have to information on pricing and expense accounts, and on information which would be useful in making wage claims? Would they have a right to find out the ownership and control of the company—which even directors have not got under existing law?

Mr. Temple Lang said he was not trying to answer these questions, but only to raise them as typical of the kinds of issues raised by the process of harmonisation of laws in the EEC. These issues should not be discussed and settled only by specialists in company law or EEC law : they affected everyone, and they need detailed public discussion and analysis. The legal revolution which the EEC could bring about was not just a matter for lawyers, and lawyers advising the EEC Commission or the Irish Department of Industry and Commerce could not advise satisfactorily on technical questions arising out of EEC measures if there had not been sufficient public discussion of the big issues, none of them purely legal, which were involved. Trade unions and others should think a lot more than they seem to have done so far about the questions involved if the legal changes resulting from the EEC were to be the kind of changes they wanted.

TOP E.E.C. LAW POST FOR IRISHMAN

Dermot J. Devine who is son of retired Chief Garda Superintendent, Joseph and Dr. Ita Devine, Ardagh Court, Athlone, has been appointed Head of the Department of International Law at the EEC Headquarters, a post which he will take up in September.

After qualifying as a solicitor in 1956 he practiced in Athlone for four years before taking up the post of Registrar in the Supreme Court, Naroibi in 1960.

In 1964 he was appointed lecturer in Law to the University of Capetown, a post he has held to date. He obtained his L.L.B. at the University of Pretoria and was awarded the Honours Degree Cum Laude. He was conferred with the degree of L.L.D. at Capetown University in June this year. His thesis was an extensive work on international law.

Dermot received his secondary education at the Marist College, Athlone and Clongowes Wood College and took his first L.L.B. degree at U.C.D., taking first place and first-class honours.

In the Incorporated Law Society's Intermediate Examinations, he took first place, with honours and also won the centenary medal. In his final solicitors' examination he took second place with honours and silver medal.

He is 37 years old and is brother-in-law of Senator Brian Lenihan, the former Minister for Foreign Affairs.

NEW PROPOSALS ON EEC RECOGNITION

Professional men and women, such as lawyers, doctors and architects, are supposed to be able to practise freely anywhere in the European Economic Community. But this freedom of establishment has remained virtually stillborn—largely because national professional bodies themselves have disagreed on conditions for the mutual recognition of degrees and diplomas. No German dentist will try to practise in France, for example, if his qualifications are not recognised, and he has to train a second time.

In other words, the Nine have to work out an "equivalence" between an engineer who qualified after three years at university followed by a two-year practical course and one whose diploma is based on four years' study at a technical institute.

Since 1967 the Commission has made 40 proposals for the mutual recognition of diplomas for ten professions, including architects, accountants, nurses, doctors, chemists and lawyers. Member governments have not accepted one of them. The proposals generally sought to set minimum standards and length of education. In the enlarged Community the problem is likely to be even harder, mainly because of the greater autonomy exercised by professional bodies in Britain.

Now a new approach has come from the Commissioner in charge, Ralf Dahrendorf. In his view, the Commission should look at what degrees and diplomas qualify one to do, not at how they were obtained.

To avoid the impression that the Eurocrats would be imposing rules on the professions, he advocates a series of public hearings at each of which representatives of a given profession could state their viewpoint. This would be an innovation in the Community's law-making process.

Herr Dahrendorf also suggests that European educational passports be issued to those whose qualifications entitled them to study or practise freely anywhere in the Nine.

—*European Community*, July/August 1973

Solicitors Seminar in Killarney

The Sixteenth Seminar, organised jointly by the Society of Young Solicitors and by the Provincial Solicitors' Association, was held in the Great Southern Hotel, Killarney, Co. Kerry, on Saturday, March 31, and Sunday, April 1, 1973. More than 200 members attended the Seminar.

The first lecture on Saturday morning was delivered by **Senator Alexis Fitzgerald,** Solicitor, on the subject of "Takeovers, Amalgamations and Reconstructions in Company Law". He referred to the takeover procedure contemplated by sections 203 and 204 of the Companies Act 1963 and then in detail to the takeover code of the Bank of England. He emphasised that the usual clauses in a takeover agreement were :

(1) That the management was to be carried on as heretofore.

(2) That if necessary special steps are to be taken before completion about reconstruction and devaluing or revaluing shares. It was obvious that this agreement would have to be drafted with great care : a distinction was also made between this agreement for sale and the warranty document, which seeks security against the liabilities of the purchasing company if the main purchaser is living abroad : arbitration should be provided to settle disputes, if required. The schemes of Reconstruction under Sections 201 and 203 of the Companies Act 1963 were then considered.

Mr. John Stakelum, F.C.A., then dealt with the "Accountancy aspect of Liquidations and Receiverships". He stressed that a liquidator had a great responsibility as he temporarily replaced a Board of Directors and thus controlled the management of the company. He had to make quick decisions, and his main attributes should be, apart from professional competence and common sense, tact and diplomacy. While a Receiver acts for one specific creditor, the liquidator acts for them all. Most liquidations due to insolvency are Creditors Voluntary Liquidators, and this is often due to defective financial records. If an accountant is to advise in an insolvency situation, he must get accurate information. The Accountant must advise a liquidation where the company's prime purpose has disappeared. In the case of a substantial liquidation, the creditors should avail of the opportunity to appoint a Committee of Inspection.

When a Receiver is appointed, he should first satisfy himself whether the person appointing him has authority to do so—whether there are sufficient powers given to him to carry out his functions, and whether he can carry on trading if it is necessary to do so. All necessary documents such as stationery books, company seals, financial books and records, insurance policies, relating to the deeds and records, and particularly the keys to the companys premises should be handed over to the liquidators who should make sure that all the actions and assets of the Company are adequately protected under a policy issued in his name. The Liquidator will then have to decide to what extent the business will be carried on—normally sufficient to dispose of any substantial stocks in trade at this normal market value.

Mr. Oliver Fry, Solicitor, then spoke on the "Legal aspects of Liquidation and Receivership". He stressed that a Voluntary Liquidation could arise either (a) from a Members Winding Up, when the Company is solvent, or (b) from a Creditor's Winding Up, if the Company is insolvent. The procedure for a Members Winding up is fully set out in Section 256 of the Companies Act 1963. Here the Directors make a Statutory Declaration stating that they consider the Company will be asked within 12 months from the Winding Up to pay its debts in full; which must be made within 28 days of the resolution of Winding Up—to be passed by a general meeting. Once the resolution is passed, it must be officially advertised.

In the case of a *Creditor's Winding Up,* 14 days notice must be given of the meeting of the Company and public. At this meeting a resolution is proposed to the effect that the Company cannot by reason of its debts continue its business, and that it is advisable to wind up the Company voluntarily, and to appoint Mr. X Liquidator. When the shareholders meeting is over, a Creditors Meeting to be held, which must be covered with ten clear days notice. They can accept the shareholders nominee as Liquidator, or appoint a different one themselves. Most creditors are companies representatives at the meeting. The Solicitor at the Creditors meeting will indicate the capital structure of the company, and what trade was carried on. The procedure by petition for Winding Up a Company was then fully set out. If the Company is in serious financial state, then it is advisable to apply to the Court to appoint a provisional liquidator, as the accounts of the Company may be frozen.

Mr. Martin Rafferty, Chairman of Belevedere Trust Ltd., delivered a paper on "Mergers and Takeovers", said that the bulk of rationalisation, in the way of mergers in Ireland has involved publicly quoted companies who will have to make a fundamental decision as to whether they will go public or become part of a much larger unit. Industrial Holding Companies have increased because it is difficult to build a substantial Irish Company from scratch, and large private Companies can then develop at a faster rate. With great incidences in taxation there is a greater incentive for highly paid managers to undertake the work, particularly in view of the fact that more Irish Companies will endeavour to expand their operations outside Ireland.

As regards take-over bids, when the bid is made, the public company should seek the advice of an outside merchant banker, and the company must at all times act for all the shareholders. Note that an offer must be properly made before it is accepted; in fact 90 per cent of decisions in takeover bids relate to the compatibility of the specific people involved.

In the case of mergers, the amount of information in the financial pages of the press is minimal. The lecturer has been involved in 40 mergers, and came to the conclusion that there must be an essential trust and compatibility between the persons concerned.

The final lecture was given by **Mr. John Gleeson,** Solicitor, Chairman of the Redundancy Appeals Tribunal, on "The Redundancy Payments Acts of 1967 and of 1971". He first stressed the dismissal provisions under section 9 of the 1967 Act. The five categories of redundancy are set out in section 7 of the 1967 Act, as amended by Section 4 of the 1971 Act as follows :

(1) When the employer has ceased to carry on business.

(2) When an employee can no longer carry on his specific work due to falling off.

(3) When the employer decides to carry on the work with fewer employees.

(4) If the employer decides that the specific work of an employee is to be done in a different manner.

(5) If the employer decides that the specific work can be done by another better qualified employer.

Section 7 of the 1967 Act lays down that, in order to be entitled to a redundancy payment, the employee must have been employed for a continuous period of 104 weeks, and that the employee was insurable and entitled to *all* benefits under the Social Welfare Acts. Employment shall be taken to be continuous unless terminated by dismissal, or by voluntary leaving. White collar workers are not entitled to redundancy payments. There are special provisions ensuring continuity in case change-over occurs :

(1) Where the change-over was uneventful, an employee can claim for his whole service, before and after the change-overs, if at any time subsequently he becomes redundant, and whether the change-over was before or after the 1967 Act.

(2) When there was a dismissal at the time of the change, and the change took place *before* the Act came into force, the employee can never qualify for redundancy.

(3) If the change-over, accompanied by dismissal *takes place after* the Act comes into force, if the employee accepts reemployment, his continuity is preserved. If he refuses, he can claim redundancy from his old employer, if his refusal to work for the new employer is deemed unreasonable. *A Lay off* under Section II occurs if it is reasonable for the employer to believe that the cessation of work will not be permanent, and that the employer gives notice to this effect to the employee before terminating; there is thus no time limit for bringing a redundancy claim in the event of a lay-off. *Short time* is defined in Section 12 as occuring where the employee's renumeration is out to less than half or where the hours of work are cut to less than half.

Many miscellanious points which arose from the Redundancy Payments procedure were stressed.

As usual, the members who attended, spent a most enjoyable week-end.

Examination Results

BOOK-KEEPING EXAMINATION

At the Book-Keeping examination for apprentices to Solicitors held on 25th June, 1973, the following candidates passed :

Passed with Merit

Michael Hayes, Colin O. Keane, Daniel J. O'Connell, B.C.L., Anne Hughes, B.C.L., Alvin F. H. Price, B.C.L.

Passed

Denis J. Barror, B.C.L., Patrick A. Butler, B.C.L., Dermot G. Byron, Jennifer M. M. Cantillon, Mary Cantrell, Martin D. Ceillier, B.C.L., Ann M. Colley, Patrick J. Daly, B.C.L., Gerard J. Doherty, B.C.L., Gerard A. Doyle, B.C.L., David G. Ellis, Vivian M. Emerson, B.A., Neasa Fitzsimons, B.C.L., George J. Gill, B.C.L., Daniel Gormley, Mary Griffin, B.A., Edward G. Hall, B.A., H.Dip.Ed., Caroline I. Halley, Paul Hanby, Rosalind E. Hanna, B.A.

Jane F. Hayes, Peter C. Hayes, B.A., Edward F. Hickey, Margaret G. Hickey, B.C.L., Michael J. Horan, B.C.L., Barbara Hussey, B.C.L., William Jolley, Michael J. Keane, Catherine Kelly, Charles Kelly, B.A., Edward A. Kelly, B.C.L., Jean M. Kelly, B.C.L., Raymonde D. Kelly, Patrick T. Kennedy, Rosalind Kiely, B.C.L., Alan J. King, B.Comm., Doreen Levins, Richard Liddy, J. Barry Lysaght, B.C.L., Stephen P. Maher.

Celine M. Martin, Martin Moloney, Arthur D. J. Moran, Patrick Moriarty, Deirdre Morris, B.C.L., Elizabeth Mullen, B.C.L., Desmond Mullaney, Thomas Mullins, Justin J. G. MacCarthy, Kathleen P. McDonnell, George C. M. P. McGrath, Madeleine McGrath, LL.B., Peter McLaughlin, Kieran E. O'Brien, Ross O'Cathain, B.C.L., Matthew D. O'Donohoe, John G. O'Donovan, Martina O'Gorman.

Thomas J. O'Halloran, Richard R. O'Hanrahan, Dermot O'Neill, Michael O'Shaughnessy, Eugene C. O'Sullivan, B.A., Michael C. Powell, Michael F. Quigley, B.C.L., John B. Quinn, B.C.L., Ann M. Regan, B.C.L., Graham C. Richards, James T. Riordan, B.C.L., Nicholas K. Robinson, M.A. (T.C.D.), B.A. (Mod.), Brian Roche, B.C.L., Patrick D. Rowan, M.A., Ambrose J. Steen, Michael Tracey, Richard R. Whelehan.

113 candidates attended; 80 candidates passed.

SECOND IRISH EXAMINATION

Donal Ashe, B.C.L., Niall B. Browne, B.Sc., Dermot G. Byron, B.C.L., Hugh A. Carty, B.C.L., Martin D. Cellier, B.C.L., Marie C. Collins, James McCartan Daly, Anne M. Delaney, B.C.L., Sheila M. Devitt, Gerard J. Doherty, B.C.L., John D. Dunne, B.C.L., David G. Ellis, Vivian M. Emerson, Anthony H. Ensor, Daniel Gormley, Padraig E. S. Halpenny.

Joseph D. Haugh, Jane F. Hayes, Esther A. Hogan, William O. Jolley, B.C.L., Damien J. Kelly, Jean M. Kelly, Anne E. Kennedy, Patrick T. Kennedy, Maurice J. Linehan, B.C.L., LL.B., Francis J. Lowney, Barry J. Lysaght, B.C.L., Neasa Mac Donagh, John V. Morahan, B.C.L., Arthur D. S. Moran, Gerard McCarthy, George C. M. P. McGrath, Fiona McGuire.

James D. O'Brien, John J. O'Brien, Orla M. O'Brien, Isolde O'Connell, Cornelius O'Connor, Martina O'Gorman, Leonie M. O'Grady, B.C.L., LL.B., Geraldine M. Pearse, Joseph Philpott, B.C.L., John C. Reidy, Nicholas K. Robinson, B.A., M.A., Michael J. Sherry, James D. Sweeney, Joseph R. Sweeney, Michael H. Traynor, B.C.L., Paul D. Traynor, Catriona M. Walsh, B.A.

57 candidates attended; 50 candidates passsd.

FIRST IRISH EXAMINATION

At the examination held on 9th July, 1973, the following candidates passed :

Michael C. Ahern, James Aitken, David W. Alexander, Peter Allen, Martin Archer, Monica Becker, Vincent P. Beirne, Noeline M. Blackwell, Michael A. Bolger, Michael Bowden, Katherine A. Boylan, Bernard J. Brady, Gerard M. Brennan, Mary Rose U. Brennan, Patrick G. Brennan, Elizabeth Bruton, Roderick Buckley, Paul Buggy.

Liam A. Cafferky, John G. Callinan, Marion E. Campbell, Jarlath A. Canney, Eugene Carey, Margaret M. Carey, Christian M. Carroll, Eamonn P. Carroll, Godfrey M. Carroll, John P. Carroll, Michael J. Carter, Katherine E. Casey, Niall Casey, Joseph Caulfield, Noel Clarke, David Clayton, Evanna Clinton, Terence W. Coghlan, Ann Collins, John K. Collins, John F. Condon, Michael Condon.

Margaret M. P. Connolly, Roderick F. Cooke, Mark Cooney, Paul S. P. Cooney, Thomas A. M. Cooney, Cornelius M. Corbett, Jean E. Corrigan, Frances R. G. Cotter, Mary K. Cullen, Colman P. Curran, Kevin Curran, Paul F. Diamond, Mary T. Doolan, Mary Dorgan, David B. Doyle, Isolda M. Doyle, Patricia Drumgoole, Bridget J. Duffy, Paula Duffy, Anthony J. Duncan, Dermot B. Duncan, Mary P. Durcan, Eithne L. M. Egan.

Mary K. E. Egan, Gerard J. Ellis, Edmund A. J. Fennell, Paul M. Fetherstonhaugh, Sheila Fingleton, Peter Finlay, Ann Fitzgerald, Shaun I. Fitzpatrick, Clare Flanagan, William P. S. Fleming, Charles J. D. Foley, Matthew F. Foley, Charles D. S. Fox, Claire Gillard, Geraldine A. M. Gillece, Bernard Gogarty, Fergus E. Goodbody, Anita Gordon, John R. Grace, Alan Graham, Mary Griffin, Anthony B. Hanly.

Barbara Anne-Marie Hanna, Breda M. Harrison, Martin A. Harvey, John Hayes, Gerard M. Heavey, Joseph Hegarty, Desmond Hogan, Pat Horan, Anne T. Horgan, Noel W. Houlden, Peter F. Houlihan, David Hughes, John Hurley, Winifred M. Hurley, Denis Jacobson, Brendan L. Johnson, Irene G. M. Jones, Peter D. Jones, Andrew B. Jordan, Eric O. Kelleher, Patricia J. M. Keenan, Mark A. Keller.

Mary P. Kelly, Philip J. Kelly, Noel D. Kelly, Georgina M. Kenny, Pierce J. A. Kent, Anne M. Keogh, Matthew G. Keogh, Anne-Marie Kiely, Conor M. F. Killeen, Goretti Kinsella, Catriona Kirby, Ann Lawler, Deirdre Leeman, John Lindsay, Thomas Loomes, Raymond Lyons, Patrick Macklin, Michael L. P. Maguire, Antonio E. Malocco, Patrick P. Mann, David Martin, Mary Meagher, Michele Mellotte, Denis Molloy, Margaret Molloy, Dermot Moore.

Michael J. Moore, David F. Mullins, Padraic Mulryan, Nuala Mulvey, Daire Murphy, James P. Murphy, John Murphy, Nicholas Murphy, Patrick J. Murphy, Stanislaus Murphy, Mary Mylotte, Marie T. F. MacGrath, Brian MacMahon, Caroline MacMahon, J. C. McBride, John W. McCarthy, Lorna J. M. McCarthy, John H. McCourt, Karen M. McDowell, Mary McElligott, Edward McEllin, Carol M. McEntee, Kenya S. McEvoy.

James McGarrigle, Joseph McGrath, Michael McInerney, Justin McKenna, Ciaran McLaughlin, John McMahon, Barbara McNamara, Thomas McNamara, Mark McParland, Joseph M. Noonan, Francis B. Nowlan, Terry O'Boyle, Padraic O'Brien, Rowan P. O'Brien, William M. O'Brien, Adrian O'Connell, Brendan D. R. O'Connor, Denis J. O'Connor, Elizabeth A. O'Connor, Claire O'Donnell, Irene A. O'Donovan, Clara O'Driscoll, Gearoid D. O'Driscoll, John K. O'Driscoll.

Stephen P. O'Dwyer, Yvonne O'Gara, David O'Hagan, Gerard O'Herlihy, Seamus O'Kelly, Mona O'Leary, Deirdre M. O'Mahony, Ciaran A. O'Mara, Gregory O'Neill, Redmond D. O'Regan, Niall O'Reilly, Pauline O'Reilly, Dominic G. O'Sullivan, Edward A. O'Sullivan, Thomas V. O'Sullivan, Richard D. O'Toole, Alan J. Potter, Robert Potter-Cogan, Hilda M. Potterton, Phyllis Power, Michael S. Preston, Barry A. Quinlan.

Anne M. Reidy, Barbara A. Robinson, Patrick Rogers, John Rohan, Fergal J. Rooney, Henry E. J. H. Roundtree, Michael P. Ryan, Oliver Ryan-Purcell, Bridget F. G. Salter, Mandy Scales, Colman D. Shanley, Donal G. Sheehan, Robert J. Sheehan, Paula Sheerin, Anthony F. Sheil, Charles C. Sherry, Laurence Shields, Thomas Simpson, Patrick L. F. Smalle.

Peter Smith, Bryan C. Smyth, Dermot W. Snow, Nora G. Stack, Kathleen M. Stapleton, David J. Synnott, Geraldine A. Tipping, David M. M. Tomkin, Joseph B. Twomey, Richard G. Walker, Patrick Wallace, David Walley, Anne R. Walsh, Richard P. Walsh, John N. Weston, Ernest M. Wolfe, Gerard Yelverton, Christopher Young, Jennifer H. Young.

272 candidates attended; 240 candidates passed.

By order,

Eric A. Plunkett, *Secretary*

RIGHTS OF FOREIGN WORKERS

A ruling by the European Economic Community Court of Justice has further clarified the rights of foreign workers and their dependants.

A Dutch citizen who lived in the Netherlands and worked in Belgium was killed in a car accident in the Netherlands while on his way to work. Under Belgian law he was insured by his employer against what was considered an accident at work.

Belgian law also authorised the insurance company to claim reimbursement for the widow's compensation and pension from the person responsible for the accident, a Belgian. The Belgian went to a Dutch court to challenge the insurer's right of redress, but the court found that, according to Community rules on social security for migrant workers, the insurer did have that right.

But it was not sure whether Belgian or Dutch law should be applied, and therefore asked the Community Court for a preliminary ruling. The Community Court held that this depended mainly on the victim's country of birth—in this case, Belgium.

—*European Community,* July/August 1973

AGREEMENT WITH THE ESTATE DUTY OFFICE

The Revenue Commissioners have agreed with the Council of the Incorporated Law Society of Ireland to the introduction of a new procedure for immediate assessment of estate duties on a strictly provisional basis and subject to the conditions set out hereunder.

This new procedure will become operational as and from Monday 13 August 1973.

Terms of Agreement

1. The Commissioners retain the right to withdraw the provisional pre-grant assessment concession at any time.
2. The Commissioners retain the right to withdraw the concession from any solicitor who fails to reply within what is in their opinion in the circumstances of each case, a reasonable time, to official requisitions after the grant has issued.
3. Solicitors accept responsibility for the prompt reply to official requisitions where they have referred these requisitions to a third party, such as an accountant or valuer, for observations.
4. That the ILSI will do whatever is in its power to assist the Commissioners in cases where there are delays in transferring Government Stock in payment duty.
5. That the ILSI accept manuscript queries without copies in the course of the present examination since such queries are designed solely to repair errors or omissions in the preparation of the Inland Revenue Affidavit.
6. The ILSI acknowledges that its members are aware of the penalty provisions contained in Section 42 Finance Act 1971.
7. The ILSI offers no objection to the Commissioners making any provisional alterations in the figures submitted in an Inland Revenue Affidavit when the Commissioners think that such alterations will expedite the issue of the provisional assessment.
8. The ILSI undertakes on behalf of its members that Inland Revenue Affidavits will, in the first instance, be completed in accordance with all the information available at the time of preparation in accordance with paragraph 5 on page 2 of the Inland Revenue Affidavit.
9. The ILSI acknowledges that the Commissioners must raise queries on the pre-grant examination in the event of their not being satisfied on, inter alia, any of the following points (page numbers refer to Form A(X), 4th edn.).

Page 1—to be fully completed—domicile to be agreed before assessment, and in testate cases a copy of the will must be furnished.

Page 2—Paragraphs 2 and 3 either deleted or completed as appropriate.

Pages 3 and 4—All questions to be answered fully in accordance with the instructions in Form U1.

Page 5—*Stock Exchange Securities*

Complete information (including size of holding, nominal value and price per unit) to enable the value of the securities to be checked.

Share in Private Companies

To be so marked and the following supplied :

1. Forms 05 and 06 completed.
2. Balance Sheets and Accounts for the last three complete years available prior to the date of valuation with an explanation if the accounts are in arrear.
3. A valuation by a competent valuer.

Securities in respect of which relief is claimed under Section 21 Finance Act 1965.

Form D3 complete in all respects.

Page 7—If the assets include a business, Form D8 (which may be obtained on application to the Estate Duty Branch) completed.

Pages 12 and 13—Property passing under separate titles must be shown separately.

The total value only of the property passing under each separate title to be returned in column headed "Principal Value".

Itimised values to be returned in the statements listed in the column headed "Title Statement No." —or, if brief, in the "Particulars of Property" column.

Estimated Values to be so marked.

Page 13—*All* aggregable property must be accounted for on page 13 and at least an estimate of the values given.

Double Taxation Relief. Evidence of the payment of the Taxation duty if available, otherwise an estimate of the foreign duty payable.

10. The Commissioners retain the right to fully examine any case where it is in their opinion desirable in the interests of the Revenue to do so.
11. The ILSI will inform its members of the terms of the granting of the concession that it has accepted these terms on behalf of the members.
12. The concession will not be given to cases already in process of examination but will be applied to cases which are awaiting examination.

Solicitors are advised to take careful note of the above provisions which impose upon them certain duties in return for a prompt provisional assessment by the Revenue Commissioners.

13 August 1973

STANDARD REQUISITION ON TITLE

Members should note that the 1970 edition of the Standard Requisitions on Title had a serious defect namely the omission of a requisition now appearing at No. 18 in the 1973 edition. This is the requisition relating to the service of notices under various Acts of Parliament including Conveyancing Acts, Local Government, Planning Acts, Public Health Acts, Housing Acts, etc., etc. Members using the 1970 edition of the Standard Requisitions should take care to insert this important requisition when raising requisition title.

Memorandum on Meeting with Representatives of the Dublin Corporation, Dublin County Council and Dunlaoghaire Corporation 26th April, 1973

Attendance: John Maher, John Doran, Dublin Corporation, John O'Neill, Dublin County Council, D. O'Sullivan, Dublin County Council and George McIntyre, Dunlaoghaire Corporation.

Certificates as to Roads and Services

Arising from a complaint by a member on the subject of delays in the issue of certificates as to roads and services a meeting was arranged with the above members of the various bodies involved. These representatives pointed out the administrative difficulties which arose when their staff dropped all work to deal with special queries. Generally speaking a standard procedure should be followed otherwise the whole system would clog-up. They pointed out that new big ordinance survey maps now showed house numbers and when this new system had been completed it would show areas in charge and this would take 7 to 10 days off the time for issuing certificates. However it is likely to take two years to organise this system. In the normal course forms go through 6 sections in the Dublin Corporation before the certificates are issued. In the case of new houses which have changed hands, possibly only five sections would be concerned. It was pointed out that roads were comparatively simple and that services are more complicated. Planning permission queries involve further delays.

It was suggested that members of the legal profession should decide what is the maximum time required to obtain a reply. If the Corporation know this, they can then plan their staffing requirements. It was suggested that delays could be avoided in the following ways:

(1) Solicitors should send out their queries to the Corporation and the County Council at the earliest possible date (the day when the contract is signed). This would give the Corporation about four weeks to reply to the solicitor. The Corporation felt that normal queries could be dealt with in three to four weeks but that this would vary depending on any special queries raised. At the moment they felt that queries could not be finalised within two weeks without getting special staff. Mr. Doran of the Dublin Corporation said that he could not answer for the planning department only for queries on roads and services.

(2) A further 2 to 3 days time could be saved if queries to the Dublin Corporation were addressed direct to the Principal Officer, Engineering Department, 28 Castle St., Dublin. In the case of the Dublin County Council, queries should be addressed to the Senior Administrative Officer, Engineering Department, 11 Parnell Square, Dublin 1.

George McIntyre of Dunlaoghaire Corporation is of the opinion that his department would be unable to plan properly for dealing with queries unless he was informed of the minimum time within which solicitors expected the certificates to be issued.

John Maher then told the representatives that the matter would be brought before the Court Offices and Costs committee and a reply would be sent to John Doran, Dublin Corporation together with copies to the other representatives.

SOCIETY OF YOUNG SOLICITORS

The new Committee of the Society is now:

Chairman: Maeve T. O'Donoghue
Secretary: Michael Carrigan
Treasurer: Derek Greenlee
General Committee: Maurice Curran, Anne Neary, Clare Cusack, Donough O'Connor, Felicity Foley, Thomas Griffin, Brian Wallace, Brian Gallagher, Norman Spendlove.

Notice re coming Seminar:
Venue: Talbot Hotel, Wexford, during the week-end 19/21 October 1973.
Theme: Property Law and Modern Conveyancing.

SOLICITORS' GOLFING SOCIETY

The Captain's (S. Victor Crawford) Prize will be held at Hermitage Golf Club, Lucan, Dublin, on Friday, 28 September 1973. In addition to the Veteran's Cup and the St. Patrick's Plate there will be special prizes to commemorate the Society's Golden Jubilee.

Notices are being posted to members of the Golfing Society and any Solicitors interested who have not reeived a notice may obtain an entry form from Henry N. Robinson, 94 Merrion Square, Dublin 2, or William O'Reilly at the Incorporated Law Society Offices.

NOTICE — Vacancies for Apprentices

Will any solicitor in any part of the Republic of Ireland who has a vacancy for an apprentice, please communicate urgently with the Secretary of the Incorporated Law Society.

Some Aspects of Irish Constitutional Reform

PART 2

By Colm Gavan-Duffy, M.A., LL.B. (Editor)

Lecture delivered to the Irish Association of Jurists in May 1968 (Part 1 was published in July/August 1971 Gazette, page 77).

FUNDAMENTAL RIGHTS

In order to evaluate what part Fundamental Rights play in modern Constitutions, it would be necessary to make a study of such documents as—The Canadian Bill of Rights, the European Convention of Human Rights and the different United Nations Conventions on this subject, on Genocide and on Non-Discrimination. A most useful document issued by the International Commission of Jurists is *The Rule of Law and Human Rights—Principles and definitions* published in 1966. It would strictly be necessary not merely to study the text of other Constitutions, but also to know how far Fundamental Rights have been protected in practice in those countries.

As this is difficult of achievement, I have decided to adopt Jacques Maritain's division of Human Rights, as it corresponds reasonably closely to that of the International Commission of Jurists.

Jacques Maritain divides what he calls the Natural Rights broadly into *three main classes,* which are much more extensive than those contained in the Constitution :

(1) *Rights of the Human Person as such* : (a) *The Right to existence*—this appears to be presumed under the Constitution as there would otherwise be no reference to person and citizen.

(b) *The Right to personal Liberty.* This is guaranteed most specifically by the strong language of Article 40 Section 3 of the Constitution by which—The State guarantees in its lass to respect and by its laws to defend and vindicate the personal rights of the citizen.

Sub-Paragraph 2, is even stronger, as by it The State shall in particular by its law protect as best it may from unjust attack, and, in the case of injustice done, vindicate, the life, person, good name and property rights of every citizen. Prima facia this strong clause would seem effectively—to guarantee the freedom of the citizen, but as will be seen, this clause has sometimes been construed in an exceptionally narrow way. There appears to be a connection between Article 40, Section 3, and Article 6, Clause 1, which claims that all powers of Government legislative, executive and judicial derived from the people whose right it is to designate the Rulers of the State and in Final Appeal to decide all questions of National Policy according to the requirements of the good.

The Right to Personal Liberty and Pluralism

The Section adds that the powers of Government are exercisable only by or on the authority of the organs of State established by the Constitution. Furthermore, Article 5 declares that Ireland is a sovereign independent and democratic State. As Maritain has pointed out, democracy is the rational organization of Freedom founded upon Law. It is therefore the only way of bringing about the moral rationalisation of politics.

Consequently, the means to achieve this must be moral and the end in view must be the principle of justice and freedom and the dignity of the individual. From this arises the pluralist principle by which the State should as far as possible leave to particular organs and Societies the free initiative to carry out their ends. The Principle of Pluralism is of particular importance in construing Article 40, Clause 3, of the Constitution. There is little doubt but that this Clause, in view of its eminence and importance, should be considered as absolutely vital as the Preamble itself. In the Fluoridation Case—*Ryan v. The Attorney General,* (1966) I.R. 312, Mr. Justice Kenny made the following statement in the course of his Judgment, which was subsequently approved by the Supreme Court : "In my opinion, the High Court has jurisdiction to consider whether an Act of the Oireachtas respects and as far as practicable defends and vindicates the personal rights of the citizen and to declare the legislation unconstitutional if it does not. I think that the personal rights which may be involved to invalidate legislation are not confined to those specified in Article 40, but include all those rights which result from the Christian and Democratic nature of the State. It is, however, a jurisdiction to be exercised with caution. There are many personal rights which follow from the Christian and Democratic nature of the State which are not mentioned in Article 40 at all—The right to free movement within the State, the right to marry, the right to bodily integrity are examples of this. In *Macauley v. The Minister for Posts and Telegraphs*—(1966) I.R. 345, Mr. Justice Kenny further held that the necessity to obtain the fiat of the Attorney General before instituting Proceedings against a Minister of State is a direct failure by the State to defend and vindicate one of the personal rights of the citizen.

The next Article of the Constitution to be considered is *Article 40, Section 1,* which states that "No citizen shall be deprived of his personal liberty save in accordance with law".

A recent application of this Section is the case of *The State* (C.) *v. Minister for Justice* (1967) I.R. 106. The Chief Justice held that Section 15 of the Lunatic Asylums (Ireland) Act 1875, which enables a Minister at will to transfer an accused to a mental hospital before the preliminary investigation on the summary proceedings in a District Court are completed is an unwarranted interference by the Executive in the working of the Court, because the Court alone must determine whether an accused is insane. The Chief Justice and Mr. Justice Walsh stated that the doing of any act by any non-judicial authority in the State which interferes with the District Court's discretion is an infringement of

judicial power. Once a Court has jurisdiction it has a constitutional right to exercise its judicial power and no law can interfere with this. It followed that the applicant was granted an absolute order of Habeas Corpus and entitled to be released from the mental hospital forthwith.

The State (Burke) v. Lennon ...

It seems unfortunate that in recent judicial pronouncements, there appears to have been a tendency to disregard completely the vital judgment of the then President of the High Court in *The State (Burke v. Lennon* — (1940) I.R. 141. It was stated that the applicant had been interned without trial from the 16th September to December 1939 in pursuance of the Offences against the State Act 1939, under a Warrant issued by the Minister for Justice on the ground that the Minister was objectively satisfied that he was engaged in activities calculated to prejudice the preservation or the security of the State. The Applicant had, the President stated, now challenged the right of the Oireachtas to make a law conferring the power of internment on a Minister. It was thus necessary to determine from a strict legal standpoint a matter of high constitutional importance. It was emphasised that Article 40, Clause 4, originally passed by Popular Plebisite in 1937 was secured by a strongly worked Habeas Corpus Clause to protect the citizen against unlawful imprisonment. *The right to personal liberty meant much more than mere freedom from incaceration* and carried with it necessarily, *the right of the citizen to enjoy other fundamental rights, the right to live his life, subject to law, and if aman is confined against his will, he has lost his personal liberty, whether the name given to the restraint be penal servitude, imprisonment, detention or internment.*

It was then stated that there was no provision enabling the Government or the Oireachtas to disregard the Constitution in an emergency short of war or armed rebellion. Furthermore—and this seems vital—*the Constitution contained no express provision for any Law endowing the executive with powers of internment without a trial.* It was further stated that Article 40 guaranteed that no citizen should be deprived of Liberty save in accordance with a law which actively respected his fundamental rights to personal liberty and which consequently defended and vindicated it as far as possible by protecting his person from unjust attack. The Constitution clearly intended that he shall be liable to forfeit that right under the Criminal Law of being duly tried and found guilty. It followed that a law for the internment of a citizen without charge or hearing for activities calculated to prejudice the State does definitely *not respect his right to personal liberty and does unjustly attack his person.* The Constitution with its most impressive Preamble was the Charter of the Irish people and should not be whittled away. The Constitution obviously intended, while making all proper provisions in time of emergency, to secure his personal freedom to the Citizen as truly as did Magna Charta in England.

