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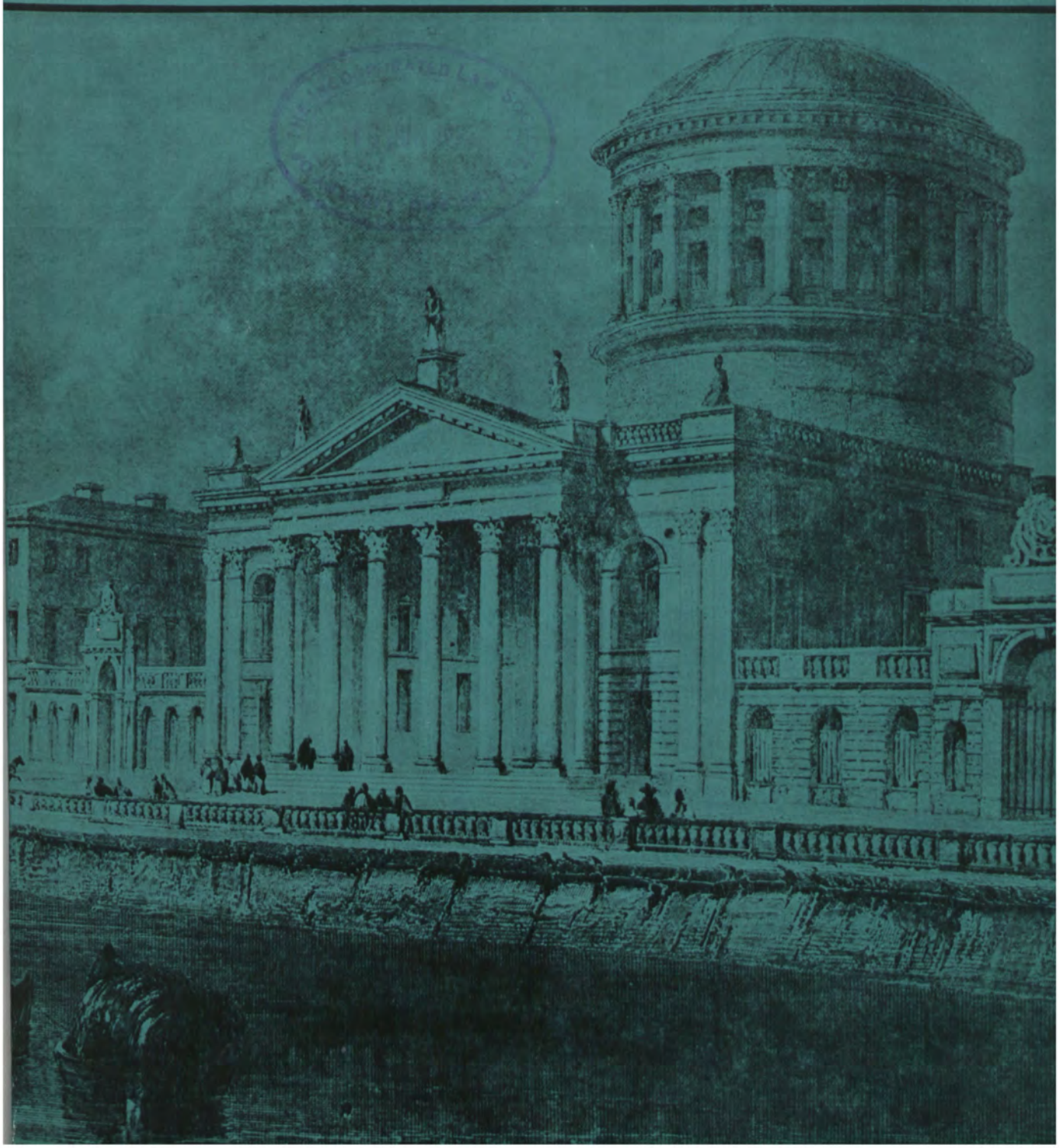

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THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

JANUARY 1972

Contents

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THE SOCIETY

Proceedings of the Council

23rd SEPTEMBER 1971

The President in the chair, also present, Messrs W. B. Allen, Walter Beatty, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph Dundon, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, John Maher, Patrick C. Moore, Desmond Moran, Senator J. J. Nash, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Rory O'Connor, Patrick F. O'Donnell, James W. O'Donovan, John O'Meara, William A. Osborne, David R. Pigot, Peter D. M. Prentice and Mrs. Moya Quinlan.

The following was among the business transacted.

Banks—undertaking by solicitors—costs

Members referred to the Society for advice a form of undertaking which they had been requested to sign by a bank. They had written to a bank giving an undertaking to hold certain title deeds in trust for the bank subject only to their claim for costs. The undertaking which they were now asked to sign was in blank and unconditional so that members claims would not have any priority. The Council on a request for advice stated as follows :

It is reasonable that a bank should ask a solicitor for a purchaser in a contemporaneous transaction to certify the title when depositing the title deeds with the bank notwithstanding that the solicitor is assuming a double undertaking which they had been requested to sign by a responsibility for negligence towards the purchaser and towards the bank and the fact that the bank do not pay him any fee. This has become ordinary practice. The position is different if a solicitor is asked by a bank when lodging title deeds for a client to certify the title where the purchase is not contemporaneous with the deposit. In such cases if the bank want the solicitor to certify the title they should be advised to pay him the ordinary fee. Alternatively they should have the title examined by their own law agent. As regards undertakings generally, a solicitor who signs an unconditional undertaking to hold title deeds in trust for a bank or any other party is bound by it and the undertaking takes priority over his own claim for costs against the client. If the solicitor wishes to protect his own interests in this matter the undertaking should be phrased in appropriate terms.

Criminal prosecutions—duty of solicitors for accused

The Council were asked for advice on the following facts. A member acting for the accused was in the circumstances absolutely convinced of the client's guilt and was unwilling to act on the basis that he would cross-examine the witnesses for the State on the basis that they had committed perjury. The client had made no confession of guilt. The Council on a report from a committee were of the opinion that a solicitor is not precluded from putting his client in the witness box and cross-examining the State witnesses merely because he is personally convinced of the client's guilt. If the client had made a confession of guilt to the solicitor the latter would not be entitled to put him in the witness box to commit perjury or cross-examine the State witnesses on the basis of alleged perjury on their part but mere suspicion or moral certainty short of confession is not enough.

Secret commission

A letter to solicitors offering a commission of one-eighth of 1 per cent on deposits introduced was submitted to the Council for advice. The Council directed that the statement in the Society's *Gazette* of May 1961 with reference to secret commissions should be republished. It will be reprinted in the February *Gazette*.

Lease at rack rent—costs

Members asked for advice as to whether in calculating the scale fee under the Solicitors Remuneration General Orders on a lease at a rack rent a solicitor is entitled to take into account as part of the rent the amount of rates to be paid by the lessee. The Council adopted a report from a committee stating that the commission scale fee is to be calculated on the amount of the rent as stated in the lease and the amount of rates to be paid by the lessee should not be taken into account although the rent as stated in the lease is exclusive of rates payable by the lessee.

Commission scale fee in probate and administration

Members acted for a personal representative in a case in which the value of a farm was agreed with the Revenue Commissioners at £4,000. The farm was subsequently offered for sale by public auction and realised £8,000 and members enquired as to the correct amount to be used in calculating the commission charge on the administration. The Council on a report from a committee pointed out that the adoption of the commission scale charge is a matter for agreement with the client and is not an official or statutory charge. It is intended to represent broadly the amount for which the costs would tax if drawn on the ordinary basis. Assuming the commission scale fee is applicable in the circumstances the Council were of the opinion that a corrective affidavit would be required and that the gross value of the estate for probate purposes and the commission fee would be the amount at which the farm was sold.

21st OCTOBER 1971

The President in the chair, also present, Messrs Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony E. Collins, Gerard M. Doyle, Joseph Dundon, Thomas J. Fitzpatrick, James R. C. Green, Gerald Hickey, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Timothy K. Keane, Francis J. Lanigan. Eunan McCarron, Patrick McEntee, John Maher, Desmond Moran, Senator J. J. Nash, George A. Nolan, Peter E. O'Connell, Rory O'Connor, Patrick F. O'Donnell, James W. O'Donovan, William A. Osborne, David R. Pigot, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor, Ralph J. Walker.

The following was among the business transacted.

Undertaking by solicitor

Members on the authority of a client gave a personal undertaking to a garage to pay the garage account for repairs to the client's car when the insurance company's cheque would have been received by members. The cheque payable to the client was received and repairs were carried out but the client was not satisfied and instructed members not to pay the account. By common consent the car was taken back and further repairs executed the client giving his own cheque in settlement. After examination of the car the client was still not satisfied and stopped his cheque. Members still hold the insurance company's cheque in favour of the client who has requested members to hand it over to him and the garage company has applied to member for payment of £523.90 on foot of the undertaking. Members ask for a ruling from the Council as to whether they should pay the garage account or hand the cheque to member. The Council on a report from a committee stated that on the facts as submitted members were not bound by the undertaking to the garage because the insurance company's cheque being made payable to the client was not received by the solicitor for the purpose of the undertaking and acceptance by the garage of the client's own cheque in settlement amounted to a waiver of any rights under the undertaking.