Re Offences against the State (Amendment) Bill 1940

In the reference of the *Offences against the State Amendment Bill 1940* (1940) I.R. 470, the Supreme Court by a narrow majority held that this Bill was valid because the subjective view of the Minister had been substituted for an objective one. Henceforth the Minister had merely to be of opinion that a person was acting dangerously against the interests of the State, whereas before then he had to be judicially and objectively satisfied about this. It followed that the Minister was no longer exercising a judicial function in signing a warrant of internment. In this reference, Chief Justice Sullivan nebulously laid great stress on the fact that there was nothing in the Clause in the Preamble laying stress on the dignity and freedom of the individual as one of the two aims to be achieved, which could be invoked to necessitate the sacrifice of the common good in the interest of the freedom of the individual. It is to be noted that Chief Justice Sullivan's view seems to be in direct contradiction with the view of the Supreme Court as expressed by Mr. Justice O'Byrne in *Buckley v. The Attorney General*—(1950) I.R. 80—as follows: In enacting the portion of the Constitution contained in the Preamble, the People of Ireland seeking amongst other things to promote the common good with due observance of Prudence, Justice and Charity, so that inter alia the dignity and freedom of the individual may be assured, adopt, enact and give to themselves this Constitution. These most laudable objects seem to us to inform the various Articles of the Constitution, and the Court is of opinion that, in so far as possible, the Constitution should be so construed as to give to them life and reality." Chief Justice Sullivan stated (p. 481), that it was alleged that the provision of the offences against the State Amendment Bill, 1940, were repugnant to the guarantee contained in Article 40, Clause 3, of the Constitution. The guarantee in that Clause was alleged not to be in respect of any particular citizen or class of citizen, but it was to reject Natural Law and was to extend to all the citizens of the State. Thus it was held that the duty of determining the extent to which the rights of any particular citizen or class of citizen could only be properly harmonized in accordance with the rights of the citizen on the whole, and therefore was a matter peculiarly within the province of the Oireachtas. The reason for this nebulous pronouncement is obscure. Any attempt by the Court to control the Oireachtas in the exercise of this function would allegedly be usurping its authority, thus attempting to suppress Constitutional judicial review. Chief Justice Sullivan's arguments appear to conflict directly with Mr. Justice Kenny's quoted passage from the Fluoridation Case as well as the basis of his decision in *McCauley v. The Minister for Posts and Telegraphs*—(1966) I.R. 345. Chief Justice Sullivan further stated (p. 482) that the phrase "In accordance with law" was used in several Articles of the Constitution, and he narrowly construed this as meaning that it meant "in accordance with the law as it existed at the time when the particular Article was invoked" and so sought to be applied without having the slightest regard for the dignity of the individual", which Professor Kelly calls the unbroken trend of judicial opinion. It will be noted that this construction is redolent of the traditional British view of the supremacy of Parliament. It was first thought that this construction must henceforth prevail for ever, but it could doubtless be reargued on the ground that the Courts contemplated by the Constitution have only been in existence since 1961, and did not exist at the time. The effect of the decision has been to compel the Courts so far to construe the emergency provisions of the Constitution in an exceptionally narrow way and to declare that internment without trial is part of the permanent ordinary law of the land.

Constitutional Amendment defining "Time of War' '

It may be contended that the maintenance of Irish

Neutrality which the Irish Government had declared as official policy was always in danger during the Second World War, and that it was necessary to adopt strong measures to preserve it. But it can hardly justify a Case such as *The State (Walsh v. Harte*—(1942) I.R., where an Executive Direction given to a Special Military Court dispensing with all the Rules of Evidence was held valid. It would seem that the Courts in the midst of a world war were broadly prepared to uphold emergency decrees of the Executive, but would not analyse them in depth and decide whether they in fact conflicted with Natural Law. This was largely due to the literal construction given to Article 28, Section 3, Sub-Section 3, of the Constitution which stated that "Nothing in the Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or of armed rebellion, or to nullify any act done or purporting to be done in pursuance of such law. It will be recalled the expression *Time of War was extended by the First Amendment to the Constitution Act, 1939,* to include "a time when the State was not actively engaged in war, but specifying that a resolution of both Houses of the Oireachtas declaring that a National Emergency would bring the emergency into force and that a similar resolution would terminate it."

It is gratifying to note that the *Constitution Committee* in their Report issued in December 1967 recognised that *this permanent period of national emergency had outlived its usefulness* and suggested that an amendment be passed to the effect that a *Declaration of National Emergency* is deemed to last for a *maximum period of three years* unless specifically renewed for further periods not exceeding three years by resolutions of each House of the Oireachtas. This proposal recognizes at least that the problem of declaring a permanent National Emergency should be overcome, but is is doubtful whether it will be ever submitted to a referendum. Professor Kelly has recently suggested that the problem could be tackled by an application to a High Court Judge, provided different grounds which had not been considered in the 1940 judgment could be advanced. Doubtless, in any event, there would be an appeal to the Supreme Court for a final decision.

Reference of Bills to Supreme Court

The procedure by which the *President refers a Bill to the Supreme Court* for a decision as to its constitutionality under Article 26 of the Constitution is unsatisfactory, inasmuch as the Supreme Court has to judge the legislation in vacuo in advance, and cannot foretell how the law will be administered in practice. Furthermore Article 34, Section 5 provides for a compulsory single judgment in Constitutional cases which is unfortunate from the point of view of jurisprudence the alleged certainty of the single judgment is nebulous and doubtful particularly *now that unlike here dissenting judgments are allowed in* Britain in the Privy Council and the Court of Appeal—Criminal Division. It is unfortunate that the Second Amendment to the Constitution Act 1941 introduced many amendments into the Constitution which were contrary to the alleged democratic concept upon which the State was founded, and it is unlikely that most of these totalitarian amendments would have been accepted by the people in a Referendum. When the Oireachtas declared the Emergency in September, 1939, it would not appear to have been in the contemplation of the Deputies and Senators of that period that such an Emergency was to last, not merely during the actual period of the Second World War up to May, 1945, but right up to this present day. There is always a danger that a phony Emergency Powers Act could be passed relating to a distant war which would not concern us. The restrictions contained in the First and in the Second Amendments of the Constitution had not to be submitted to popular referendum. There was undoubtedly a crisis in September, 1939, when the Second World War started and it was impossible to predict what would happen, but provision should have been made for the National Emergency to cease within twelve months of the actual ending of hostilities unless the Oireachtas determined otherwise.

The present position is that the Houses of the Oireachtas alone can determine by means of a resolution whether this present national emergency is at an end, but successive Governments have urged that it would be safer to retain it. If the Constitution is to be amended, it would seem essential that a provision similar to Article 40, Section 4, Sub-Section 1, should be made mentioning specifically that no *citizen shall be deprived of his personal liberty save in accordance with the provisions o fthe Constitution and the laws to be determined strictly in accordance with the principles of Natural Law and Natural Justice.*

The Right of the Free Exercise of Religion

This appears to be fully guaranteed in Article 44, Section 2, which reads as follows: *Sub-Section* 1 "Freedom of Conscience and the free profession and practice of religion are subject to public order and morality guaranteed to every citizen." *Sub-Section* 2 "The State guarantees not to endow any religion." *Sub-Section* 3 "The State shall not impose any disabilities or make any discriminations on the ground of religious profession, belief or status. There cannot be much conflict save perhaps amongst atheists about Article 44, Section 1, Sub-Clause 1, which reads as follows: "The State acknowledges that the homage and public worship is due to Almighty God. It shall hold his name in reverence and shall respect and honour religion." One cannot but agree with the Constitutional Committee of December 1967 in regard to Sub-Section 2 where the State recognises the special position of the Catholic Church as the guardian of the Faith professed by the great majority of the citizens; this statement does not confer any special benefits upon that Church as such and the Constitution (Amendment) (No. 5) Act, 1972, has finally deleted it. In the same way, Sub-Section 3 in which the State recognises various denominations existing at the time of the coming into operation of the Constitution, such as the Church of Ireland, the Presbyterian Church, the Methodist Church, the Society of Friends, and the Jewish Congregation appears to be unnecessary, as this recognition does not give any of the denominations listed any special privileges and any denomination can in fact be recognised provided it in fact conforms to the norms of public order and morality; this subsection has also been deleted by the same Constitution (Amendment) Act.

[*to be concluded*]

FREE LEGAL AID CENTRES MAY CLOSE

The law students, who now run eight free legal advice centres on a voluntary basis throughout Dublin, warned T.D.s and Senators in Leinster House yesterday that they will be forced to close down at the end of this year, unless the Government accepts its reponsibilities in this field.

About 50 deputies and senators met a deputation from F.L.A.C. (Free Legal Advice Centrds) and heard an account of the rapidly-growing demand on the voluntary F.L.A.C. services.

Miss Barbara Hussey, chairman of F.L.A.C. told the Oireachtas members: "Unless F.L.A.C. receives a firm commitent from the Government that it intends to introduce a more comprehensive State free legal aid system, we will be forced to withdraw our voluntary service."

Miss Hussey and other F.L.A.C. Council members went to Leinster House to lobby for the introduction of a State system, and she said at a press conference afterwards that their representations seemed to have evoked "a very favourable reaction."

However, Miss Hussey added: "If we feel that the State is going to do something, we are prepared to help out. But if we feel that the State is not going to do anything, then we will have to close down."

She said that, apart from the increasing public demand which is more than the students' limited resources can cope with, they had some fears that "if we continue this service we may even be postponing the introduction of a free State-run system."

4,000 Clients

Since the first Free Legal Advice Centre was set up in 1967, F.L.A.C. has been consulted by nearly 4,000 clients. The three largest categories of cases have been interpersonal relations cases (mainly marital disputes), landlord and tenant cases, and criminal cases.

The 80 students who run F.L.A.C. have the voluntary assistance of 60 solicitors and 40 barristers, and the withdrawal of their service would be a major blow to people in the lower income brackets who come into contact, either voluntarily or involuntarily, with the Courts system.

It was announced earlier this week—and the coincidence has evoked some comment—that F.L.A.C. was to get an allocation from the £200,000 extra which was promised in the Budget for child-care services.

The F.L.A.C. deputation yesterday heard from the Attorney-General, Mr. Declan Costello, that the amount to be allocated to their organisation is £5,000. He was unable, however, to elaborate on how the Minister for Justice would require this money to be spent.

The Minister, Mr. Cooney, was attending a Senate debate and was unable to meet the F.L.A.C. members, but he is to contact them in the near future with details.

However, a F.L.A.C. council member, Mr. Alan Shatter, pointed out later: "We are trying to emphasise that we are only an interim service, and no matter how much money we get, we cannot cope with the long term problem."

The £5,000, F.L.A.C. members felt, might be for a duty solicitor to advise defendants in the Dublin Children's Court, and to provide some badly-needed secretarial services. But this, they added, would leave many other juveniles—in Ballymun, Rathfarnham and Ballyfermot area courts, and throughout the country—still without legal assistance.

The existing limited system of State-provided free legal aid—it is available only in criminal cases and then only in exceptional circumstances—was described as totally inadequate by F.L.A.C. members, but they said that at least some help was available for people charged with criminal offences.

No legal aid whatsoever was provided by the State for civil actions. They commented that there seemed recently to have been a relaxation in the attitude of the courts to granting legal aid in criminal cases. It was now granted much more readily than a couple of years ago. But the Department of Justice did little to publicise its availability, F.L.A.C. pointed out.

A Public Right

Among the other points made by Miss Hussey in the briefing for Oireachtas members was that F.L.A.C. should not have to provide what was, in effect, a charitable service. "Free legal aid should be a right which people are entitled to, not something they should be dependent on a voluntary organisation for," she said. "We have no wish to perpetuate this charitable system."

She added: "We have always left the State to introduce its own system of free legal aid and so we are not interested in receiving money to finance our voluntary work. We do not want to continue our service indefinitely as an inadequate alternative to a comprehenive State aid scheme."

If definite steps to initiate a statutory service are not taken by the Department of Justice, F.L.A.C. will close down their centres from next January 1. Miss Hussey said, however: "We are prepared to cooperate fully with the Minister for Justice in devising a free legal aid system in criminal and civil cases if a firm commitment is forthcoming from him."

The F.L.A.C. deputation circulated a questionnaire to deputies and senators at the briefing to ascertain their attitude to the question of introducing a State financed system. The estimated figure to run such a system is £200,000. Government Ministers who heard the F.L.A.C. case yesterday included the Minister for Foreign Affairs, Dr. FitzGerald, the Minister for Posts and Telegraphs, Dr. Cruise O'Brien, and the Minister for Education, Mr. Burke. The former Minister for Justice, Mr. Des O'Malley, was also present and F.L.A.C. are to press for a meeting with the Minister for Justice, Mr. Cooney, on another occasion.

Miss Hussey said at the press conference later that the Attorney General had indicated that there were going to be some reforms in the law relating to child offenders and also in legislation concerning marital cases. He had not indicated any official attitude on the question of a comprehensive free State legal aid scheme.

(*The Irish Times,* June 1973)

BOOK REVIEWS

Alexander (Willy)—The EEC Rules of Competition. 8vo; Pp. xvi, 187; London, Kluver Harrap Handbooks, 1973; £4.90.

Cunningham (James P.)—The Competition Law of the EEC—A Practical Guide. 8vo; Pp. 315; London, Page; £6.50.

Cunningham (James P.)—The P-E. Briefing Guide to Restrictive Practices and Monopolies in EEC Law. 8vo; Pp. 94; London, Kogan Page; £1.50.

Bellamy (Christopher) and Graham D. Child—Common Market Law of Competition. 8vo, Pp. xxvi, 361; London, Sweet and Maxwell; 1973; £7.75.

It was inevitable that, once Britain and Ireland had joined the Common Market, there would be a spate of books on the vital law of competition within the Community, and so it has proved. It may be best to examine each of these volumes separately.

Alexander is a Dutch Lawyer, and his work bears the imprint of having been written by a Continental—and while all aspects of this intricate subject are more than adequately covered, the work is written in a ponderous style which requires deep concentration. This is certainly not a book for the beginner, but those who persevere in reading it will undoubtedly acquire much knowledge.

Mr. Cunningham's book on the Competition Law is frankly a book for the businessman and his advisers. The main principle is that Community competition prohibits arrangements between competitive business concerns which restrict competition in trade between Member States, although exemptions are allowed in specified cases. In other words competition law in essence seeks to achieve economic objectives by legal enforcement. As regards Ireland, we are informed on page 38 that there is no law against dominant positions or cartels of business as such, but that investigations can be undertaken by the Fair Trades Commission if requested. The main provisions of the Treaty of Rome relating to this matter are Articles 85, which deals with cartels, and Article 86, which deals with dominant positions.

When the general prohibition against cartels in Article 85(1) is quoted, the expression "agreements", "Decisions by Associations" and "Concerted Practices" are all considered in detail, as well as "undertaking", "appreciable", "effect on trade". The full case law relating to each expression is given, and finally there is a list of the particular types of agreement prohibited by Sub-Section 1. Each subsection is dealt with lucidly in the same detailed manner, and thus the reader will acquire proficiency in these abstruse problems. There is also a section dealing with patents as well as with standardisation agreements, joint selling agreements, copyright and mergers.

Mr. Cunningham's book can be thoroughly recommended to all practitioners who intend to secure a practical grasp of the difficult problems met within the course of competition law. He has divided his book into four parts, namely:

(1) General Principles, including Cartels and Concerted Practices; (2) Vertical agreements including Distribution Agreements and Resale Price Maintenance; (3) Horizontal Agreements including Joint Research Agreements, Agreements for Joint Selling and Purchasing, Standardisation Agreements, Specialization Agreements, and Exchange of Information Agreements; and (4) Mergers and other abuses of Dominant Position. The Appendix contains the text of all relevant Commission and Council Regulations from 1962 to 1971. As its name suggests, Mr. Cunningham's Briefing Guide to Restrictive Practices and Monopolies is intended as an elementary guide, and achieves its purpose admirably by dealing briefly and clearly with Articles 85 and 86.

Messrs Bellamy and Child emphasise what cannot be stressed often enough, namely that, since 1 January 1973 the Common Market rules on competition form part of the domestic law of Ireland. All these authors have wisely refrained from dealing with the European Coal and Steel Community in order to keep their work within reasonable proportions. They stress the Continental practice sanctioned by the Supreme Court in *State (Bourke) v. A.G.*—31 July 1970— in which citation of distinguished authoritative legal authors is encouraged by the Courts. They also stress how inconvenient it has been for practitioners to have but a limited English translation of the authentic texts. The authors admit their debt to Mr. Alexander, yet they have managed to express lucidly and succintly what was difficult to follow in Alexander's book. The learned authors first deal in detail with each subsection of Article 85, then with Article 86. In dealing with the De Minimis Rule under Article 85 (para. 245) it is stressed that an agreement which would otherwise fall within Art 85(1) none the less falls outside the prohibition, according to the European Court decision in *Volk v. Verwaecke* (1969), where it is unlikely either to affect trade between Member States, or to restrict Competition to any noticeable extent. The effect of the famous *Grundig-Konsten decision* (1964) is well summarised in stating that "where an agreement has the object or effect of preventing competition between the parties, or between one of the parties and a third party, that agreement then falls within Art. 85(1) notwithstanding that the overall effect of the agreement may be to increase competition within the Common Market.

As regards provisional validity, the decision of the Court in *Brasserie de Haecht* (No. 2)—6 February 1973— is important. Here it was held (1) that the Court may depart from its previous decision, and (2) that it may do so without explaining the reasoning which leads it to overrule or distinguish previous decisions.

Each of the 12 chapters is divided into numbered paragraphs, chapter 1 covering paragraphs 100 to 199, and chapter 2 covering paragraphs 200 to 299, etc. The relevant cases of the European Court are very clearly summarised. There is little doubt that this volume, will, with Mr. Cunningham's, be jointly ranked as the essential recent volumes which any practitioner dealing with any intricate problem with European Community Law will require.

Stroud (F.)—Judicial Dictionary of Words and Phrases. Fourth edition by John S. James; volume 2; D—H—evo.; pp. xvi plus 1673; 1972; £10.50.
Volume 3 I;—O; 8vo; pp. xvi plus 1916; 1973; £10.50. London, Sweet & Maxwell.

Volume 1 of this new 4th edition was previously reviewed. (See 1971 Gazette, page 165.) It may be recalled that it was suggested that Mr. James should cull more material from Commonwealth Law Reports instead of confining the quotations mostly to English Judges—a perusal of these volumes will show that many Commonwealth cases have now been included. Reports from the Irish Jurist Reports (1935-'65), and from the Irish Law Times Reports are omitted, and quotations from the Irish Reports since 1925 are skimpy. However by his deep research and knowledge, Mr. James has given Stroud a contemporary form, which will be much appreciated by practitioners who require an up to date legal definition quickly. The printing and presentation are as usual first class.

Phillips (O. Hood)—Constitutional and Administrative Law. Fifth edition; 8vo; pp. xlvi plus 669; London, Sweet & Maxwell, 1973; paperback, £2.20.

The Vice Principal of Birmingham University, and President of the British and Irish Association of Law Librarians, Professor Hood Phillips, in presenting us with a new edition of his famous work on Constitutional and Administrative Law, has managed the remarkable task of shortening it by almost 200 pages—the 4th edition, published in 1967, contained 865 pages, while the present edition contains 669 pages. In comparing the new editions, we find that a new chapter of more than 20 pages on the thorny question of—Can Parliament bind its successors? dealing with such problems as the extended subject—matter of Legislation as represented by the European Communities Act, 1972, and the manner and form of legislation concerning the authenticity of Acts of Parliament. The fascinating subject of Parliamentary Privilege is now considered after Parliamentary Procedure instead of before it. The interesting Chapter on Emergency Powers of the Executive has been transferred from Part 5 to Part 3, but no satisfactory explanation is given as to why the British Government allowed the Northern Ireland Government to harass the minority there by permanent emergency legislation which has inevitably led to the present chaotic situation; a chapter of more than 20 pages on Courts has been omitted. In considering the offence of Public Mischief, which merely compels the police to transact their duties more attentively, it is amazing that this offence is turned into a statutory crime by the English Criminal Law Act 1967, although most learned legal writers and lawyers have been opposed to this.

The chapter on "Judicial Control of Public Authorities" has now been divided into two, one dealing with Judicial Control of Excessive Powers by exercising the principles of natural justice—though wide in theory, it appears to be very limited in practice. The second part deals with the possible remedy of damages, the discretionary remedies of injunction and specific performance, narrowly restricted remedies of certiorari, prohibition and mandamus, and the technical action for a declaration.

It is strange that the learned author has not ruthlessly attacked the majority decision of the House of Lords in *Smith v. East Elloe R.D.C.* (1956) A.C.—which amazingly held that, after the 6 weeks period in which a compulsory purchase order can be challenged, this order could no longer be challenged even on the ground that it had been procured by bad faith; our Constitution would probably protect us against such injustice—but the later decision in *Anisminic v. Foreigh Compensation Board*—(1969) 2. A.C.—fortunately appears to reverse it. That wonderful institution, the French Conseil d'Etat, is summarily dismissed in one sentence, without a comprehensive and thorough reason—this appears unduly narrow and insular. Most of the other chapters have been shortened. The latest developments in Northern Ireland are briefly referred to in the Preface, but it is hoped that a much more detailed and comprehensive account will be given in the next edition.

The learned author is an expert on the various English institutions and has described them with great erudition, clarity and precision. This is undoubtedly the leading textbook for practitioners and students who wish to improve their knowledge of English Constitutional and Administrative law, but Irish readers will always have to remember that in Ireland the Constitution takes precedence over statute law.

Colinvaux (Raoul), David Steel and Vincent Ricks—Forms and Precedents being "British Shipping Laws". Volume 6; 8vo; pp. xxiv plus 334; London, Stevens, 1973; £10.50.

Despite the fact that Ireland is an island it is remarkable how relatively few shipping cases reach the Courts. These Admiralty and English Commercial Courts Precedents have been specially drafted by expert counsel; they are characterised by reliable draftmanship, abbreviation in size, and ease in use. It is to be noted that nothing has been reprinted from other volumes in the Series "British Shipping Laws".

The precedents of "Model Liner Bills of Lading" which has developed so radically since 1967 are fully covered as are the subjects of "Model Passenger Ticket", Charterparties for Coal, Wood Berths, Stone, Cement and Fertilisers; such matters as "Ice Clauses", "Strike Clauses", etc., receive full treatment. Then claims for Damage to Cargo or for Demurrage, or under a Time Charter, before the Commercial Court are fully explored. All claims and defences to action for Marine Insurance before the English Commercial Court are fully set out, as are the Admiralty Pleadings, such as claims for fatal accidents or collisions, or for damage to cargo during voyage, or for seamen's wage, or for salvage by tug. All the precedents of documents necessary to arrest a ship, such as the warrant of arrest, the affidavit leading thereto, and notice of arrest by the Admiralty Marshal, are fully set out. Some of the proceedings in the County Court could doubtless be adapted to the Admiralty jurisdiction of the Cork Circuit Court. It will thus be seen that this is an essential volume of precedents for the members who have an extensive practice in shipping law.

Brown (L. Neville), J. F. Garner, and Nicole Questiaux—French Administrative Law. Second Edition; 8vo; pp. xvi plus 187; London, Butterworths, 1973; £3.20 (paperback).

Like the learned solicitor author, this reviewer was fortunate in being able to spend some months in the Conseil d'Etat in Paris and thus to become inbued with some of the principles of French Administrative

Law. Like Professors Brown and Garner, this reviewer is absolutely convinced of the great superiority of French Administrative Law as rendered by that elite body, the Conseil d'Etat. One of the grave defects of the Irish Constitution is that Article 37 only provides for temporary administrative tribunals, and that all other decisions must be made by one of the Courts established by the Constitution. This in effect means that no effective permanent administrative tribunal, save with very limited power can ever be established in Ireland, and that the ordinary tribunals can never be manned by specialist lawyers trained in administrative law and procedure. The resulting administrative decisions given by ordinary Courts in Ireland can only be unsatisfactory, as they are not given an opportunity to probe the full facts, but only the facts in files which the Department concerned wishes to impart to them and this in the skimpiest way possible. The Courts have been slow until recently to reject inadequate privilege claims which the State has endeavoured to sustain on the slimmest evidence. Without going into detail, one can but agree with the learned authors that the French administrative system is infinitely superior to the Irish one, inasmuch as (1) the judges of the French Court have an administrative expertise second to none. (2) The remedies available are simple and not deliberately complicated and complex like *certiorari and mandamus.* (3) All the documents are in writing, and this permits an intimate dialogue between the court and the administration; the loose limits of oral evidence are rejected. (4) The Court can probe with profound depth into all administrative action; and the narrow limitations of Irish law do not apply.

With the expert assistance of Madame Questiaux, who is so helpful to all English speaking visitors of the Conseil d'Etat, the learned authors have set out the procedure of the Conseil d'Etat in such a lucid and clear manner that the complexities appear simple; it is only by attending in practice a *séance d'instruction* or *a séance de jugement* that a foreign lawyer can appreciate how such an intricate law is rendered simple by experts. No useful purpose can be served by going into the intricacies of the procedure save to state that the learned authors have mastered it, and have made it appear easy—further study would soon dispel this idea. Our Library is the only one in Ireland where such a study could be undertaken, as it contains a summary of the more important decisions of the Conseil d'Etat in the last few years. We are deeply indebted to Professors Brown and Garner for having enlightened us on a most complex subject. This will remain the essential introductory book to the study of French Administrative Law in English in the foreseeable future.

Bailey (S. J.)—The Law of Wills including Intestacy and Administration of Assets. Seventh edition; 8vo; pp. lxxiii plus 384; London, Pitman, 1973.

The fact that the learned author who is a Professor of English Law in Cambridge University, has produced seven editions of his work in forty years speaks for itself. From the first, the manner in which the material was presented has appealed to students throughout, and, the book is well known to our students, as it has been on the Law Society course for a long time. Apart from the law of wills the volume contains chapters on the equitable doctrines of conversion and secret trusts and election, on conditions precedent and subsequent, and on the various rules relating to future interests, such as Whitby v. Mitchell, which are so well covered in Mr. Justice Megarry's Manual of Real Property. An interesting modern decision considered is *Edmondson's Will Trusts*—(1971) 1 W.L.R.—in which the rule in *Andrews v. Partington* (1791) was applied. In the case of *Bravda*—(1968) W.L.R., two daughter beneficiaries, who attested the will, as well as the attesting witnesses, got nothing. In *Re Horgan, decd.*—(1970) 2 W.L.R.—Latey, J., held the following clause in a will valid—that the firm might act through any of its partners or their successors in business at the date of my death not exceeding two in number. These few examples will demonstrate that the learned author has taken full cognizance of all recent decisions.

Smith (J. C.), and Brian Hogan—Criminal Law, Third edition; 8vo; pp. xciii plus 678; London, Butterworth, 1973; £4.60 (paperback).

These learned authors, Professor Smith of Nottingham and Professor Hogan of Leeds, have published no less than three editions in sixteen years, and the material between 1957 and 1973 has increased by 70 pages. Smith and Hogan has established itself as the leading modern textbook in criminal law, not merely on account of the complete accuracy of the material, but also the illuminating comments made by the learned authors on various points of criminal law arising from the cases. For instance at page 159, in referring to *Buckove v. L.C.E.*—(1971) 1 Ch—where apparently Lord Denning accepted the view that a driver, stopped by a red light at a cross roads, and seeing a blazing house 200 yards in front of him would have committed an offence if he had crossed at the red lights on the ground of necessity to help but added: "Nevertheless such a man had he done so, should not be prosecuted. He should be congratulated". The learned authors remark concisely: "It is odd to see the Master of the Rolls finding a breach of the criminal law a case for congratulation". As to differences between the Larceny Act 1916 and the Theft Act 1968 the learned authors state at page 396: "In practice the Larceny Act 1916 was construed on the tacit assumption that there was no intention to alter the previous law, and the earlier case law lost little authority. Such an approach to the Theft Act 1968 would be wholly wrong." Practitioners are consequently warned that they should skip the section dealing with that Act.

However Smith and Hogan has maintained its lead as the pre-eminent textbook on Criminal Law, and Irish practitioners who study it will soon master that difficult subject provided they read references to English statutes since 1922 with care.

Baxter (J. W.)—World Patent Law and Practice. Second edition; 8vo; pp. xiv plus 455; London, Sweet & Maxwell, 1973; £6.80.

The learned author, who is Legal Adviser to the Patents Section of Imperial Chenical Industries, had already published a first edition of this work in 1968. It sets out detailed patent requirements and practices in all parts of the world, and questions such as: who should make the application for a license in Brazil, when documents are required in New Zealand? how to oppose an application for a license in France; what is the conception of novelty in Ireland? the different time limits set, the rules relating to renewal fees, members recognising the International Patent Conventions of Lisbon in 1958 and of Stockholm in 1967—are

treated in full. It will thus be appreciated that the learned author has had to study and arrange under suitable headings the various laws of patents throughout the world, and this has entailed considerable research. Mr. Baxter's erudition is only equalled by his expertise in putting this complicated matter together in such a simple way.

Telling (A. E.)—Planning Law and Procedure. Fourth edition; 8vo; pp. xxviii plus 325; London, Butterworth, 1973; (Limp. £2.60).

The fact that four editions of this work have been published in ten years demonstrates its usefulness and popularity. From the beginning, Mr. Telling has succeeded in simplifying as much as possible this complicated subject. He first of all deals with the facts and objects of planning law, and insists that henceforth no development is to take place without planning permission; in England the legislation has been recently co-ordinated in an Act of 1971. The thorny question of development plans is fully explored, and the definition of "development" emphasised. The steps necessary to apply for and obtain planning permission are described, as well as the extent of revocation or modification of planning permission. The enforcement of planning control by enforcement notices; and the special forms of control in relation to tree preservation, buildings of special interest, out-door advertising, abandonment vehicles, etc, are fully considered.

There is a most useful chapter on the conduct of a planning enquiry. Finally the intricate problem of when compensation will be granted is fully mentioned. Although the Irish Law on planning under the 1963 Act differs in some respects from the English Law, practitioners who wish to improve their knowledge in this subject will find this book a most useful and thorough guide.

RECENT LEGISLATION

(1) Road Traffic (Amendment) Act 1973

The purpose of the Act is to amend the Road Traffic Act 1968 to take account of a judgement of the Supreme Court in which Section 44(2)(a) of that Act was declared unconstitutional.

The amendments provided for by Sections 2 to 6 are clearly related. Sections 3 and 4 amend sections 30 and 33 of the 1968 Act so as to enable any member of the Garda Siochana to require an arrested person to permit the taking of a specimen of his blood or to provide a specimen of his urine. At present the power to make such a requisition is vested only in the member of the Garda Siocana who is in charge of the Garda Station at the time an arrested person is brought there. The Amendments of Sections 27, 36, 43 of the 1968 Act which are provided for by Sections 2, 5, 6, of this Act respectively are consequential on the Amendments of Section 30 and 33.

Section 7 amends section 44 of the 1968 Act as follows: (a) In subsection (2)(a) which relates to the evidential effects of a certificate from the Medical Bureau of Road Safety as to a person's blood-alcohol level, the words "be sufficient evidence until the contrary is shown" are being substituted for "be conclusive evidence". It was the use of the word "conclusive" that led the Supreme Court to declare the former subsection (2) (a) to be invalid. (b) A new subsection (3) provides that it shall be presumed until the contrary is shown, that the person who took the blood specimen or for whom the urine specimen was provided is a registered medical practitioner.

(2) Ministers and Secretaries (Amendment) Act 1973

By Section 2, the Government may by order appoint a day for the purpose of establishing the Department of the Public Service provided for by this Act. Briefly the "Public Service" is defined as the Civil Service and State subsidised bodies. The Minister for Finance will automatically also be Minister for the Public Service. By Section 4, the Public Service Advisory Council to perform the following functions assigned to it by Section 5:

(a) To advise the Minister on the Organisation of the Public Service and on matters affecting personnel in the Public Service.

(b) To advise the Minister on any special matter relating to the Public Service as he shall direct.

The schedule to the Act gives particulars relating to the Public Service Advisory Council. The Council shall consist of a chairman and seven members shall be appointed by the Minister for a term not exceeding four years. A member of the Council may resign his office as a member by a letter addressed to the Minister and may also be removed from office by the Minister. Each member of the Council including the Chairman shall have one vote. The quorum for a meeting of the Council shall be four members. In the case of an equal division of votes the Chairman shall have a second or casting vote.

The Council shall regulate its own procedure and business. Finally, the Council shall report annually to the Minister on the organisation of the Public Service and on personnel practices in the Public Service.

(3) European Communities (Amendment) Act 1973

Section 1 of this Act is enacted in substitution for Section 4 of the European Communities Act 1972.

(i) Regulation, under this Act shall have Statutory effect.

(ii) If the Joint Committee on the Secondary Legislation of the European Communities recommends to the Dail and to the Senate that any regulations under this Act be annulled and a resolution annulling the regulations is passed by both the Dail and Senate within one year after the regulations are made, these regulations shall be annulled accordingly and shall cease to have statutory effect.

In the event of the Dail standing adjourned for more than ten days if, during that adjournment at least one third of deputies by notice in writing to the Ceann Comhairle require the Dail to be summoned, the Cean Comhairle shall summon Dail Eireann to meet within 21 days of the receipt of such notice. The same rule shall apply to the Senate and the Chairman of the Senate can summons the Senate to meet within 21 days of receiving a notice signed by at least one third of all the Senators.

(4) European Communities (Confirmation of Regulations) Act 1973

The several regulations made under the European Communities Act 1972 and mentioned hereunder are hereby confirmed.

S.I. No. 311 of 1972—European Communities (Motor Vehicles) Regulations, 1972.
S.I. No. 312 of 1972—European Communities (Crystal Glass) Regulations, 1972.
S.I. No. 314 of 1972—European Communities (Shipbuilding) Regulations, 1972.
S.I. No. 320 of 1972—European Communities (Rules of Court) Regulations, 1972.
S.I. No. 325 of 1972—European Communities (Textiles) Regulations, 1972.
S.I. No. 329 of 1972—European Communities (State Financial Transactions) Regulations, 1972.
S.I. No. 331 of 1972—European Communities (Enforcement of Community Judgements) Regulations, 1972.
S.I. No. 333 of 1972—European Communities (Aliens) Regulations, 1972.
S.I. No. 334 of 1972—European Communities (Customs) Regulations, 1972.
S.I. No. 339 of 1972—European Communities (National Catalogue of Agricultural Plant Varieties) Regulations, 1972.
S.I. No. 341 of 1972—European Communities (Judicial Notice and Documentary Evidence) Regulations, 1972.
S.I. No. 14 of 1973—European Communities (Cycle Tyres) Regulations, 1973.
S.I. No. 19 of 1973—European Communities (Seeds of Perennial Ryegrass and Cereals) Regulations, 1973.
S.I. No. 20 of 1973—European Communities (Fruit and Vegetables) Regulations, 1973.
S.I. No. 24 of 1973—European Communities (Common Agricultural Policy) (Market Intervention) Regulations, 1973.
S.I. No. 30 of 1973—European Communities (Bacon Levy Periods) Regulations, 1973.
S.I. No. 32 of 1973—European Communities (An Bord Bainne) Regulations, 1973.
S.I. No. 43 of 1973—European Communities (Names and Labelling of Textile Products) Regulations, 1973.
S.I. No. 67 of 1973—European Communities (Measuring Instruments) Regulations, 1973.
S.I. No. 127 of 1973—European Communities (Fishery Limits) Regulations, 1973.
S.I. No. 128 of 1973—European Communities (Marketing Standards for Eggs) Regulations, 1973.
S.I. No. 129 of 1973—European Communities (Fresh Poultry Meat) Regulations, 1973.

CORRESPONDENCE

Malicious Injury Claims

Corporation of Dun Laoghaire,
Town Hall,
Dun Laoghaire.
7th June, 1973

Andrew F. Smyth, Esq.,
Solicitor,
1 Upper Ely Place,
Dublin 2.

Re: Malicious Injury Claims
Borough of Dun Laoghaire

Dear Mr. Smyth,

I should be obliged if you would inform your members that Malicious Injury Decrees awarded against the Borough of Dun Laoghaire should be sent direct to the County Solicitor, Dublin County Countil, Parnell Square, instead of sending them to me. Solicitors have been told to do so by me but I am still receiving Decrees.

It would perhaps be as well if you put a notice in the Gazette.

Yours Sincerely,

M. J. Leech

Notice of Assignment to Ground Landlords

31 Aungier Street,
Dublin 2.
21 May 1973

The Secretary,
Incorporated Law Society.
Dear Sir,

I wish to draw your attention to that fact that it is becoming more and more a frequent habit of Solicitors to fail to give notice to Lessors of Assignments of property so that when demand notes are sent out they are either ignored by Lessees or letters are returned by the new Assignees stating that the property was sold an appreciable time ago. Section of the Conveyancing Act prescribes that due notice of Assignment should be given to the Lessors and the question arises why is this not being done more regularly. This used to be automatically carried out.

Yours truly,

Stanley A. Siev

25/5/'73

Stanley A. Siev, M.A., LL.B.,
Solicitor,
Dublin 2.

re.: Notice of Assignment

Dear Mr. Siev,

We acknowledge receipt of your letter of the 21st May, and we agree that there is far too much default in Solicitors failing to give the necessary notice of assignment to ground landlords.

We are arranging to have your letter published in the Gazette and so serve as a reminder to the profession.

Yours faithfully,

Patrick Cafferky, *Assistant Secretary*

THE REGISTER

REGISTRATION OF TITLE ACT, 1964
Issue of New Land Certificates

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the Schedule which original land certificate is stated to have been lost or inadvertently destroyed. A ne certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Dated this 30th day of September, 1973.

D. L. McALLISTER,
Registrar of Titles

Central Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: James Byrne; Folio No.: 2092, Kildare; Lands: Walterstown; Area: 13a. 1r. 15p.; County: Kildare.

(2) Registered Owner: Matthew Mulrooney; Folio No.: 1794, King's; Lands: Kyle; Area: 84a. 0r. 12p.; County: King's.

(3) Registered Owner: Geoffrey Wycherley; Folio No.: (1) 8826, Cork; Lands: (1) Naul; Area: (1) 9a. 1r. 21p.; Folio No.: (2) 8793, Cork; Lands: (2) Curraheen; Area: (2) 11a. 0r. 8p.; County: Cork.

(4) Registered Owner: Una Kilgarriff; Folio No.: 23506, Roscommon; Lands: (1) Kilcolman; Area: (1) 3a. 2r. 8p. Lands: (2) Ballaghaderreen; Area: (2) 0a. 0r. 3p. Lands: (3) Lung; Area: (3) 0a. 2r. 7p. Lands: (4) Kilcolman; Area: (4) 3a. 2r. 18p.; County: Roscommon.

(5) Registered Owner: William Henry Faulkner; Folio No.: 15592, Cavan; Lands: Lisanymore; Area: 28a. 2r. 39p.; County: Cavan.

(6) Registered Owner: Richard Leary; Folio No.: 5050R, Wexford; Lands: Ballyreilly; Area: 29a. 1r. 35p.; County: Wexford.

(7) Registered Owner: Una Kilgarriff; Folio No.: 23506, Roscommon; Lands: (1) Kilcolman; Area: (1) 3a. 2r. 8p.; Lands: (2) Ballaghaderreen; Area: (2) 0a. 0r. 3p.; Lands (3) Lung; Area: (3) 0a. 2r. 7p.; Lands: (4) Kilcolman; Area: (4) 3a. 2r. 18p.; County: Roscommon.

(8) Registered Owner: John M. Hartnett; Folio No.: 366, Limerick; Lands: Dromtrasna South; Area: 23a. 1r. 21p.; County: Limerick.

(9) Registered Owner: John Downey; Folio No.: 8339, Leitrim; Lands: Ballyglass; Area: 11a. 1r. 5p.; County: Leitrim.

(10) Registered Owners: The Reverend John Roche and The Reverend James Donovan; Folio No.: 3099, Wexford; Lands: Ramsgate; Area: 12 perches; County: Wexford.

(11) Registered Owner: Richard Delahunt; Folio No.: 3080, Tipperary; Lands: (1) Lismaline; Area: (1) Lismaline; Area: (1) 86a. 0r. 21p.; Lands: (2) Rahinane; Area: (2) 36a. 1r. 37p.; Lands: (3) Ballingarry; Area: (3) 0a. 0r. 10p. County: Tipperary.

LOST WILL

In the goods of **Nora McNicholas,** Deceased, late of Ranelagh, Dublin 6. Will any person knowing the whereabouts of the Last Will and Testament of the above (if any), please communicate at once with the undersigned.
Patrick J. McEllin, Esq., Solicitor, Claremorris and 27 Upper Ormond Quay, Dublin.

J. D. McCormack and Jean McCormack late of "The Grove", Howth Road, Sutton. Would any person who has information concerning the existence or possible existence of a Will of either or both of the above deceased please contact the undernamed.
Dermott P. Morris, Esq., Solicitor, 40 Upper Abbey Street, Dublin 1.

OBITUARY

Dr. Joseph Shields, Solicitor, Irish Ambassador to Canada, died suddenly in Ottawa on 23 July 1973 at the age of 62 years. Dr. Shields obtained a first class moderatorship in Trinity College Dublin in Legal Science and was subsequently conferred by that college with a Doctorate in Law Jure Dignitatis. He was admitted a Solicitor in 1930 and from 1937 to 1940 was examiner to the Law Society with the late Dr. Kierans. As Dr. Shields was from Carrickmacross and Dr. Kierans from Monaghan Town, unsuccessful candidates used to refer to them as the "Monaghan Mafia". At first Dr. Shields was an Assistant Solicitor with the late Laurence O'Neill, Molesworth Street, Dublin. Shortly afterwards he started his civil service career as a legal assistant in the Land Registry and subsequently became an Examiner of Title in the Land Commission. During the war years he acted as Deputy Chief Press Censor. As the late Mrs. Shields was American, he was first posted to Boston, Washington and New York. He then became Irish Ambassador, first to Italy and subsequently to the Vatican, where he was created a Knight of the Grand Cross of the Order of St. Gregory. He was transferred as Irish Ambassador to Canada in 1970 but, unfortunately his health deteriorated there.

THE GAZETTE OF
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OF IRELAND

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Contents

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EDITORIAL

The Bankruptcy Law Report

The Report of the Bankruptcy Law Committee, under the chairmanship of Mr. Justice Budd, was recently published, and the major recommendations have been inserted elsewhere in this issue. It is indeed high time that the old Acts of 1857 and of 1872 should be repealed, and the Committee have drafted a comprehensive new Bill which incorporates their recommendations. It will be seen that the Official Assignee will henceforth be invested with all necessary powers in connection with a bankrupt's property. The Committee have also drafted rules incorporating the more modern ideas of bankruptcy procedure; if their full recommendations with regard to the draft Bill and to the Rules are adopted, which seems likely, then we will soon have an up-to-date bankruptcy code. The Committee is to be congratulated for having given us a useful historical analysis, and for the learning and erudition displayed in the report.

The Irish Penal System

A most useful volume on this subject is to be published by the Prison Study Group comprising at least three lawyers, under the auspices of the Department of Psychiatry, U.C.D. The authors prove conclusively that the Irish prison system is antiquated, and is based on punishment rather than reform. "The education of prisoners had never been taken seriously in Irish prisons, and no attempt was being made to teach prisoners anything to help them to get employment on release. Although a daily sum of £8.87 is spent on each prisoner, there is little to show for it; the average prisoner is a product of the slums of the cities, usually from a family where unemployment is rife; they spend fifteen hours per day in their cells." There is not even a library service in Mountjoy, although there is one in Portlaoise; there is no doubt but that the personnel of the Visiting Committees, who have power to inflict punishment, is most unsatisfactory, and requires to be radically altered.

When the Minister announced recently the appointment of a Director of Health and of a Director of Studies for Prisons, he was only carrying out the minimum reform necessary in the circumstances, but it is astounding that he did not grant this learned group full facilities to inspect prisons in detail; much of the evidence which they have adduced has inevitably come from Prison Reports.

This is a vital study of current prison conditions in Ireland which deserves a wide circulation.

THE SOCIETY

Proceedings of the Council

20th SEPTEMBER 1973

The President in the chair, also present: Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, John Maher, Patrick C. Moore, Patrick McEllin, Patrick McEntee, Brendan A. McGrath, John J. Nash, George A. Nolan, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Dermot G. O'Donovan, William A. Osborne, Peter D. M. Prentice, Mrs Moya Quinlan and Ralph J. Walker.

Members taking an assignment against their own client

Members wrote stating they had acted for a client in a High Court action in which judgment was given against their client. They were then instructed to pay the debt in order to secure the release of certain property of the client. They duly paid the debt out of money provided by the client. The solicitor on the other side then raised the question of his costs and refused to release the property unless he was paid his costs. Members then gave an undertaking to discharge costs where taxed. Their client refused to indemnify members and when called upon members had no alternative but to discharge the costs out of their own pocket. To secure their rights against their own client members took an assignment from the plaintiff to the amount of costs which they had paid on foot of their own undertaking. They now want to apply for an execution order as assignee of the plaintiffs under Order 42, Rule 24, of the Superior Court Rules (alternatively they could presumably sue their client for indemnity on the basis of money paid on his behalf). The Council upon a report from a committee submitted that member had not acted unprofessionally in the circumstances. It is, however, a matter for the Court as to whether such an assignment is enforceable against the client.

Counsels' fees in the Circuit Court

Members wrote concerning the difference between counsels' fees in Circuit Court matters as prescribed by the Bar Council and by the Circuit Court Rules. The Council were informed that some Circuit Court judges allow the scale of fees prescribed by the Bar Council to a successful litigant. The Council decided that they should endeavour (a) to meet with representatives of the Bar Council and (b) to recommend to the Bar Council that they approach the President of the Circuit Court. The Council felt there was no further action available to them.

Member bound by undertaking though not aware of full circumstances

Members wrote stating they acted for a British client who hired a car in the name of a lady whom he de-

scribed as his wife. She crashed the car and the repair bill came to £400. The British client was injured and he instructed members to pay the £400 at £10 per week out of damages which he would recover on a personal injury claim. As a result members gave an undertaking to the garage to pay the repair bill out of the damages. Later the British client wrote to members saying that the lady was not his wife and consequently he did not regard himself liable to her debt and he requested the solicitor to cancel the undertaking to the garage. The Council felt that the solicitor was bound by his undertaking. They felt that the question of whether the revocation of authority was binding is a question of law. They referred members to the previous statement of the Council in the *Gazette,* September/October 1972, page 233, which suggests that solicitors for their own safety should have their clients sign a form of irrevocable retainer attached to the undertaking itself.

Vendor to bear expense of Land Registry map

Members wrote requesting further information on the Council's recommendation in Vol. 64 of the *Gazette,* September/October 1970, page 92, that a vendor should furnish an official Land Registry map as part of the title in Land Registry transfers. Members asked who should bear the expense of procuring the Land Registry map. The Council on a report from a committee recommended that the vendor should bear this expense.

Retirement of Secretary

The President stated that this would be the last meeting to be attended by Mr. Plunkett in his capacity as Secretary of the Society, an office which he had held since 1942. He paid tribute to Mr. Plunkett for his service to the Society in which various members of the Council joined.

The Secretary replying thanked the Council and wished every success to his successor Mr. James J. Ivers, Director General, who was present.

Reform of Legal Education

The President reported on behalf of the deputation which was received by the Minister for Justice on 27 July 1973 (L/53/2). The Minister had approved in broad principle of the Society's proposals for the reform of legal education but had indicated that he was not disposed to recommend legislation abolishing the Irish examination.

Circuit Court Rules Committee

It was unanimously resolved to appoint Mr. Thomas Gannon, solicitor, Mohill, in place of the late Mr. Francis J. Gannon.

District Court Rules Committee

It was unanimously resolved to reappoint Mr. William A. Osborne as one of the Society's representatives on the Committee with effect from 4 December 1973.

Court Dispute: Minister's Advice to Justices

Every District Justice had discretion to extend or reduce the time appointed for lodging documents, the Minister for Justice said yesterday. Mr. Cooney was referring to statements by some District Justices regarding the "so-called work-to-rule" by provincial court clerks.

These Justices, the Minister announced, were reported as saying that, because of the "work-to-rule" they could not deal with documents which had not been lodged in the court office within the prescribed time.

"Without in any way wishing to interfere with the discharge of their judicial functions by these Justices, the Minister considers it his duty to point out that every District Justice has discretion to enlarge or abridge the time appointed for lodging documents" a Government Information Bureau statement announced.

"It follows that members of the public with business in the court have the right to demand that documents be accepted in the court office and that they be placed before the Justice so that he may be enabled to exercise the discretion vested in him. That discretion has traditionally been exercised in favour of the applicant where this does not adversely affect any other party interested in the proceedings."

Mediation Offer

The statement added that the Minister had informed the Council of the Dublin Solicitors' Bar Association, which had approached him with an offer to mediate in the dispute, that if there was any way in which their intervention could bring about a resumption of discussions with the clerks he would welcome it.

The Minister accused the clerks of choosing to resume their "so-called" work-to-rule to coincide with the annual licensing session of the court—an action calculated to inflict the greatest possible inconvenience on the legal profession and on the public. The Minister's response to the Bar Association offer was welcomed last night by the 104-strong Clerks' Association.

But referring to the Minister's accusation that they had resumed their work-to-rule in September so as to disrupt the annual licensing session a spokesman declared: "We must again contradict this suggestion. The District Courts take summer vacation from August 1 and resume on September 1. Obviously if we resumed our work-to-rule in August the preparatory work for the session would have been hit."

A strong protest was made at Nenagh Court yesterday by Mr. Michael O'Mara, a senior member of the Bar Association, for Tipperary, Laois and Offaly, over the delay in the efforts to settle the dispute. Mr. O'Mara said the Minister was himself a solicitor of more than twenty years standing and had a good knowledge of the difficulties they were all experiencing. They had a big list there that day and the cases of people attending court might not be reached. There had been untold delays and frustration because of this dispute.

Irish Independent (5 October 1973)

UNREPORTED IRISH CASES

Contempt of Court—£250 fine substituted for imprisonment (Court of Criminal Appeal).

Mr. Justice Walsh, giving judgment, said: "On 25 November 1972, the Special Criminal Court convicted the applicant for contempt of court in the face of the court and sentenced him to a period of imprisonment of three months from that date. Having been refused a certificate for appeal by the Special Criminal Court, the appellant applied to this court pursuant to the provisions of Section 41(1) of the Offences Against the Sate Act, 1939, for leave to appeal against the sentence and on 27 November 1972 this Court granted the application for leave to appeal and admitted the appellant to bail pending the determination of his appeal to this court.

"On that occasion this court also ordered that in the event of the appeal being dismissed the appellant should serve the remainder of the sentence imposed by the Special Criminal Court without any remission in respect of the period of bail allowed. The appellant's appeal has now been heard by this court.

"The contempt arose during the course of the trial at the Special Criminal Court on the date in question of Mr. Sean Mac Stiofain in which he stood indicted of being a member of an illegal organisation contrary to the Offences Against the State Act, 1939.

"One of the witnesses called on behalf of the prosecution," said Mr. Justice Walsh, "was the present appellant and in the course of his evidence he refused to answer a question put to him by the Court. This refusal was adjudged contempt of court in the face of the Court.

"The appellant is a well-known journalist employed by Radio Telefis Eireann. He had been called to give evidence about an interview he had had with the accused and upon which the State was apparently relying as evidence of an admission by the accused of membership of an illegal organisation or of an admission of facts from which that conclusion might be legitimately inferred. In the course of his evidence Mr. O'Kelly stated that he had had an interview with somebody, who was a man, on the morning of the 18th of November 1972 and that he had made a tape recording of the interview and had given it to Mr. Desmond Fisher, the deputy head of news of Radio Telefis Eireann. He stated that he had not interfered in any way with the tape before it was handed to Mr. Fisher."

Mr. Justice Walsh continued: "The tape recording was identified in Court partly on the evidence of Mr. Desmond Fisher and partly on the evidence of Mr. O'Kelly who also stated in his evidence that the tape recording before the Court was an accurate and authentic one and 'that he was satisfied the remarks on it by Mr. Mac Stiofain were authentic.'

"When asked the direct question who was the man he interviewed, he refused to answer. He indicated that this was a problem of conscience for him and that while recognising his duty to the Court as a citizen to co-operate with it in the furthering of justice he stated: 'I also appear here as a journalist and, as a journalist, I do in conscience feel bound to respect confidences given to me in that capacity, so as to answer the question put to me properly'; he did not feel free to disclose the information.

" 'I would be not only putting my own exercise as a journalist into jeopardy, I would make it very difficult adequately to promote the public good by making it difficult for any journalist all over Ireland to foster the free exchange of public opinion'."

Mr. Justice Walsh continued: "The court is quite satisfied that Mr. O'Kelly genuinely believed that he would be acting in breach of his journalistic ethics if he were to answer the question, but the Court is not satisfied that he was entitled to refuse to answer it. Furthermore it appears to the Court that there was a considerable amount of confusion in Mr. O'Kelly's mind on this matter, though this may be explicable by the fact that Mr. O'Kelly found himself in an environment and a position quite unusual for him. It appears to the Court that what Mr. O'Kelly had already said in evidence amounted to evidence to the effect that the man he interviewed was Mr. Sean Mac Stiofain and that the voice on the tape recording was that of Mr. Mac Stiofain and that the interview on it was the interview in question and that the tape had not been tampered with.

The interview in question was one made for public broadcast and one of the essential features of the publication was the fact that the identity of the person being interviewed was Mr. Sean Mac Stiofain.

"Mr. O'Kelly's references to the difficulty which might be placed in the way of promoting the public good by fostering the free exchange of public opinion appears to add further confusion to the matter because the object of the interview was the publication of it. The Court is aware that in general journalists claim the right to refuse to reveal confidences or disclose sources of confidential information. The Constitution, in Article 40, Section 6, states that the State shall endeavour to ensure that the organs of public opinion, such as the radio and the press, while preserving their right of liberty and expression, including criticism of government policy, shall not be used to undermine public order or morality or the authority of the State. Subject to these restrictions, a journalist has the right to publish news and that right carries with it, of course, as a corollary the right to gather news. No official or governmental approval or consent is required for the gathering of news or the publishing of news.

"But even where it does, journalists or reporters are not any more constitutionally or legally immune than other citizens from disclosing information received in confidence.

"The fact that a communication was made under terms of expressed confidence or implied confidence does not create a privilege against disclosure. So far as the administration of justice is concerned the public has a right to every man's evidence except those persons protected by a constitutional or other established and recognized privilege.

"As was pointed out by the Supreme Court in *Murphy v. The Dublin Corporation and the Minister for Local Government* it would be impossible for the judicial power under the Constitution in the proper exercise of its functions to permit any other body or power to decide for it whether or not certain evidence would be disclosed or produced.

"In the last resort the decision lies with the courts so long as they have seisin of the case. The exercise of the judicial power carries with it the power to compel the attendance of witnesses and the production of evidence and, *a fortiori* the answering of questions by witnesses. This is the ultimate safeguard of justice in the State, whether it be in pursuit of the guilty or the vindication of the innocent.

"The judgment or the wishes of the witness shall not prevail. This is the law which governs claims for privilege made by the executive organs of the State or by their officials or servants and journalists cannot claim any greater privilege.

"The obligation of all citizens, including journalists, to give relevant testimony with respect to criminal conduct does not constitute a haras ment of journalists or other newsmen. In the present state of the criminal law, a journalist concealing knowledge of criminal facts like any other person in a similar position, might well find himself guilty of misprision of felony where a felony was concerned.

Even if the question of confidence arose here, which it did not because, for the reasons already stated, the identity of the person being interviewed was an essential part of the publication, the claim of privilege to refuse to answer the question was unsustainable in law although made in good faith. However, Mr. O'Kelly persisted in his attitude when the Court had very patiently explained the position to him. He was, in the opinion of this Court, rightly convicted of contempt of Court and in fact has not appealed against that conviction.

"The views expressed by the Court may be of assistance to journalists and Courts dealing with this matter in the future. In reviewing the sentence the Court has regard, of course, to the fact that Mr. O'Kelly sought to be as helpful as he could, subject to the privilege which he claimed, but must also bear in mind the fact that he persisted in maintaining this attitude when the position had been fully explained to him and he had been given every opportunity to reconsider the position.

"In all the circumstances the Court thinks that the sentence of imprisonment should be quashed and in lieu thereof a fine should be imposed.

"The order of the Court, therefore, will be that Mr. O'Kelly will pay a fine of £250 and in default of payment of this fine by Mr. O'Kelly into the office of this Court on or before the 30th day of September he will serve a sentence of three months imprisonment but in such event the time already spent by Mr. O'Kelly in serving the sentence imposed on him by the Special Criminal Court will be taken into account. The order of the Court will therefore be that the appeal is allowed in the terms already stated."

Mr. Justice Murnaghan and Mr. Justice Gannon were the other members of the Court.

[Attorney-General v O'Kelly; *The Irish Times,* 31 July 1973.]

District Justice has jurisdiction to say whether proceedings should continue if told that some point is going to be decided by the Supreme Court.

This was an application to make absolute a conditional order of *certiorari* granted against the defendant Justice, on the ground that the Justice must exercise his discretion, by granting the adjournment requested. As was decided by the Supreme Court in *The State* (A.-G.) *v Justice Mangan* (1961) Ir. Jur. 71, that where a Justice has properly acted within his jurisdiction, his decision will not be interfered with. There it was held that the Justice had jurisdiction to grant an adjournment—but he also has jurisdiction to refuse it. As Murnaghan J. stated, it would be acting outside his jurisdiction, if he were to reverse the practice that has been previously adhered to. Accordingly the conditional order was discharged, and the cause shown allowed.

Per Murnaghan J.: "There are some indications that the Bar generally for some time past do not regard judgments of the High Court with the respect which they deserve. There is not a presumption that a judgment of the High Court is wrong. A District Justice being made aware that there is a decision of the High Court should not assume that such decision will be reversed by the Supreme Court."

[The State (Llewellyn) v District Justice Ua Donnchada; Murnaghan J.; unreported; 3 May 1973.]

There is no power in the Local Government (Planning and Development) Act 1965 to acquire land compulsorily for the purpose of development or for the provision of amenities.

On 27 June 1968, defendant County Council made a compulsory purchase order in respect of a tiny piece of land consisting of seashore above high water mark near Spiddal. The order making this effective referred to the Housing Act 1966 and the Planning and Development Act 1965. The defendants sent this order to the Minister for Local Government for confirmation on 22 July 1968. On 25 July 1968 the plaintiffs, who owned the land adjoining, lodged objections. The main ground was that the defendants were not authorised, by law, to acquire the lands compulsorily for the purpose of "development as an open space, and for use in connection with the amenities of the area". The Minister, having held a public inquiry, duly confirmed the order on 23 December 1969. The plaintiffs then brought proceedings under Section 78 of the Housing Act 1966 for the purpose of having the order quashed.

The plaintiff alleges that the order was not made *bona fide* by defendants in the exercise of their powers of compulsory acquisition, but no evidence was adduced to sustain this. The issue, therefore, is whether a local authority, who are also the planning authority, are authorised to acquire lands compulsorily for the purpose of development or for the provision of amenities under the Planning and Development Act 1965. In that Act, "development" is fully defined in Section 3. As there is nothing specifically in the fact which authorises such compulsory acquisition, it follows that the procedure adopted was incorrect. Powers of compulsory acquisition must be created by clear language, and are not to be implied. Accordingly the plaintiff's contention is correct, and the Compulsory Purchase Order will be quashed.

[Movie News Ltd. v Galway County Council; Kenny J.; unreported; 30 March 1973.]

Dublin Corporation lose appeal against £302,433 judgment—malicious injuries.

Mr. Justice Pringle, in a reserved judgment, delivered in the High Court yesterday, dismissed an appeal from a Circuit Court judgment, by the Dublin Corporation,

against an award of £302,433 to Cavendish Woodhouse (Holdings) Ltd., under the Criminal Injuries Acts.

The award was made in respect of the destruction by fire of the company's premises at Grafton Street, Dublin, on the night of March 1st and 2nd, 1971. The amount of compensation was not in dispute and the only question arising on the appeal was as to whether the company had discharged the onus which was on them, of proving that the fire, which completely destroyed their premises, was caused maliciously.

Mr. Justice Pringle, in his judgment, said that the nature of the proof of malice in order to discharge the onus was a matter of dispute between the parties, the company contending that the onus of proof was that required in civil proceedings (on the balance of probabilities), whereas the respondents contended that the proof was that required in criminal proceedings (beyond a reasonable doubt).

Mr. Justice Pringle said he was quite satisfied that the company's contention was correct and that proof beyond a reasonable doubt was not required.

The evidence produced as to the origin of the fire, said Mr. Justice Pringle, had completely satisfied him (even beyond a reasonable doubt, had this been necessary) that the fire was deliberately caused by some person or persons who planted on the premises an incendiary device which was intended to, and did, cause the fire which destroyed the premises.

He added he was satisfied that the remains of an incendiary device found in the premises some seven months after the fire, had survived the fire, and he rejected the Corporation's suggestion that it had been planted after the fire.

There had also been evidence that several other fires had occurred around the same time in other premises in Dublin in circumstances which tended to suggest they were started deliberately. These had been at Easons, Clerys, Arnotts and Roche's Stores. There was, therefore, some evidence, at this particular period, that there was an outbreak of incendiarism in the city. This, in his opinion, strengthened the company's case.

The decision of the Circuit Court Judge was, in his opinion, correct and the award made by him must be affirmed, and the appeal dismissed with costs.

[re Cavendish Woodhouse (Holdings) Ltd.; *The Irish Times,* 2nd October 1973.]

£1,000 Bereavement damages urged for husbands and wives –Law Commission Report

Damages of £1,000 for personal bereavement should be payable to a husband or wife who lost their spouse in an accident or to parents who have lost a child, says the Law Commission in a report yesterday.

It is one of several proposals made to Lord Hailsham, the Lord Chancellor, for improving the rules for assessing and awarding damages in actions for personal injury or death.

The committee proposes that damages now awarded for loss of expectation of life should be abolished but instead the injured person would be compensated for the loss of income during his lost years, less any sum he would have spent maintaining himself.

In awarding damages for pain and suffering, courts would take into account the suffering likely to be caused to a person by the knowledge that his life has been shortened.

Actuarial tables proposed

Another proposal is that parties to an action would be entitled to rely on evidence from actuaries in assessing future pecuniary loss in such cases as a widow who has lost the support of her husband or a man disabled by his injuries.

The commission suggests that the Lord Chancellor, with advice from an expert committee, could approve actuarial tables for use in court which would, if possible, take account of inflation.

Periodic parliamentary payments rejected

It supports the present system under which it is left to the judges to set the level of damages and rejects the idea that a legislative tariff to guide the courts should be laid down and revised periodically by Parliament.

While rejecting proposals that damages should be awarded in the form of periodic payments instead of in a lump sum, as at present, it accepts that courts should be able to make a provisional award to an injured person while authorising him to return to court later for more money if more serious consequences of his injury materialise.

The commission did not have within its terms of reference the question whether the present system for awarding damages which is based on proof of fault should be replaced by a system of strict liability or automatic cover by insurance.

This is now being considered by a Royal Commission.

The five Law Commissioners, headed by Mr. Justice Cooke, say the aim of their report is to ensure that compensation for pecuniary loss such as expenses and loss of earnings is full and that compensation for non-pecuniary loss such as pain and suffering and loss of faculties or a limb is seen by the public as being just.

Strong case for damages for bereavement

The commission thought there was a strong case for allowing recovery of damages for the bereavement caused by the death of a close relative. It could have "some slight consoling effect" where parents lose an infant child or where a spouse loses husband or wife.

It proposes a fixed tariff figure because it was anxious that there should be no judicial inquiry into the consequences of bereavement but it recognises that the effects of bereavement could be greater in some cases than in others.

The Daily Telegraph (26 July 1973)

BOOK REVIEWS

Goldman (Berthold)—European Commercial Law. Translated by Philip Hawkes and Christopher Mitchell Heggs. 8vo; pp. xxiv, 452; London, Stevens, 1973; £7.80.

The learned author is Professor of European Commercial Law in the Faculties of Law and Economics in the University of Paris, and this is a translation of his *magnum opus* which first appeared in 1971. As Dr. Simmonds has stressed in his Foreword, this book is by now very firmly established in the juristic literature of the Six original Member States. There is an invaluable Introduction of ten pages which is required reading. It is stressed that the establishment of a Common Market requires foremost the abolition of customs duties and of quantitative restrictions on imports and exports, and the setting up of a common customs tariff.

Equal access to the Common Market also requires that nationals of Member States can establish themselves, work and offer their professional services all over the territory without discrimination based on nationality; this also presupposes equal and effective competition between enterprises—which also involves co-ordination of company law.

This new European Law will have to be subdivided into European fiscal and financial law. European Social Law covering the free movement of workers, and European Commercial Law comprising the rules relating to freedom of establishment, competition and integration of European Laws relating to these. Community Law is quite distinct from the national laws of the Member States, and, according to the European Court supplants them.

European Commercial Law stems initially from the three original Treaties of Rome of 1957 and from subsequent international conventions, applied by the Council of Ministers and the Commission under the control of the European Court, which ensures uniform interpretation of Community Law. By virtue of Article 220, two conventions have been negotiated—namely (1) the Brussels Convention of February 1968, on mutual recognition of companies and juridical persons; and (2) the Brussels Convention of September 1968 concerning the execution of civil and commercial judgments. Whereas the function of decisions and regulations, which are immediately effective, is to create a Community Law of inter-State relationships, the purpose of recommendations and directives is merely to modify national legislation in order to harmonise and co-ordinate it, or to remove harmful discriminations.

On the other hand, the rules governing competition are largely left to the discretion of the Commission, whose decisions are published in the Official Journal. Through its jurisdiction to hear appeals under the Treaty, the Court is able to control the legality of the acts of the Council and of the Commission and thus becomes truly the protector of Community Law.

The main work is divided into three parts as follows; Part *one* deals in detail very clearly with rules regulating access to the Common Market, and the progressive suppression of restrictions on the right of establishment and to supply services.

As suppression of discrimination under Community Law is founded on nationality, it follows that it is necessary to study in detail the nationality laws of the Member States in order to verify the legal position. Whereas the notion of "establishment" included the acquisition of a business in another Member State, "the supply of services" includes the notion that a professional in one Member State will, independently and for remuneration, undertake tasks related to his profession at the request of a client in another Community country. Questions such as the entry and residence of foreigners are then considered in detail in relation to each of the Six Member States; and any particular discriminations are noted. The various bilateral and multi-lateral Conventions are then described. The persons benefiting from the freedom of establishment and the right to supply services, are the nationals of the Member States.

An effective and continuous economic tie exists by virtue of a pre-existing establishment within the Community. The scope of those who benefit from the right of free establishment and to supply services is very wide; and they include activities of an industrial, commercial, craft or professional character. The difficulties regarding supply of services of lawyers have already been noted in the *Gazette;* and the Commission have apparently also put forward proposals relating to medicine, dentistry and architecture.

Part *Two* covering 180 pages, deals with the law governing Competition in the Common Market. The Treaty envisages the adoption of common commercial relations with non-member States in transport and agriculture. Essentially the signatories relied upon a free market economy as a guide towards the objectives of the Market. The rules in the Treaty define the actions which prevent, restrain or distort competition, and generally prohibit them. Enforcement of competition is undertaken by the Council subject to the ultimate control of the Court.

Much of the material in previous works on Competition Law is then fully considered.

Part *Three,* covering 120 pages, considers the interesting problem of the creation of European Commercial Law and its relationship with national legal systems. The rules relating to harmonisation of laws, which apply uniformly to all Member States are strictly the only rules which genuinely form Community legislation; the Council has also prepared multi-lateral Conventions, and finally the harmonisation of legislation of Member States must also be undertaken. These are all the necessary Constitutive Components of European Commercial Law. Yet the most striking example is that of Company Law. The broad effect of Articles 100 to 102 of the Treaty as to approximation of laws is fully considered, and the two previously mentioned Conventions of 1968 are dealt with.

While Community Law binds the Member States, and, in case of conflict, overrules internal law, it must be applied in a uniform way throughout the Member States. This applies particularly to freedom of establishment and supply of services, as well as to the competition rules.

The criterion for applying competition law is whether the anti-competitive object or effect is felt on Community territory, and therefore does not apply

to restrictive agreements in other countries.

Enough has been said to show that this will remain the leading textbook on European Commercial Law for many years. Like all French textbooks, it is written with clarity and precision, and practitioners who wish to master this intricate subject which is now Irish law could not do better than to study it.

Jackson (Paul)—Natural Justice. 8vo; pp. xiii, 88; London, Sweet & Maxwell, 1973; £1.50 (Modern Legal Studies Series).

Mr. Jackson is now a Senior Law Lecturer in Birmingham, but he started his academic career in Trinity College, Dublin, and one would consequently have expected him to be well acquainted with Irish cases on this subject. Unfortunately, he has disappointed us, by not referring to Mr. Justice Walsh's definition of "Constitutional Justice" in *McDonald v Bord na gCon* (165) I.R. 217, and by not stressing how much more important natural justice is in countries which have written constitutions. However, Mr. Jackson has assembled all the recent English cases on the subject, starting with *Ridge v Baldwin* (1963) which held that the police watch committee was under a duty to observe the rules of natural justice by giving a right of hearing to the Chief Constable of Brighton before dismissing him. *In re Godden* (1971) 3 A.E.R., the Court of Appeal held that the doctor of a police inspector was entitled to see the reports and information communicated by the local police authority to the police doctor who was to examine him to see whether he was unfit for work. *In Pett v Greyhound Racing Association* (1969) 1 Q.B. 125, the Court of Appeal granted an interlocutary injunction to restrain the defendants from holding an inquiry into the running of Pett's greyhounds unless he was allowed to appear and be legally represented. *In Hannam v Bradford Corporation* (1970) I.W.L.R., the plaintiff schoolmaster, who had been dismissed by the school governors, would, according to the Court of Appeal, have won his case if he had pleaded bias instead of relying on wrongful dismissal. *In Pergamon Press* (1971) Ch. 388, the Court of Appeal held that inspectors conducting an inquiry under the Companies Act must act fairly—the directors must be given a hearing, but that did not entitle them to cross-examine witnesses. It is to be noted that in similar cases, the French Conseil d'Etat would award damages if it considered that the circumstances warranted it. English law apparently has decided that natural justice is restricted when applied to cases concerning university examiners, and disciplinary committees of trade unions and architects, the decision in *O'Farrell and Gorman* (1960) I.R. 239, suggests that natural justice would be strictly observed here; this is reinforced by the Supreme Court decision in *Paraic Haughey* (1971) I.R. Lord Denning applied the rules of natural justice in *Edwards v S.O.G.A.T.* (1971) Ch. 354, when, in a case of expulsion of a member from a trade union, he denied that "a union can give itself by its rules an unfiltered discretion to expel a man or to withdraw his membership". Yet taxpayers have been refused the right to appear before a tribunal in tax cases—an unlikely development here. *In Glynn v Keele University* (1971) I.W.L.R., Pennycuick V.C. while holding that a decision of exclusion from a university campus could only be made after a proper hearing, also held that the Court had no control over the quasi injunction. These few examples show that Mr. Jackson has delved deeply into recent English case law on natural justice, but a deep comparative study of American and Commonwealth cases would have enriched his material very much.