Interest on damages

The Council directed that a letter be written to the Committee on Court Practice and Procedure suggesting that the law relating to interest on damages should be revised in the interests of claimants so that interest on damages subsequently awarded should be assessed from the date of the originating summons at a rate prescribed by rules of Court to correspond with the rate of interest on short-term Government loans.

Increased postal charges

Several members drew attention to the fact that since the announcement of the applications for increase in solicitors' remuneration there had been an increase of 50 per cent in postal rates. The Council were of the opinion that this matter should be dealt with at the appropriate item in solicitors' bills. In its effect on debt collection work it is a matter for negotiation and agreement between the client and the solicitor acting for the creditor with appropriate adjustments where necessary.

County Council—payment direct to client

A member who acted for a client in the sale of a vested cottage to a County Council and for another client who sold part of his land to the County Council for road widening drew attention to the practice of a County Council of sending the cheque for the purchase money direct to the client. As the result of this the solicitor will probably have to institute proceedings in one case to recover his costs. In the meantime he claims a lien on the completed documents of title and does not intend to allow the County Council access to them. By direction of the Council a letter was written to the County Council seeking an assurance that the procedure mentioned by member would not be adopted in future. If no satisfaction is received it was decided that the matter should be taken up by the Department of Local Government.

Stamp duty—Finance Act, 1970

A member drew attention to the following matter. Sestion 59 (4) of the Stamp Act, 1891, was repealed by the Finance Act, 1970. Section 59 (1) of the 1891 Act provides that where any contract or agreement for sale of any estate or interest in property is made it shall be charged with the same rate of *ad valorem* duty as if it were an actual conveyance. Sub-section (4) which has been repealed provided that where any such contract or agreement is stamped with a fixed duty of 10s or 6d it shall be regarded as duly stamped for the mere purpose or proceedings to enforce specific performance or to recover damages for the breach thereof. By virtue of the repeal of sub-section (4) the defendant in specific performance proceedings could raise a stamp duty objection. It was decided that a letter should be written to the Revenue Commissioners drawing attention to the difficulty and suggesting that sub-section (4) of Section 59 of the Stamp Act, 1891, should be reintroduced.

Mortgagee's right to land certificate

Member drew attention to Section 57 of the Registration of Title Act, 1964, which provides that the owner of a charge is not by reason of being such owner entitled to the land certificate and it goes on to provide that every stipulation whereby the custody of the land certificate is to be given to the registered owner shall be void He drew attention to the practice of lending institutions of requiring that the land certificate should be deposited with them. The Council on a report from a committee were of the opinion that the practice at present observed by the lending institutions does not occasion any hardship and is generally in the public interest and decided to take no further action.

Commission scale fee—administration matters

A member enquired whether in assessing the commission scale fee the gross value of the estate should include the English and other foreign assets and whether a separate charge should be made for taking out the English and foreign grants, fees payable to the foreign solicitors being regarded as outlay. The Council on a report from the committee stated that assuming the commission scale fee is agreed between member and client it would be chargeable on the gross Irish and foreign assets. The professional charges of the English or other foreign solicitors for the extraction of foreign grants should be paid out of the commission charged. The foreign outlay would be chargeable in addition.

Service on limited company

Attention was drawn to difficulties which arose in the service of proceedings on limited companies at the offices of the companies' accountants. In some cases the accountants had failed to take action on foot of the proceedings. It was decided that a letter should be written to the various accountancy bodies asking them to draw the attention of their members to the importance of the matter.

Registry of Deeds

Representations were made to the Registrar of Deeds on the subject of complaints received from members of delay in the Public Search Room and also the necessity of additional telephones.

Land Registry

Representations were also made regarding certain difficulties in connection with the rejection of documents and mapping in the Land Registry.

Standard conditions of sale

Members referred to Clause 29 of the Society's private treaty contract enabling the vendor to resell for breach of any condition by the vendor. They have always assumed that this condition would not affect the necessity of twenty-one days notice making time of the essence. Recently they learned of colleagues who are under the impression that the terms of this clause make it possible to forfeit a deposit without notice. The matter was referred to counsel who replied that he had never heard of any solicitor attempting to resell without first having made time of the essence by an appropriate notice which would usually refer to the provisions of Condition 31 but if any of the Society's members are under the impression that Condition 31 enables them to forfeit without deposit it would be well to remove this impression at the earliest opportunity. Once there has been failure to comply with the notice it is not strictly necessary to give further notice of intention to resell but a prudent solicitor would usually do so. Until time thus has been made of the essence and the purchaser has made default in complying with the notice he has not in law failed to comply with any of the conditions and Condition 31 cannot be relied on.

25th NOVEMBER 1971

The President in the chair, also present, Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, James R. C. Green, Gerald Hickey, Michael P. Houlihan, Francis J. Lanigan, Eunan McCarron, John Maher, Patrick C. Moore, Senator John J. Nash, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Thomas V. O'Connor, Patrick F. O'Donnell, James W. O'Donovan, William A. Osborne, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD Taylor, Ralph J. Walker, David R. Pigot, Patrick J. McEllin, Thomas Jackson, Christopher Hogan, John C. O'Carroll.

The following was among the business transacted.

Motion for judgment—duty of a solicitor to notify opponent

In the particular circumstances of the case submitted the Council adopted a report from a committee stating that the solicitor concerned for the plaintiff committed a breach of etiquette in failing to notify the solicitors for the defendant of his instructions to proceed on a motion for judgment. The committee also disapproved of the solicitor's failure to consent to late filing of the defence in the circumstances of the case. They also directed that the alleged failure of the solicitor for the plaintiff to reply to a letter requesting a letter consenting to late filing of a defence should be referred to the Registrar's Committee for their directions.

Housing Act, 1966, Sections 90-92. Registration of vesting documents

A member wrote to the Society referring to Section 90 of the Act under which a Housing Authority may sell a dwelling to a tenant by means of a vesting order. Section 92 requires that the order shall be registered with the Land Registry. Members state that such orders are being prepared by clerks in the service of local authorities and transmitted by them to the Land Registry for registration and were of the opinion that this is an offence under Section 58 of the Solicitors Act, 1954. It was decided that a letter should be sent to each county manager informing him of the practice and of the Council's view of the legal position whereby such action is illegal.

Road traffic prosecutions

Members drew attention to a case in which they had submitted a full report to the Hibernian Insurance Co. and requested the fee of £10.50 agreed between the Society and a number of the Accident Offices Association and published in a recent issue of the Society's *Gazette*. The insurance company concerned refused to pay more than the fee of £7.35. It was decided that as the Hibernian Insurance Co. has no agreement with the Society the Council would not intervene. Members' claim for costs is against their own client. They are not obliged to furnish a report for an insurance company unless they are instructed to do so by the client and on payment of the proper charges either by the client or by the insurance company.

Mortgagee's solicitor's costs

The attention of the Council was drawn to a case in which the costs of the mortgagee's solicitor on the granting of a loan for the purchase of a dwelling calculated at the lending institutions rate of 1½ per cent would in fact exceed the permitted scale charges having regard to the amount of the loan. The Council on a report from a committee were of the opinion that the mortgagee's solicitor would not be entitled to more than the commission scale fee under the Solicitors Remuneration General Orders, 1884 to 1964. Further representations have since been received which are under consideration by the committee.

Search fee

The will of a testator drawn over thirty years ago was lodged to obtain a grant of administration with will annexed. The grant was refused and the papers were filed away. The principal of the firm has since died and the practice was taken over by his son who transferred to Dublin. The opinion of the Council was sought as to whether in the circumstances a fee could be charged for searching and handing over the will. The Council replied in the negative.

Planning—Housing Act, 1969

Members drew attention to a case in which a client who resided in a block of four suburban houses and feared the adjoining house would be demolished to provide access to a site at the rear of the house. The Housing Act does not provide for any objections to be made to applications for demolition under that Act and the local authority has declined to give the solicitors notice of any application that may be received. In view of the speed with which premises can be demolished an injunction will not provide an adequate remedy. The committee reported that they had noted a letter from the Department of Local Government which stated that an applicant for permission for change of use or demolition under the Housing Act, 1969, is not obliged by the Act to publicise his intention in the matter and neither is there any obligation under the local authority to do so. In granting a permission under the Act it is open to the local authority to impose a condition requiring the taking of such reasonable steps in relation to the demolition work as will ensure that the work either while being carried out or when completed with neither cause injury to any adjoining or adjacent building nor interfere with the stability thereof. The Council on a report from a committee were of the opinion that the matter is not one in which the Society can take any action and that individual owners must take the appropriate action to protect their own interests.