De Smith (S. A.)—Judicial Review of Administrative Action. Third edition; 8vo; pp. xlix, 549; London, Stevens, 1973; £7.25.

Professor De Smith frankly admits that, in preparing a new edition of his *magnum opus,* he was faced with various difficulties. Space considerations compelled him to limit the new case-law in Commonwealth jurisdictions, but this was offset by excellent English decisions, such as *Anisminic and Padfield.* While no fundamental changes in arrangement, in comparison with the first edition of 1959, and the second edition of 1968, have been made, yet the first chapter, which deals with "The Place of Judicial Review in Administrative Law" has been considerably expanded, as this edition has been enlarged by more than 60 pages compared to the first edition. Here the author stresses the fundamental fact that administrative courts should apply substantive and procedural rules distinct from the ordinary law, which fact is unfortunately not recognised in the Irish Constitution, save on a very limited basis; furthermore, administrative decisions here are sporadic and often peripheral, and it is thus not possible to evolve a coherent body of decisions on administrative law. The learned author talks of the administrative law system of England as "an ensymetrical hotch-potch" and the same term could be applied with more vigour in Ireland; this is largely due to Dicey's view that every person is subject to the ordinary law, and to the conservative insularity of Englishmen; fortunately recently the role of the Courts in administrative matters appears to have become more active and creative, largely due to an increase in awareness of the impressive performance of Courts, in the United States, France and some Commonwealth countries. The 1971 Report of Justice has been the most radical document to demand administrative reform. Whereas French administrative law can be expounded with perfect order, Irish administrative law is essentially untidy and *ad hoc,* for there is no uniformity in the scope of review permissible in appeals to the Courts, unless constitutional arguments are raised. On the other hand, Irish Courts can award a rich variety of remedies —prohibition, *mandamus, certiorari,* declaration, etc.— not available to foreign Courts—but these remedies are usually very complex and technical. Furthermore the Superior Courts will seldom review administrative findings of fact—and many claims such as those for wongful dismissal of civil servants, which could be entertained abroad, are unlikely to succeed here. But the main complaint was that the secretiveness of central administration was on the whole legitimised by the judiciary. Fortunately, here, as well as in England, the Courts are increasingly disinclined to interpret statutes as giving Ministers conclusive power to determine the limits of their own powers. The learned author in his own inimitable fashion has discussed all these problems in a masterful way, and the depth and erudition displayed by him makes this volume a most readable book in elaborating these very difficult problems. This volume is essential reading to all practitioners who wish to grasp the principles of judicial review.

Vallat (Sir Francis), editor—An Introduction to the Study of Human Rights. 8vo; pp. xvi, 127; London, Europa Publications.

The introduction, by Professor Sir Francis Vallat, sets down the general principles. This is followed by eight lectures delivered at King's College, London, in 1970, as follows: (1) Christianity and Human Rights, by Canon Evans; (2) The Rights of Man since the Reformation, by Professor Burns; (3) Man and the Modern State, by Professor René Cassin; (4) Race, Poverty and Population, by Lord Caradon; (5) Freedom of Association and the Right to Work, by Lord Denning; (6) The Right to live and be Free, by Professor Fawcett; (7) The Legal Protection of Human Rights—National and International, by Professor Sir Humphrey Waldock; (8) War and Human Rights, by Miss Gutteridge. The eminence of the lecturers ensures that the lectures make interesting reading though one might not necessarily agree with all of them. The subject of human rights is a wide one, and gives the lecturers plenty of scope to display their erudition.

Snell (Edmund Henry Turner)—The Principles of Equity. Twenty-seventh edition by Hon. Sir Robert Megarry and P. V. Baker; pp. clvii, 692; London, Sweet & Maxwell, 1973; £6.50.

Since the twenty-third edition in 1957, this well-known textbook has been brilliantly edited by Mr. Justice Megarry, and the present editor of the *Law Quarterly Review*, Mr. Baker, Q.C., has joined him since 1954. There is little doubt but that the previous editions before then had been difficult to read, and Mr. Justice Megarry wisely decided to recast the whole volume; as he has stated in the Preface, by now well over half the book consists of material written by the present learned editors. They have wisely decided not to consider save casually the fiscal aspects of the law of Trusts. The chapters on Married Women, Specific Performance and Injunction have been considerably extended. On a spot check of Irish cases on Trusts, we failed to discover *Provincial Bank of Ireland v McKeever* (1941) I.R. 471, relating to under influence, and, in relation to the doctrine of advancement the case of *Walsh v Walsh* (1942) I.R. 403, so often cited in Ireland. In charities, the case of *Maguire v The Attorney-General* (1943) I.R. 238, while under infants the controversial case of *Tilson v Tilson* (1951) I.R. 1, do not appear. Despite the mention of Ireland, in the Preface, a check of various other modern Irish cases has regretfully led to the conclusion that they do not seem to appear. There is no doubt that some of them are more important than some cited English cases, and perhaps space could be found in a future edition to treat some of them in the text in greater detail. Otherwise the clarity, precision and erudition we have come to expect from this learned work are more manifest than ever in the present edition. The learned editors have ensured a brilliant future for Snell as the clearest exposition of that most difficult of legal subjects, Equity.

Vaines (James Crossley)—The Law of Personal Property. Fifth edition by E. L. G. Tyler and N. E. Palmer; 8vo: pp. xlv, 602, index pp. 37; London, Butterworth, 1973; £4.80 (paperback).

Students are well acquainted with this work, which has been on their course since the first edition in 1954. As the third edition, which was published in 1962, only contained 458 pages, it will be appreciated that this edition has been enlarged by 144 pages, and thus contains much new matter. The two editors who are law lecturers in the University of Liverpool, were requested by the author to undertake this edition, and have accomplished the task most successfully. Despite pressure to exclude it, the editors wisely decided to retain the earlier chapters on such matters as the Nature of Personality; they also refrained from dealing with subjects like insurance, patents and trademarks. The chapter on hire-purchase has been rewritten, and the views of the Law Lords in *Branwhite v Worcester Works Finance Ltd.* (1969) 1A.C. 552, are fully discussed. Other recent decisions considered, include (1) *Lewis v Averay* (1972) 1 Q.B. 198, where a rogue bought a car with a worthless cheque on the pretext that he was the actor Richard Greene and immediately resold it to the defendant. The attempt to sue the defendant in conversion failed, as he had bought in good faith; (2) *Ashington Piggeries Ltd. v Christopher Hill Ltd.* (1972) A.C. 441, where Section 13 of the Sale of Goods Act was reconsidered; (3) *Belvoir Finance Co. v Harold Cole and Co.* (1969) 3 All E.R. 904, in which the term "mercantile agents" was mentioned; (4) *Astley Industrial Trust Ltd. v Miller* (1968) 2 All E.R. 36, where an action in detinue was successful against a defendant who had purchased in good faith. This volume, like the previous editions, will be invaluable to practitioners and students who have to consider intricate problems in personal property.

Phillips (Owen Hood)—Leading Cases in Constitutional and Administrative Law. Fourth edition; 8vo; pp. xviii, 395; London, Sweet & Maxwell, 1973) £3.75 (bound), £2.50 (paperback).

The excellence of this textbook of leading cases by the Pro Vice-Chancellor of Birmingham University, is so well known that it does not require any *encomiums.* While twenty-one cases have been deleted, no less than twelve new cases have been added in this edition, including (1) *Blackburn v Attorney-General* (1971) 1 W.L.R. 1037, in which an unsuccessful attempt was made to hold that Britain had derogated from her sovereignty by joining the Common Market; (2) *Nissan v Attorney-General* (1970) A.C. 179, where the House of Lords held that the Crown was liable to compensate a hotel proprietor in Cyprus for damage done by troops; (3) *Schraidt v Home Secretary* (1969) 2 C.H. 149, where it was held that the Home Office had complete discretion not to allow an alien scientologist to stay in England, and also *Padfield Anismimic and Conway v Rommer.* The cases have as usual been chosen with care, and the pactitioners must thank Professor Hood Phillips for greatly facilitating their task in expounding leading English constitutional and administrative decisions. Some short notes of recent Irish decisions would have been invaluable.

Hill (Hugh), compiler—Outlines of Irish Taxation. 1973-1974 (including the Finance Act 1973). 8vo; published privately and printed by the Leinster Leader, pp. 20; published privately and printed by the Leinster Leader, Naas; 35p.

Mr Hill is a barrister who has retired from the Inland Revenue, and consequently, he has made a deep study of Irish taxation law and particularly of the recent

Finance Acts. Every year, for the past few years he has published this *Outlines of Irish Taxation* which is a most useful summary of Irish income tax. This booklet is invaluable to the practitioner who wishes to get a quick reply on points of taxation law without delving deeply into the Finance Acts.

Annual Survey of Commonwealth Law. 1972. Prepared under the auspices of the Faculty of Law in the University of Oxford and the British Institute of International and Comparative Law, edited by Professor H. W. R. Wade and Harold Brown; 8vo; pp. lxxxvi, 705; London, Butterworths, 1973; £15.50.

The pattern of this annual survey is now well established, and the general editors have got experts to write on each of the twenty-one subjects covered: Fundamental Rights (Dr. Yardley); Criminal Law (Mr. Heydon); Trusts (Mr. Davies); Labour Law (Paul O'Higgins); International Law (Dr. Brownlie); etc. As in previous years all the most important cases on a particular subject, whether in Britain, Ireland, or the Commonwealth are mentioned at least in a footnote. In the result this is the most comprehensive survey, and the authority and erudition of each contributor is unquestionable. There is a useful paragraph on the Livestock Marts Act case, but it seems strange that, despite the Constitution, Ireland is listed in the Index as "Eire". Those who wish to follow the trend of judicial decisions in any of the subjects covered by the experts could not do better than to study it in this massive volume.

Cross (Rupert) and Asterley Jones (P.)—Cases on Criminal Law. Fifth edition; 8vo; pp. xxxiv, 391; London, Butterworth, 1973; £2.60 (paperback).

The merits of the fourth edition of this book were reviewed in the July-August 1973 *Gazette,* at page 169. In this edition, thirty-six new cases have been inserted, and thirty-one old cases deleted, particularly relating to reason, criminal libel and perjury. Amongst the inclusions are (1) *Mohan v R.* (1967) 2 All E.R. 58, where it was held that two persons may be convicted of aiding and abetting each other; (2) *R. v McInnes* (1971) 3 All E.R. 295, relating to self-defence, manslaughter and murder; (3) *Phillips v R.* (1969) 2 A.C. 130, relating to what the jury must consider when provocation is pleaded in answer to a charge of murder; and (4) *Cray v Barr* (1971) 2 All E.R. 949, where it was held that *mens rea* was necessary in the case of all forms of manslaughter. This new edition has been edited with the care and excellence we can expect from these learned authors of our profession.

Press not critical enough–Judge

The retiring President of the Circuit Court, Mr. Justice Barra O Briain, said last Friday—his final appearance on the Bench in Limerick—that generally speaking the press in Ireland had been far too timid and not nearly critical enough in its judgment on the courts of the country.

Insofar as this comment relates to critical assessment of the effects of judgments, it is probably true that there is more room for editorial appraisement than has been generally used. But this is obviously an area where editors must walk warily.

An article designed to show significant differences in sentencing policy as between judges would not be in contempt of court—but the writer would need to know all relevant information, including the accused's record as read to the sentencing judge, family circumstances, etc. Comment based on partial information would be very risky indeed.

There is certainly room for comment on the effects of judgments in any branch of the law but with one proviso: as the law stands such comment should wait until the time for appealing the decision has passed, otherwise any comment might be seen as pre-judging the issues on appeal and hence be in contempt of the appeal court. Often once the appeal time has elapsed, the newsworthiness of a case has disappeared too.

Contempt of Court

Another point is that the law of contempt of court is vague: even if it were crystal clear its exercise is still at the discretion of the judges concerned who, naturally, differ as any human beings differ.

To illustrate the general vagueness of this field of law the recent House of Lords decisions in the Sunday Times case is a good example. It now appears that in England fair and temperate pressure on a party in litigation to settle out of court would not be contempt of court. If this is true, it is a big change in the law: again, would this ruling be followed in this country? The House of Lords decisions are read here as persuasive but not binding authorities.

There are a number of Irish cases where editors have been convicted of contempt for publishing abusive material about the courts. The distinction here should be clear enough. Equally, of course, anything calculated to sway the minds of a potential juror cannot be used. But once a judgment has been given and the time for appeal is passed there is room for assessment, and adverse criticism, of the decision.

The Irish Times (30 July 1973)

LEGAL EUROPE

Lawyers in France—The French Legal Profession after the Reform

(Reprinted from English Law Society "Gazette", by kind permission)

FRENCH LEGAL PRACTITIONERS

Before the 1971 Reform

1. Avocat	2. Avoue	3. Avocat au Conseil D'Etat et a la Cour de Cassation (**Avocats** admitted to practise before these highest courts)
4. Notaire	5. Agree (Pleader before Commercial Courts	6. Conseil Juridique (Unadmitted legal practitioners)

After the 1972 Reform

1,2 (partly) and 5:	Merged into the **one,** fused profession of Avocats (barristers **and** solicitors)
3 and 4:	Unaffected
6:	Restricted and, for the first time, regulated. (This category also comprises foreign practitioners in France, qualified in their countries of origin but not, or not necessarily, in France.)

The lawyers before the 1971 reform

Until its reform, enacted by law at the end of 1971 and which came into force in September 1972, France was served by several classes of lawyers, with overlapping and complementary functions. The "Avocats" (loosely: barristers) did, to a large extent, the work both of the English barrister and solicitor, and "Avoués" attended to procedure, doing also the solicitor's part of it, has the monopoly of preparing and lodging written pleadings. Notaries, in addition to English notaries' functions, had—and still have—the monopoly of preparing, attesting and holding wills, deeds relating to real property, mortgages and leases and settled and authenticated memoranda and articles, and other formal company documents. Arising from their conveyancing activities, notaries also had and have lucrative real estate practices, did probate and administered estates. But much of the day to day non-contentious work was in the hands of "Conseils juridiques" (legal advisers), also called "hommes d'affaires", "Men of Business'. These, astonishingly, did not require any legal education, training or qualifications. And yet they did much of the French advisory, commercial, family, administrative and tax work, done in England by solicitors and accountants. There existed also "Agrèés, who pleaded before some special commercial courts and, further, high court barristers, called "Avocat au Conseil d'Etat et à la Cour de Cassation", who were avocats with an exclusive right of audience before these highest courts.

The law of 31 December 1971 brought about a fundamental reform. It was the result of decades of debate and long preparation. The reform adopted is called the "small reform"; a "major" reform was to deal with the *whole* of the legal profession and would have put an end to the unregulated activities of the *conseils juridiques* entirely. The present reform, as will be shown is more limited.

Historical background

The existence of the two main types of lawyers before 1971—of avoués and avocats, has a long history. All professional organisations, including also lawyers, having been abolished in the Revolution, the need, once the Revolution simmered down, led in 1800 to the re-admission of avoués. They were appointed by the executive and attached to particular courts. Besides an exclusive right to handle procedure and the right to appear for clients and prepare their cases for trial, they also obtained the right to *conduct* cases in court. In 1810, the need for lawyers with a wider range came to be felt. Although Napoleon—like other dictators before and after him—had no liking for lawyers, who meddled too much for his liking in politics, the profession of avocats was restored. But neither his opportunism nor his excessive concern with family ties—his father and one of his brothers had both been avocats—which he rated high in other fields, led him to grant to the avocats the right of audience; this as an exclusive right was not granted to them until 1922.

The avoués

Up to the time of industrialisation in the 19th century, it was the avoué who, thanks to his monopoly, conducted proceedings. It was he and not the client who mostly chose the avocat for a case. The avoué also advised the client in other respects and the notary gradually became the economic adviser of the well-to-do and of property owning clients.

The number of avoués was limited. Their appointment created a "charge" or right of property transferable *inter vivos* and which could also devolve by inheritance—often to sons-in-law. They were licensed to act, in civil matters, in the courts of first instance of the High Courts and in the appeal courts.

In commercial courts, legal representation came to be the preserve of agréés—lawyers with lesser legal qualifications and specialising in commercial matters.

The avocats concerned themselves with legal arguments in the pleadings and with appearances at hearings ("plaidoirie"), considering themselves as members of a noble, gentlemanly profession. For this reason, they refused to be agents of the client; they merely assisted him and defended his cause. Yet, compared with the English barrister, he had the inestimable advantage of direct contact with the client, without the intervention

of avoués or others. In fact, having been consulted in a litigious matter the avocat in Paris or larger cities, chose or recommended an avoué (in smaller provincial towns this was less the case). The direct connection of the avocat with the lay client became an even greater potential advantage with the advent of industrialisation and a great upsurge in the country's economic life towards the end of the 19th century, since non-contentious business increased, the avoués became reduced to the role of mere proceduralists. Eventually, there opened therefore a wide field of remunerative activity for the avocat. But he treasured his independence from the client and wished to remain the pure legal adviser, the orator, secluded in his chambers and not wishing to stoop into the humdrum legal problems of industry, trade and finance, or family matters. The Bar maintained a strict code of professional conduct, based on this restricted concept of the lawyer's role and it was not permitted for an avocat to attend outside chambers, to accept directorships or salaried posts in company legal departments. Avocats' chambers in most cases were run with a minimum of clerical staff and facilities, more or less like those of English barristers. All these factors led to an absence of close contacts and relationship with day-to-day problems of the clientele and with the economic world, for which the young avocat was, anyway, not trained. A university degree in law followed by short practice in chambers, qualified for call to the Bar; it was not until the 1940s—under the Vichy rule—that a higher diploma was introduced, a certificate of "professional capacity", to be obtained before call. At the same time, courses enabling students to understand some practical aspects of their future activities, in addition to their academic and professional training, were introduced.

The conseil juridique

The complex needs of modern life and business demanded training and a practical education, adapted to these, to the needs of the whole fabric of a modern country. Had the avocat satisfied these needs he could have become the lawyer, with a general and lucrative practice. But his lack of contact with life and business left a gap which was filled by all sorts of willing candidates, opportunists, men of business experience, retired civil servants, even gendarmes, agents or, lately, men with an academic degree in law but no other legal training, who came to be called *conseil juridique* or, colloquially, *hommes d'affaires.* Anyone, without any knowledge of or training in law whatsoever, could so practise and many self-appointed advisers with the most varied backgrounds came through this wide-open door, to dispense "legal" advice and perform services sometimes with common sense but often without competence. No professional regulations nor association policed the activities of these conseils juridiques; they could canvass and advertise for clients and serve them according to their own self-set standards and rates. Visitors to French cities will recall having seen large name plates or signs at door entrances or affixed to buildings in prominent positions advertising the conseil juridique operating on the premises and often his special aptitudes. Readers may have observed their advertisements in the French press. Large such offices, often incorporated with limited liability mushroomed and appropriated highly profitable legal work either from the qualified lawyers or self-generated in the absence of qualified practioners. They were consulted even on complex legal and tax matters by people who either could not go to an avocat, or did not know that this was the right thing to do, since the conseils juridiques became ingrained in the community's life.

Companies, in the absence of a qualified, practical legal profession with appropriate standards, were compelled to set up their own legal departments, manned by salaried university trained staff—not by avocats. The French Bar, promoted this tendency by forbidding the acceptance of any salaried legal appointment by avocats and disbarred offenders.

The pressure for reform

Thus, by default, much lucrative non-contentious work went to notaries and much of it came to rest, for the same reason, with the conseils juridiques. In the end, public and professional opinion began to press for reform of an archaic profession. For reasons beyond the scope of this article, notaries were not to be included in the reform, nor were the avocats to the "Conseil d'Etat" (the supreme administrative court, having jurisdiction in public, administrative and fiscal law), and before the "Cour de Cassation", the highest court of appeal—a class by themselves, small in numbers.

The reform

During the debate of the reform, it was intended to bring the *conseils juridiques* also into the new reformed, fused legal profession, but the difficulties appeared to be insuperable. To appreciate these, it is sufficient to realise the great number of conseils juridiques practising (estimates only are available; they range from 5,000 to 15,000), the great diversity of their training and education—if any—the extremes in their standing and the necessity to respect acquired rights. The *avoués,* on the other hand, could be more easily assimilated to the Bar and also more easily compensated in respect of their acquired rights. No "major" reform was therefore attempted and the small reform, introduced by the law of 31 December 1971, created with effect from 16 September 1972 a new profession, conferring the title *avocat* on *all who practised the new, fused profession.* Included in it, within the existing Bar associations and with the right to practise the *whole* litigious and non-litigious professional activities (except those reserved for notaries and the higher ranking barristers) mentioned, were *avocats. avoués* and *agréés,* who, as will be recalled, practised before the special commercial courts. Avoues attached to *appeal courts* are, for the time being, to continue without being fused. The avoués, brought into the new profession and who, by their inclusion, have lost valuable property rights, their monopoly "charge", are being indemnified from a levy, collected from litigants. Compensation is distributed through a fund specially set-up.

Conseils juridiques now restricted

But what happens to the *conseil juridique* in the reform? Henceforth, they must be registered on a Roll kept by the Procureur de la Republique, who is to exercise some disciplinary powers over them. *Conseils juridiques* having practised for at least 5 years are admitted to the Roll without legal training or education, merely on account of having so practised. Those with only 3 years practice qualify for admission if they have a prescribed, minimal legal degree. Conseils juridiques having less than 3 years practice require a degree of law (bachelor's or doctorate), or an equivalent foreign diploma as a condition to be allowed to practise.

Conditions of standing are also imposed and many will not be able to satisfy some or all of the new requirements. To cap the new requirements, the activities of *conseils juridiques* are *now restricted to advising and the drafting of documents.* Whether their lucrative interventions with government agencies will also come to an end and whether the restrictions will be strictly observed, is to be hoped for but remains to be seen. Many will give up; it is expected that not more than 1,500 to 2,500 will be admitted to the Roll.

The aims of the reform

What were the objects of the reform? The fusion of the various branches of the profession is first and foremost a rationalisation. The unification of the two main branches of practitioners should benefit those who resort to law in two respects: by simplification, obviating the necessity for clients to deal with two types of lawyers, members of two separate professions. This it is hoped that procedure will be speeded up and lead to a saving in the costs. It should also remove the disadvantages of diffused responsibility arising from the sharing of roles in litigation between avoué and avocat. The reform is also an approach towards the systems in certain other Continental states, such as Germany, Holland and Italy, where the profession, for all practical purposes, is fused.

The French reform may be of interest to the English legal professions, in helping to crystallise ideas, tending towards the same end and demonstrating at least one possible solution. Some figures in this field might be of interest: the number of avocats, before the reform, was about 7,500 in the whole of France; one half of them were members of the Paris Bar. At the same time, 1,500 avoues practised in the country, out of them 150 in Paris. The number of notaries in the whole of France is just over 6,000.

PRACTICE NOTE - Extension of time for compensation under Planning Act

An application of great interest was recently brought before the Dublin Circuit Court. It was stated by Counsel to be the first of its kind to be brought in the Circuit Court, certainly in the Dublin Circuit area.

The application was brought under Section 57 (6) of the Local Government (Planning and Development) Act, 1963, for an extension of time to bring a claim for compensation under Part VI of the same Act. Frascati Estates Limited of 28 Lower Leeson Street, Dublin, made a claim for compensation under Section 55 of the Act against the Corporation of Dun Laoghaire arising out of the refusal of an application for planning permission by the Corporation as Planning Authority, in relation to the lands and premises known as Frascati, Rock Road, Blackrock, comprising in all 6.16 acres. The Corporation refused planning permission on the 19th May 1972.

The Developers appealed against that decision and an oral hearing of the Appeal was held in October 1972. Before the Minister gave his decision Frascati Estates Limited withdrew their Appeal to the Minister for Local Government and on the 12th December 1972 lodged a claim with the Corporation for compensation amounting to £1,309,972.00. The Corporation rejected their claim on the basis that it had not been brought within the six months statutory period as set out in subsection (6) (a) of Section 55 of the Act which provides that a claim for compensation shall be made within six months after the notification of a planning decision by the Planning Authority or the Minister, as the case may be. The Corporation contended that the six months time period ran from the 19th May and, therefore, Frascati Estates Ltd. were late in bringing their claim.

By Notice of Motion dated the 24th January 1973 Frascati Estates Limited applied to the Circuit Court for an extension of time and the application was brought in accordance with the Circuit Rules (No. 1) 1970 (S.I. No. 149 of 1970) made by the Minister for Justice on the 24th June 1970. The procedure under these rules differs somewhat from the procedure dealing with Applications, Notices of Motion, etc., in the Circuit Court.

Order 60, Rule (5) provides that an Application to the Circuit Court for extension of time (which shall be called an Action) shall be commenced by the issue of a Notice of Motion in form No. 2 to the Schedule to the Order and the Applicants shall be called Plaintiffs. The same rule provides that the Planning Authority shall be called the Respondent. The rules differ from other rules in so far as that instead of the Notice of Motion being grounded by an Affidavit, Form 2 sets out the grounds for bringing the application.

Rule 13 of Order 60 provides that if a Respondent wishes to dispute wholly or partly the Plaintiff's claim he must serve a Defence in accordance with Form 3 on the Plaintiff within ten days after the service of the Notice of Motion. This document replaces the more usual replying Affidavit.

Another departure from the ordinary rules is contained in rule 14 which provides for the hearing of oral evidence and it is unusual for oral evidence to be given in the hearing of a Notice of Motion except by special leave of the Court.

The procedure to be adopted is, as mentioned above, unusual and the term "Plaintiff", "Action" and "Defence" would seem to confuse a Notice of Motion with an ordinary Circuit Court Action. The time limits set out in the Rules must be closely followed.

Although the application is termed an action, there is no need or provision for the service of a Notice of Trial. The original application (Form 2) sets the matter down for hearing and the Defence, if any, must be served within ten days after the service of the application and filed within seven days of such service—rule 13.

The position is further confused by an almost identical procedure under the same rules to deal with enforcement of awards made by the County Registrar under the Landlord and Tenant (Ground Rents) Act, 1967.

For the purpose of the record, the application which came before Judge Wellwood on 5th March 1973 was granted. The learned Circuit Judge did not give written judgment. He said he had a discretion which allowed in favour of the Plaintiff, but awarded costs to the Corporation (see Rule 15).

Bankruptcy Law Committee Report

SUMMARY OF RECOMMENDATIONS

The Report of the Bankruptcy Law Committee under the Chairmanship of Mr. Justice Budd, was published on the 3rd October 1973.

Among the more important recommendations are the following.

Section I, Paragraph 15, Sub-section 1

An examination of the existing law contained in the Bankruptcy Acts of 1857 and 1872 was undertaken. The general principles were found to be satisfactory and have been retained. "Where considered suitable, we have taken some ideas from contemporary bankruptcy, and, having adapted them to Irish conditions, have included them in the draft Bill contained in Appendix D. In the light of decisions of the Irish Courts, we have found it necessary to introduce a number of new provisions and to amend some of the existing ones. In doing so, we have borne in mind the necessity in doing justice to the creditors and the bankrupts, by keeping a balance between the harshness of creditors and the fraud of debtors. Constant reference is also made to reports and recommendations made by Committees established in England, relating to Bankruptcy Law. As there are no modern books available on Irish bankruptcy law, we have made our Report as extensive as possible."

Chapter 2: Petitions, Acts of Bankruptcy and Adjudication—*Major Recommendations*

(1) *Petition to Court*—This procedure should be retained. Petition and adjudication should be contemporaneous. The minimum amount of the petitioning creditor's debt should be increased to £100. An act of bankruptcy should be available for three months only. The debt of the petitioning creditor should be a liquidated sum. A secured creditor should be able to petition for adjudication.

(2) *Acts of Bankruptcy*—Levying of execution by the seizure of a debtor's goods or a return of no goods made by the Sheriff or County Registrar, whether by endorsement on the order or otherwise, should be an act of bankruptcy. A debtor's summons should be renamed a "Bankruptcy Summons". The giving of a fraudulent preference should be an act of bankruptcy.

(3) *Adjudication*—Immediate seizure of a bankrupt's property should be made on adjudication. Only one statutory sitting of the Court is necessary. A debtor in prison under the Enforcement of Court Orders Act 1926 should be released on adjudication. A statement of affairs should be less complicated. The assets of a debtor adjudicating himself bankrupt should not be less than £100.

Chapter 3: Composition after Bankruptcy—*Major Recommendations*

The system of paying compositions after bankruptcy should be continued. The second composition sitting should be abolished. In deciding on an offer any creditor whose debt is below £20 in number and value should be ignored. An instalment of a composition should not be secured by a bill, note or other security signed by or enforceable against the bankrupt alone. The Court should have discretion to refuse to accept an offer payable by instalments if the final instalment is not payable within two years from the date of the approval of the offer. The Court should have full control over compositions. A bankrupt should be entitled to his discharge and the revesting of his estate on the lodgment of the cash and/or the bills with the Official Assignee. A claim by a creditor having a corrupt agreement with a bankrupt should be void and both should be guilty of an offence.

Chapter 6: Bankrupt Dying after Adjudication—*Major Recommendation*

If a debtor dies after adjudication the bankruptcy should continue.

Chapter 7: Summonses, Warrants for Committal and Examinations—*Major Recommendations*

A person in prison pursuant to an order of the Court should, if required by its direction, be brought before it. If he satisfies the Court that he has complied with its lawful requirements he should be released, otherwise he should be taken back to prison. While examinations should normally be held in public the Court may direct that the whole or any part of any sitting should be held in camera.

Chapter 8: Warrants—*Major Recommendations*

A search warrant should be necessary to enter premises other than the bankrupt's.

Chapter 9: Vesting (including Election and Disclaimer)—*Major Recommendations*

There should be absolute vesting in the Official Assignee only. The dual system of election and disclaimer should be abolished and a single system of disclaimer substituted. Power should be given to the Court to make an order for possession to the person entitled under the disclaimer and to vest property in him. Notification of a disclaimer should be given to the Registrar of Titles.

Cahpter 11: Registration of Lands, Deeds, Conveyances, etc.—*Major Recommendations*

A certificate under the seal of the Court should be issued to the Official Assignee as evidence of the vesting of a bankrupt's property in him, this certificate to be registrable as if it were a conveyance.

Chapter 12: Excepted Articles—*Major Recommendations*

The monetary limit for excepted articles should be increased from £20 to £100 or such further sum as the Court may allow.

Chapter 13: Clauses in Agreements or Leases which (1) Provide for Forfeiture or (2) Prohibit Alienation—*Major Recommendations*

The Official Assignee should be in a position to dispose of a bankrupt's interest in a lease. Every covenant or provision for forfeiture in a lease on the bankruptcy of the lease should be void against the Official Assignee. A condition in a hire purchase agreement providing for the termination of the agreement on the bankruptcy of the hirer should also be void against the Official Assignee.

Chapter 14: Judgments, Seizures and Judgments-Mortgages—*Major Recommendations*

(1) Judgments which are not registered within twenty-one days of bankruptcy should not be void.

(2) The proceeds of sale of goods and leaseholds or any moneys received in satisfaction of an execution should be retained by the Sheriff or County Registrar for twenty-one days, and, in the event of bankruptcy, should be paid to the Official Assignee. There should be no lower limit to the amount retained by the Sheriff or County Registrar for payment to the Official Assignee in the event of bankruptcy. The period of retention should be increased to twenty-one days.

(3) A judgment mortgage registered at least three months before adjudication should give the mortgagee preference over simple contract creditors.

Chapter 15: Power of the Court to put the Official Assignee or the Purchaser of Lands in Possession—*Major Recommendations*

Provision should be made to enable possession of a bankrupt's lands to be given to either the Official Assignee or a purchaser.

Chapter 18: Money Deposited in the Post Office Savings Bank and Securities issued through the Post Office by the Minister for Finance—*Major Recommendations*

Money in the Savings Bank and securities issued through the Post Office by the Minister for Finance should be subject to the vesting provisions in bankruptcy.

Chapter 20: Copyright—*Major Recommendations*

The author of a work should receive royalties in full where the holder of the copyright is adjudicated bankrupt.

Chapter 22: Fraudulent or Voidable Preferences—*Major Recommendations*

A conveyancer or transfer made within six months of adjudication should be deemed fraudulent. Guarantors should be brought within the confines of the section. A new provision should be introduced to deal with certain transactions carried out within three months of adjudication, which would not be fraudulent, but which would in future be declared void, if the doctrine of relation back were abolished. The section should not apply to arrangements.

Chapter 23: Voluntary Conveyances—*Major Recommendations*

The section should apply to all debtors, whether traders or not, and to wives as well as husbands. Voluntary conveyances should be avoided if made within two or ten years, depending on the circumstances. A transfer of after-acquired property made in pursuance of a contract or settlement should be void against the Official Assignee unless made more than two years before adjudication. The right of a spouse under Section 113 of the Succession Act 1965, if exercised by a bankrupt should not be void against the Official Assignee.

Chapter 27: Power of Court to Appropriate Part of Bankrupt's Income, Salaries, etc.—*Major Recommendations*

The proposed section has been extended to cover the earnings of professional and self-employed persons. Departmental or other sanction to pay portion of a salary or income to the Official Assignee is, in our view, unnecessary.

Chapter 29: Allowances Payable in Bankruptcy—*Major Recommendations*

Allowances payable in bankruptcy should be a matter for the judge sitting in bankruptcy.

Chapter 30: Position of Banker in Relation to Bankrupt's Account—*Major Recommendations*

Special notification of bankruptcies should not be given to the Irish Banks Joint Standing Committee. Banks should notify the Official Assignee of any account in a bankrupt's name.

Chapter 31: Debts to Rank Equally—*Major Recommendations*

Subject to Sections 60 (2) (B), 81 and 132 of the draft Bill, all debts should rank equally.

Chapter 34: Claim to Property in the Possession of a Bankrupt—*Major Recommendations*

Claimants to property in the possession of a bankrupt should file with the Official Assignee a claim verified by affidavit. If an affidavit is not filed within one month after service of a notice from the Official Assignee he may sell such property.

Chapter 35: Re-Direction of Letters—*Major Recommendations*

Provision should be made for an application to be made by the Official Assignee, to re-direct to him letters including telegrams and postal packets addressed to a bankrupt.

Chapter 36: Audit and Dividend—*Major Recommendations*

A new procedure for distribution of a bankrupt's estate is recommended. It suggests that the report to the Court, a copy of the bankrupt's account in the Official Assignee's books, particulars of expenses, fees, costs and a note of the dividend payable should be placed in the Court file to be open for public inspection prior to their submission to the Court for approval.

Chapter 37: Unclaimed Dividend Account—*Major Recommendations*

The existing Unclaimed Dividend Account operated by the Judge and the Examiner should be wound up and replaced by one operated by the Official Assignee alone to which the balance in the existing account should be transferred. The provisions relating to indemnification of the Official Assignee out of the Unclaimed Dividend Account should be retained and extended.

Chapter 38: Annulment and Discharge—*Major Recommendations*

Annulment and discharge should be distinguished. A bankrupt whose estate has been realised should be entitled to his discharge if his creditors receive fifty pence in the £ or more. A bankrupt should be entitled to his discharge if his bankruptcy has subsisted for twelve years. All subsisting bankruptcies where the order of adjudication was made before the 1st January 1950 should be discharged.

Chapter 39: Partnerships—*Major Recommendations*

The existing provisions applying to debtors' summonses in relation to partners should apply to bankruptcy summonses. The principles of Lord Loughborough's Order (now rules 88 to 90) should be made statutory. Solvent partners should lodge such accounts and information as the Official Assignee may desire. We suggest new provisions for the lodgment of information with the Official Assignee concerning the winding-up of partnership estates or estates in which a bankrupt has an interest. Where a bankrupt is a party to a contract with any other person, the latter should be capable of suing or being sued without joining the bankrupt. Any partners carrying on business under a partnership name may take proceedings or be proceeded against in the name of the firm and the Court may order the disclosure of the partners' names. Limited partnerships should be subject to bankruptcy proceedings in the event of the general partners being adjudicated.

Chapter 40: Estates or Deceased Persons Dying Insolvent—*Major Recommendations*

Estates of deceased insolvents should be wound up in bankruptcy. If no personal representative is constituted, notice of an administration order should be served on such person as the Court thinks fit. The right of retainer should be restricted.

Chapter 41: Surplus in a Bankruptcy—*Major Recommendations*

A surplus in a bankruptcy matter should be paid to the bankrupt—no interest should be allowed to ordinary creditors.

Chapter 42: Arrangements—*Major Recommendations*

Protection should be granted to a debtor, notwithstanding an execution order in the hands of the Sheriff, which would be effective against all creditors except the execution creditor. If a debtor is granted the protection of the Court, he should, if he is imprisoned under the Enforcement of Court Orders Act 1926, be released. Two copies of the statement submitted by the debtor at the preliminary meeting should be filed in the Official Assignee's office two days before the private sitting. A second private sitting should no longer be held. The Official Assignee may refuse to act as trustee in a vesting arrangement. Failure of an arranging debtor to carry out the duties imposed on him by the statute should in future lead to his adjudication. A person carrying on business on his own and also in partnership may not obtain protection in respect of his personal liability unless all his partners join with him. The special sitting to consider any difficulty should be abolished, but, when his proposal has been accepted, a debtor should be able to apply to the Court to hold a special sitting. In a vesting arrangement the Official Assignee or any person interested may apply to the Court to appoint a sitting for enquiry. The audit of vesting arrangements should be abolished and a new system of distribution should be introduced. Goods delivered by a creditor on the eve of protection to a debtor may be returned or paid in full. Court control over trust deeds is undesirable. The Deeds of Arrangement Act 1890 should be repealed.

Chapter 43: Proof and Admission of Debts—*Major Recommendations*

The present system of finding and proving debts should be retained except that the sittings presently held before the Assistant Examiner should in future be held before the Official Assignee. A modification of the present practice has been made and is set out in the First Schedule. Specific proof of debt sections are recommended for repeal and replacement by an omnibus section embracing all the present provisions. Mutual debts and credits should be set off. The system of deducting a rebate for interest from the dividends on the debts payable in future should be abolished, and the creditors should be admitted for the amount due at the date of adjudication. Interest under a contract should be provable in bankruptcy. The payment of interest to creditors out of a surplus in bankruptcy should be abolished. Proofs of debt should be capable of being amended with the consent of the Official Assignee. A creditor should bear the costs of making his proof of debt, unless the Court shall otherwise specially order. Proof of a debt which, after investigation, does not appear to be due, should be expunged. A penalty should be imposed on a creditor making a wilfully false statement or wilful misrepresentation. The costs of a judgment should be provable.

Chapter 45: Jurisdiction in Bankruptcy—*Major Recommendations*

Bankruptcy jurisdiction should be confined to the High Court. The power of the Bankruptcy Court to review, rescind and vary its own orders should be continued. Every order of the Bankruptcy Court should be subject to appeal. Bankruptcy jurisdiction should be withdrawn from the Circuit Court.

Chapter 46: Solicitors Acting in Bankruptcy Matters—*Major Recommendations*

(1) That a solicitor may appear, act in and plead in any proceedings in the Court without being required to employ counsel. (2) For the appointment of a solicitor to act for the assignees.

Chapter 50: Bankruptcy Offences—*Major Recommendations*

A trader who has been adjudicated a bankrupt or who has obtained the protection of the Court should be guilty of an offence if he has failed to keep books. Excessive gambling or rash speculations by a person subsequently adjudicated should be an offence. The maximum sentence for certain offences should be raised to five years penal servitude. Certain bankruptcy offences should be scheduled under the Criminal Justice Act 1951 so that, in less serious cases, the matter may be dealt with by a District Justice. The Circuit Court is the appropriate Court for the trial of bankruptcy cases.

Chapter 51: Officers of the Court—*Major Recommendations*

Control by the Examiner over the Official Assignee should cease. The functions delegated to the Examiner as well as the duties assigned to him under the rules should be redistributed. Estate drafts should be signed by the Official Assignee alone. The Official Assignee should not be subject to supervision. He should seek the sanction of the Court only in case of doubt or difficulty. The Official Assignee in bankruptcy should be a corporation sole.

Chapter 52: The Messenger of the Court—*Major Recommendations*

The Court Messenger should be known as the Inspec-

tor. His expenses and those of his assistants should be borne by bankrupt's estates. It should be a misdemeanour to obstruct an auctioneer appointed by the Minister or the Court or the Inspector or his assistant. No provision for payment to the Inspector of a percentage of the amount realised by the sale of a bankrupt's goods and chattels should be made.

Chapter 53: Auxiliary Provisions—*Major Recommendations*

The auxiliary provisions or order in aid section should not alone be retained but extended to other countries, as evidenced by the following:

(1) *Avant-projet de convention* relative á la faillite, aux concordats et aux procédures analogues.

(2) *Rapport sur la convention* relative á la faillite, aux concordats et aux procédures analogues.

Rather than delay presentation of the Report we decided not to await an English translation which was not immediately available nor to work on the French version, which of necessity would be slow.

Chapter 54: Rule Making Authority—*Major Recommendations*

A separate and independent Rule Making Authority should be established to deal with bankruptcy matters.

Chapter 55: Preferential Payments—*Major Recommendations*

Preferential payments of all kinds should be abolished.

Chapter 56: Returns to Parliament—*Major Recommendations*

Both the annual return to Dail Eireann and the half-yearly return to the Examiner should be abolished.

Chapter 57: Second or subsequent Bankruptcies—*Major Recommendations*

Creditors in second and subsequent bankruptcies should have priority in those bankruptcies.

Chapter 58: Bankruptcy of Solicitors and Auctioneers—*Major Recommendations*

Changes recommended either under (1) the Solicitors Act 1954, Sections 34, 51, 61 and 69; (2) the Solicitors Act 1960, Sections 21 and 32; and (3) the Auctioneers and House Agents Act 1967, Sections 5, 11, 14 and 15. No change recommended.

Chapter 59: Doctrine of Relation Back—*Major Recommendation*

The doctrine of relation back should be abolished. Certain transactions by a debtor within three months of adjudication should, however, be void against the Official Assignee.

Chapter 60: Married Women—*Major Recommendations*

It is recommended that husband and wife can claim against each other as if they were not married.

Chapter 61: Reputed Ownership—*Major Recommendations*

The reputed ownership or order and disposition clause should not be re-enacted.

Chapter 62

The Trustee Clauses contained in Sections 87-122 of the Bankruptcy Ireland Amendment Act 1872 should not be re-enacted.

Chapter 63: Wards of Court—*Major Recommendations*

As regards persons of unsound mind the Committee state that no special legislation is necessary to deal with the case of a bankrupt becoming a person of unsound mind. On the other hand, if an infant under twenty-one is liable at law in respect of any debt or obligation, he should be liable to be adjudicated a bankrupt and to obtain the protection of the Court.

The draft Bankruptcy Bill set out in Appendix D contains 174 sections and 2 schedules. The draft Bankruptcy Rules set out in Appendix E contains 37 sections divided into 124 rules and in addition there are 51 forms.

Finance seen as the crux for repair of courthouse

Readers may recall a similar direction to the then Minister for Justice made by Mr. Justice Henchy in respect of Drogheda Courthouse in October 1971.

A further order was made in that case in April 1972 recommending the Minister to contact the Minister for Finance with a view to getting the Commissioner for Public Works to carry out the repairs.

This is a liaison envisaged by Section 6 (1) (a) of the Courthouses (Provision and Maintenance) Act, 1935, which places on local authorities the responsibility for the upkeep of courthouses.

It is by now notorious that very many of our courthouses, and in particular district courthouses, are in a deplorable state of disrepair. Drogheda and Waterford were only two outstanding examples.

The problem is finance: local authorities are naturally reluctant to spend money on the upkeep of a courtroom which will be in use for relatively few days in the year.

The Twelfth Interim Report of the Committee on Court Practice and Procedure averted to this situation and their report includes the following recommendation: "We are of opinion that so far as is possible courtrooms outside Dublin which are only in periodic use should be so designed as to be capable of being used for other community activities when the court is not actually in session."

The report also recommends that local authorities be relieved of the expense of providing and maintaining accommodation which is used only for the purpose of court work but should bear a share of the expense involved in providing dual purpose accommodation.

Irish Independent (24 July 1973)

Irish Tax Case Reports

The Council raised with the Revenue Commissioners the question of the publications of decisions of the Appeal Commissioners and the Circuit Court on appeal from the Appeal Commissioners of decisions in income tax cases. It is recognised that the hearing of the cases by the Appeals Commissioners and by the Circuit Court on appeal for them are confidential and it was suggested that the reports of such cases should be restricted to the legal questions involved without disclosing the names of the parties or any material information regarding the facts which could lead to identification of the parties. It is generally recognised that as the taxpayer is presumed to know the law it is inequitable that there should be a body of secret law consisting of decisions of the Appeals Commissioners and of the Circuit Court which are known only to the Revenue Commissioners and are not available to the taxpayer. It was, therefore, suggested that subject to appropriate safeguards the relevant facts and the legal decisions on the facts should be made available in the form of authorised reports. Tax should be made available in the form of authorised reports. Tax cases heard in the High Court and the Supreme Court are, of course, included in the authorised reports and are available as published.

The attitude of the Revenue Commissioners is that decisions in the Circuit Court on the rehearing of income tax appeals are not available. The Income Tax Acts direct that rehearings of appeals by the Circuit Court must be heard in camera and there is no authority in law for full publication of decisions of these hearings. Income tax appeals are first heard by the Appeal Commissioners but the acts provide that an appellant aggrieved by the Appeal Commissioners' determination may require that his appeal may be reheard by a Judge of the Circuit Court. On the question of publishing edited reports (to conceal the identity of the taxpayer) of Circuit Court Judges' decisions the Revenue Commissioners would feel constrained to accept the view expressed in the seventh report of the Commission on Income Taxation (Pr. 6581) in relation to the publication of decisions by the Appeal (then Special) Commissioners. In paragraph 780 of that report the commission regarded "it as undesirable to publish even on a limited scale any decisions of the Special Commissioners on tax appeals".

In relation to tax cases heard in the High Court and the Supreme Court the Commissioners arrange for the publication of tax leaflets of reported decisions. Leaflets are issued to subscribers only on payment of an annual subscription (35p) to the Controller, Stationery Office, Beggar's Bush, Dublin 4. While no leaflets have been published in recent years a number are at present being prepared for printing. Leaflets issued for cases decided up to 1948 are available in bound volumes of "Reports of Income Tax Cases", volumes I and II. These were published by the Stationery Office and may be purchased from the Government Publications Sales Office, GPO Arcade, Dublin 1. A third volume of issued leaflets is being prepared for the printers.

With respect to the views expressed in the seventh report of the Commission on Income Taxation the Council cannot regard this position as satisfactory. There seems to be no valid reason in principle why the decisions of the Appeals Commissioners and of the Circuit Court on further appeals should not be published. These are part of the law of the land which the taxpayer is deemed to know. The result of these decisions is known to the Revenue Commissioners but not to the taxpayer which creates an inequitable imbalance where a taxpayer's rights are involved. The position regarding the delay in publication of the tax leaflets is also unsatisfactory. Further representations are being made to the Revenue Commissioners on this matter.

Provisional assessments of Estate Duty

—The Estate Duty Office has requested the Society to inform its members that the new provisional pre-grant assessment of estate duties scheme which is in operation since August is working reasonably smoothly. Owing to a lack of trained staff the Estate Duty Office are completely unable to come to a prompt final assessment of duty in any case. Where solicitors attempt to get a final assessment before taking out a grant they are finding themselves delayed considerably because of the shortage of staff. Solicitors should bear in mind that the provisional assessment of estate duty is provisional on both sides and that any solicitor who feels too much duty has been assessed will be perfectly entitled to claim a refund just as the Estate Duty Office would be entitled in a proper case to increase the amount of duty assessed after the grant is extracted.

In order to keep the system of provisional pre-grant assessments running smoothly solicitors are requested to accept the provisional nature of the assessment as to do otherwise would mean upsetting the routine now established in the Estate Duty Office.

It is to be hoped that the Estate Duty Office will improve as time goes on by securing a properly-trained staff.

Courts Organisation

Twelfth Interim Report of the Committee on Court Practice and Procedure dealing with Court Organisation. Appointed in April 1962. Report issued in July 1973. 17½p.

Very briefly here are some of the principal recommendations of this Committee.

(1) The Dublin Metropolitan District should be extended to include *all* of the City and County of Dublin with the exception of the electoral district of Rathmichael (Bray).

(2) The following places in the new district should be appointed for the transaction of business, namely Central Dublin Courts, Dunlaoghaire. Balbriggan, Swords and Kilmainham.

The business should be transacted as follows.

At Balbriggan—the same as at present.

At Swords—summary business only.

At Kilmainham—summary business only.

At Dunlaoghaire—summary business only including complaints by way of summons of Dunlaoghaire Corporation.

Juvenile business except as at present transacted at Balbriggan should be transacted at the Central Dublin Court.

All persons arrested in the extended districts should be brought before the custody Court of the Central Dublin Court whether on bail or on custody.

(3) Courthouse accommodation should be improved. The proposals include :

(a) To erect a multi-storey Court building with adequate office accommodation and lift service on the site now occupied by the Bridewell Garda Station and the three Court rooms in Chancery Street. It is estimated that a minimum of twelve Court rooms would be required by the District Court—on the lines of the Sheriff Court Building in Edinburgh.

(4) Outside Dublin the report recommends the District Courts to be divided into five divisions somewhat similar to the present Circuits (Northern, Western, Southern, Eastern).

(5) Forty District Court venues outside Dublin Metropolitan District should be abolished and one new venue established (at Kinnegad, Co. Westmeath). This would leave a total of 219 District Courthouses, as against 258 at present.

Generally it is recommended that summary business be transacted at all these venues while civil business be transacted only at principal venues in major towns, etc. Justices should not reside in their Circuits; and should henceforth be called "Judges of the District Court".

(6) Annual licensing : All licences dealt with by the District Court should expire at the end of June each year and annual licencing business should be heard in the month of June. Intoxicating liquor licences should be renewed by the Revenue Commissioners without the necessity for a Court certificate except where there are objections.

(7) With regard to the Dublin Circuit Court the committee recommend at least four judges to be assigned full time to the Dublin Circuit. They further recommend the availability of five courtrooms at least, two for criminal trials.

(8) Circuit Court venues should be reduced by eighteen leaving forty-two venues including the establishment of a new venue (at Tuam, Co. Galway). There should only be four circuits (Northern, Western, Southern and Eastern), say the majority, for civil cases, and criminal trials should be dealt with by two separate Judges.

(9) There should be twelve Circuit Court Judges (at present there are eleven).

(10) Criminal trials should be held only in larger centres where there is a large pool of jurors available. Circuit, Criminal and High Court (on circuit) civil trials should be held at fourteen principal venues. Transfer of trials outside Dublin should henceforth be made to the Dublin Circuit Court.

(11) The County Registrars should be given greater jurisdiction to deal with non-contentious applications for example payment out of funds in Court.

(12) The judicial year should be slightly extended into thirty-nine weeks and divided into three sittings of approximately equal duration of thirteen weeks each. Hours of sittings of the High Court and the Circuit Court should be extended by one half an hour by commencing sittings at 10.30 a.m.

(13) The committee noted the acquisition of the Incorporated Law Society of King's Hospital and recommended the purchase of the Solicitors' Buildings at present occupied by the Society for the purpose of extending the Circuit Court accommodation. The Library should be a Judge's library.

(14) The circuit of the High Court on Circuit should be the same as the Circuit Court and the High Court should only sit in fourteen venues.

Seventeenth Interim Report of the Committee on Court Practice and Procedure dealing with Court fees. 9p.

(1) The basic recommendation in this report is that the administration of justice is a necessary State service for citizens and it is one which should be available to all citizens without payment of Court fees.

(2) If it is decided to continue with the imposition of Court fees the amount of same should be determined so that the receipts therefrom should not exceed two-thirds of the costs of administration of justice. In determining the cost of the administration of justice no account should be taken of salaries, pensions, and travelling expenses of judges, charges for public works or buildings or rates on Government property. On the basis of this calculation present receipts represent 57 per cent of the cost of administration of justice.

(3) With regard to High Court fees it is recommended that no fees should be payable on notices of motion affidavits, subpoenas or Court orders and that fees should be payable only on :

(a) the originating document;

(b) the defence;

(c) the setting down for trial;

(d) the taxation of costs.

(4) The attested copy system in the High Court should be reviewed. So too should the system of charging for copying documents on a per folio basis to be replaced on a per sheet basis. Certainly for photographic and typed copies these should be based on a per page basis.

(5) The fee payable to the Official Assignee on the realisation of assets in bankruptcy (currently at ½ per cent) should either be abolished or limited to a maximum of £25.

Eighteenth Interim Report of the Committee on Court Practice and Procedure dealing with the Execution of Money Judgments. 10p.

(1) The committee recommend that money judgments in the District Court and Circuit Court should be of the same status as High Court judgments. Therefore the lower Courts should have similar jurisdiction as the High Court as to the making of the various forms of execution orders, stop orders, etc., allowing procedure and implementation to be governed by the rules of each Court.

(2) The judgment mortgage system should be replaced. In its place a Central Judgments Registry attached to the High Court should be established established wherein all judgments for £100 or more should be registered. The registration would operate as a legal charge on all interest (other than as trustee) of the judgment-debtor in immovable property vested in him at the date of registration or vesting in him thereafter during the lifetime of the judgment. Mr. Justice Kenny of the High Court dissents to this recommendation which he believes would considerably delay conclusion of all sales of land. For example the registration of a judgment against Sean Murphy would mean the purchasers from every person bearing that name would have to be conclusively satisfied that the person from whom they are buying is not the same person against whom the judgment has been entered.

MURDER TRIAL LAWYERS GET THE SACK

A young Dublin man on a murder charge sacked his counsel and solicitor in the Central Criminal Court yesterday and was granted a new trial. Among other things, the defendant, William Gannon (21), said his lawyers had made a deal against his wishes with the prosecution involving his pleading guilty to manslaughter. Gannon, of St. Brigid's Flats, Sheriff Street, is charged with murdering 21-year-old barman James Booth earlier this year at an O'Connell Street lounge bar. He pleads not guilty.

Yesterday he told Mr. Justice Kenny that his counsel had also refused to cross-examine all prosecution witnesses according to his instructions, and had failed to turn up at his earlier District Court hearing.

When the Court sat yesterday morning, Gannon rose in the dock and told Mr. Justice Kenny: "I want to sack my counsel on the grounds that this man told me last night that he had made a deal with the State counsel that I plead guilty in the case."

Brother's Plea

One of Gannon's brothers came from the body of the Court and said that the senior defence counsel in the case, Mr. Padraig Boyd, had suggested in the presence of the accused's family that he plead guilty to a charge of manslaughter. "This is not fair to him and I wish to protest most strongly in the interests of justice," he declared.

Gannon told the Court that he had drawn up a list of questions which he wanted his counsel to put to witnesses who appeared in the case yesterday. Counsel had refused to do this, despite the fact that the questions were to the point. The defendant said that the Justice in the District Court would confirm that his counsel, appointed under free legal aid, had failed to appear at earlier hearings.

When told by Mr. Justice Kenny that he would have to defend himself, Gannon replied that he would ask the Court to appoint new counsel and would ask for time to instruct them. "I want a new trial," he declared.

The State prosecutor, Mr. Noel K. Macdonald, S.C., who earlier objected to a new trial, said that while no injustice would be done to the accused, i twas important that justice also be seen to be done and said that the matter of a new trial was a matter for Justice Kenny. He denied that any deal had been done.

Discussions

Mr. Padraig Boyd, who led the defence team, which included Mr. David Montgomery, B.L., and Mr. Fergus Taaffe, solicitor, said he had had consultations with the prosecution which was normal legal practice. In his discussions with his client he had suggested a certain course.

Mr. Justice Kenny said he was prepared to accede to Mr. Gannon's request for a new trial though he wanted it clearly understood that it might not now take place until after Christmas and in the meantime the accused would have to remain in custody.

Irish Independent (4 October 1973)

SOLICITORS' GOLFING SOCIETY

Autumn outing at Hermitage Golf Club on Friday, 28th September 1973. Results:

Captain's Prize: 1st, David Bell (18), 36 points; 2nd, John O'Donnell (11), 30 points (on second nine).

St. Patrick's Plate: 1st, W. R. White (8), 31 points; 2nd, B. O'Brien Kenney (4), 30 points (on second nine).

Veteran's Cup: 1st, Dan Lynch (6), 25 points; 2nd, M. E. Hanahoe (23), 24 points.

Handicaps 14 and Under: 1st, M. A. O'Carroll (5), 31 points; 2nd, P. L. Tracey (8), 30 points (on second nine).

Handicaps 15 and Over: 1st, Michael Kelly (18), 32 points; 2nd, P. D. Fallon (17), 29 points.

First Nine: George O'Sullivan (7), 17 points.

Second Nine: W. E. T. Bradshaw (14), 16 points.

Competitor from more than 30 Miles: M. P. Keane (8), 27 points (on second nine).

Best Score of 3 Cards by Lot: Barry Doyle (10) 26 points.

350 TRIALS IN SPECIAL CRIMINAL COURT

Almost 350 people have been tried by the Special Criminal Court in Dublin in the first sixteen months of its operation, according to figures given by the Department of Justice in response to inquiries.

Up to the end of last August, the Court—which was set up in May of last year—had convicted 249 persons and acquitted 100.

The category in which most convictions occurred was firearms offences. A total of 84 people were convicted for offences in this category, and they received sentences varying from three weeks to five years.

There were 39 convictions for explosives offences, and sentences in these cases ranged from four months to eight years.

In the same period, to the end of August, 34 people were convicted of membership of an unlawful organisation and their sentences varied from three months to fifteen months. (It is apparent from reports of various cases that the Court has gradually increased the severity of sentence for this offence, from a point around the start of its operations when the usual term was six months, to the present practice of imposing a year or fifteen months.)

Eighteen persons were convicted of armed robbery with aggravation, receiving variously from eighteen months to ten years imprisonment.

There were 18 convictions for assault also, and sentences have been from six months to seven years. Ten persons were sentenced for incitement and the terms imposed were from two weeks to twelve months. Eleven were convicted of larceny; sentences were from three years to five years.

Eight have been convicted under the Official Secrets Act, 1963, and their sentences varied from three months to three years.

Smaller categories of offences were, for example, conspiracy, of which six persons were convicted, and convictions for false pretences, malicious damage, receiving stolen property, obstructing gardai, and escaping from prison, were numbered in ones and twos.

Although there were very few convictions in these latter categories, it is these cases for the most part which have given rise to claims in some quarters that the Special Criminal Court is being used occasionally in non-political cases, because of the higher conviction rate there.

The Court, which sits without a jury, has a panel of seven judges from which the tribunal of three is drawn. The present members of the panel are Justice O Caoimh of the Supreme Court, Mr. Justice Finlay, Judge Conroy and Judge Ryan of the Circuit Court, Justice O Floinn, president of the District Court, and Justices Tormey and Carroll of the District Court.

Last January, Mr. Justice Finlay replaced Mr. Justice Griffin, who had up to then presided at most of the trials in the Special Criminal Court.

The Irish Times (10 October 1973)

Strasbourg: No friendly deal is likely

The prospects of an early, friendly settlement in the Ireland v Britain case have receded sharply. The British Attorney-General, Sir Peter Rawlinson, will make a last-ditch effort here today to try to prevent the Commission of Human Rights proceeding to the stage where evidence will be taken from key witnesses in the North and the torture charges are investigated on the ground.

The Attorney-General, Mr. Declan Costello, has now, it is understood, made it clear to the Commission that Ireland will not agree to any settlement unless Britain admits that there were breaches of the Convention of Human Rights in the Six Counties, especially in relation to torture and that the individual who was tortured will be fully compensated.

Mr. Costello now wants Britain to come forward with concrete proposals this morning that will guarantee there would be no repetition in the North of the breaches of the Convention. Only in the event of guarantees of this nature will an early settlement be on the cards.

The Commission meets early this morning to try and devise proposals that will break the deadlock. Then, at midday, there will be another open session involving the Irish and British teams. Everything could hinge on this session. The British Attorney-General is reported to be very unhappy at the way things are going and at the very determined stand being taken by the Irish team. He looked grave and pre-occupied as he left the Human Rights building here last evening.

The cut and thrust of the legal arguments between Sir Peter and Mr. Costello over the past four days have been described as "rough" and "unrelenting".

Where in the initial hearing a year ago Sir Peter walked across the floor and congratulated Mr. Tom Finlay (now Mr. Justice Finlay) for his brilliant elucidation of points of law in the Irish case, the mood this week has been very different indeed. But then the first hearing was only concerned with the admissability of the Irish case.

Britain, it is understood, is endeavouring to avoid at any cost the embarrassment of a team of Commissioners arriving in the North to investigate things on the spot, especially the conditions in Long Kesh and also the charges that detainees were tortured in the course of interrogation.

Mr. Costello conceded nothing in ten hours of legal arguments this week. He has driven every point home with ruthless ability. The bi-partisan policy between the Coalition Government and Fianna Fail in fighting this case on the fundamental issues of the right of the individual to a fair trial, and the basic issue of internment itself is evident in the support being given to Mr. Costello by his second in command, Mr. Tony Hederman, S.C., who was a member of the team at the initial hearing under Mr. Colm Condon.

Britain is now mounting a strong offensive aimed at pressurising the Commission of Human Rights in Strasbourg to force the Irish Government into an early settlement of the inter-State case arising from internment and the torture of detainees in the North.

The powerful weapon that Britain is using is to threaten the Commission that it may, at worst, not renew its ratification of the Convention of Human Rights when it comes up for renewal next January.

At the very least, if it should agree to renew, it will be without giving its consent to the important "right of individual petition" clause. Under this clause any one person or group of individuals can complain to the Commission that basic rights have been breached by a government. In fact, it was under this clause,as defined in Article 25 of the Convention of Human Rights, that seven individuals from the North brought cases to the Commission, alleging torture and brutality, and these cases were declared admissible earlier this year.

Of the fifteen countries that are signatories to the Convention of Human Rights only three—Turkey, Cyprus, and Malta—do not accept the clause permitting citizens to have the "right of individual petition" to the Commission.

It is quite obvious that the Commission would not like it for one moment if Britain were to go through with its threat on this clause. That is why the Commission, in its communique at the end of the most recent four-day hearing in Strasbourg, intimated clearly that it was now ready to mediate to try and achieve a friendly settlement between Ireland and Britain.

But the minority in the North will not countenance the idea of the Irish Government entering into a friendly settlement until internment and detention are ended, and until Britain has given clear guarantees that there will be no further torture of detainees in the course of interrogation.

While the Irish Government is preserving a tight-lipped silence on its tactics in the case, obviously fearful that Britain might complain to the Commission, there are civil servants in Whitehall who do not seem to be as squeamish in their approach. Judicious "leaks" will soon make it appear, on a European and world-wide basis, that Ireland is acting "the dog-in-the-manger" and setting its face against a settlement, when Britain is only too anxious to settle.

But, of course, the Irish Government's prime duty is not to the faceless men in Whitehall, but to the minority in the North.

The Attorney-General, Mr. Declan Costello, is fully aware now that no matter what threats Britain conveys to the Commission, or no matter in what subtle diplomatic language they are couched, the plain fact of the matter is that there are great, fundamental issues involved in this case and the Irish Government cannot —and must not—agree to a friendly settlement unless it gets the guarantees sought at the last four-day hearing.

Internment must end and the Geneva Codes must be fully observed in the treatment of detainees. There can be no half-settlement where these basic issues are concerned.

Irish Independent (5 October 1973)

Deserted wives talks progressing with U.K.

The Minister for Justice, Mr. Cooney, announced last night that substantial progress had been made in the negotiation of an agreement between this country and Britain for the mutual enforcement in each country of maintenance and affiliation orders made by the Courts in each country.

Mr. Cooney, addressing the Irish Association of Civil Liberty in Dublin on the subject "Dark Corners of the Law", said that the progress had been achieved following a series of meetings in his Department last month.

The Minister said that one such "dark corner" was the legal disadvantage under which married women and their children suffered if the marriage broke down.

He said that for a deserted wife her situation, bad enough by being deserted, was often aggravated by the difficulty or impossibility of getting maintenance from her husband for herself and the children, especially if the husband had gone away to England or some other country.

Mr. Cooney said that he had expressed his feelings on this and related problems, such as those concerning unmarried mothers and their children, on several occasions, in the Dail and elsewhere.

Another very important and difficult problem which arose when a husband deserted his wife was that of the right of the wife to remain in the matrimonial home. The difficulty here was that the home might be in the husband's name and he might, before the desertion, have negotiated for its sale to an innocent third party, or he might have been in arrears with mortgage payments or fallen into arrears after the desertion.

On the other hand, the wife would, morally speaking, have contributed to the home, if not with money of her own, certainly with hard work, and it was obviously wrong that she should be liable to be turned out for no fault of her own.

The need to protect the wife while taking proper account of the rights of innocent third parties, involved a difficult problem which must be faced and solved in as satisfactory a way as its nature allowed, he said.

Mr. Cooney added that these problems of family law were presently under examination by the Committee of Court Practice and Procedure under the chairmanship of Judge Walsh. He had specifically extended the terms of reference of this committee so that that particular "dark corner of the law" could be thoroughly investigated with the utmost speed.

Order Revoked

District Justice Herman Good said that an examination of the Married Women's Maintenance in the Case of Desertion Act 1886 would reveal many dark corners. If a wife who secured a maintenance order committed an adulterous act she could have the order in her favour revoked if the husband discovered her act. Yet if the husband committed adultery the wife could do nothing. As the husband was usually the owner of the home, that meant that a wife could be put out while her husband was allowed to have all the mistresses he wished in her absence.

There was no provision in this country for having portion of the husband's wages "attached", as there was in England. The wife who got a maintenance order very often had to go to her husband's place of employment and beg the money she was entitled to in order to keep herself and her children. In England there was provision for having a portion of the husband's income deducted from his pay at source and paid over to the wife.

It was a fact of life in Ireland and all over the world that there was a serious breakdown in married life. The rate of breakdowns in Ireland was increasing, and it was interesting to note the reasons. Of a recent group of

marital cases that came to court 28 were due to violence, 16 to adultery, 22 to drink, 9 to mental troubles, 10 to "shotgun" marriages, 1 to religious differences, 3 to gambling, 2 to meanness on the part of the husband, and 2 to the mother-in-law problem.

The breakdown in married life was a social problem, and he did not think that nearly enough had been done to investigate its cause. It was a serious problem, because the family was the basic unit of society, and all our resources should be given to seeing what could be done to prevent it getting worse.

Vagrancy Act

Justice Good said he regretted that since he spoke a year ago against the Vagrancy Act of 1824—under which a person can be imprisoned for three months for having no visible means of support—nothing had been done to change it. To him it appeared to be basically wrong that it should remain on the statute book, and the sooner it was removed the better.

Referring to a recent case of a young girl prosecuted under the Act he said it eventually transpired that she had left her home in the country and came to Dublin in search of work. She was picked up by gardai, who were obliged to bring her to court. She was over four months pregnant. He had her sent to a convent who catered for girls in her position, but there was no law to oblige her to stay there and be looked after. Yet she could have been sent to prison for three months, and, under the Vagrancy Act, be declared "a rogue and a vagabond". That would be a complete injustice.

He praised the gardai for the humane way in which they administered the law, and said the prison service came in for a lot of unjust criticism. The trouble was that prisoners were not graded according to their criminal tendencies. Many people went to jail just because they were sick, and these included many drug addicts, who were in need of psychiatric help. It was wrong that our prisons did not have their own psychiatric service.

Mr. Donal Barrington, S.C., also spoke. Professor Denis Donoghue, president of the association, presided.

The Irish Times (23 October 1973)

CORRESPONDENCE

8 South Great George's Street, Dublin.
18th October 1973.

Dear Mr. Gavan-Duffy,

There is a notice displayed in the Stamping Office, Dublin Castle, showing that there is a very large number of documents in that office, awaiting collection by solicitors.

The solicitors concerned may have overlooked the collection of the documents, and I would suggest that in the next issue of your *Gazette,* you insert a paragraph, drawing attention to the notice.

Such a paragraph may help solicitors to find documents which they may think were lost.

T. FINBARR O'REILLY

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificates

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the Schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Dated this 31st day of October, 1973.

D. L. McALLISTER,

Registrar of Titles

Central Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Margaret M. Brogan and Christina Brogan; Folio No.: 238, Meath. Lands: (1) Phillistown. Area: (1) 91a. 1r. 14p. Lands: (2) Clondavan. Area: (2) 32a. 0r. 38p. Lands: (3) Clondavan. Area: (3) 6a. 0r. 34p. County: Meath.

(2) Registered Owner: Alfred Norman. Folio No.0 2287, Dublin. Lands: A plot of ground with the dwellinghouse and buildings thereon, known as numbers 15, Ely Place, situate in the Parish of Saint Peter and County Borough of Dublin. County: Dublin.

(3) Registered Owner: Patrick Gerard Cannon. Folio No.: 5803, Meath. Lands: Platin. Area: 96a. 0r. 20p. County: Meath.

(4) Registered Owner: Martin Duffy. Folio No.: (1) 175, Mayo. Lands: (1) Knockanarra. Area: (1) 5a. 0r. 2p. Folio: (2) 175. Lands: (2) Bellaveel. Area: (2) 1a. 3r. 11p. Folio: (3) 175. Lands: (3) Knockanarra. Area: (3) one-third of 2a. 1r. 19p. Folio: (4) 31690. Lands: (4) Knockanarra. Area: (4) one-half of 4a. 3r. 31p. County: Mayo.

(5) Registered Owner: Esther Guiney. Folio No.: 1742L, Dublin. Lands: The leasehold estate in the dwellinghouse and premises known as No. 121 Mount Prospect Avenue situate on the east side of the said Avenue in the District of Clontarf. Parish of Clontarf and city of Dublin. County: Dublin.

(6) Registered Owner: Patrick White. Folio No.: 21822, Galway. Lands: (1) Derreenboy. Area: (1) 76a. 2r. 32p. Lands: (2) Cloonlahan (Eyre). Area: (2) 1a. 0r. 24p. County: Galway.

(7) Registered Owner: Desmond McGivern. Folio No.: 31604, Kerry. Lands: Derrylough. Area: 2a. 2r. 15p. County: Kerry.

(8) Registered Owner: Mary Buckley. Folio No.0 35025. Lands: Ballyellis. County: Cork. Area: 0a. 0r. 29p.

NOTICE

In the matter of William. W. Blood-Smyth, a solicitor, and in the matter of William Martin Noyk, a solicitor.

By orders of the President of the High Court made on the 1st day of October 1973 pursuant to Section 20 of the Solicitors' (Amendment) Act 1960 it was directed that no banking company shall without leave of the High Court make any payment out of a banking account in the name of:

(1) William W. Blood-Smyth, Solicitor, 39, Castle Avenue, Clontarf, Dublin 3.