COMMITTEES OF THE COUNCIL 1971-72

1 and 2. Registrar's and Compensation Fund
W. A. Osborne (Chairman), Walter Beatty, Bruce St. J. Blake, Anthony Collins, Gerard M. Doyle, Gerald Hickey, Thomas Jackson, Thomas V. O'Connor, Patrick F. O'Donnell, Moya Quinlan.

3. Finance, Library and Publications
Walter Beatty (Chairman), James R. C. Green, Eunan McCarron, Senator John J. Nash, George A. Nolan, Ralph J. Walker.

4. Parliamentary
Thomas J. Fitzpatrick, T.D. (Chairman), William B. Allen, Bruce St. J. Blake, Eunan McCarron, John Maher, Patrick J. McEllin, Patrick C. Moore, Senator John J. Nash.

5. Privileges
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6. Court Offices and Costs
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7. Court of Examiners
Peter D. M. Prentice (Chairman), Joseph L. Dundon, James R. C. Green, Eunan McCarronn, David R. Pigot.

8. Disciplinary
Thomas H. Bacon, John Maher, Desmond Moran, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Thomas A. O'Reilly, Dermot P. Shaw, Robert McD. Taylor, Ralph J. Walker.

9. Public Relations and Services
Bruce St. J. Blake (Chairman), Walter Beatty, John Carrigan, Joseph L. Dundon, James R. C. Green, Eunan McCarron, Gerald J. Moloney, Patrick Noonan, Rory O'Connor.

10. Blackhall Place
Peter D. M. Prentice (Chairman), Bruce St. J. Blake, Thomas Jackson, Eunan McCarron, Patrick C. Moore, Patrick Noonan, Rory O'Connor, Moya Quinlan, Ralph J. Walker.

The President, Vice Presidents and immediate past President are members ex-officio of the above committees except numbers 1, 2 and 8.

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the difference between English and Irish statute law.

Auctioneers and Estate Agents
See under *Vendor and Purchaser;* Berrington v Lee; C. of A.; 28/10/1971; February *Gazette.*

Architect's Certificate
See under *Building Contract;* P. and M. Kaye Ltd. v Hosier and Dickinson Ltd.; H.L.; 22/12/1971.

Banking
In general the meaning and effect of a document does not change while it is in the hands of the postman. However, informal a notice of dishonour may be, and accepting that it may be given most informally, it must be couched in such terms that the recipient knows that the bill has been dishonoured. A statement that the bill will be dishonoured will not do, however certain the happening of that event may be. A notice given before dishonour never can be a notice of dishonour.

[Eaglehill Ltd. v J. Needham Builders Ltd.; C. of A.; 20/11/1971.]

Building Contract
The House of Lords, by a majority, dismissed an appeal by bulding employers, P. and M. Kaye Ltd., of Parkway, NW, on a preliminary issue as to the construction of clause 30 (7) of the RIBA form of building contract (1963 edition) and the evidential value of an architect's final certificate.

[P. and M. Kaye Ltd. v Hosier and Dickinson Ltd.; H.L.; 22/12/1971.]

See under *Negligence;* Dutton v Bognor U.D.C.; C. of A.; 17/12/1971; February *Gazette.*

Charging Order
A bank which had obtained judgment against a husband and wife in respect of two overdrawn joint current accounts successfully applied for a charging order nisi on a mortgaged house in their joint tenancy.

Mr. Justice Waller in a reserved judgment gave reasons for having allowed an appeal by the National Westminster Bank Ltd. from a refusal by Master Jacob to make a charging order on the bank's application under Section 35 of the Administration of Justice Act, 1956, and Order 50, Rule 1, of the Rules of the Supreme Court in respect of a house of which Mr. Roy Allen and his wife, Mrs. June Olive Allen, are joint tenants.

Section 35 (1) provides: "The ... court ... may, for the purpose of enforcing a judgment ... for the payment of money to a person, by order impose on any ... interest in land ... a charge for securing the payment of ... moneys due ... under the judgment ..."

[National Westminster Bank Ltd. v Allen and Another; 12/7/1971.]

Charity Rating
A house owned by Bexley Congregational Church which was vacant but held available by the church as a minister's residence from which the minister would perform the duties of his office was held to be liable for rates.

[Treasurer of Bexley Congregational Church v Bexley London Borough; 4/8/1971.]

Clubs
Gaming licensing authorities have jurisdiction under the Gaming Act, 1968, to register proprietary clubs under Part III of the Act to enable them to have gaming machines on their premises, even though they are not bona fide members' clubs; but the authority has a discretion whether or not to register a particular club.

[Tehrani and Another v Rostron; C. of A.; 29/7/1971.]

An application for election to membership of the East Ham South Conservative Club is a situation to which Section 2 of the Race Relations Act, 1968, applies and a refusal to elect on the ground of colour, race or ethnic or national origin would be unlawful. Members of some famous clubs in Pall Mall and of clubs which require their members to be of a particular race, or to come from a particular country, are a "section of the public" and cannot reject a man solely because of his colour or race.

[The Race Relations Board v Cheeter and Others; C. of A.; 14/12/1971.]

Compensation
Where planning permission to build houses on a small piece of land adjoining the Green Belt in Surrey had been repeatedly refused by the planning authority and the Minister because houses would spoil the view, compensation for its deemed compulsory acquisition, calculated by reference to the assumptions which must be satisfied under Section 16 (2) (a) and (b) of the Land Compensation Act, 1961, cannot be given on the basis of the fiction that planning permission might reasonably have been expected to be granted in respect of it, but must be assessed on the factual basis that permission would never be granted.

[Provincial Properties (London) Ltd. v Ceterham and Wallington U.D.C.; C. of A.; 12/10/1971.]

Conflict of Laws
Where, in determining the proper law of the contract, the system of law with which the transaction has the closest and most real connection, the scales are evenly balanced, the law of the flag can be taken as a last resort. It is an accepted principle that a contract is, if possible, to be construed so as to make it valid rather than invalid. Where the Netherlands courts would be compelled by Netherlands law to apply a special law of the Netherlands, which was not the proper law of the contract and was out of line with the maritime law of other countries, the case should be retained in the English courts which would apply the proper law of the contract, English law.

[Coast Lines Ltd. v Hudig and Veder Chartering N.V.; C. of A.; 7/12/1971.]

An action for damages for alleged slander at a press conference in London arising out of disputes between two international oil companies incorporated in California over drilling concessions granted to them by two of the Trucial States in the Persian Gulf should be tried in England as the most convenient place in all the circumstances.

[Butters and Oil Co. v Hammer and Another; C. of A.]

Contempt of Court
Where there is contempt of the county court by disobedience to a court order, the power to punish by committal is an integral part of the remedy even after the order has ceased to be effective, their Lordships held when returning to prison for contempt a landlord who had terrorised and persecuted her tenants, in order to make them leave after they had been granted interim injunctions to restrain her.

[Jennison and Others v Baker; C. of A.; 2/12/1971.]

Contract
A man who agreed to sell his car to a rogue who called on him after seeing an advertisement, talked knowledgeably about the film world, signed a dud cheque for £450 in the name of "R. A. Green", and was allowed to have the logbook and drive the car away late the same night when he produced a film studio pass in the name of "Green", had effectually contracted to sell the car to the rogue and could not recover it or damages for it from another man who had bought it from the rogue for £200.

[Lewis v Averay; *The Times;* 22/7/1971.]

A firm of accommodation agents were held not to be entitled to recover commission from a barrister for whom they had found a flat, as it was illegal under the Accommodation Agencies Act, 1953.

[Crouch and Lees v Harides; C. of A.; 29/6/1971.]

Where a car dealer continued in possession of a motor car which he had bought from one finance company with a cheque that bounced and had sold to another finance company who paid him for it and were tricked by the dealer into believing

they were letting it under a hire purchase agreement to one of his customers, the original sellers' retaking of the car from the dealer gave them a good title to it for the transaction was within the protection of Section 25 (1) of the Sale of Goods Act, 1893.

Their Lordships so held by construing the sub-section in accordance with a Privy Council decision on an Australian appeal and treating as no longer good law earlier English decisions on the meaning of the sub-section.

[Worcester Works Finance Ltd. v Cooder Engineering Co. Ltd.; C. of A.; 20/7/1971.]

On an appeal from a Minister's decision over an issue whether or not a person is employed under a contract of service, the Court must examine the decision to see whether it contains a false proposition of law ex facie; whether it is supported by no evidence; and whether the conclusion reached is one that no person acting judicially and properly instructed as to the relevant law could have come to in the determination under appeal. The Court does not have again to balance the arguments pro and con and give separate factors and weigh which the Court thinks should or should not be given to them; the balancing operation is a matter for the Minister.