(2) William Martin Noyk, 43 Wellington Road, Ballsbridge, Dublin 4.

Dated this 1st day of October 1973.

JAMES J. IVERS

Registrar of Solicitors

NOTICE

John Gleeson and Leo Mangan, Solicitors, will now practice under the style of John Gleeson & Co., Solicitors, at 75 Morehampton Road, Donnybrook, Dublin 4, as and from 29th October 1973. Phone 694099 and 695252.

VACANCIES FOR APPRENTICES

Will any solicitor in any part of the Republic of Ireland who has a vacancy for an apprentice, please communicate urgently with the Director-General of the Incorporated Law Society.

OBITUARY

Mr. Thomas E. O'Donnell died on 22nd August 1973. Mr. O'Donnell was admitted in Michaelmas Term 1928 and practised under the style of P. E. O'Donnell & Son, 8 Glentworth Street, Limerick.

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

DECEMBER 1973
Vol. 67 No10.

Contents

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PRELIMINARY NOTICE

It is regretted that this issue of the Gazette has been unavoidably delayed due to the numerous electricity cuts arising out of the current power crisis in the printer's works. It is not anticipated that the situation will improve, and consequently it is regretted that many issues of the 1974 Gazette will unavoidably appear late. In the circumstances, it has been decided that the next issue of the Gazette will be published at the beginning of February 1974, and will be an enlarged issue of at least 40 pages to cover the months of January and February 1974. The following issues will appear according to the circumstances prevailing in the power crisis at the time. Arrangements will be made to issue the monthly Gazette regularly every month, as soon as the restrictions arising from the present power crisis are lifted.

The Index to Volume 67 (1973) of the Gazette will be inserted in the January-February 1974 issue of the Gazette.

EDITORIAL

LAW REFORM

When the membership of the new Executive of the Assembly of Northern Ireland was announced recently, Mr. Cooper of the Alliance Party was appointed Member for Law Reform; at first sight, this sounded most promising, but it is understood that since Mr. Alfred Donaldson's premature retirement, there is no staff at the moment. This was essentially due to the fact that absurd and totally unwarranted restrictions were placed upon Mr. Donaldson, and as a result of which he was completely unable to carry out his functions properly. The position is thankfully more hopeful in the Republic, as Mr. Charles Haughey, when he was Minister for Justice, actually published a programme of law reform. Unfortunately, the succeeding Ministers for Justice—despite the Irish Title of the Ministry, which places substantive Law before the enforcement of law—have concentrated to an undue extent upon the problem of enforcement, and have almost neglected the positive problems of law reforms. It is an open secret that Mr. Justice Gavan Duffy, before he became a Judge, was willing to become Minister for Justice as a Senator for one year only, for the sole purpose of carrying through extensive law reforms. It is disappointing to note that despite several appeals, no official Law Reform Committee with wide powers of drafting composed of Judges, legal practitioners and academic lawyers, has been established, although the President of the High Court does preside over an advisory Committee with arrangements for specified lawyers to present reports.

It has already been pointed out that the Sheridan Report on Northern Ireland Land Law drafted a bill to bring the Northern Ireland land legislation up to date, and that this bill could be adapted in the Republic with very few modifications. It is amazing that the Minister has not appointed a Committee of Conveyancing Experts to draft the necessary amendments, and to introduce the Bill without delay in the Oireachtas, as the kudos he would receive as a result of introducing this measure would make him famous for a long time to come. In the same way it would undoubtedly be of great benefit to the legal profession if such English measures as the Misrepresentation Act 1967, the Resale Prices Act 1964, the Trade Descriptions. Act 1968, the Employers Liability (Defective Equipment) Act 1969, the Animals Act 1971, the Occupiers Liability Act 1957, and the Perpetuities and Accumulations Act 1964 were re-enacted with modifications into Irish law. It will be seen that there is ample work to be undertaken by a properly constituted Committee of Law Reform.

THE SOCIETY

Proceedings of the Council

18th OCTOBER 1973

Present: W. B. Allen, Walter Beatty, Bruce St. J. Blake, John F. Buckley, John Carrigan, Anthony Collins, Gerard M. Doyle, Joseph L. Dundon, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, Jnr., John B. Jermyn, John Maher, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, John J. Nash, George A. Nolan, John C. O'Carroll, Peter E. O'Connell, James W. O'Donovan, William A. Osborne, David R. Pigot, Moya Quinlan, Ralph J. Walker.

Practice certificate contributions 1974/75

The Council decided that the overall contributions paid by each Solicitor in respect of taking out a practising certificate for the year 1974/75 should remain the same as before, but that the contribution payable to the Compensation Fund should be reduced from £30 to £20 whereas contribution payable to the Society should be increased from £31 to £41.

Purchaser paying vendor's fees and outlay

Members wrote to the Society complaining of the practice of certain builders of charging a fee for preparing a book of title together with outlay for archi-

tects fees. Previous opinions namely DR 24, DR 40 and DR 77 contained in the Solicitors Handbook 1968 edition were referred to.

The Landlord & Tenant (Ground Rent) Act 1967, Section 32 prevents a lessor from passing on any part of the costs of a lease, but it does not prevent him from making the purchaser pay the cost of showing title as this does not fall within the term "costs of the lease". In May, 1972 (page 131 of the Gazette) the Council published a statement as to Solicitors' costs on a first lease or purchase of a new house and sought to lay down a general code of practice for observance by Solicitors for lessors, builders and lessees. Part of this publication was as follows :

"Agreement for the sale of new houses should not unduly restrict the title offered to the purchaser and Ushould provide for the furnishing to the purchaser without cost to him of all copy documents and declarations necessary to enable him obtain a loan. In particular the following documents should be furnished to the purchaser on application without charge :

Copy documents or book of title including certified copy negative searches.

Statutory declaration of identity.

Certificate of compliance with building covenant.

Lease Map.

Indemnities as to roads and services.

Certificate under Section 32 of the Registration of Title Act 1964.

In the opinion of the Council the charges in respect of these items should be properly borne by the lessor or vendor. The Council disapprove of the imposition on the lessee or purchaser by the Solicitor or the lessor or vendor of charges for postage and petty outlay."

Costs on appearance by solicitors on social welfare business

The Society were informed that as a result of representations made that the fee to be allowed to solicitors for appearance before Appeals Officers is to be increased from 3 gns. t o£3. Special extra costs may be allowed by the Appeals Officer where appropriate.

Land bonds

Members wrote to the Society stating that both the public and the profession are long suffering as they are obliged to accept land bonds at par in payment from the Land Commission. These bonds are now quoted at over 10% below par. Members feel very strongly that the public and solicitors should not be obliged to accept payment in land bonds as this incurs an immediate loss in cash terms. The Council on report of a Committee decided to make representations to the Minister for Lands.

Law Commission against Legal Action on Gazumping

A Law Commission discussion paper has ruled out reform of the law of buying or selling a house to outlaw gazumping. Even the introduction of a liability for expenses on a party to an agreement subject to contract who has unreasonably let the other down is not positively supported.

The Commission believes that "the cause of the problem lies outside the law and the practice, and that there are clear dangers in altering a system which has been carefully designed, and which served its purpose well in the vast majority of cases, solely for the reason that in exceptional (and perhaps temporary) circumstances the system is capable of being used unscrupulously".

The Attorney-General asked the Commission in December 1971 to consider legislation to prevent either the buyer or the seller withdrawing from an agreement over a house. The Commission hopes to stimulate discussion with these views, and present a final report later.

The Commission says it believes that even in the recent sellers' house market many more buyers than sellers have withdrawn from subject to contract agreements. The present procedure is designed primarily to protect buyers rather than sellers, and the Commission says that "it is somewhat ironic that buyers should now be complaining of its effects". It endorses the view that buyers should be protected because of the general rule of caveat emptor : let the buyer beware.

Possible changes to the law, such as introducing compulsory seller's surveys, bonding options, returning to the simpler Scottish practice, and conditional contracts are ruled out. But the Commission does support a Law Society suggestion that would reduce the time between agreeing on a price and exchanging contracts. The Society recommended that sellers should be encouraged to instruct a solicitor as soon as a house is on the market so that contracts can be prepared quickly. Local searches and inquiries also should be made by the seller's solicitor and made available to the buyer.

The commission finally suggests that many sellers are deterred from gazumping by normal considerations. If the law was changed to impose financial liability on a party this "could not fail to give the impression that a seller is entitled to gazump, provided that he offers to pay the buyer's expenses. By lending an air of legal respectability, the restraints imposed by moral pressures would be lost".

The Law Commission, Working Paper No. 51, *Transfer of Land "Subject to Contract" Agreements,* 3 July 1973. Stationery Office.

The Guardian (31 July 1973)

UNREPORTED IRISH CASES

Application for Summary Judgment granted.

The plaintiffs applied for summary judgment for their £40,000 odd, this is in respect of a cheque for £37,000 issued by defendants on 28 February 1972 plus interest. The defendants seek to avoid judgment, because the Receiver, appointed on 17 November 1972, had caused a search to be made in defendant's books, which are all in his possession, and can find no mention of a meeting held on 28 February 1972, nor of any resolution passed by the directors authorising the borrowing of £37,500 from the bank. In January 1972, a customer of the plaintiff Bank, Mr. Nolan, requested a loan of £37,500 from the Bank for the purpose of acquiring Ardmore Film Studios, Bray. The Bank's agent agreed to issue a cheque for £37,500 to defendant's solicitors, on the understanding that the plaintiff company would open its account at plaintiff's Bank and take over the overdraft. On 28 February 1972 a certified copy of a resolution sanctioning an overdraft at the Bank's discretion was presented to the Bank Manager, as well as copies of the memorandum and articles of association of the new defendant company, which had been formed. The bank manager then issued the cheque for £37,500 to defendant company. Broadly the particulars were true save that John Houston had been added as a director. The defendants contended that the principle of law applicable is that a firm dealing *bona fide* with a limited liability company is not required to inquire into irregularities in the internal management of the company. Finlay J. is satisfied that on 28 February 1972, the two directors were entitled to hold a valid meeting, and that the resolution passed at that meeting was valid. On the strength of *Duck v. Tower Galvanising Co.* (1901) 2 K.B. 314, the plaintiffs are entitled to summary judgment.

Allied Irish Banks Ltd. v. Ardmore Studios International (1972) Ltd.; Finlay J.; unreported; 30 May 1973.]

No breach of warranties under Hire-Purchase Acts—Plaintiff responsible for overloading truck.

The plaintiff, a haulage contractor in Co. Cork, claims damages against the defendants for breach of conditions contained in S. 9 (1) (d) and 9 (2) of the Hire Purchase Act 1946. The hire-purchase agreement was signed on 4 August 1967 for the hire-purchase of a new Bedford 7 Ton cab and chassis for £2,390, allowing £560 for a "Trade-in" of an Austin Fiat and chassis. The plaintiff claims that the Bedford Cab was not of Merchantable quality, and not fitt for the purpose required, i.e., road haulage. There is no doubt that the purpose for which this cab was required was made known to the owners of the garage where it was purchased. The plaintiff intended himself to have a body fitted on to the chassis, and the old body on the Austin chassis was in fact fitted in. The plaintiff alleges he had plenty of brake trouble from January to March 1968. In April the truck broke down in Tivoli with a bearing gone in the back axle which involved substantial work by a garage. Various other repairs in connection with the brakes and axle were carried out in June and July, and in September a new gear box was fitted; in November more repairs were carried out, but the plaintiff was so dissatisfied with the truck that he stopped using it after December 1968, and the truck has lain on the side of the road unused for 3 years. Up to then, the 17 hire-purchase instalments had been paid, but, after that, the payments ceased. The defendants accordingly counter-claimed for the remaining 19 instalments for £1,125 odd. The defendants contended that, in December 1968, the truck had travelled more than 50,000 miles. An engineer for the plaintiff examined the truck in May 1969, and stated that it would have been worth £1,200, but was only now worth £500 owing to the bad state of repair. There was evidence that the truck, which was supposed to carry 7 tons, was continually overloaded to the extent of 10 or 11 tons, and this was essentially the cause of the brake and axle trouble. It was continually overloaded in Whiddy Island for 3 months from May 1968, and was not properly kept in good order and repair. The crack was probably due to the manner in which the body was fitted rather than to any defect in the chassis. Accordingly, at the time of delivery, the cab and chassis were of merchantable quality, and reasonably fit for the purpose required. Therefore the action must be dismissed as there was no breach of any of the implied warranties. The defendants are entitled to judgment for £1,125 on the counterclaim.

[Maybury v. Mercantile Credit (Hire-Purchase) Ltd.; Pringle J.; unreported; 20 December 1971.]

Custody of Young Children awarded to Mother.

The defendant husband and the plaintiff wife were married in July 1966, and had 3 children—two daughters and a son—born between 1967 and 1969. The couple lived unhappily in Cobh, and the marriage finally broke up in April 1970, when the husband left the wife, and gave the three children to his married sister to look after. The wife agreed that the husband should have custody of the three children, the married sister kept them until September 1971, when they were transferred to the custody of the husband's parents until April 1972. Meantime the husband lived with another woman and took the children into his own custody. The wife had meanwhile been awarded £6 per week for maintenance. She took a university degree in Cork and can shortly become a teacher; she proposes to live with her parents in Cobh. The other woman is deemed suitable by the Court to have custody, despite the birth of a natural child in 1971. The wife is deemed emotional and hysterical. The intellectual welfare of the children is on the side of the husband, as Dublin schools would tend to be better; the same applies to the physical welfare of the children, for the children now have their roots in the husband's household.

However the moral factor is entirely in favour of the wife, and following the Supreme Court decision in *Walsh v. Walsh* it would not be suitable for these children to be living with a woman, who was not the husband's lawful wife. This moral factor outweighs the other advantages, and accordingly the custody of all the children was granted to the wife residing in Cobh. Additioned Maintenance of £3 per week net is awarded to each child, the husband can have access to the children once a week. This order is subject to any change in circumstances that may occur.

Waterford Corporation awarded £1 damages in High Court action over Wallace plaques.

Waterford Corporation were awarded damages of £1 by Mr. Justice Finlay in the High Court, Dublin, yesterday, when he delivered his reserved judgment in the action brought by the Corporation against a local man which concerned the ownership of two stone plaques commemorating Waterford-born composer, William Vincent Wallace.

In the action which was heard two weeks ago, the Corporation claimed the return of the plaques which were erected on the walls of Mr. Vincent O'Toole's premises, Maryland Guesthouse, at The Mall.

In addition they sought damages against Mr. O'Toole for detinue and a mandatory injunction directing him to return the plaques to them.

Mr. Justice Finlay, who gave Mr. O'Toole his costs, said that in his view the plaques had been preserved or the benefit of the citizens of Waterford and visitors, and they were suitably placed in a prominent place. In the circumstances the damages suffered by the corporation by reason of the technical detinue of the plaques was in his view nominal only.

Wallace was born in Waterford on 11 Mary 1812 and he died in Paris on 12 October 1865. He is buried in Kensal Green, London. His best known works are Maritana, Lurline and The Amber Witch. The plaques were commissioned by a body known as his admirers in 1914.

In the course of his judgment, Mr. Justice Finlay outlined the history of the plaques from the evidence tendered during the one-day case.

He said that around 1969, Mr. O'Toole who, he was satisfied, had, over a period, taken a very deep and genuine interest in the life and works of Wallace, became interested in the situation with regard to the plaques. As a result of his searches he had discovered the project for the erection of the Wallace statue, which had become frustrated, and the existence of the plaques in the possession of the Waterford Corporation.

Mr. O'Toole, he said, therefore conceived in 1969 in association with the Festival of Light Opera annually held in Waterford, a plan for unveiling the plaques in some prominent public place associated with choral singing by children and associated with a considerable amount of publicity which he was satisfied would enhance the reputation and general organisation of the festival.

The house in which Wallace lived was in a dilapidated condition in 1969 and for that reason Mr. O'Toole decided that the most suitable place for them was on the wall of his own guest house.

"I'm fully satisfied that in choosing this he had not got a personal profit or ulterior motive and was simply anxious to secure the erection of the plaques in a prominent and suitable public place", said Mr. Justice Finlay.

With this end in view, Mr. O'Toole asked the then chairman of the festival, William Carroll, to approach the City Manager, Mr. Cassidy, for the purpose of obtaining permission to have the plaques erected on the guest house at his (Mr. O'Toole's) expense. Mr. Carroll in turn sought the assistance of Alderman Thomas Brennan, who was the present Lord Mayor of Waterford. Alderman Brennan and Mr. Carroll then had an interview with the City Manager.

Mr. Justice Finlay said that he was satisfied and found as a fact that the substance of the message conveyed to Mr. O'Toole, following the interview, was that the City Manager was agreeable to his taking the plaques and having them erected on his premises but, that that would have to be ratified at a meeting of the corporation.

Mr. Justice Finlay said that he was also satisfied that the meaning conveyed to Mr. O'Toole was that this ratification was not considered anything more than a formality.

On the same day, 1 September 1969, Mr. O'Toole went to the corporation's premises at Bolton Street and was shown the plaques. Mr. O'Toole then arranged for the plaques to be removed the following day by a firm of builders and contractors, Hearn and Co., Waterford.

Mr. Justice Finlay said that the reason why permission was then given for the removal of the plaques by the officials of the Corporation was that Mr. Thomas Carroll, the City Engineer, had on that date a telephone conversation with the City Manager, Mr. Cassidy, which Mr. Carroll interpreted as being a directios that she should hand over the plaques to Mr. O'Toole or to any person coming on his behalf. Mr. Cassidy had given evidence to the court that he did not intend to give any such order to Mr. Carroll and that on his recollection he did not give those instructions.

"Mr. Carroll struck me as being a meticulous and careful public official and he wrote a report on September 3 confirming the instructions which he understood he had received and the action which he had taken in pursuance of them.

"I take the view that the Waterford Corporation in law held out Mr. Carroll, the City Engineer, as a person having authority to deal with a matter such as this and that, therefore, they must be taken for the purposes of the issues arising in this case, to have handed over at that time possession of these plaques to Mr. O'Toole."

Waterford Corporation, on 8 September 1969, defeated a resolution which proposed the ratification of the handing over of the plaques to Mr. O'Toole and a resolution was then taken to demand the return of the plaques and to make provision for their erection elsewhere in the city. The following day, Mr. O'Toole was written to by the City Manager and the City Engineer who demanded the return of the plaques, but he refused to return them. Later he wrote to the Corporation indicating that in the view of the builders it was not possible to remove the plaques from his premises without breaking them. The proceedings were then instituted against Mr. O'Toole.

Mr. Justice Finlay said that he was satisfied on the law that it was not within the power of the City Manager to have made any agreement he liked with Mr. O'Toole without obtaining the ratification or approval of the City Council; that it was not the intention of the City Manager to make such a decision without the ratification of the council, and that Mr. O'Toole was aware that a ratification on the part of the Council was necessary at all material times. In these circumstances he was satisfied Mr. O'Toole's condition of bailment failed and he had an obligation to return the plaques.

Later in his judgment, Mr. Justice Finlay said that he would not grant any order for the return of the plaques in the circumstances and he would not grant a mandatory injunction for their removal from the building.

He found that Mr. O'Toole committed a detinue to the plaques and the corporation were entitled to damages for that.

Man wanted for theft in England fails in High Court Application.

In a reserved judgment delivered in the High Court in Dublin yesterday, Mr. Justice Finlay refused an application for release under the Extradition Act brought by David Wyatt, of Rosewood Estate, Ballincollig, Cork.

Wyatt had challenged an order made against him in the District Court for his extradition to England on foot of a warrant alleging that at Stockport he took a Ford Tipper lorry, valued at £3,000 without the consent of the owners.

Mr. Justice Finlay made no order as to costs.

Wyatt challenged the extradition order on the grounds that no evidence was offered before the District Justice upon which he could determine that the offence in the warrant corresponded to any offence under the law of the State and that the order was therefore invalid.

In the course of his judgment, Mr. Justice Finlay said he found himself driven to the conclusion that each of the allegations o ffact made against the accused in the warrant before him (the judge) were material, though not the only allegations of fact to constitute the ingredients of theft under the Theft Act, 1968. They were, of course, at the same time the classically essential ingredients of the offence of larce y as defined in the Larceny Act, 1916.

This, said Mr. Justice Finlay, would lead to a conclusion that the offence specified in the warrant was a offence corresponding with an indictable offence in Ireland, subject to one further argument by counsel on behalf of Mr. Wyatt.

Mr. Wyatt's counsel, said Mr. Justice Finlay, contended that, having regard to the fact that appropriation was wider and might be carried out in more varied forms than taking and carrying away, the accused person, if extradited, might then be faced with a situation in which he could be convicted of theft under the 1968 Theft Act in England, without the prosecution having to prove a taking and carrying away as they now alleged in the warrant, provided that they proved an appropriation in some other form; and some of the other forms in which they could prove appropriation would not be indictable offences in Irish law.

Mr. Justice Finlay said that an Extradition Act was the necessary consequence of an agreement between two sovereign States reposing confidence in each other and that he should not suppose that the court and other authorities of the country to whom extradition was sought were using a deceit so as to secure the apprehension of the plaintiff.

Apart from this, and in his view more decisive, was the fact that, under the provisions of the Extradition Act, 1965, there appeared to be nothing to stop a person, extradited on a warrant in respect of one charge, being tried for other offences in the courts of the country to which he was extradited, except for the provision restricting the extradition of a person where there were substantial reasons for believing that he would, if removed from the State on any charge, be prosecuted or detained for a political offence or an offence connected with a political offence, or an offence under military law which was not an offence under ordinary criminal law.

If that was so, then it seemed to him that an assertion that all or part of the allegations of fact contained in a warrant might not be proved, but that instead of them some other act or fact sufficient to constitute the same English offence might be proved instead, was not a valid objection to the making of an order under section 47 (of the Extradition Act). He therefore refused the application in this case.

Mr. Wyatt has 21 days to appeal the case to the Supreme Court.

(*The Irish Times,* 15 November 1973.)

Doctor wins Count Order against transfer of shares.

A Co. Cork consultant psychologist was granted a temporary injunction in the High Court yesterday restraining Pye (Ireland) Ltd., of Dundrum, Co. Dublin, through their servant and agent, Mr. Charles O. Stanley, from transferring 419,766 shares in Credit Finance Ltd.

Dr. Peter Berry, of Skibbereen, whose English address was given as Bentley Grange, Green Lane, Burnham, Buckinghamshire, said in an affidavit that in August last he, along with certain associates, became interested in acquiring Phillips' block of shares held by their subsidiaries and associates in Credit Finance.

With that in view he approached Mr. Stanley as the chairman of Pye (Ireland), in the name of which company there were then registered 419,766 ordinary shares of 25p each in Credit Finance.

He had several meetings with Mr. Stanley who, on September 23 at his home in Clonakilty, Co. Cork, confirmed to him that he would grant an option to purchase the shares on or before October 31 last.

On October 1, Mr. Berry said he received an option granted by Mr. Stanley to purchase the shares in Credit Finance and on October 26, in writing, he informed Mr. Stanley that he proposed to exercise his option to purchase the shares.

On November 14 he was informed by Mr. Van Eyle, Executive Director of Philips Industries, that Pye (Ireland) had held a board meeting and that his offer to purchase the shares had been considered, but that it had been decided that the company would sell their shares to a third party.

He immediately sent a telegram to Pye (Ireland) reminding them of the option he had exercised.

On November 15, he received a telegram from A. and L. Goodbody, solicitors for Pye (Ireland), alleging that there was no agreement in existence between the company and him.

The order, made by Mr. Justice Kenny, is effective until after Monday next.

(*Irish Independent,* 20 November 1973.)

LAW v JONES—Summary of Case

Court of Appeal; Civil Division; Russell, Buckley and Orr LJJ; 1, 2 March, 10 April 1973.

By an oral agreement made on 17 February 1972 the defendant agreed to sell, and the plaintiff to buy, a freehold property for £6,500. There was no intention that the agreement should be subject to contract. On February 18 the defendant's solicitors wrote to the plaintiff's solicitors referring to the plaintiff's "proposed purchase of the ... property for £6,500 subject to Contract" and stating that they would obtain the tirle deeds and submit a draft contract as soon as possible. On February 25 they wrote again referring to the earlier letter and enclosing the daft contract. On March 13 the parties agreed on an increased price of £7,000.

Again the agreement was oral but it was intended to be binding; the defendant assured the plaintiff that he would not go back on his word. On March 17 the defendant's solicitors wrote a letter to the plaintiff's solicitors in which they said: "We understand that an increase in the consideration has been mutually agreed and we shall therefore be obliged if you would amend the Contract in your possession to read a purchase price of £7,000". Subsequently a date for completion was agreed and on that date the plaintiff's solicitors forwarded the purchaser's part of the contract signed by the plaintiff. The defendant, however, believing that he could obtain a better price elsewhere, refused to complete. In an action for specific performance the defendant claimed that the contract of March 13 was unenforceable on the ground that the relevant correspondence and the draft contract were incapable of constituting a "note or memorandum" of the contract for the purposes of S 40 (1)* of the Law of Property Act 1925 since they did not look back to a concluded oral contract, but related exclusively to a different written contract to be concluded in the future.

Held, by the Court of Appeal (Buckley and Orr L.JJ, Russell LJ disenting): The contract was enforceable for the following reasons—

(i) Where an oral contract for the sale of land had been proved, it was sufficient, for the purposes of S 40 (1) if the note or memorandum recorded the terms agreed on; it was not necessary that the note or memorandum should itself acknowledge the existence of the contract unless, in the absence of such an acknowledgment, the document would be read as denying the existence of the contract.

(ii) Where a document contained the words "subject to contract", it was open to the parties subsequently to waive that stipulation orally, thus creating a contract. In such a case the document might thereafter serve as a sufficient note or memorandum if the waiver could be established by oral evidence.

(iii) Even if the insertion of the words "subject to contract" by the defendant's solicitors prevented the letter of 17 February and the subsequent correspondence up to March 13 from constituting a note or memorandum, the letter of March 17 was a written acknowledgment signed by the defendant's solicitor, acting within his authority, that the parties had entered into a new contract on the terms of the draft contract save for the alteration of the purchase price. That acknowledgment was not expressed to be "subject to contract" and any effect which that qualification in the letter of February 17 had had on the earlier correspondence was nullified by the firm oral agreement between the parties on March 13. Since the terms of the oral agreement were to be found incorporated in the letter of March 17 read with the earlier correspondence, and the draft contract, with which it was linked, those documents contained a note or memorandum of the oral agreement of March 13 within the meaning of S 40 (1).

Griffiths v. Young (1970) 3 All ER 601 applied.

Appeal

By a writ issued on 25 April 1972 the plaintiff, Joseph Law, brought an action against the defendant, Stuart Martin Jones, claiming (i) an injunction restraining the defendant from selling or otherwise disposing of the defendant's freehold dwelling-house known as Dingleberry Cottage, Yarningale Common, Claverdon, Warwickshire ("the cottage") except to the plaintiff; (ii) specific performance of an agreement by the defendant to sell the cottage to the plaintiff and (iii) damages for breach of contract. By his defence the defendant denied that there existed a binding contract to sell the cottage to the plaintiff and, in the alternative, relied on the procisions of S 40 of the Law of Property Act 1925 and denied that letters, correspondence and a draft conveyance which had passed between the defendant's and plaintiff's solicitors or any of them constituted a note or memorandum of the alleged contract. The defendant counterclaimed for a declaration that there was no binding contract between the plaintiff and the defendant for the sale of the cottage and an order that the registration of a class C(iv) land charge in respect of an estate contract between the plaintiff and the defendant which the plaintiff had caused to be registered in the register of land charges be vacated. On 27 July 1972 Ungoed-Thomas J granted the plaintiff the decree of specific performance sought and dismissed the defendant's counterclaim. The defendant appealed.

COURT THROWS OUT OWN RULING

(Tiverton Estates v. Wearwell).

The rule established in Law v. Jones by the Court of Appeal in April that buyers and sellers of houses can be legally bound by an oral agreement was overturned yesterday—by the Court of Appeal.

The April ruling had caused consternation within the legal provession. It decided that an oral agreement was binding even if the magic words "subject to contract" were included. These words have for more than a century been understood to mean that there was no binding agreement until formal written contracts had been exchanged.

On this basis, when a buyer and a seller agree orally subject to contract each has been free to investigate further. The buyer has the property surveyed and gets his solicitor to discover whether, for instance, there is any plan to build a motorway through the back garden.

Yesterday a differently-constituted Court of Appeal (Lord Dunning, with Lords Justices Scarman and Stamp) decided that the April ruling—Law v. Jones—was wrong. They held that an oral agreement to sell a leasehold property for £190,000 was not binding because there was no written contract when the seller decided not to go ahead.

Normally the Court of Appeal is bound to follow its own decisions but there is an exception where it has previously given inconsistent rulings, in which case it can select from among them. The three judges agreed that the decision in April was inconsistent with certain nineteenth century decisions and that the old cases should be preferred.

It is virtually unheard of for the Court of Appeal to reverse itself on an important matter within a few months. But in this particular case the legal profession will breathe a considerable sigh of relief. It is still, however, theoretically possible that the April decision will be restored, because leave to appeal to the House of Lords was granted.

(*The Guardian*, 22/11/1973)

LEGAL EUROPE

THE FRENCH NOTARY

By Professor L. Neville Brown (Birmingham)

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Who is the notary?

In France, as in the so-called Latin countries generally, the organisation of the legal profession is based upon a functional distinction between contentious and non-contentious business. This resembles, but is not identical with, the Anglo-American distinction between "court lawyers" and "office lawyers". In France contentious business is conducted primarily by *Avocats* who form the Bar, in conjunction with other specialised groups such as the *avoués* who have the monopoly of the written procedure at civil appellate level. Non-contentious business is the peculiar, though not exclusive, province of the *notaire*. For his monopoly consists, not simply in the giving of legal advice (the *avocat* and others do this too), but in his capacity to draw documents having authentic force. This character of authenticity is the *raison d'etre* of the notarial profession and requires full explanation for the benefit of English lawyers to whom term and concept alike are strange. *L'authenticité* is the key to an understanding of "*le notariat*", as the notaries describe themselves collectively.

Notaries are defined by statute as the public officials (*officiers publics*) established:

(1) to receive all the *actes* and contracts which the law requires or the parties desire to be given the character of authenticity attached to the *actes* of a public authority;

(2) to establish their date; and

(3) to preserve their custody and to issue certified copies.

Before analysing this complex definition, it will be helpful to descrize briefly the organisation of the notarial profession.

Organisation of Notaries

Notaries divide into three classes:

(1) those practising within the ressort or area of jurisdiction of a *cour d'appel*;

(2) those practising within the area of a *tribunal de grande instance*;

(3) those practising within the area of a *tribunal d'instance*.

The jurisdiction of a notary and his character of public official are strictly limited to the confines of his area: within the area he is fully competent, but outside it, he can receive no *acte* nor confer authenticity. However, an *acte* so made outside his area may still be valid as, a private document under hand (*acte sous seing prive*), if signed by all the parties. There are heavy penalties for infringing this rule of jurisdiction.

The conditions of admission are (1) that the applicant enjoys the rights of a French citizen, (2) that he has satisfied the demands of military service, (3) that he is over 25 years of age, (4) that he has served the necessary period of normally two years apprenticeship *stage*) in a notary's office, (5) that he has passed the professional examinations, and (6) that he has received a favourable report on his moral fitness from the President of the Chamber of Discipline for the area in which he proposes to practise. To this list of conditions it used to be necessary to add that the aspiring notary had to command considerable wealth, so as to be able to buy a practice or have hopes of inheriting one. This was because until 1969 a notary could not work in partnership with another notary nor be employed by another notary as an assistant. Since that date, however, partnerships have been permitted, and there are already some 300 such partnerships in existence. This development as well as the wider availability of loans for the purchase of practices is gradually broadening the social base of the profession. (Strictly speaking, it is not the practice one buys but rather the right to be presented to the office held by the outgoing notary.)

Of the various lawyers or para-legal professions in France, the most numerous is the Bar with some 7,600 *avocats* (of whom 3,700 practise in Paris). The notaries are not far short of this number with 6,260 notaries in practice. Moreover, whilst an *avocat* usually works single-handed with perhaps one secretary-typist, the notary is often the head of a large "law firm" with several senior *clercs* (or legal executives) and a host of secretaries. Thus, the staff employed in notarial offices has grown from 26,000 in 1960 to almost 36,000 in 1969. This justifies the claim of the *notariat* to be by far the largest legal service operating in France.

Statutory definition

It is now possible to return to the statutory definition of the notary. This begins by referring to notaries as the public officials. This emphasises that they have a monopoly of their particular functions, which cannot be usurped by other professions, officials or individuals. We should not be misled by the description *officiers publics*. The term is used vaguely, and the notary should in no way be regarded as the equivalent of a British civil servant, comparable (say) with a Registrar of Marriages. Rather the term should be understood in the sense that the notary is an appointee of the state, from which source he derives his attributes and his power to give to his *actes* executory force. The meaning of this *force executoire* will be discussed later. He is also a public official inasmuch as he has been appointed to exercise a public calling. Like the innkeeper and the common carrier in England, he is then under an obligation to lend his services to those who request them. For such services he is, of course, entitled to be paid, his scale of charges being fixed by law. With the important qualification that he is not free to reject a client, the position of the notary is thus similar to that of the

solicitor. The Ministry of justice has the right to investigate his activities, but in practice supervision of his conduct is carried out by his local Chamber of Discipline, which consists of a number of his senior colleagues. Subject to his liability to this body in the event of a breach of the strict professional code of conduct and etiquette and to his client in the event of his negligence, the notary may practise within his area with almost as much freedom as the solicitor.

Functions of the Notary

The definition then proceeds to enumerate his functions. In the first place, he receives all the *actes* and contracts which the law requires of the parties desire to be given the character of authenticity. The word *"acte"*, for which the writer has thought fit to retain the French form, in its original and literal sense means anything done. Then, by a metonomy, which is found also with the English word "deed" it has come to mean not the transaction itself but the document in which the transaction is recorded. Unlike the English deed, however, the French *acte* is not necessarily under seal.

The notary being confined to non-contentious business, he may receive all the *actes* recording the friendly transactions of the parties, only excepting the ceremony of marriage and an *acte d'emancipation* of a child. The *prive*), according as the parties may elect. It is to this man in society with his fellows, that is, those which concern the status and fortune of individuals. Among such *actes* there are those which must necessarily be passed before a notary if they are to have any validity. Others, on the contrary, may be passed before him, if it is desired to give them authenticity, or merely put into writing and signed by the parties (*actes sous seing privei*, according as the parties may elect. It is to this distinction that the definition alludes.

Characteristics of Authenticity

Authenticity is not directly defined in any statute or code, but it has been described as the attestation of a fact by a public authority whose declaration is conclusive without previous verification of the writing, until impeached for falsity. And Article 1317 of the Civil Code defines as *authentique* any instrument which has been drawn up with the required formalities, by a public officer duly empowered to practise in the place where the instrument was received. The four requirements, therefore, of an *acteauthentique* are:

(1) that a public authority or officer has presided at its making,

(2) that the *acte* appertains to the attributes of the public authority or officer who has made or received it,

(3) that the authority or officer has the right to practise in the place where, and at the time when, the *acte* is passed,

(4) that the *acte* is clothed with all requisite formalities.

Of such *actes* there are four categories:

(1) *Actes* of the legislature (eg. statutes).

(2) *Actes* of the administration (e.g. death certificates).

(3) *Actes* of contentious jurisdiction (eg. court orders).

(4) *Actes* of voluntary jurisdiction—in particular, notarial *actes*, which are, therefore, but a species of a much larger genus.

Effects of Authenticity

The two principal effects of authenticity are, first, that the *acte* is conclusive evidence until impeached for falsity, and secondly, that it is executory in itself. Whereas the first effect is common to all *actes authentiques*, the second only applies to certain of these, in particular to the *grosses* or notarial *actes*. A **gorsse** is a certified copy of an *acte* and concludes with an executory formula identical with that appearing at the close of orders by the courts. A creditor armed with a *grosse* can proceed to have execution levied on his debtor's property without needing to have recourse to a court judgment in his favour. This right to employ the executory formula, which he shares with the judiciary, is one of the startling characteristics of the notary and clearly places him in a position of considerable power—power which the elaborate method of nomination and discipline effectually safeguards from abuse. Moreover, the issue of a *grosse* is hedged with considerable precautions to prevent its coming into the hands of a person unauthorised to exercise it.

As to the first effect, which concerns the evidential value of the acte, one must here distinguish between its form and its contents. Every *acte* which appears on its face to be authentic is presumed, until impeached for falsity, to issue from the public official whose signature it bears. As to the contents, its probative force varies: the operations, on the one hand, which are stated to have been actually performed by the notary or to have been carried out in his presence are fully proved by the *acte* until impeached; on the other hand, for events which have taken place other than in the presence of the notary, the *acte* is proof that the parties have made the declarations which the *acte* relates, but not that those declarations are themselves true.

The probative force applies equally against the contracting or participating parties, their heirs and assigns, as against third parties. Article 1313 of the Civil Code, which appears to limit the probative force to the parties to the *acte*, their heirs and assigns, is interpreted as referring only to the obligatory or contractual force of the *acte*.

Actes authentiques deemed conclusive

Actes authentiques, therefore, are in some respects conclusive evidence until impeached for falsity. This impeachment is a very involved and costly procedure and may be pursued either in civil law alone or criminally at the same time. An additional deterrent is that failure in this procedure may involve the pursuer in heavy damages with the possibility of criminal proceedings being taken against him. Impeachment, however, is not necessary to disprove the declarations of the parties, which may be opposed by all the ordinary methods of proof.

In short, the *acte authentique* is an instrument with a high evidential value or probative force derived from its form and the authority by whom it is prepared. Because of its superior value as evidence, an agreement will often be recorded in this form in preference to using an *acte sous seing prive*, even in cases where the parties are under no obligation to use the authentic form.

Acte en minute and acte en brevet

Besides the reception of *actes authentiques* and the certification of their date, the statutory definition also refers to another important function of the notary, that

of assuring the deposit and of issuing certified copies of the *actes* which they receive. The notary has the duty of safeguarding the custody of the originals of the *actes* which he receives *en minute.* An *acte* drawn *en minute* is an *acte* the original of which is kept by the notary who has drawn it, certified copies only being given to the parties or the persons legally entitled to call for copies. It is opposed to an *acte* drawn *en brevet,* where the original document signed by the notary is handed to one of the parties and a plain copy is kept in the notary's office. The *acte en brevet* is the exception and that *en minute* the rule. Only certain *actes* may be drawn *en brevet.* It will be realised that the whole notarial system depends on the conservation of these *minutes.* To this end elaborate rules exist regarding their custody and their transmission where a practice changes hands. Further, as all *actes* require to be registered at a government office and certain registration duties paid, the notary must keep a *repertoire,* in the form of a chronological table, of all the *actes* which he receives. This *repertoire* is periodically called in for inspection by the registration officials, so as to prevent the evasion of these duties.

Notaries must keep documents for 125 years

The notary, therefore, by reason of his duty to conserve his *actes en minutes,* is made into an archivist. Unlike the solicitor, he has the duty and expense of keeping at his office a mass of documents, which for convenience are usually bound chronologically into volumes, and which are commonly referred to as his "minutes". He is obliged to keep the *minutes* of himself and his predecessors for 125 years. As *minutes* exceed this age, they are periodically delivered up to the national or district archives.

Notaries must give unbiased careful advice

The statutory definition does not exhaust the functions usually exercised by the notary, although one may observe that it is largely due to his statutory attributes that these other functions have attached themselves to his office. Apart from the preparation of authentic *actes,* which in itself requires considerable skill in draftsmanship, the notary is often called upon to advise his clients in all manner of questions affecting their legal rights, and he does well to weigh carefully what advice he gices. For, in any dispute which may subsequently arise, the courts before whom the matter is heard will not be slow to rebuke the notary who has advised his client amiss. Moreover, before any acte is signed, he must fully instruct the parties in the law as to the effect of the engagements into which they propose to enter. Further, the notary may have to act as judge or arbitrator between the parties who resort to him, and he should seek to hold the scales evenly. It is his duty to be impartial: he must not take sides. The moral obligation upon him to give sound and unbiased advice is heavy, for the parties having need of his services often place absolute confidence in him, due to their own ignorance of the law and to the high prestige of his office. Nor is the obligation moral only, for its breach may create legal liability for negligence.

Specialised functions

Certain specialised functions have also been conferred on him by the legislature: thus, he may be appointed by the court to represent persons who are presumed to be "absents" in inventories or partitions; he may likewise be appointed to conduct the liquidation and draw the involved accounts where a partition is being carried out through the court; again, where a public authority is compulsorily acquiring property, he may be appointed to form part of the commission to decide the compensation payable (but not, of course, where the *expropriation forcé* concerns any of his own clients).

Practical work of Notaries

Hitherto the description of the notary's functions has stemmed from the analysis of a statutory definition. From a practical point of view, a notary might divide his work into the following four categories:

(1) Family affairs, such as marriage settlements, wills and the administration of estates.

(2) Conveyancing: conveyances (ventes) of immovables form a substantial and lucrative part of most notarial practices. Here must also be included the increasingly important *Reglements de Copropriete,* a form of co-ownership of apartments by floors, extensively developed during the present century, especially at Grenoble and Lyons.

(3) Company affairs, such as company formations, increases of capital, and the like: in this sphere the notary, unlike the solicitor, has held his own against the accountants.

(4) Miscellaneous matters not falling within any of the other headings, and including advising on almost every difficulty and problem of daily life.

From this division by way of subject-matter it will be seen that the notary takes no part in litigation. His jurisdiction only extends to cases where the parties voluntarily seek his assistance. If the parties are unable to reach agreement, he ceases to have jurisdiction, which then shifts to the courts.

A place of dignity and honour

By virtue of his functions, whether they be assumed or be attributed to him as a monopoly by the law, the notary occupies a place of great dignity and honour in French life. The disinterested counsellor of the parties, the protector of the interests of the inexperienced and legally incapable, the trusted sharer of the inner-most secrets of the family and often the peacemaker in its disputes, he has a high legal and moral responsibility which generations of notaries have faithfully discharged. The tradition of the profession is a powerful force, only rivalled perhaps by that of the English Bar, and in its official publicity to school-leavers and students the profession declares "one can be proud to belong to a profession of social and economic importance which with a total personnel of 42,000 members puts it at the head of all the legal professions."

How does a notary differ from a solicitor?

The English solicitor differs principally from the French notary in having no jurisdiction *qua* solicitor to authenticate the agreements and instruments of his clients. The monopoly of the solicitor, which means that certain instruments cannot be drawn up except by the privileged few competent in that behalf, should not be confused with the authenticity which a notary may bestow on his *actes*: the English conveyance, for example, is in French eyes an *acte sous seing prive,* even though, because of its subject-matter, English law has reserved its preparation to a restricted class of persons.

In his capacity, however, as a Commissioner for Oaths, the solicitor may give special evidential value to documents sworn or declared before him, as he may also if he acts as a notary public (the French notary lost his epithet of "public" after 1830).

English Notaries Public

It was to confer authenticity that the office of notary public was established in England at an early date (perhaps by the end of the thirteenth century). The development of this office is an interesting result of the contract of two distinct systems of law, common and civil. In the Middle Ages this contact was closest in the ecclesiastical sphere, for the Western Church was a powerful international organisation. It was, therefore, the Church which, in order to bring England into conformity with the civil law countries, appointed the first officials in this country to authenticate documents for transmission to the Continent. The Archbishop of Canterbury, through the Master of the Court of Faculties, still appoints notaries public in England, but their original ecclesiastical function has been largely lost in their commercial attributes. For the growth of international commerce found the office useful for its own special purposes, particularly in matters of bills of exchange and shipping, matters which often involve a foreign element.

Certificate deemed an authentic act

The certificate of a notary public, bearing his signature and official seal, is accepted as proof of the acts done in his presence and attested by him in all countries where notarial *actes* are recognised. Thus, in French terminology, the certificate is an *acte authentique*. The *raison d'etre* of the notary public is to live this *cachet* of authenticity to documents intended to be used abroad; this is the great difference between the notary public and the French notary: French law compels the parties to utilise the authentic form for many transactions and in practice it has been seen that his form is often adopted voluntarily, but in England its use is exceptional, other than for documents to be transmitted abroad. The relative unimportance of the notary public when compared with the French notary is due not to any great dissimilarity in the nature of his office but rather to the narrowness of the functions attributed to him. "The backward economic condition of England in the Middle Ages, and the insularity of the common law, were the reasons why that common law never needed, and therefore never recognised, an official of the civil or canon law. The Reformation of the sixteenth century, and the victory of the common law over its rivals in the seventeenth century, reduced the civil and ecclesiastical law to a subordinate position; and the officials recognised by them naturally shared their fate." (*Holdsworth, H E L,* vol. 5, p. 115.)

It was the attorney of the common law who attracted to his profession almost all the functions of the French notary, apart from the matter of authenticity. His final triumph may be seen in the fact that the great majority of notaries public are also practising solicitors. In France, on the other hand, the *avoué* did not expand his field of activity beyond his original role of taking the formal acts in the law on behalf of his client and his office has now been merged with that of the *avocat* except before the *cours d'appel.* The functions, which in England have accrued to the solicitor, in France have passed to the notary, so that, except for the absence of litigation, his daily work is remarkably like that of the solicitor. There is as it were, a common territory in which both operate, and on either side a domain special to each—the solicitor has his litigation and the notary his authenticity.

Notary confined to non-contentious business

To this distinction between contentious and non-contentious business the notary remains committed. That this is not a merely French distinction but of world-wide significance can be seen from a speech made at the Tenth Congress of the International Union of Latin Notaries in Montevideo in 1969:

"At a time when clients and their needs are changing and when some persons believe it would be a progressive step to adopt the principle of a unified profession imitated from Anglo-Saxon practice and based upon the confusion of the contractual and contentious domains, we consider it right to reaffirm in the interest of society the distinction between contractual and contentious business, the quantity of the latter being in inverse proportion tot he quality of the former."

But whether the distinction may become less self-evident as British solicitors become more widely involved in the enlarged Common Market is an interesting speculation. Certainly, solicitors will find in French notaries an invaluable source of help and advice in commercial, company and property transactions on the Continent of Europe."

SHAREHOLDER CONTROL IN IRISH COMPANIES

By John Temple Lang

The differences between Irish company law, under the Companies Act, 1963, and the company law of Britain as it was embodied in the UK Companies Act, 1948, are few in number and some of them are not of great importance. One of the most important of them, however, is so inconspicuous, and seems to have been so rarely recognised, that it is worthwhile to draw the attention of the legal profession to it specifically.

Under regulation 80 of part I of Table A of the Companies Act, 1963, and under the corresponding regulation 80 of part I of Table A under the Companies Act, 1948 and regulation 82 of part I of Table A of the Northern Ireland Companies Act, 1960 the business of a company is placed in the hands of the directors. In each case the powers of the directors are expressed to be subject to the provisions of the Articles of Association of the company (including Table A) and the provisions of the relevant Act. The UK and Northern Ireland Acts go on to say that the powers of the directors are to be subject "to such regulations being not inconsistent with the aforesaid regulations (i.e. the Articles and Table A) or provisions (i.e. the provisions of the Act) as may be prescribed by the company in general meeting".

In contrast, the 1963 Act provides that the powers of the directors are to be subject, "to such *directions,*

being not inconsistent with the aforesaid regulations or provisions, as may be given by the company in general meeting" (emphasis supplied).

Regulations to mean Special Resolutions

In the case of *Quin and Axtens v. Salmon* (1909) A.C. 442, it was held that the word "regulations" in the UK Act means in effect special resolutions, which have the same status as the Articles of Association and which are adopted by the shareholders in general meeting by a 75% majority in the ordinary way.

The somewhat strange interpretation placed by the House of Lords on the provision in the UK Table A could not be adopted, and was no doubt not intended to be adopted, as the proper interpretation of the wording of Table A of the Companies Act, 1963. It is quite clear that for companies which have adopted it, the shareholders in general meeting may, by a 51% majority, give orders to the directors. Apparently the directors are bound to comply with these instructions, provided that they are themselves consistent with the Act and the Articles of the company. Presumably directors who did not comply with the instructions within a reasonable time will be personally liable to the company (rather than to the shareholders) for their failure to carry out the instructions.

That this is the correct interpretation of the regulation is made clear by the last clause which in the Companies Act, 1963, continues "but no direction given by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that direction had not been given". In this clause the word "direction" has again been substituted for the word "regulation" used in the UK and Northern Ireland Acts.

Majority of shareholders may instruct directors

It could be argued that although 51% of the shareholders have a statutory right at any time to remove one or all of the directors from office, it is undesirable that they should have a right to give instructions to the directors as to how the business of the company should be run. If this argument was valid it would of course apply equally to instructions given by 75% of the shareholders by way of a special resolution. The fact that a special resolution alters the constitution of the company and thereby in effect alters the rules of the game for the directors is not relevant to this argument. The question under discussion is whether the rules, as far as the directors are concerned, do include instructions given by a 51% majority, and not whether directors should be subject to the rules made by the shareholders at all. It is clear that they are.

It cannot be argued against this interpretation that it enables 51% of the shareholders to over-ride the interests of the minority of 49% or less. Under section 205 of the 1963 Companies Act (another section of the full implications of which have yet to be spelt out) any shareholder of a company may apply to the Court if "the powers of the directors of the company are being exercised in disregard of his or their interests as members" and this also applies if "the affairs of the company are being conducted" in the same way, irrespective of who they are being conducted by. What appears to be a substantially similar right is given by section 201 of the Northern Ireland Companies Act which enables the injured minority to complain to the Court if the affairs of the company are being conducted or the powers of the directors exercised "in disregard of his or their *proper* interests as member or members".

It follows that Table A of the 1963 Companies Act totally altered the balance of power between shareholders and directors in relation to the management of a company, by enacting for companies adopting Table A a much greater degree of shareholders democratic control over controversial aspects of the administration of the affairs of the company than had previously existed. (Regulation 71 of Table A of the Companies (Consolidation) Act 1908 is the same in this respect as the wording of the UK Act 1948). Whether Irish shareholders choose to exercise their powers in particular instances is a matter for them, but it is clearly the duty of the legal profession to be aware of the effect of the 1963 Act in this respect and in appropriate cases to call it to the attention of their clients, whether directors or shareholders.

PRACTICE NOTE—Foster Finance v McGee

(Mr. A. Donnelly, solicitor for Foster Finance.)

This matter came before Judge K. Deale at Dundalk Circuit Court on October 24 last, same having been placed in his list on his direction as a result of a complaint made by the County Registrar when it appeared that Judgement was obtained in the office against the defendant for £114. Subsequently, a decree was lodged with the County Registrar for enforcement. It was then ascertained that the defendant had fully discharged the alleged debt some months before the Judgement had been obtained.

Foster Finance, with their legal representative, appeared in Court and Patrick J. O'Sullivan gave evidence on their behalf in explanation of how the error occurred.

He said that the practice was to check with the client's Ledger Card and that he had done this before swearing the Affidavit of Debt. It was subsequently discovered that the debt had, in fact, been paid and was not due when he swore the Affidavit because, when the debt was paid, it was credited to a Suspense Account and not direetly to the defendant's Account.

Judge Deale—Do you realise that it means that the Sherrif executes and seizes goods even though the man did not owe you anything; have you no better method than looking at the ledger?

The witness said that there was a procedure for checking this kind of error.

The Judge—You made a sworn Statement and, upon that obtained Judgement and the Sherrif was about to seize a man's goods who owed you nothing?

The witness—Those are the facts. My firm deal with some 40,000 accounts.

The Judge—If you have 40,000 accounts, you should have staff to handle 40,000 accounts.

The witness—There is no doubt that the firm made an error and we have apologised to the client and to the Court.

Mr. Donnelly—Perhaps I may be at fault. Having got a direction to appear there, I thought the proper time was to apologise here in Court.

The Judge—I am concerned with the apology to Mr. McGee who has an Execution Order against him for money he didn't owe.

Mr. Donnelly—There is also a sincere apology to Mr. McGee for a very regrettable error. Mr. O'Sullivan has with him a cheque payable to the defendant for the amount that was overpaid. There are no costs of the proceedings being sought at all and the man has been refunded what was overpaid.

The Judge—Mr. O'Sullivan, acting in good faith makes a sworn statement that this man owes his company £114 and in fact he not only does not owe them, but in fact they owe him money, or, at least there was an overpayment. The source of that Information is a sheet of paper in the office which is assumed to be correct. No check was made to find out if in fact that record was correct before that Affidavit was sworn. It is deplorable to think that in consequence of that false record which should have been traced, and traced quickly, that the Sheriff was about to execute for money not owing. Fortunately, the Sherrif did not seize, but it is very unsatisfactory that such a thing should occur. I directed that the matter be put in the list so that Foster Finance should come here and explain. I have heard the explanation and I hope that in future records of this kind in this firm, or any other firm either, will be more carefully kept, and that all relevant documents will be examined to make sure the money is owing and not paid. I accept the apology that has been offered. I am glad that Mr. McGee, who is not represented, has been apologised to also and that some costs he has paid out have been repaid to him.

The Judgement should be set aside and I have no jurisdiction to do so until I am asked to do so by Mr. McGee's solicitor.

Students propose legal changes

A delegation from the Law Students Union for Action presented a memorandum to the Minister for Justice, Mr. Cooney, calling for reforms of the district courts, the prison system and legal education, and the establishment of a free legal aid system.

The delegation met the Minister for over an hour and later issued a statement in which they said that they felt that Mr. Cooney was in agreement with most points in the memorandum. The Minister had intimated that the discussions would be more helpful if they undertook not to communicate to the press what was said at the meeting, excepting the memorandum. The delegation agreed to this request.

The students proposed the establishment of one law school in Dublin, or at least the bringing into line of the legal courses in Trinity College, U.C.D. and U.C.C. so that they had the same content.

Students wishing to become lawyers would have to first obtain a four-year Bachelor of Law degree from one of these institutions. The professional bodies would fulfil no education role during this period. When a student obtained a degree he would then decide whether to train to be a trial lawyer or an office lawyer or he might go into business or the Civil Service, or follow an academic career. In the former two cases it was incumbent on the professions to provide new machinery to allow graduates to train with established lawyers while being paid. After a year of such training the student ceuld register as a practising lawyer.

The memorandum pointed out that, in return for about £550 paid to the King's Inns, the student obtained 48 compulsory dinners complete with snuff and frock-coated servants; 120 40-minute lectures; the opportunity to sit examinations in 12 subjects, nine of which were examined in the university courses in papers of at least as high a standard; 12 Irish language lectures; the use of a library in which one never saw more than half a dozen students; membership of the debating society, and a call to the bar on successful completion of examinations.

The memorandum contended that the traditional distinction between academic and professional training had become largely irrelevant as the university courses were today so comprehensive.

The memorandum described King's Inns as a relic of Britain's occupation in Ireland and as a means of perpetuation of class distinction. Meanwhile the student could receive an excellent legal education at a university college for approximately £300 over a similar three-year period. It stated: "We suggest that the Inns of Court established by Henry VIII in 1542 to consolidate his foothold in Ireland is today an indefensible position of privilege in relation to the training of lawyers and should have its undergraduate functions taken away by the Coalition. How can we have the Just Society without a just legal system?"

Referring to the district courts the memorandum suggested that the method of appointing district justices should be reconsidered: district justices should be appointed on a reviewable five-year basis: social, economic and psychological factors should be officially considered in determining the punishment for any crime: the Children's Court must be abolished this year; the age of criminal responsibility should be raised to 14; the charge of loitering with intent to commit felony should be done away with—it was too vague and open to abuse.

On prison reforms the students suggested that solitary punishment should disappear; dietary punishment should be ended; and there should be the appointment of at least one full-time psychiatrist.

The memorandum said that care should be taken that the procedure whereby prisoners were assigned to mental hospitals was not abused; better training and qualifications and working conditions were essential for prison warders; prisoners did not have confidence in visiting committees.

The American Commission of Gaols had placed a moratorium on the building of prisons for 10 years at least, on the grounds that they were failures. The students argued that a similar body would give the same advice and reach the same decision in Ireland.

Examination Results

PRELIMINARY EXAMINATION

At the Preliminary examination for intending apprentices to Solicitors held from the 16th to 23rd July the following candidates passed :

Maureen Aboud, James Aitken, Monica Becker, Noeline M. Blackwell, Helen Boland, Michael Bowden, Katherine A. Boylan, Patrick C. Brennan, Elizabeth Bruton, Paul Buggy, Christian M. Carroll, John P. Carroll, Michael J. Carter, Eugene Carey, Niall Casey, Michael Condon, Carol E. Connolly, Mark Cooney, Paul S. P. Cooney, Thomas A. M. Cooney, Cornelius M. Corbett.

Jean E. Corrigan, Frances R. G. Cotter, Duncan Crozier-Shaw, Colman P. Curran, Patrick J. F. Dalton, Mary Dorgan, Anthony J. Duncan, Patricia Drumgoole, Eithne L. Egan, Paul H. Fetherstonhaugh, Ann Fitzpatrick, Clare Flanagan, Eithne Flanagan, William Fitzgerald, Shaun I. Fitzpatrick, Clare Flanagan, Eithne Flanagan, William P. S. Fleming, Charles J. D. Foley, Peter M. Fortune, Geraldine A. M. Gillece, Bernard Gogarty, Catherine Gray.

Mary P. Griffin, Michael T. Higgins, Mary P. Kelly, Philip Kelly, Matthew G. Keogh, Conor M. F. Killeen, Catriona Kirby, John Lindsay, Thomas P. Loomes, Raymond Lyons, Patrick Macklin, Elizabeth Maguire, Antonio E. Malocco, David Martin, Mary Meagher, Dermot Moore, Terence C. Moran, Nuala Mulvey.

Mary Mylotte, John C. McBride, Henry J. McCourt, Edward McEllin, Justin McKenna, John P. McMahon, Mark M. G. McParland, Adrian M. O'Brien, Padraic O'Brien, Elizabeth A. O'Connor, Claire O'Donnell, Clara O'Driscoll, Gerald D. O'Driscoll, David O'Hagan, Gerard O'Herlihy, Ciaran A. O'Mara, Redmond D. O'Regan, Niall O'Reilly, Patrick P. O'Sullivan.

Anne M. Reidy, John Rohan, Michael P. Ryan, Robert J. Sheehan, Paula Sheerin, Anthony F. J. Sheil, Stephen L. Shields, Thomas Simpson, Dermot W. Snow, Maurice T. Spillane, Manus Sweeney, Mary B. Sweeney, David J. Synnott, Eugene T. Tormey, Brendan J. Twomey, Patrick Wallace, David Walley, Rosamond Walsh.

160 candidates attended; 96 candidates passed.

FIRST IRISH EXAMINATION

At the examination held on 15th October, 1973, the following candidates passed :

Sheena Barry, Carol Connolly, Mark M. Devitt, Edward Dundon, Donal W. Dunne, Peter M. Fortune, Gerald J. Gallagher, Carol L. Gillespie, Maurice M. Griffin, Daniel J. P. Hanley, Stephen W. Haughey, James J. Hickey, Brendan Hyland, Marcus Jones, Alexis S. Keane, Kevin P. Kilrane, Randal M. P. Lamb.

Brendan G. T. Lynch, Edward MacBride, Thomas K. Madden, John . Mannion, Patrick Manny, Damien Martyn, Gerald J. Meaney, Daniel Morrissey, Michael A. Mullane, David M. Murphy, Linda Murphy, William M. Murphy, Gavan McAlinden, Jeremiah C. McCarthy, David P. S. McCormack, Sheila Neary, Adrian M. O'Brien, Clifford C. O'Donnell.

Anthony F. M. O'Gorman, Donal O'Kelly, Elizabeth A. Olliffe, Eugene O'Sullivan, John P. D. Purcell, Noel A. Quinn, Michael J. Ryan, James Scally, Henry A. Sexton, Duncan C. Shaw, David G. Somers, John Territt, Eugene T. Tormey, Declan J. Traynor, Owen Wilson, Margaret Wren, Liam J. Wrynne.

56 candidates attended; 52 candidates passed.

BOOK-KEEPING EXAMINATION

At the examination held on 24th September, 1973 the following candidates passed :

Passed with Merit

Joseph Dermot Haugh.

Passed

Denis Patrick W. Boland, Geoffrey Browne, Patrick J. Butler, John F. Carroll, Patrick Francis Clyne, John A. Coughlan, Crowley Peter O'Neill, Sheila Devitt, John Dunne, Orlean Joan Dyar, William Early, Michael Enright, Daniel Fagan.

Kevin Gaffney, Stephen C. Hamilton, Agnes Sarah Kirwan, Michael Molloy, Brendan T. Muldowney, Thomas J. McDwyer, Joan Nagle, Orlaith O'Brien, Mary R. O'Sullivan, Thomas P. Quinn, Edward M. Sheehan, Patrick H. John White.

37 candidates attended; 26 candidates passed.

FIRST LAW EXAMINATION

At the First Law examination held 3rd-7th September, 1973, the following candidates passed :

Dermot Agnew, B.A., Bernard F. Armstrong, David Bergin, Patrick L. Brady, B.A., H.Dip. in Ed., Marian N. Brazil, Eithne Breathnach, Michael G. M. Brennan, George P. Bruen, Francis X. Burke, John R. Carroll, Brian D. Casey, Joseph Caulfield, B.Comm., Therese M. Clarke, Joseph A. Comyn, Stephen M. Coughlan.

Pauline M. Curtin, B.C.L., Eugene Cush, B.C.L., William B. Devine, Anthony J. Doherty, B.A., LL.B., Peter J. Dooley, Thomas F. Dowd, Dominick M. Dowling, Kevin Dowling, Janet A. Erskine, B.A., Joseph Fair, Paul Fleming, Sean Gallagher, Brendan Garvan, B.Sc., Margaret M. A. Gleeson, Terence Hanahoe, Henry N. Healy, B.A. (Mod.), Eileen M. Howell, Veronica Huggard.

Joseph M. Jordan, Philip Joyce, Patrick J. Kelly, Niall D. Kennedy, Gillian K. M. Kiersey, Mary E. Larkin, Martin Lennon, Francis J. Lowney, John R. Lynch, Richard W. Maguire, Aedeen M. Meagher, Patrick J. Minogue, Michael Moran, Thomas K. Mulcahy, B.A., Sarah A. McAuliffe, B.C.L., Patrick McCafferky, B.A.

Susan H. Nolan, Mary O'Connor, B.C.L., Thomas V. O'Connor, Catherine M. O'Doherty, Brian H. O'Donnell, Michael J. O'Donnell, Thomas O'Dwyer, Donal P. O'Hagan, David O'Keeffe, Brian F. O'Sullivan, Mary C. O'Sullivan.

Brendan J. Rossiter, Bryan J. Strahan, Anne Sweeney, B.C.L., David M. Turner, Henry J. Ward, B.A., Mary T. P. Ward, Veronica H. Watchom, John Weston, B.A.

139 candidates attended; 68 passed.

SECOND LAW EXAMINATION

At the Second Law examination held 4th-8th September, 1973, the following candidates passed :

Passed with Merit

Charles Kelly, B.A., Eugene C. O'Sullivan, B.A., Matthew D. O'Donoghue, Edward G. Hall, B.A., H.Dip. in Ed., Colin Keane, B.A., Mary P. Cantrell, B.C.L.

Passed

Brian P. Adams, B.C.L., James J. Binchy, Denis P. W. Boland, B.C.L., John G. Brady, Jennifer M. M. Cantillon, B.C.L., John F. Carroll, B.C.L., Margaret M. Carter, Martin D. Cellier, B.C.L., Marie C. Collins, Marie G. Connellan, James Courtney, Peter O'Neill Crowley, Anne M. Delaney, B.C.L., Sheila Devitt, James M. Devlin, B.A., Mary C. Dolan.

John D. Dunne, B.C.L., Grace M. French, B.C.L., Kevin Gaffney, Sylvia H. Geraghty, B.A., Mary Griffin, B.A., Helen Heffernan, Simon W. Kennedy, Joseph F. Langwell, Doreen Levins, Richard Liddy, Hugh F. Ludlow, Sean M. McBride, B.C.L., Patrick J. Minogue, Arthur D. S. Moran, B.A., Deirdre Morris, B.C.L.

Rose McCarthy, B.A., David C. O'Brien, Eimear O'B. Kelly, John J. O'Brien, Ross O'Cathain, John G. O'Donovan, B.C.L., Richard O'Hanrahan, Kathleen A. O'Leary, Joseph Philpott, B.C.L., Ann M. Regan, B.C.L., Nicholas K. Robinson, M.A., Brian J. Roche, Patrick D. Rowan, M.A.

Edward M. Sheehan, B.C.L., Michael Sherry, James D. Sweeney, Joseph R. Sweeney, William J. B. Synnott, Rosaleen Tyndall, Catriona Walsh, B.A., Michael P. Walsh, Roderick St. J. Walsh, B.C.L., Brian O. Whelan, B.C.L., Richard R. Whelehan, B.A., H.Dip. in Ed.

87 candidates attended; 61 passed.

THIRD LAW EXAMINATION

At the Third Law examination held from the 3rd to 10th September, 1973, the following candidates passed :

Passed with Merit

Alvin F. M. Price, Dermot G. Byron, B.C.L.

Passed

Donal Ashe, B.C.L., Denis Barror, B.C.L., Terence F. Casey, Angela E. Crowley, Patrick J. Daly, B.C.L., Gerard J. Doherty, B.C.L., Gerad A. Doyle, Kieran Earley, David G. Ellis, B.A., Nessa Fitzsimons, B.C.L., Eamonn P. D. Gallagher, George J. Gill, B.C.L., Brian Glen, Daniel Gormley.

Caroline I. Halley, B.C.L., William G. J. Hamill, Stephen C. Hamilton, Rosalind E. Hanna, B.A., Peter Hayes, Louis A. Healy, Margaret G. Hickey, B.C.L., Michael J. Horan, B.C.L., Anne Hughes, William O. Jolley, Michael J. Keane.

Catherine A. Kelly, Damien Kelly, Edward A. Kelly, Jean M. Kelly, Raymonde D. Kelly, B.C.L., Agnes S. Kirwan, B.C.L., Ronald J. M. Lynam, J. Barry Lysaght, B.C.L., Brendan T. Muldowney, B.C.L., Elizabeth Mullan, B.C.L., Thomas M. J. Mullins, B.C.L., Kathleen P. McDonnell, B.C.L., Kieran E. O'Brien, Daniel J. O'Connell, B.C.L., Carroll O'Daly, B.A.

Hugh O'Donnell, Thomas J. O'Halloran, B.C.L., Donal O'hUadhaigh, Margaret M. O'Kane, Dermot O'Neill, Mary L. O'Sullivan, B. C. L., Michael O'Shaughnessy, John B. Quinn, B.C.L., James T. Riordan, B.C.L., Odran J. Rochford, B.C.L., John B. Shannon, B.C.L., Patrick J. White.

72 candidates attended; 54 candidates passed.

By Order : James J. Ivers, *Director-General.*

DUBLIN SOLICITORS BAR ASSOCIATION

At the Annual General Meeting of the Association the following Officers and Committee were elected for the Session 1973/74.

President : Thelma King
Vice-President : Patrick Golden
Hon. Secretary : Andrew F. Smyth
Hon. Treasurer : Carroll Moran

Council : Moya Quinlan, Anne R. Neary, David R. Pigot, John P. A. Hooper, Thomas Jackson Junior, John F. Buckley, Rory O'Donnell, Colm Price, Laurence K. Shields.

The Meeting decided to recommend to all firms of Solicitors in Dublin that Offices should close at their normal hour of closing on Friday the 21st December and reopen at their normal hour of opening on Monday the 31st December 1973.

The Annual Dinner of the Association was held in The Library, Solicitors' Buildings, Four Courts, Dublin on Saturday, 8 December 1973. As members were able to invite their wives, as well as guests, there were more than 200 guests present. Miss Thelma King presided, and the guests included Mr. Justice O'Keeffe, President of the High Court and Mrs. O'Keeffe; Mr. Justice Conroy, President of the Circuit Court; Judge O'Malley; Justice O'Flynn, President of the District Court, and Mrs. O'Flynn and other District Justices; and the respective Presidents of the Belfast Solicitors' Association and the Southern Law Association, as well as the President of the Society, Mr. T. V. O'Connor. Miss King proposed the Toast of "Our Guests" to which Mr. Robert Barr, S.C., responded. Mr. Justice Conroy proposed the toast of "The Association" to which Mr. Ernest Margetson responded. Mr. Rory O'Connor arranged a suitable musical programme contributed to by eminent artistes. Altogether, thanks to the excellent catering of Aer Lingus, a most enjoyable evening was had by all.

BOOK REVIEWS

Salmond (Sir John)—The Law of Torts. 16th edition. Ed. by R. F. V. Heuston. Royal 8vo.; pp. xcii, G47; London, Sweet & Maxwell, 1973; paperback £3.85.

Since its first edition in 1907, Sir John Salmond's learned treatise on the law of torts has undergone no less than sixteen editions, and Professor Heuston has successfully edited all editions since the 13th in 1963 while the 13th edition contained 825 pages of text, and even the 15th edition (1969) contained 840 pages, the pagination has now been reduced by nearly 200 pages, a remarkable achievement. Professor Heuston differs from this reviewer in regarding as hallowed Sir John's original text, and has admitted that, in relation to certain matters, he has not altered it. In this reviewer's opinion, it would have been better if Professor Heuston, with his vast experience o fwriting legal literature, had frankly published a new textbook on Torts under his own name. All the lucid features of Professor Heuston's previous editorship, are here with the addition of up to date English—and, alas, too few Irish—cases. This reviewer has used Salmond in giving tuition in tort, and is broadly surprised how relatively little change the text has undergone on the whole.

It surprises me, in relation to licences, that so much space should be devoted to hoary cases like *Wood v. Leadbitter* and *Hurst v. Picture Theatres*: a very few lines would have been ample. There is however little doubt that the chapters on defamation and on negligence are fascinating to read, as the lucid learning of the illustrous editor are so evident. A few incidental references, have been made to the Irish Civil Liability Act 1961, but, in the view of this reviewer, its outstanding features should have been fully noted. However the practitioner who has studied and remembers the principles of tort displayed expertly in this volume by Professor Heuston, will have reason to thank the learned editor for greatly facilitating his task.

Encyclopaedia of European Law. Volume A—United Kingdom Sources. General Editor: K. R. Simmonds. 8vo; looseleaf. (The pagination is different according to the parts used.) London, Sweet & Maxwell; New York, Matthew Bender, 1973; looseleaf, £17.50.