It was recognised nowadays that factors other than simply the degree of control exercised had to be taken into account in separating a contract of service from a contract for services.

[Global Plant Ltd. v Secretary of State for Health and Social Security; Q.B.D.; 11/6/1971.]

Where an important actor agrees to play the leading role in a "one-man play" and he subsequently repudiates the contract, which repudiation is accepted, the producers are entitled to recover whatever expenditure they have incurred which would be in the contemplation of the parties as likely to result from the breach. Pre-contract expenditure as well as post-contract expenditure is recoverable.

[Anglia Television Ltd. v Reed; C. of A.; 28/7/1971.]

See under *Conflict of Laws;* Coast Lines Ltd. v Hudig and Veder Chartering N.V.

Crime

Although power exists to extend the time within which an applicant must renew to the full court an application for leave to appeal after being notified of the single judge's refusal to grant it, the power will be exercised only rarely. The only issue on such an application is whether the applicant has an excuse for not having renewed his application within the fourteen days prescribed by the Criminal Appeal Rules, 1968.

[Regina v Doherty; C. of A.; 29/7/1971.]

Where an accused person elects to be tried by jury on a charge in respect of which he could not have been committed for trial without his election, it is not unlawful for the charge to be altered in the indictment, or for other counts to be added whether or not in respect of alleged offences for which he could not otherwise have been tried on indictment in the absence of his own election.

However, a count cannot lawfully be added unless it is founded on facts or evidence disclosed in any examination or deposition taken before a justice in accordance with the proviso to Section 2 (2)o f the Administration of Justice (Miscellaneous Provisions) Act, 1933, and the court has inherent jurisdiction to ensure that the alteration of the original charge when it becomes a count in the indictment, or the addition of further counts even if they are founded on evidence in the depositions, is not unfair.

[Regina v Nisbet; C. of A.; 6/7/1971.]

The Court of Appeal (Lord Justice Megaw, Mr. Justice Geoffrey Lane and Mr. Justice Kilner Brown) certified that a point of law of general public importance was involved in the decision (*The Times,* July 7th) but did not consider that it was one which ought to be considered by the House of Lords.

The question is "Whether in a case in which the accused has been charged with an offence to which Section 25 of the Magistrates' Court Act, 1952, applies and elects to be tried on indictment, it is lawful to add to that indictment oher counts charging offences founded on facts or evidence disclosed in the depositions to which offences Section 25 applies but in respect of which the accused has made no election."

[Regina v. Nisbet; C. of A. ; 16/7/1971.]

A co-defendant in a criminal trial may cross-examine a defendant who gives evidence in his own defence even if he has not implicated the co-defendant. Such cross-examination is allowed n practice and is necessary if justice is to be done.

[Regina v Hilton; C. of A.; 22/7/1971.]

The necessity of framing indictments under Section 22 of the Theft Act, 1968, in accordance with the terms of the section was emphasized by the Court of Appeal (Lord Justice Roskill, Mr. Justice Geoffrey Lane and Mr. Justice Watkins) when allowing an appeal against conviction. The indictment alleged that the defendant "... did dishonestly handle certain stolen goods [lamb carcasses] knowing or believing the same to be stolen goods".

The section reads: "(1) A person handles stolen goods if (otherwise than in the course of stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the ..."

[Regina v Marshall; Q.B.D.; 22/12/1971.]

Oral admissions and a written statement made by Nicholas Anthony Prager to police officers when he was questioned at Doncaster police station were held to have been made voluntarily. The court said that even on the assumption that Rule 2 of the Judges' Rules, 1964, relating to the administering of a caution, had been breached, there was no reason to hold that the Lord Chief Justice, who presided at the trial, had erred in exercising his discretion in admitting them.

[Regina v Prager; C. of A.; 11/11/1971.]

Intention to occupy was not a necessary constituent of the offence of forcible entry, their Lordships held when dismissing appeals by Raymond and Derek Brittain and Charles Henderson, all now in prison, against their convictions at Maidstone Assizes last February (Mr. Justice John Stephenson) for forcible entry contrary to the Forcible Entry Act, 1381. They had been sentenced to nine months imprisonment each.

[Regina v Brittain; C. of A.; 9/12/1971.]

A judge was held to have been wrong in refusing to admit a statement made by the wife of an accused when he was in custody which the defence wished to produce to rebut a prosecution suggestion that her evidence had been concocted by her and the accused.

[Regina v Oyesiku; C. of A.; 14/12/1971.]

The court held that evidence that an accused person had previously pleaded guilty to the same charge might be admitted at the discretion of the judge in a subsequent trial, but such evidence could be admitted on rare occasions when the probative value of the plea exceeded its prejudicial effect.

[Court of Appeal; 26/11/1971.]

In cases of murder great care must be taken to see that there is no miscarriage of justice, but there is no principle that the proviso to Section 13 (1) of the Jamaican Judicature (Appellate Jurisdiction) Law, 1962, which provides "that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred", can never be applied in murder cases, nor can it be that for the application of the proviso there cannot be any possible criticism of the summing-up.

[Anderson v The Queen; Privy Council; 30/9/1971.]

A man who ordered drinks in a public house and showed the barmaid some banknotes but afterwards said falsely that he could not pay because he had lost his money failed in an appeal against conviction for obtaining a pecuniary advantage by deception, contrary to Section 16 (1) of the Theft Act, 1968.

[Hucknott v Curd; 16/6/1971.]

A person can be charged and convicted under Section 4 (1) of the Criminal Law Act, 1967, with doing an act to impede the arrest or prosecution of a person whom he knows or believes to have committed an arrestable offence notwithstanding that he did not know the nature of the particular offence committed.

[Regina v Morgan; C. of A.; 23/11/1971.]

A man who was found in possession of tablets which he had thought had been destroyed and which he found ten months later in a drawer in his bedroom won his appeal against conviction under Section 1 (1) of the Drugs (Prevention of Misuse) Act, 1964.

Peter Buswell had been convicted at Reading Borough Sessions (deputy recorder, Mr. G. B. Hutton).

Section 1 (1) provides: "... it shall not be lawful for a person to have in his possession a substance for the time being specified in the schedule to this Act unless—(a) it is in his possession by virtue of the issue of a prescription ..."

[Regina v Buswell; 12/11/1971.]

Where a police officer in purported exercise of functions under Sections 186 (1) and 186 (2) of the Licensing Act, 1964, sought to enter licensed premises for the purpose of preventing or detecting the commission of an offence against the Act, other than an offence under Section 155 or Section 157, it was held that he must have had reasonable grounds for suspecting that an offence was being or had been committed.

[Valentine v Jackson; Q.B.D.; 11/11/1971.]

Customs and Excise

When the Commissioners of Customs and Excise take condemnation proceedings over forfeiture of imported goods pursuant to Section 275 of, and Schedule 7 to, the Customs and Excise Act, 1952, the questions to be determined are whether the goods have been imported and whether their import is prohibited. The identity of the importer is irrelevant. Naming a person as the importer in the commissioners' complaint is a piece of unnecessary information and does not prevent the condemnation order from being made even though the person named is found not to be the importer.

[Darton v John Lister Ltd. and Another; Q.B.D.; 28/6!71.]

Damages

A dentist who ordered a new Rover 2000 to replace one which became a total loss in an accident, instead of buying a second-hand car, was held to have acted reasonably. He was entitled to the cost of hiring alternative transport for the time it took to obtain the new car, even though he could have acquired a secondhand car much sooner.

[Moore v DER Ltd.; C. of A.; 18/6/1971.]

It is desirable that the Court of Appeal when hearing an appeal against an award of damages should be in the same position as the trial judge and should not know the amount which defendants to the action paid into court before the trial.

[Thornton v Swan Hunter (Shipbuilders) Ltd.; C. of A.; 25/10/1971.]

Although Section 19 of the Finance Act, 1971, affords relief from taxation on the interest element in an award of damages for personal injuries or death under Section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, the 1971 Act has not affected the rate of interest which is to be awarded in accordance with the *Jefford v Gee* principles ([1970] 2 Q.B. 130).

[Mason v Another and Herman; Q.B.D.; 22/12/1971.]

A boy aged five who was so badly injured in a car accident that he will have to spend the rest of his life supported by the State in a National Health institution was held to be entitled to damages for loss of future earnings without deduction of a sum for housing and maintenance expenses which an injured person would otherwise incur.

[Daish v Welton; C. of A.; 15/10/1971.]

Defamation

A defamatory article in a popular daily newspaper may be capable of being held to refer to a person who is neither named nor described in it if it is proved that ordinary sensible people scanning their newspaper without great attention to detail, in the way ordinary people generally do, conclude, because of special facts known to them, that it refers to the unidentified person. It is not necessary that there should be any peg or pointer in the article itself on which to hang the alleged identification of the plaintiff as the person referred to.

[Morgan v Odhams Press Ltd. and Another; House of Lords; 29/6/1971.]

Alegations in British national newspapers of reports that the Maltese Labour Party had received secret payments of £125,000 for their "election expenses" in the forthcoming general election from the Libyan Government were held by the court not to be plainly defamatory though capable of being held by a jury to be defamatory, and accordingly in the interest of freedom of the press and of political controversy should not be the subject of an interim injunction against repetition.

[Mintoff v Daily Telegraph Ltd.; C. of A.; 11/6/1971.]

The Queen's Bench Division in England laid down the principles applicable there on an appeal by the plaintiff from an order of a Master that the action be tried with a jury. It was stated that the action promised to be one of the most complicated libel actions yet fought and that the time for trial would be calculated in weeks not days. If the action were one of the great bulk of cases in the Queen's Bench Division there would nowadays be no likelihood of a judge granting trial by jury. But libel was a type of case in a special category in respect of which an order for jury trial was to be ordered under Section 6 (1) of the Administration of Justice (Miscellaneous Provisions) Act, 1933, "unless the judge is of opinion that the trial requires any prolonged examination of documents or accounts which cannot conveniently be made with a jury but save as aforesaid any action to be tried in that division may in the discretion of the judge be ordered to be tried with or without a jury". The Queen's Bench Division allowed an interlocutory appeal by the plaintiffs from an order of the Master that the action be tried with a jury. Counsel for the defendants urged as one of the grounds for contending for trial by jury that a jury did not have to give its reasons. The court thought that in a complicated case the obligation to give the reasons tended to concentrate the mind admirably. The court was satisfied that if a jury were to try the case with all its many complicated issues they would be innundated by a sea of documents and that accordingly it was in the interests of the administration of justice that trial be by judge alone.

[Rothermere and Others v Times Newspapers Ltd. and Others; Q.B.D.; 21/12/1971.]

De Minimis

A slip of the tongue by a chairman of justices when announcing a sentence did not render the justices functi officio so as to prevent the slip being corrected immediately afterwards, and the corrected sentence was held to be valid by the Divisional Court.

[Regina v Newcastle-upon-Tyne Justices ex parte Seveles; Q.B.D.; 8/12/1971.]

Prima facie any departure from a strictly enforced code in the Gaming Act, 1968, relating to general provisions for "application for grant of licence" renders a step in the procedure in which an error is made ineffective, but there must be reason in all things, and a trivial typographical error does not invalidate a notice published in a newspaper.

The Divisional Court so decided when granting an application by E.M.I. Cinemas and Leisure Ltd. for an order of mandamus requiring the gaming Licensing Committee of Dacorum, Hertfordshire, to hear and determine according to law an application for the grant of a licence to E.M.I. in respect of the A.B.C. Social Club at the Rex Cinema in Berkhamsted to enable bingo to be played there.

[Regina v Decorum Gaming Licensing Committee; Q.B.D.; 20/7/1971.]

Avis executive credit cards

Members recently received with the approval of the Society executive credit cards from Avis Rent a Car (Ireland) Ltd. These credit cards entitle holders to car renting facilities in Ireland and elsewhere. As is the case with all credit card clubs holders of cards are liable for payments incurred by persons using thec ards. Any member who does not wish to retain the card is, of course, entitled to return it to the company. Similarly any Avis credit card holder who mislays his credit card or whose card is stolen should notify the company immediately so that the card may be cancelled. Once Avis have been notified of a lost card no liability rests with the holder.

EDITORIAL

Revision of the Constitution

There has been a great hullaboloo about changing the Constitution recently, and there have even been discussions about it between the Irish political parties. It has already been shown (June 1971, *Gazette*) that there are several practical matters that could usefully be altered, but it is understood that these inter-party talks relate mainly to changing the provisions about fundamental rights on the alleged pretext of preparing a Constitution which would be satisfactory to all shades of opinion in Ireland, North and South.

It is important to emphasise in no uncertain matter that it would be extremely dangerous to allow an inter-party constitutional committee to amend in any way these fundamental rights, even on the alleged ground that these amendments would be more liberal and would satisfy modern conditions. One cannot dispute the fact that the Supreme Court is the guardian of our Constitution and that on the whole this Court has construed our Constitution in a most liberal manner; it would be disastrous if the power of judicial review in relation to fundamental rights were in any way curbed and there is a danger of this happening. Mr. Temple Lang in the January 1971 *Gazette* pointed out forcibly the dangers inherent in the proposal that the Constitution should no longer be subject to a popular referendum in order to be amended, but that a joint sitting of the houses of the Oireachtas should have this power instead; he emphasised that, in such a case, the Constitution would merely be a set of rules which the winning political party could change at will. Let us hope that nothing of the sort is contemplated even on the absurd ground that referenda are expensive. Mr. Temple Lang also pointed out the dangers relating to permitting divorce although on the surface this suggestion seemed most liberal. Undoubtedly statements declaring that the Catholic religion's special position as the religion of the majority, and the mention of recognition of other denominations could well have been omitted, as these statements give no special privileges either to the Catholic Church or to the other denominations. Even so, one should be very slow to change any of the wording relating to articles of the Constitution which are vital to preserve our fundamental rights. Many changes can be made by ordinary legislation.

One had hoped that several appropriate Constitutional amendments would have been introduced to enable us to enter the European Economic Community. Instead the Third Amendment to the Constitution Bill, 1971, proposes an omnibus amendment which would have the effect that no provision of the Constitution whatsoever would invalidate laws enacted, acts done or measures adopted by the State consequent upon membership of the Communities; this is unduly wide and unnecessary. It will be appreciated that the wording is so wide that it in no way protects the very fundamental rights which the European Court itself has been at pains to protect. Even the Supreme Court, in giving its most liberal interpretation to this clause, would find it difficult not to validate this clause, unless it could perhaps conflict with the fundamental rights clauses. This Constitutional amendment should only be supported if the fundamental rights articles are specifically excluded from its operation.

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 Certificates are 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 January, 1972.

D. L. McALLISTER
Registrar of Titles.

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

Schedule

(1) Registered owner: Mary Bridget Pey; Folio 9445; Lands, Woodfield or Tullinisk, County Offaly; Area, 13a, Or. 25p.

(2) Registered owner: James Carroll; Folio 3680; Lands, Graigue Upper, County Tipperary; Area, 42a. 2r. 8p.

(3) Registered owner: James Foley; Folio 1015; Lands, Carrigeennageragh Big and Glendalligan, County Waterford; Area, 131a. 3r. 31p. and 1a. 2r. 32p.

(4) Registered owners: Richard Mullins and John Mullins; Folio 13420; Lands, Jerpointchurch, County Kilkenny; Area, 16a. 1r. 30p. and 3a. 3r. 0p.

(5) Registered owner: John Flynn; Folio 3906 (now part of Folio 19591); Lands, Agarinagh Beg, County Clare; Area, 25a. 0r. 22p.

(6) Registered owner: Margaret O'Brien; Folio 11652R; Lands, Ballymoylin, County Tipperary; Area, 27a. 0r. 21p.

(7) Registered owner: Michael Nolan; Folio 617 (now property No. 1 on Folio 8559); Lands, Tankardsgarden, County Kildare; Area, 1a. 1r. 7p.

(8) Registered owner, Daniel Buckley; Folio 6098; Lands, Caherbarnagh, County Cork; Area, 87a. 3r. 5p, one-sixth of 4a. 1r. 23p., one-third of 407a. 2r. 30p.

Legal Education: Integration or Rationalization?

by Professor Hyman Tarlo

The Report of the Committee on Legal Education [in England and Wales], March 1971, Cmnd. 4595 ("the Ormrod Report"), is to be welcomed, not only for its extensive survey of English legal education and its various proposals or reform, but also for its survey in concise form (in Appendix D) of legal education in thirteen other countries as different from each other as Australia, Canada, France, Germany, India, Italy, Netherlands, New Zealand, Nigeria, Scotland, South Africa, Sweden and the United States of America. These twenty-two pages constitute a valuable section of the Report and are well worth perusal notwithstanding the small print. The terms of reference of the Committee did not include Scotland or Northern Ireland. The survey of other countries, while it covers Scotland, does not include Ireland, either North or South. Perhaps Irish legal education cannot be regarded as sufficiently distinctive in comparison with that of England and Wales, and this is largely true as to the general scheme of things. There is in Ireland, however, nothing really comparable with the schools of law conducted by the Bar and the solicitors in England.