It was a happy idea of Messrs. Sweet & Maxwell and of Messrs. Bender to think of publishing a full Encyclopaedia of European Law; it is proposed to issue 3 volumes—Volume A—United Kingdom Sources: Volume B—European Community Treaties and Volume C—Community Secondary Legislation: Volume A has now appeared. Part A1 is a most Annotated Edition of the English European Communities Act 1972, which is somewhat more extensive than the corresponding Irish Act. Part A2 consists of 2 5 other annotated British Acts which directly or indirectly affect European Communities Law. Part A3 consists of 79 Annotated British Rules and Orders relating to Community Law. Part A4 lists in full with annotations the Command Papers, Parliamentary Reports and circulars issued in Britain relating to the European Community. The fact that Dr. K. R. Simmonds, Director of the British Institute of International Law, is the General Editor of this vast Encyclopaedia, will ensure that it is accurate and useful. Furthermore, as the volume has the advantage of being loose-leaf, it will be easy to insert additional loose-leaf material as and when it is published, subject to an annual supplementary fee. As broadly speaking, the Irish legislation and relevant statutory instruments will be similar in context to the material published in this volume, it should prove most useful to any Irish practitioner who will have to undertake much work in connection with European Community Law, which, as previously stated, is as much Irish Law as if it had been passed by the Oireachtas.

Sanctuary (Gerald)—Before You See a Solicitor. 8vo.; pp. v, 117; It's your law sense. Published by the Law Society and Oyez, London, 1973; 60p.

The authority of this book is unquestioned, as Mr. Sanctuary is the Chairman of the Professional and Public Relations Committee of the English Law Society. The main purpose of the book is to explain the work of the Solicitor to the layman, and his role in society. He rightly stresses that in many respects, such as the question of deserted wives, the law is unsatisfactory. In England they have the advantage not only of Free Legal Advice Centres, but also of Citizens' Advice Bureaux, to help the ignorant litigant; Zander, Readers Digest Family Guide to the law (1971) is also strongly recommended. It is stressed that a solicitor is at all times deemed to be a trained lawyer and that it is essentially a friendly profession. In England, the happy position exists whereby the majority of solicitors now in private practice are working as members of a firm, but of course partnerships carry substantial negligence insurance, and it i swise to organise the offices into specialised departments. The English Solicitors' Remuneration Order 1972 sets out the guidelines which a solicitor must observe in charging a scale fee in conveyancing matters. It is stressed that the majority of solicitors use the time-costing system, and the importance of preliminary inquiries before signing a contract is also emphasised. There are also useful chapters on Property, Family Law and Legal Aid. This is an essential book for the layman who wants to understand the solicitor's profession.

Community Law—A selection of publications on the Law of the European Economic Community and the relevant Law of the original member states—published by the British and Irish Association of Law Librarians, London. 4vo., pp. v, 64; obtainable from Mr. Breem, Librarian, Inner Temple, London E.C.4; £2.25.

Up to the publication mainly by Miss Charlotte Lutyens and Miss Muriel Anderson, of this most useful bibliography, it was very difficult to obtain in English any accurate bibliographical data about legislation, law reports and textbooks relating not only to the European Economic Community, but also relating to the Continental Member States, other than Denmark—namely Belgium, France, Federal Germany, Italy, Luxembourg

and the Netherlands. This void has now been admirably filled by this volume, and the compilers are to be congratulated upon their tireless industry and accurate information. This reviewer has had occasion to check the name and price of books in French and German and has invariably found them accurate. It will be appreciated that this checking of foreign catalogues was an extremely laborious process which the computers have accomplished so successfully. It is hoped that it will be possible to establish a Central Depository Library for all Ireland not only in respect of the law of the seven Continental Member States; this will necessarily be a very expensive venture, but otherwise we will largely have to rely on the limited French and German Collection in University College Dublin, and it would be a pity if the opportunity were lost to establish a full European Law Library in Ireland. Be that as it may, we must congratulate the publishing Association, and particularly its computers, for having produced a volume which is invaluable to everyone who wishes to build up a library mainly on Community Law, which of course is now part of Irish Law.

Chloros, A. G., ed.:—Bibliographical Guide to the Law of the United Kingdom, the Channel Islands and the Isle of Man. Second Edition. 8vo., pp. xvii, 301; The Institute of Advanced Studies of the University of London, 1973, £8.

The first edition of this invaluable bibliographical work was published by Professor Lawson in 1956. Professor Chloros, in his Preface to the present edition, has truly emphasised that the development of mechanical civilisation has made it necessary that all lawyers should become specialists. The purpose of the book, admirably achieved, is to give as much information as possible in each section. Various well-known experts, such as Professor Neville Brown on the Legal Profession, Professor Cohn on the Common Market, Professor Gower on Company Law, Professor Guest on Torts, Professor Sheridan on Equity, and Mr. John Wylie on Northern Ireland Law, ably assisted by Mr. Steiner of the Institute, have all contributed to the respective 21 sections. Each section not merely gives a bibliographical list of books on the subject but gives valuable notes as to the relative value of the main textbooks. For instnace a subject like contract is subdivided into its most important parts. It will thus be appreciated that each of the Sub-editors has carried out his section of the work with authoritative thoroughness and expertise, and that the book can be thoroughly recommended to the practitioner who wishes to build up a library of English Law. It is a pity that Irish Law has not been catered for, apart from Northern Ireland.

COMMITTEE ON COMPANY LAW

The Council have agreed with the Council of the Institute of Chartered Accountants to set up a Committee to recommend changes in the present Irish Company Law in the Republic. This committee will consist of an independent chairman, and of four members each from the Law Society and from the Institute of Chartered Accountants. It is intended that this committee should work closely with the Companies Section of the Department of Industry and Commerce. It is now considered appropriate to revise the company law, which is now ten years old.

The committee will welcome and consider any suggestions put forward by members of the Law Society which in their opinion would improve Company Law. All correspondence on this subject should be addressed to Mr. Ivers, Director-General of the Law Society.

DATING OF INDENTURES

It would seem that many solicitors do not ensure that indentures of apprenticeship are properly dated. In order that no possible dispute can arise as to the date upon which indentures of apprenticeship are properly dated.

J. Ivers, *Director General*

APPOINTMENTS

Mr. William Dundon, former Law Agent to Limerick Corporation, has been appointed as Law Agent of Dublin Corporation.

Mr. Richard Woulfe, former Assistant Law Agent to Cork Corporation, has now been appointed Law Agent to Limerick Corporation.

Deficiencies in Legal Education

By PAUL McGILL, Research Officer U.S.I.

The "Report of the Committee on Legal Education in Northern Ireland" (cmd 579) which was published this month should be carefully studied by all involved in legal education in the Republic. The report is far from radical—no consideration is given to the problem of how a predominantly middle-class profession can be opened up to all or even to how the profession can be given an understanding of the problems facing working-class people. The report is satisfied with stating that the possibility of running legal advice clinics would be explored.

Another defect is the inadequate examination of the content of the academic law degree. The discussion of degrees concerns only law content, e.g., whether the "mixed" degree contains the necessary "core" subjects of law. No consideration is given to the broader studies which should be an integral part of legal studies, particularly sociology, economics, medicine, politics and psychology. Nor does the report state that a vital purpose of a law course should be to produce graduates who are capable of critically analysing the desirability of legal rules rather than merely interpreting them correctly.

Leaving aside these serious conceptual deficiencies the new structure proposed for professional legal education is a neat and co-ordinated one. Most practising lawyers

will have a law degree. If the degree is from outside Northern Ireland a short course on Northern Ireland law will be provided. Special provision exists for graduates in subjects other than law and for those with no degree at all. After graduation prospective practitioners enter an Institute of Professional Legal Studies, which will be part of Queen's University but separate from the law faculty. The one-year course here is strictly vocational, concentrating on the practical application of legal knowledge and techniques and the development of skills needed to practise. This course is followed for solicitors by three years of "limited practice" and for barristers, by pupillage. The final stage is the ongoing one of continuing education.

If such a structure were adopted here it would mean a dramatic improvement. Legal education in the Republic has long been in a disgraceful condition, many of the faults stemming from lack of co-ordination between the Universities and the Professional bodies. One example of this is that the Benchers decide the course for most of the King's Inn's exams but the lectures are given in the Universities. Since the Universities are autonomous the course in the University might cover quite different ground. Even if the courses were precisely the same serious problems arise because the student must take two sets of examinations. A Trinity Student doing the four-year B.A. in Legal Science does 16 subjects and the same number of exams. If he is also doing Bar exams he does another 14—there are no exemptions whatsoever. If he is doing solicitors erams he must do 13 more law subjects plus two Irish papers and book-keeping—32 in all. In addition if he is serving his apprenticeship at the same time he is supposed to be learning the necessary professional and practical skills while doing all the exams.

Anomalies like this abound in relation to professional training. In U.C.D. many complaints are made also about the degree, among them the bad conditions, terrible staff-student ratios and lecturers who know no Irish law. Added to complaints like this are factors such as the high cost of becoming a qualified lawyer.

All in all it could be said that legal education in the Republic is much worse than in the North. The effective teaching of University law is hampered by bad facilities and conditions and by the excessive outside claims on the time of the student. The professional bodies are not adequately involved in profiding professional training. The victims of the present disorganised structure are firstly the students themselves, but most of all the unfortunate public on whom they are set loose unequipped for their job.

A wide-ranging examination of legal education in Ireland is urgently needed.

The Irish Times, 29 October 1973

Judges disinterested in penal reform

Have judges become too isolated? For four days last week penal reformers and expert prison administrators met at York to discuss how to keep more people out of prison. There was no disagreement on the goal. Home Office officials, probation officers, prison governors, and community workers were all agreed that too many people were being sent to prison.

If there had been any doubts, the first paper presented to the conference would have dispelled them. Prepared by a Home Office research team the paper set out in detail what reformers had stated in more general terms for years: too many alcoholic, mentally handicapped, mentally ill, and homeless people were being sent to prison.

Too many homeless on mission

One problem which disturbed the conference was the judiciary's silence on penal policies. What was the use of penal reformers and administrators meeting to discuss ways of keeping men out of prison if the men who put people in prison, the judges, were absent?

One High Court judge, Sir Brian MacKenna, did attend the conference but he agreed that there was too little contact between judges and the people who had to carry out the sentences. Sir Kenneth Younger, chairman of the Howard League for Penal Reform which organised the conference, criticised the judges for what he regarded as a "self-imposed apartheid" in the public discussion of sentencing policies.

Judges ignorant of penology

It was not just the silence of the bench which disturbed Lord Gardiner, the former Lord Chancellor, but their ignorance. Judges were well trained in the rule of law and how to sum up to a jury but were not required to take any examination in criminology, penology, or psychology.

There have been a few reforms. Some judges now visit prisons on the special one-week training courses which were established by the Lord Chancellor in 1968. The Parole Board has allowed one or two High Court and Crown Court judges a better insight into prisons.

But what, rightly, was of more concern to the conference was not arranging more prison visits for judges, valuable though they would be, but pointing to the need for some form of machinery which would allow collective consultation between judges and prison and probation officials who have to administer the sentences imposed by the courts.

Magistrates and Prisons

Magistrates probably have more contact with prisons than judges. Local magistrates not only serve on probation committees but also on the boards of visitors which act as prison disciplinary courts and ombudsmen. More people are sent to prison by magistrates than judges, but, because the offenders whom judges send to prison serve longer sentences, they occupy more space.

What became clear at the conference was the new Government departments with whom penal reformers now have to tangle. In earlier days the sole target used to be the Home Office. Now several departments are involved. If the isolation of the judiciary is to be resolved, the Lord Chancellor will have to be lobbied. If the increase in detoxification units to help alcoholics remains too slow it is no longer the responsibility of the Home Office but the Department of Health and Social Security instead. If there are too few homeless hostels, the main hope for reform rests with persuading more local councils to build them.

Cost of Prison

Perhaps the biggest fillip to the penal reformers' campaign to cut down the number of people in prison was a paper produced by Christopher Nuttall, a Home Office senior research officer. Ironically the paper took issue with the penal reformers' claim that, because it cost £35 a week to keep a man in prison (not including supplementary benefits which have to be paid to his wife and children) and only £4 a week to keep him on probation, it was cheaper to place a man on probation.

The paper showed that the marginal cost of one extra prisoner was much less than £35. The extra prisoner did not require extra staff, facilities, or in some prisons, food. The marginal cost of one extra prisoner could in fact be less than £4.

As Edmund Dell, the Labour MP for Birkenhead, pointed out at the conference, one reason why the marginal cost of prisoners was so low was because of the readiness of the Prison Department to allow overcrowding in prisons.

But the paper helps penal reformers in their campaign because its main message is that it is no use transferring a few prisoners to probation schemes and expecting to save money. To achieve any economy, radical transfers have to be made.

No one now doubts that there is a large number of people in prison who do not need to be there. Police, probation, and prison officials are all agreed that the homeless, the alcoholic, and the mentally sick should be somewhere else.

Mr. Nuttall's contribution has been to show that it may be cheaper to be radical than timid.

The Guardian (18 September 1973)

PROFESSIONAL NEGLIGENCE INSURANCE AND THE LAW SOCIETY IN ENGLAND

by GEORGE B. BATES

It now seems almost certain that the Solicitors (Amendment) Bill, albeit after a change of clothes, is unlikely to pass into law owing to opposition from certain non-legal members of Parliament who will persistently block the Bill on the second reading.

However, it seems not unlikely that if the Bill is presented again next session it will at least have Government backing if a Government Bill does not take the place of the present private member's Bill.

The demise of the Bill cannot be a matter for regret for, although it contains some useful provisions, there is nothing in it which could not wait for a couple of years if necessary for implementation, and other provisions which ought never to be made law.

However, there is one clause in particular which did not appear in the first Bill, but appears in the current one, namely Clause 7, which gives the Law Society wide powers in regard to professional indemnity insurance.

Law Society's proposal

Readers will remember the announcement which appeared in the *Law Society's Gazette* on 11 October 1972 to the effect that the Council of the Society had it in mind to consider taking care of solicitors' professional indemnity insurance either by itself establishing a scheme or fund for this purpose or (more likely) negotiating a single master policy with the insurance market for the profession as a whole.

Whichever scheme is adopted, it is proposed that in any event insurance against professional negligence should be made compulsory for solicitors and that a solicitor would not be able to obtain a practising certificate without effecting satisfactory insurance.

It is questionable whether the idea of compulsion is a good one, having regard to the effect it may well have on the size of premiums, since practitioners will be liable to be forced into paying disproportionate premiums. Certain it is that compulsion will not reduce premiums, which are already a heavy burden on practitioners. It would be interesting to know what percentage of solicitors do, as not effect professional negligence insurance. I suspect that the percentage is very low. The Council of the Law Society obviously gave consideration to one or other of these schemes in the (I think mistaken) belief that professional negligence insurance was becoming more and more difficult to obtain and might become eventually unobtainable.

Specialist insurance market

I doubt whether this is so. What has happened in practice is that many of the larger insurance groups have left the underwriting of professional negligence insurance to the specialist insurance market and this has led to the mistaken belief that the capacity for this class of insurance would eventually disappear. In recent years there has been a withdrawal from the market of non-specialist insurers, but this is entirely justified in the light of the necessity to underwrite professional negligence insurance upon the basis of a wide portfolio. I am advised that correctly underwritten professional negligence insurance is both attractive and profitable to the specialist insurer.

On the other hand the increasing cost of insuring against professional negligence is a matter of concern for nearly all practising solicitors, particularly those who have had the misfortune to have one or two claims in the past.

It seems self-evident, however, that to give the monopoly of this type of insurance to one or even two companies (i.e. the master policy scheme) will certainly not reduce the cost of the premiums owing to the removal of the competitive element which alone keeps premiums down, although it may be beneficial to the companies concerned on the basis of the premise stated above, that it is necessary if professional negligence insurance is to

be underwritten profitably for it to be based on a wide portfolio.

If cover is to be effected by one or two companies through the agency of the Law Society, the element of competition will virtually disappear and will have serious disadvantages to the profession. Innovations of cover brought into the market because of competition would probably never appear whereas now, if a solicitor finds the premium quoted unsatisfactory, he has at least other companies to which he can go for a quotation. On the other hand some solicitors with a clean sheet or low claims record may be called upon under the Law Society scheme to pay higher premiums than they had secured by private negotiation.

The other alternative suggested by the Council of the Law Society is that its own common insurance fund or scheme should be established. It is not made clear how this will differ in cost, if at all, from putting all the insurance in the hands of one company (the master policy scheme), thereby removing the element of competition completely.

Full disclosure requirement inserted prematurely

Many solicitors, too, would surely be apprehensive if the Law Society itself was operating the scheme in view of the special relationship which exists between the Society and the members of the profession on the one hand, and the desirability for complete disclosure on the other. Many solicitors will be distrustful of disclosing matters to their discredit to the Society although assurances have been given that the scheme would be operated completely independently. Whatever assurances may be given at this stage they are no guarantee for future years. Also it should be noted that in Clause 16 of the current Bill an amendment has been made to Section 29 of the Solicitors Act 1957 giving the Council of the Law Society power to disclose a report on or information about a solicitor's accounts obtained in the exercise of their powers of inspection to the Director of Public Prosecutions. Is this the way the wind is blowing? It looks like the thin end of the wedge!

It is noteworthy that recently the Law Society has circulated local law societies on the subject of the proposed insurance arrangements. One is, therefore, in doubt whether the problem or its solution were sufficiently considered before the clause in the current Bill was inserted. It is the writer's view that the clause was inserted prematurely and without adequate consideration of the consequences of the proposals, otherwise there is no reason why the Society should at this late stage be giving the consideration to the scheme which it should have given earlier. Surely all aspects should have been fully explored before the new powers were sought.

In its announcement in the *Gazette* (supra) the Law Society mentioned some unsatisfactory elements of the present system many of which are difficult or impossible to refute. These include rising premiums, limit of cover to twelve months and the cumulative claims limit, so that the maximum sum for which insurance cover is given has to meet all claims in a year and not each individual claim. These are all matters of concern to solicitors but it is by no means clear how the establishment of a master policy can avoid them, or those which I have not detailed.

Group policy through selected company favoured

What the Society might usefully be able to do is to assist the practitioner who is refused cover to obtain it through a group policy with a selected company which, on the basis of a wide portfolio albeit of high risk cases, would more easily be able to afford the risk. Whether this would be feasible I am not prepared to say, but the Law Society should include the possibility of this in its investigations.

In conclusion, the indications are that, far from effecting reductions in premiums, the Law Society's proposals could well create increases owing, inter alia, to the creation of a monopoly coupled with compulsory insurance as a condition of practice. The solicitor will have to negotiate from a position of weakness. It is difficult to see how any of the schemes proposed by the Law Society can be an improvement on the present system of negotiating professional negligence insurance individually in a free and competitive market with an insurer who is sympathetic to the requirements of the special needs of the profession. If these negotiations are conducted within the framework of a specialist negotiated arrangement, such as the British Legal Association's insurance scheme, which promotes and encouages a free interchange of views between practitioners and insurer, many of the problems and difficulties encountered would rapidly disappear.

It is sincerely to be hoped that when the Solicitors (Amendment Bill is re-presented, this ill-considered provision will be omitted, or if included and passed, that the Law Society will consider very carefully the full implications of their proposals before using the powers which the section would give them. In the meantime practitioners who have hitherto overlooked the provisions of the Bill should give serious consideration to this one in particular, and make representations not only to the Law Society but to their Members of Parliament before the provisions become law.

DISSENT OF MAN—
How Manxmen retain their system

Fire precautions in the Isle of Man had been criticised by the island's chief fire officer, Mr. Cyril Pearson, before the Summerland tragedy. There are no laws governing fire exits, alarms, or emergency lighting, and legislation equivalent to Britain's Fire Precautions Act 1972 is still being drafted. But this is not the only field in which Manx laws are different.

The pubs stay open all day and moves to introduce the breathalyser have been stalled. Income tax is 21 per cent, a car licence costs around £10, and there is no such thing as capital gains tax or estate duty. You drive at 16, vote at 21, and never serve on a jury if you are a woman. Youths are apt to be birched for a long string of offences, and students lose their grants for misbehaviour.

To the English—or the Welsh or the Scots—the laws of the Isle of Man are a chapter of anomalies, a jumble of measures combining fiscal laxity, social severity, and

many other variations on the British norm which seem to lack rhyme or reason.

Many Acts of the Westminster Parliament are virtually rubber-stamped by Tynwald; but in fire regulations as in many other fields the differences which have accumulated over the years are substantial.

Indeed, as the Manxmen are quick to tell you, the differences have been there from the start. They claim that their Parliament, Tynwald, is the oldest legislature in the world, dating back over 1,000 years to the Viking invasions of the island. They have been making their own laws for a long time and they intend to go on choosing which British laws to adopt and which are in need of local improvement.

The Isle of Man is a self-governing dependency of the British Crown not part of the United Kingdom or colonies. An ancient kingdom originally governed by Norway, it was ceded to Scotland in 1266 and disputed for another 150 years before the English Crown took over, Henry IV granting the island in 1405 to Sir John Stanley, whose heirs became the Earls of Derby.

In 1736, the lordship passed to the Dukes of Atholl, but the most important date in the island's history was 1765, when the Isle of Man Purchase Act placed it under the direct administration of the British Crown.

For all the autonomy of Tynwald, its present law-making powers have therefore been won back on sufferance from Westminster, notably in the Isle of Man Customs, Harbours, and Public Purposes Act of 1866, which separated the Manx revenues from the rest of the United Kingdom, and set up the House of Keys as a popularly elected legislative body with 24 members.

Any Act of the British Parliament can apply to the Isle of Man if the island is specified in the statute, and UK legislation on aviation, navigation, nationality, and similar subjects is generally framed to include it.

In what the Speaker of the House of Keys, Mr. Charles Kerruish, described as the worst development in Anglo-Manx relations for 100 years, the Wilson Government demonstrated just what powers it had by extending the 1967 Marine Offences Act to the island, outlawing Radio Caroline.

But in most other fields Tynwald has been allowed to go its own way for over a hundred years now, and there have been many demands for further autonomy.

Customs and excise duties have been harmonised with those of the United Kingdom, in spite of suggestions that Jersey's policy of cheaper cigarettes and drink should be copied, but tax differences are substantial: low personal and company income tax, no corporation tax or death duties, and better incentives for the right sort of investor than Britain's development areas can offer.

In the social field, the retention of capital and corporal punishment is well known (although there have been no executions for years), but Britain's liberalising laws on abortion and homosexuality were never copied, and the island has still not passed an equivalent of the 1959 Mental Health Act.

Strikes are extremely rare, and the Industrial Relations Act was never adopted. Nor has Tynwald bothered with the price and wage restraint legislation.

In the latest development, the island has just taken over running its own Post Office, issuing its own stamps as it also does banknotes. But its most remarkable achievement, along with the Channel Islands, has been the arrangement reached with the EEC whereby it applies the common external tariff and participates in free trade throughout the Community while remaining a tax haven, enjoying the best of both worlds as a country could never do.

The Guardian (8 August 1973)

Society of Young Solicitors

The Society organised a visit to the European Commission in Brussels, followed by a week-end in Amsterdam, from Thursday 22nd to Sunday 26th November inclusive. About 50 solicitors took part, and the excellent arrangements were in the capable hands of the Chairman, Miss Maeve O'Donoghue, and of Michael Carrigan and Donough O'Connor. The party left Dublin Airport on Thursday morning, and reached Brussels after a comfortable flight of 80 minutes. they were then brought by coach to the Metropole Hotel, where they were entertained so lunch by Vincent Grogan, Director-General of Policy in the Competition Section of the Community. They were afterwards brought to the Berlaymont building in the Community, and heard lectures by Mr. Grogan and some other officials in one of the vast basement lecture rooms. Subsequently, Allied Irish Banks Ltd. gave a very pleasant reception in the Hilton Hotel, which was much appreciated by all concerned. The evening was rounded off when Vincent Grogan and Conor Maguire took some of us to a supper of mussels in old Brussels. On Friday morning the party heard lectures in the morning on "Regional Policy" and "Social Policy", and this was followed by an excellent lunch given by the Community in the Europa Hotel. The party then visited the Headquarters of te Irish Permanent Mission to the European Communities where they heard a lecture on the functions and objects of this Mission. The party were well accommodated at the Central Hotel, one minute from the Bourse, and, having called there for their luggage, set out after 6 p.m. for a three hour coach journey to the Museum Hotel, Amsterdam. The party were free to wander at their leisure around Amsterdam until Sunday afternoon at 4 p.m.; they had the advantage of being near the famous Rijks-Museum and the Van Gogh Museum. The coach took 2½ hours to reach Brussels Airport, and the party reached Dublin Airport on Sunday *evening after another uneventful* flight. It was altogether a most successful trip.

DAIL QUESTIONS

25 October 1973

MALICIOUS DAMAGES CLAIMS

Mr. Timmons asked the Minister for Justice if he proposes to introduce legislation to make malicious damages' claims a national charge.

Mr. T. J. Fitzpatrick (Cavan): A review of the whole law relating to malicious damage to property is currently in progress and I shall make an announcement on the matter as soon as possible.

RENTS OF FLATS

Mr. Kyne asked the Minister for Justice whether he will set up a rents tribunal with powers to decide fair rents for tenants of furnished and unfurnished flats.

Mr. T. J. Fitzpatrick (Cavan): This question raises complex social and economic issues which would have to be considered very carefully. At this stage I have no legislative proposals in the matter; but am arranging to have the matter examined in depth.

IRISH CITIZENSHIP

Dr. O'Connell asked the Minister for Justice if he will introduce legislation to provide that a foreigner who marries an Irish citizen will automatically become an Irish citizen; and if he will, pending the passage of such legislation, permit any person whose spouse is Irish to reside in this country.

Mr. T. J. Fitzpatrick (Cavan): I have no such legislation in mind.

The law allows a woman who is married to a man who is an Irish citizen otherwise than by naturalisation to acquire Irish citizenship simply by registration.

For the rest, every decision to refuse an alien entry to the State or to ask him to leave it is taken on the merits of each case. The fact of marriage to an Irish citizen would be a factor in arriving at a decision.

Dr. O'Connell: The question relates to an Irish girl who married a Malaysian but he is not permitted to enter this country as her husband. Can the law be changed so that he can enter the country with his wife. The Aliens Office say that this man cannot enter the country although he has no criminal record, has fluent English and a perfect education. They say he must have a licence or a permit to work in this country before he will be admitted. Can anything be done to ensure that this woman sees her own husband in her own country? In Britain, as the Minister will agree, when an English person marries a foreigner the foreigner automatically becomes a British subject by naturalisation. The same thing applies in the United States and in most EEC countries, but seemingly we are unique in Ireland in preventing this.

Mr. T. J. Fitzpatrick (Cavan): As I have stated, for a woman marrying an Irishman there is no problem.

7 November 1973

WIFE DESERTION

Mr. Andrews asked the Minister for Justice when it is intended to attach husbands' salaries when it is found that the wife and children are not being adequately maintained by the husband.

Mr. Andrews asked the Minister for Justice when it is intended to amend the Married Women (Maintenance in Case of Desertion) Act, 1886; and if he will make a statement on the need for reform in this area.

Mr. Andrews asked the Minister for Justice when it is intended to protect a wife's rights to the matrimonial home in the event of desertion; and the action he contemplates in this matter.

Minister for Justice (Mr. Cooney): With your permission, a Cheann Comhairle, I propose to take Questions Nos. 30, 31 and 32 together.

As I stated in the House on 17th July last, in reply to a question—Volume 267, column 972—I have, in consultation with the Attorney General, embarked on a programme of family law reform. Further to that, I have extended the terms of reference of the Committee on Court Practice and Procedure, which previously were restricted to matters of procedure, so as to enable the committee to make recommendations on matters of substantive law and I have asked the committee to examine certain aspects of family law including the law as to the desertion of wives and children.

This examination will cover the various matters mentioned in the questions, and others as well, though I should perhaps say, for the record, that the 1886 Act has already been amended more than once and was indeed substantially amended as recently as 1971, by the Courts Act of that year.

Family law is difficult and complicated and its various aspects require thorough and detailed examination. I cannot say, therefore, at this stage, when recommendations may be expected from the committee in regard to any of the matters referred to in the questions but I am quite certain, from my knowledge of the committee's work, that there will be no avoidable delay.

Mr. Andrews: Would the Minister impress upon the Committee on Court Practice and Procedure the urgency particularly in the matter of deserted wives and the possibility of attaching the husbands' salaries, and other related matters?

Mr. Cooney: I am satisfied that there is no need to impress the urgency of these matters on the committee. Their record for work and speed in reporting are possibly unique in committees.

Mr. Andrews: I do not wish in any way to reflect criticism on the committee, a committee of which I have considerable knowledge. I would ask the Minister to urge the committee to issue an interim report in this matter, if at all possible.

Mr. Cooney: All I can say is that the committee are aware of the urgency of the matter, and I would rely on their discretion and wisdom to decide whether an interim report is necessary. I have no doubt that, if they find themselves being delayed and that there would be an advantage in an interim report, they would issue it, but I shall have to rely on their discretion.

Mr. Haughey: Could I ask the Minister are there any of these Committee's reports in his Department not yet acted upon or implemented?

Mr. Cooney: Regrettably the majority of the reports furnished by this committee have not been implemented.

Mr. Haughey: Would the Minister give us any indication as to his programme of action in regard to these reports and, secondly, in regard to the examination which he is now going to ask them to make into the question of family law? Does he anticipate that the committee will be prepared to receive representations from various organisations who have shown an interest in this matter?

Mr. Cooney: In regard to the first part of the Deputy's supplementary, it would not be feasible for me at this stage to indicate what action will be taken in regard to what I might call unfulfilled reports. They range over a very wide field of court procedure and practice. There are many technical questions of considerable complication, and I could not, in reply to a supplementary question, indicate a programme of action in that area. It is not proposed that this committee would invite submissions in the field in which they are now carrying out their examination.

COUNCIL OF EUROPE

FELLOWSHIPS FOR STUDIES AND RESEARCH IN EUROPEAN LAW

Candidates, who must normally be citizens of one of the Member States of the Council of Europe, may apply for Fellowships for the purpose of studying one of the following:

(1) A Legal subject relating to a comparative study of one of the Member States with one another.

(2) The Law governing the institution and unctions of the Council of Europe, or European Communities.

(3) The Law contained in the Conventions of the Council of Europe.

Only Governments may propose candidates, but the Irish Government has delegated this duty to the Secretariat of the Council of Europe in Strasbourg. The Secretariat will appoint a Selection Committee of 3 members for 3 years to review the qualifications of candidates: The completed Applications for scholarships must reach the Secretariat in Strasbourg at latest by 1 February 1974, and Fellowships shall be awarded by the Secretary-General in accordance with the decisions of the Selection Committee, who may also list "reserve candidates" to receive Fellowships in the event of refusal. The Selection Committee shall propose the duration of the fellowship, normally a minimum of six months, and a maximum of twelve months. The allowances determined by the Secretary-General work out normally at 5,000 French francs (£490) for six months and 6,000 French francs (£588) for eight months.

Fellows shall submit to the Secretary-General at a stipulated time a study written on their chosen research subject in one of the official languages. Two typewritten copies of about 15,000 words must be submitted. Fellows shall not engage the responsibility of the Council of Europe in any of their work, but shall work strictly as individuals; if any breach of this rule is committed, the Fellowship will be immediately withdrawn.

If the material for study is subsequently published, mention shall be made of the aid given by the Council of Europe, who reserves the right to publish it if it is not otherwise published, but the copyright shall remain exclusively in the author.

Mixed views on plan to curb Conspiracy Law

A mixed reception from judges, lawyers and the police is likely for the Law Commissioner's outline proposals earlier this week to limit severely the scope of the conspiracy law.

Many barristers and solicitors are known to share the Commission's concern about the present trend in the courts which has been to extend the limits of conspiracy with the effect that conspiracy charges may be used to secure a conviction when the charge of a specific offence may fail.

But new offences may have to be created to fill gaps in the criminal law which a narrower definition of conspiracy may leave.

The commission's proposals that conspiracy should be limited to cases of conspiracy to commit a crime would mean upsetting the recent House of Lords ruling that conspiracy to commit trespass is a crime even though simple trespass in itself is only a civil wrong.

The effect of this House of Lords case where the main judgment was given by Lord Hailsham, the Lord Chancellor, is that demonstrators and squatters who occupy public or private buildings could be convicted of conspiracy for which the maximum fine and jail term is unlimited.

The commission has been studying the scope of the conspiracy law for about two years as part of its general examination of the criminal law with a view to its reform and restatement in code form.

The implications of Lord Hailsham's ruling have not yet been considered by the commission because its working paper had already been prepared and sent to the printers before the judgment was given.

The Daily Telegraph (26 July 1973)

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of New Land Certificate

An application has been received from the registered owner mentioned in the schedule hereto for the issue of a land certificate in substitution for the original land certificate issued in respect of the lands specified in the schedule which original land certificate is stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original certificate is in existence and is in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Dated this 15th day of December 1973.

D. L. McALLISTER,

Registrar of Titles

Central Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: David Philip George Sutton and Pacqueline Sutton; Folio No.: 11939; Lands: Coxtown East; Area: 1a. 0r. 38p.; County: Waterford.

(2) Registered Owner: Patrick Flanagan; Folio No. 22564; Lands: Ballycummin; Area: 0a. 3r. 33p.; County: Limerick.

(3) Registered Owner: John Halton; Folio No.: 19132; Lands: Derrymore; Area: 47a. 2r. 37p.; County: Westmeath.

(4) Registered Owner: Robert Inglis; Folio No.: 2001; Lands: Malahide; Area: 4a. 2r. 27p.; County: Dublin.

(5) Registered Owner: Robert Morell Thompson; Folio No.: 5006R; Lands: Toosy; Area: 19a. 3r. 20p.; County: Monaghan.

(6) Registered Owner: Daniel Moroney; Folio No.: 586; Lands: Keelderry; Area: 18a. 3r. 26p.; County: Clare.

(7) Registered Owner: John McEvoy (Junior); Folio No.: 49454; Lands: Cabragh; Area: 1a. 0r. 13p.; County: Mayo.

(8) Registered Owner: Patrick Davitt; Folio No.: 17278; Lands: Part of the lands of Stamullen, containing 35a. 21p in the Barony of Balrothery East and County of Meath; Area: 35a. 21p.; County: Meath.

(9) Registered Owner: James Moore; Folio No.: 26712; Lands: Singlad (situate on the south of the Nenagh Road in the city of Limerick); Area: 0a. 2r. 8p.; Couny: Litmerick.

(10) Registered Owner: Patrick Hoey; Folio No.: 2720; Lands: Carnacop; Area: 85a. 2r. 10p.; County: Meath.

(11) Registered Owner: Patrick Cahill (Junior); Folio No.: 10651; Lands: Shankill Lower; Area: 14a. 2r. 10p.; County: Cavan.

(12) Registered Owner: Shay Sinnott; Folio No.: 21292; Lands: Ballyboggan; Area: 0a. 3r. 0p.; County: Wexford.

Solicitor required for office in Co. Tipperary. Salary negotiable and commensurate with qualifications and experience. Full particulars to Box No. ? ? ?

Second year law student seeks apprenticeship in Dublin or Cork. Particulars to Aidan Deasy, 3 Carrigdhour, Bandon Road, Cork.

OBITUARY

Mr. Francis Armstrong died in the Richmond Hospital, Dublin, on 7 December 1973. Mr. Armstrong was admitted in Trinity Term 1928 and practised in Sligo under the joint names of Messrs. Howley & Armstrong, Fenton & Lyons, and Fitzgerald & McCormack in Teeling Street, Sligo.

Mr. John Goold died on 29 October 1973. Mr. Goold was admitted in Trinity Term 1934, and practised in Macroom, Co. Cork.

COUNTRY SOLICITORS SEEKING QUALIFIED ASSISTANTS

The Society have received a number of queries from Country Solicitors (including Cork) who are seeking qualified assistants and are offering attractive salary arrangements.

Any qualified Solicitors or apprentices at the end of their term of apprenticeship, willing to work in the country, may apply to Mr. Cafferky, Assistant Secretary for a list of such Solicitors. Any Solicitors who wish to have their names included in such a list should likewise contact Mr. Cafferky.

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