The Committee, after studying the other systems and allowing for the important differences between the legal systems and professions of those countries—particularly the Civil Law countries—and England, drew conclusions which went much of the way to support their recommendations. The impression which the members gained was that the wide range of permutations and differences in other countries was really only variations on a central theme or basic pattern, namely, that legal education is conducted almost entirely at university law school or law colleges, that entry to the legal profession is almost always by way of acquiring a university law degree followed by a period of apprenticeship, and that, on the whole, faith in apprenticeship seems to be waning. (Para. 68). The present writer, with some first-hand knowledge of several Common Law countries, offers a few comments on aspects of the Report, in the belief that those who seek to reform legal education in Ireland, perhaps on the basis of the Committee's recommendations for England, will wish to consider the experience of other countries with legal systems similar to Ireland's. Consequently, special (if limited) reference will be made to legal education in Australasia. (Though Scotland has a rather different legal system, its progressive legal education structure, not dissimilar in many respects from Australasia's, could also profitably be studied.)

Frustrated attempts at reform in England

Many English lawyers (and that term includes law teachers) have for long been dissatisfied with the state of affairs existing in that country as to legal education. The story of their attempts to change the system during the last century and a quarter, as chronicled in Chapter 1 of the Report, is a sad and frustrating one. There were so many sound and progressive proposals which never came to fruition. "The history of legal education in England over the past 120 years is largely an account of the struggle to implement the recommendations of the 1846 Committee [Select Committee on Legal Education] and the effects of that struggle". (Para. 19.) This Committee had, within three months, produced a report "which contains a remarkable and far-sighted study of the whole problem of education for the legal profession". (Para. 14) The aspects of providing both adequate education in the law and professional training, emphasized by the 1846 Committee, were unfortunately subordinated by the legal profession to the third aspect underlined by that Committee, the setting up of an adequate system of qualifying examinations. This could with some truth also be said of the history of legal education in Ireland.

The Ormrod Report's principal recommendations constitute a deliberate further attempt to remedy a situation which has for too long been bedevilled by the consequences of having two separate branches of the legal profession, each with its own separate educational and training requirements and each jealous of its monopolies and privileges. If the Report is implemented, the subordinate status of the university law degree will be upgraded so that almost the entire legal profession will be university educated and so in time may be truly said to be a learned one. At the same time, there will be organised vocational training for which there has always been a significant need.

Integration of academic and vocational legal education

The very first conclusion reached by the Committee is that academic and vocational legal education should as far as possible be integrated into a coherent whole. Comparison is made, as it is in other parts of the Report, with the medical degree which has a qualification status in its own right. This has meant that university medical faculties have always had to make some provision for the vocational or practical aspect of the training of medical students and have, therefore, had to remain closely associated with the practising profession. Professors of medicine "are in active professional practice in the teaching hospitals and there is a free two-way traffic between academic and hospital medicine. The law faculties, on the other hand, have become isolated from the practising profession. If the law degree were to be recognised as the major part of the qualification to practice this tendency would be reversed and the

qualification itself substantially modified and improved". (Para. 85.)

Emphasis is thus on the need to integrate academic and professional training, drawing on medicine as the model. Whether or not one agrees with the medical model (as to which see *infra*), no-one surely could quarrel with the declaration that the traditional antithesis between "academic and vocational", "theoretical and practical", which has divided the universities from the professions in the past, must be eliminated by adjustment on both sides. There is, though, room to doubt whether such distinctions have any validity. Nor should any reasonable person disagree with the Committee's criticisms of the present system, involving, as it does, "duplication and overlaps leading to the poor utilisation of scarce resources, particularly accommodation, library provisions, and perhaps, most crucial of all — suitable teaching staff". (Para. 85.) Somewhat similarly the Irish Minister for Justice, Mr. D. O'Malley, after castigating legal education in Ireland (both for solicitors and barristers) for being "outdated and unsatisfactory", is reported as having said, "The present confused system is, to say the least, illogical and wasteful of resources". ((1971) 65 The Gazette of the I.L.S.I.135.)

Two pre-qualification stages

It will be seen that the Committee argues both on educational and on economic and pragmatic grounds for integration. The basic outline of the scheme proposed for the future, as given in para. 100, indicates these stages in the legal educational process: (1) *the academic stage*, to be taken at a university or its equivalent; (2) *the professional stage*, comprising (a) organised vocational training in an institutional setting and (b) practical training in a professional setting under supervision ("in-training"), an (improved) pupillage system being retained for the Bar, but the articles system for solicitors to be replaced by a period of three years limited practice after qualification. (There is also a projected third (post-qualification) stage of continuing education and training, considered by the Committee to offer by far the best prospects of "growth" in legal education. Paras. 170–177, which discuss this stage, were criticised by a speaker at a recent symposium on the Ormrod Report as a "jumble of postscripts".)

There may perhaps be detected a certain confusion of ideas and ideals in the elaboration of the two pre-qualification stages, for what is suggested does not appear to achieve the desired integration of academic and professional training. Rather does it keep the pre-qualification stages in separate compartments. The university law schools will continue as before and will remain masters of their own houses (subject to certain limitations considered *infra*), provided that the courses include the "basic core subjects" as listed by the report, viz. Constitutional Law, Law of Contract, Law of Tort, Land Law (including "some elementary instruction in trusts") and Criminal Law. The vocational courses will be provided either "within the university and college higher education structure" (if the majority has its way) or by the profession in its own schools (if the minority has its way). (Paras. 140, 143.) But no matter where the vocational training is provided, the training itself must *ipso facto* be different in every way from that provided by the existing faculties of law and inevitably it will be organised and institutionalised in a completely different way. This is implicit in the Committee's statement of the factors which must govern the provision of the courses. Thus the professional bodies are to have a powerful influence over the courses and a large number of specially qualified teachers will have to be found. (Paras. 138, 139.) Further, only four or five centres are envisaged, so that the vast majority of university and college law schools will be completely unaffected.

Integration or Rationalisation?

Is this "integration into a coherent whole"? Timely rationalization it certainly may be, but it is doubtful if it is integration in the most commonly accepted sense of that term, which would call for a blending "into a coherent whole" of the two pre-qualification stages. All that is proposed by way of integration is that a law degree should be recognised *per se* as part of the qualification for practice and not merely as an entitlement to exemption from some of the professional examinations. (Para. 106.) (It may be noted that "law degree" is carefully defined in para. 110 and includes a degree in law obtained after a three-year course of full-time study at a university in Northern Ireland, but in the case of the Republic of Ireland only a degree in law obtained at a university "which has been approved for the purpose".) This is not exactly a revolutionary proposal. As the Report itself states, the "practising Bar . . . is now becoming almost a profession of law graduates; the solicitors' branch is clearly developing in the same direction". (Para. 35.)

The law faculties and departments are in any event to be regarded as "an essential part of the training apparatus of the profession". But the real issue of greater integration of academic education and vocational training is to a large extent avoided, perhaps because it was considered impracticable to realise—but this is nowhere stated. There is reference to "the desire of the law faculties to teach law as a broad and liberal education with only the vocational bias inherent in a professional subject, and to retain the maximum freedom to change their curricula and to experiment". The faculties also stressed to the Committee the large part which they played in the education of those law students who did not intend to enter the profession. The Committee did not wish in any way to alter the existing situation "or to subject academic teaching to narrow vocational requirements", but at the same time it quotes (in para. 106) from the Robbins Report (on Higher Education) (1963) which mildly chided universities for their reluctance to undertake the imparting af practical techniques and emphasised there was no betrayal of values when institutions of higher education taught what would be of some practical use, provided that the teaching was such "as to promote the general powers of the mind". As may be seen, even this gentle reminder is hedged about with apologia from the Committee.

Integration in Australasia

However "academic" 'a law degree course may be, it is unlikely that there is not a great deal of it which is

of "practical use", but this quotation from the Robbins Report does indicate some awareness by the Committee of the underlying problem which faces all academic law schools. It does not perhaps loom so large where there is a separation of the academic and vocational stages in the making of the lawyer. It arises more acutely where the law degree is one which constitutes a full (or almost full) qualification for practice. This is generally the position in Australia (and also in New Zealand), where the most striking feature of legal education is the important part played by the universities in comparison with the position in England. Thus in each Australian state the normal pattern is that the LL.B. degree will, subject to the requirement of a period of articles (one or two years in most cases) (or a period of pupillage after admission for barristers in the two states, New South Wales and Queensland, in which the profession is as strictly divided as in England and Ireland), qualify the recipient of the degree for admission to the legal profession in that state. In some jurisdictions, there is also a small number of additional subjects of a vocational nature which, if not included in the degree course, has to be undertaken after graduation in order to qualify a candidate for admission. Even in the case of these subjects, the universities usually are in charge of the teaching and examining. In no case does this amount to a complete practical training course, though there have been developments in recent years tending in that direction, either in substitution for or as an alternative to articles or as supplementary to articles.

However, unlike New Zealand where all entrants to the profession must hold the LL.B. degree of one of the New Zealand universities, it is still possible in Australia to enter the legal profession without obtaining a law degree, provided entrants have served four or five years in articles (but in the non-fused jurisdictions in the case of solicitors only) and have passed the specified professional examinations. In fact, apart from New South Wales, where there is the greatest shortage of university places in law, most entrants to the profession have a university law degree (normally now obtained on a full-time study basis) and also, in many cases, an Arts, Commerce or Economics degree as well. It may be added that both in Australia and New Zealand there is a uniform system of education for both barristers and solicitors in the university law schools. Thus required studies and examinations are precisely the same for both branches. This is the case even in the non-fused Australian jurisdictions where the only differences arise in the practical training, such as it is, outside the law schools. But in the other (fused) Australian states there is only one set of admission rules and so even those who intend to practise solely as barristers have to complete a period of articles.

New Zealand too is a country with a formally-fused profession, though, as in Australia, in practice the division of work between barristers and solicitors tends to be maintained. But New Zealand has moved ahead of Australia in substituting limited practice (for three years) for service in articles for those who wish to practise as solicitors. There is no system of pupillage in New Zealand, so that the newly-qualified "Barrister and Solicitor of the Supreme Court" may, if he so decides, take out a practising certificate exclusively as a barrister and set up immediately in independent practice.

The responsibility of integrated Law Schools

It will be obvious therefore that the important part played by the law degree in Australasia throws a heavy burden on the universities law schools. They have, of course, to aim at giving an education that will equip the student with the knowledge and the techniques to give him competence in the major sectors of current legal practice. But they must do more than this if the award of a university degree is to be intellectually and academically justifiable. The courses, which extend over four or five years (plus an extra year if combined with another degree), consist not only of the essential professional subjects but also cultural studies in general perspective subjects(and in some schools in non-legal subjects as well), so that the law graduate should emerge with a liberal education in law, with some understanding of law, and not with just a knowledge of technical rules law.

Thus it is recognised that the newly-qualified lawyer must have some appreciation of the purpose of law and its place in society. But the preservation of a proper balance between cultural and professional subjects in the limited period available, longer though this is than in Britain and Ireland, is always a considerable problem which causes a great deal of intellectual anguish. The Boards of the Faculties of Law, which control the degree courses, consist not only of all or most of the law school staff who are actually teaching the courses, but also of representatives of the Bench, Bar and solicitors who are inclined to place heavy emphasis on professional interests. These three "outside" elements do not, of course, always coincide in their viewpoints, let alone with those of the teaching staff, but they do attend the meetings and are not remiss in expressing their opinions. It was only after 1945 that the Australasian university law schools gradually shook off the shackles of almost complete professional domination, manifested not only by strict control of the curricula but also by most instruction being given by practitioners on a part-time basis. They are now, by and large, well-developed institutions, with their teaching, except to a minor extent, provided by full-time academic staff. A relic of professional control in New Zealand is that practitioners still "assist" the university law schools in setting papers and assessing the scripts in the case of subjects which count towards the professional qualification.

Naturally during this period of great growth and development there were many controversies, and in some cases bad relations developed between law schools and the profession. (Canada too had its great rifts.) However, in most jurisdictions there is happily now a somewhat greater awareness on the part of the profession of the broader educational needs of the lawyers of the future and that much more than technical professional competence is required. This growing appreciation of the necessity for promoting an understanding of law in a social, economic, philosophical and political context, best achieved in the intellectual environment of a univer-

sity, has meant that largely it is the full-time teaching staff in the law schools who have become the greatest influence in the shaping of curricula and syllabuses. But even now they have to tread warily because they have to retain the confidence of the profession to ensure that recognition of the law degree for professional qualification purposes is maintained. Consequently, the courses will often include some subjects which would be considered by an English or Irish diehard academic to be too "technical" or "vocational" to be included in an academic degree course.

Post-graduate vocational training in Australasia

But, as previously indicated, there is already in some Australian jurisdictions a post-graduate period in which such subjects as are not included in the degree course but are required for professional qualification may be undertaken, and this tendency is growing. This is also the position in New Zealand where the law graduate, if he wishes to enter the profession, must pass examinations in six "practical" subjects which cannot be taken during the law degree course (Civil Procedure, Conveyancing and Draftmanship, Evidence, Legal Ethics and Advocacy, Office Administration and Accountancy, Taxation and Estate Planning). (The system in Scotland is not dissimilar). In any event, whether or not included in the degree course, these subjects are normally taught only in the universities, but by part-time lecturers who are practising members of the legal profession. Further, there is a growing recognition by nearly everyone interested in legal education that it is not within the framework of the law degree that full professional competence can, or even should, be acquired. This, allied with a growing disenchantment in Australia with the mediaeval system of training by service under articles and by pupillage, has led to the belief that formal practical training is also necessary and that this should be systematic and perhaps given in an institution specially created for the purpose, whether or not it is associated with a university. Pioneer work has already been carried out in Victoria and elsewhere, and at the Australian National University in Canberra the Federal Government has allocated funds for a "legal workshop" (to be in operation from 1972) in which law graduates will work for six months in a simulated office situation as an alternative to articles of clerkship. These developments are a reflection of the current dissatisfaction with existing training methods.

The truth is that even in the closely integrated structures of law degree courses and professional qualifications as have hitherto existed in Australia and New Zealand it has been found to be impracticable to attempt to cover in the law degree courses all the necessary facets of systematic training required to produce a person fit to practise law. The role of the university in the making of the lawyer is a vital one, and it is indeed only in the university that the intellectual pursuit of an education in law should be offered. As the Scottish Faculty of Advocates stated in its memorandum to the Ormrod Committee, "the most important single principle . . . has been the recognition that the proper place for the teaching of law is a univeristy." (Para. 69.) But it is generally acknowledged that the academic role of the university is a limited one in law and that the bones and muscles of the intellectual habits cultivated in the law school must be covered with the flesh and blood of the skills and techniques necessary to survive in the professional world outside the law school.

Other professions

The Ormrod Committee, however, in looking at education for nine other professions, found a different attitude. In para. 80 it is stated: "There are not many in the other professions who advocate a clearly distinguished formal academic course and an organised practical training course, probably because it is generally expected that the university degree will be universal, and will cover both 'academic' and 'professional' requirements — or that there is no real distinction between these concepts." There are perhaps some in the world of law also who would agree with these views, for one of the most difficult tasks is to distinguish "academic" and "practical" (or "vocational") subjects in law. The attitude of many American law teachers is that there is no branch of law or practice which is not fit to be taught at a university law school; it is all a question of how it is taught.

Despite the many approving references to medical education throughout the Ormrod Report, it stops short at recommending a fully integrated degree structure such as exists in medicine. (These medical references are without doubt a consequence of the Chairman's unusual career, for he switched from law to medicine, and after a war-time medical career turned back again to the Bar.) Perhaps the Committee, though, in evolving its proposals, realised that too close a parallel cannot be drawn between medicine and law. These two great disciplines are very dissimilar in their basic approaches and methods, and the nature of the disciplines must determine how they are taught. But, leaving aside the fundamental difference between the physical and social sciences, is there not a fallacy in the belief that there is not even now the same distinction between academic education and professional (or vocational) training in medicine as exists in law? Certainly the degree structure in medicine is very different from that in law, for all medical education is theoretically within and under the control of a single entity, the medical school, and ultimately the student emerges with a university degree (or professional diploma) which is a qualification for practice in itself. (Full registration is subject to his serving satisfactorily a period of compulsory internship, with which may be compared the period of limited practice after qualification for solicitors recommended by the Report). To that extent, there is integration, but surely a clear distinction exists between the pre-clinical years of basic or ground-work teaching and the later years of clinical or applied training.

Relations between the Law Schools and the profession in England

The Report was anxious that firm links should be established between the law faculties and the profession

both of which should be concerned to produce better lawyers to serve society. It considered that the professional bodies, as bodies responsible to the public for maintenance of the standards of the profession, must concern themselves with what and how their students were being taught; if they were to hand over all responsibility for the teaching of substantive law to the universities and colleges, and to recognise the law degree as part of the professional qualification, they would require some reassurance. But, it is forthrightly pointed out by doing so they would gain important advantages: "Legal education will be in the hands of professional educationalists, whereas the profession itself can never be more than enlightened amateurs who can only give part-time attention to its problems." (Para. 107.)

In the same paragraph attention is drawn to inadequate communication between the profession and the law faculties: "Non-communication breeds distrust, ignorance and misunderstanding". This is a strong motivation for the recommendation that an Advisory Committee on Legal Education, consisting of representatives of the profession and legal educators, should be established. (Paras. 116 and 117 give detailed proposals for the composition and functions of the proposed Advisory Committee.) These are perhaps some of the most significant observations and recommendations of the Committee.

There is a correct emphasis on the vital necessity for mutual trust and respect between all concerned with legal education if the proposals are to be successfully implemented. But there is also a degree of caution in this part of the Report. While the professional bodies, it was very wisely asserted, ought not to attempt to specify the contents of the curriculum as a condition of recognition of a particular law degree, if, however, contrary to the Committee's expectations, the gap between the academic and professional bodies widened in the future rather than narrowed, some form of specification might become necessary, although it hoped it would not. (Para. 108).) Those who may find it difficult to envisage the circumstances in which English law schools would accept professionally imposed prescription of courses should consider an earlier part of the Report where it seemed clear to the Committee "that almost nowhere outside the British Isles (*sic*) does the legal profession now exercise the kind of influence on university law teaching that it has exercised here through the subject-by-subject exemption system." (Para. 70.)

Problems of recognition of law degrees

A reaction which illustrates the dangers in the Committee's wary approach appears in a Memorandum on the Report published (October, 1971) by the Young Solicitors' Group of the Law Society: "We are nervous of an acceptance of all [law degree] courses in their present form as it is our belief that some of them will contain matter largely irrelevant to the general legal practitioner and, more importantly, omit some of the basic legal principles he will require . . ." (Memorandum, p. 6, para. 4:2.) This expresses an attitude calculated to raise the blood pressure of most university law teachers and comes ill after a prior admission that: "We are not properly qualified to judge the syllabus of each of such courses". At the same time the Group goes on to recommend that Company Law be an additional "core subject".

It is understandable that the profession has to be convinced of the advantages of recognition of the law degree. The Committee had to take the situation as it found it and start from there, so naturally some reassurance had to be offered by way of inducement to the profession to concede long-held positions. But all that should reasonably be required of the law schools is that the "basic core subjects" (under whatever names) should be included as compulsory subjects in the law degree course. This means that the profession will have to resist the temptation to insist on a larger core. One Australian law faculty, when considering reform of its curriculum to allow for a greater degree of choice on the part of its students, was confronted with professional demands for the inclusion of seventeen compulsory subjects if its degree were to continue to have recognition as a qualification for practice. This is admittedly an extreme example, but it does illustrate the problem of professional recognition.

"Balance" in America

The U.S.A. was held out by the Committee as "perhaps the leading example of a system in which the practising profession and the law schools have attained a balance between academic freedom and professional participation". This was possibly "because in America, to a greater extent than here, the law teachers are seen as an important section of the legal profession". (Para. 70.) Assuredly American law teachers have long had a great sense of academic freedom. But there, as the Report itself shows (in Appendix D, para. 123), the practising profession, in the form of the American Bar Association, does not, in approving law schools which conform to its standards, in any way attempt to prescribe the subjects which are taught at the law schools, or the way in which they are taught. The price paid for this freedom from interference is that no exemptions for subjects taken at law school are allowed in the State Bar examinations which in almost all states must be passed in order to gain admission to practice. In recent years, there has been growing criticism in the U.S.A. of its system of legal education and especially of its lack of professional-practical training. The hoary cry from the profession about the law schools not adequately preparing their students for practice has been heard more frequently. This may in time lead to an upsetting in the delicate balance in that country.

Curricular Diversification

Another aspect of the problem is the number of law graduates who do not in fact enter the legal profession. The Committee was not able to obtain precise figures but the evidence suggested that 25% would not be an under-estimate. (Para. 118.) It is reckoned that about 50% of Australian graduates do not enter private practice. The law faculties have a duty also to their students who will enter into careers, legal and non-legal, in indus-

try and commerce and in various forms of public service. That is one good reason why there must be as small a compulsory core as possible. Students should have available to them a range of optional subjects suitable for the careers they have in mind and at the same time catering for these aspirants to the profession who wish to specialise to some extent, even while they are still in their undergraduate stage. However, this is not meant to advocate anything like the vast proliferation of elective and seminar courses offered by the major American law schools, even if the human and material resources were available for such an undertaking in other countries. Diversification is important, but should not become an end in itself with the risk of the law degree becoming to a large extent meaningless.

One way out of the dilemma is to have several kinds of degree available for different purposes. Some of the English universities already have "mixed" degree courses, which combined a number of law subjects with other subjects (usually in the social sciences). The Report even suggested that it would be reasonable for the profession to accept a three-year mixed degree as a law degree for qualifying purposes provided that it conformed to certain requirements, one being that it required the study of at least eight law subjects of which five should be the proposed "core" subjects. (Para. 111.) While the mixed degree is a good choice for those who do not intend to practise or are uncertain about their future careers or simply desire a liberal education with a law slant, there should be some misgivings about giving it the same status as a proper law degree.

Three years too short

The question may also be raised whether the English traditional three-year law degree course is in any event sufficiently long. Many law teachers consider that four years is the minimum period in which they can reasonably be expected to turn the raw material from the schools into presentable, if inchoate, lawyers. Some would say that it would be well-nigh impossible to achieve in three years the objectives of the academic stage set by Ormrod, especially the objective of providing the student "with an understanding of the relationship of law to the social and economic environment in which it operates", perhaps the most important and difficult aspect of all for the future.

As the Report admits, the length of the university law course, and indeed of the total period required to produce the finished lawyer, is shorter in England than in most other countries. In those countries where there is only a three-year law degree course this normally is a post-graduate degree, as in the U.S.A. and Canada (and it is in fact recognised in the U.S.A. as such now under its new title of J.D.). There is a strong tendency in this direction in Australia where a combined degree course (i.e. a Bachelor of Arts or Economics or Commerce, etc. degree combined with the LL.B. degree) taken over a period of five or six years is now quite commonly undertaken. The LL.B., though technically a first degree, is in fact taken as the second degree following the completion of the Arts, etc. sector of the combined course. Despite its length, the standard LL.B. degree in Australia and New Zealand is a pass degree; the honours degree generally involves considerable additional work.

Compulsory pre-LL.B. Degrees in Australia

There have been developments of a different nature in the two newest law schools in Australia in that another degree has, except in some special cases, been made a prerequisite to proceeding to the LL.B. degree. In the Law School of Monash University (in Melbourne), which is in its seventh year of operation, and in the Law School of the University of New South Wales (in Sydney), which is in its first year, there are three-year courses leading to the degree of Bachelor of Jurisprudence. These are "mixed" degrees combining a core of legal subjects with some (preferably) related subjects from Arts, Economics, or Commerce. In addition to the basic legal subjects, a student in the University of New South Wales might, for example, take Accountancy or Economics and Business Law electives; Political Science and Public Law electives; Industrial Relations and Labour Law electives, or various other groups of subjects.

The B.Juris. is a non-professional degree and either it or an approved Arts, Economics or Commerce degree course must be combined with the LL.B. degree course, so that the student will have two degrees after successfully completing five years' study. This will, of course, satisfy the academic requirements for admission to practice as a barrister or solicitor (or as both in Victoria). Those desiring to qualify as solicitors in New South Wales will be required to undertake one year's articles after graduation. (This is already the position in Victorio with regard to graduates in law who are prospective "barristers and solicitors".) The different combinations of degrees cater for students with different ambitions and interests, while the three-year B.Juris. degree is (or at the University of New South Wales soon will be) available on its own for those who desire to have a basic legal education (or simply a liberal education), but not the full professional qualification. A full-time LL.B. programme of three years duration will be offered in the University of New South Wales to graduates of other faculties. The innovation is in the insistence of another "tailor-made" degree as a prerequisite to the LL.B. degree, with the consequent broadening of the educational scope. This is illustrated by the curricular structure in the University of New South Wales, which includes two compulsory subjects entitled "Language and the Law" and "Law, Lawyers, and Society" for all prospective practitioners.

Prospects in England and Ireland

These comments on the Ormrod Report have been made in this Gazette in order to stimulate debate on the best forms of legal education for Ireland. The Report is a good one, not perhaps as revolutionary in its proposals as some of its members may believe, but essentially rational and highly credible. So far as England is concerned, the big question is whether it will

really be implemented. Or will the forces of conservatism and tradition in the legal profession be more powerful than the forces of progress and evolution, thus ensuring the preservation of the *status quo*? It will be a tragedy for legal education in England if this happens.

The major difficulty which is likely to emerge concerns the fourth or vocational year over which there has been a good deal of confusion since the Report was published. It is furthermore the only recommendation in the Report which produced a minority view—a view incidentally seemingly shared by the Council of the Incorporated Law Society of Ireland which appears to favour providing vocational training in a professional school. The Council also is understood to be insisting on the retention of the apprenticeship system in Ireland, and this attitude is certainly in conflict both with the unanimous recommendation of Ormrod and with developments elsewhere. However, the progressive views expressed by the Irish Minister for Justice and others, as they have appeared in the pages of this Gazette in recent issues, and the welcome generally given to the Ormrod Report lead one hopefully to believe that legal education in Ireland stands on the edge of major reforms.

HYMAN TARLO
Professor of Law in the University of Queensland (sometime Lecturer in Real Property and Equity to the Incorporated Law Society of Ireland).

Landlord and Tenant Amendment Act, 1971

This Act which was passed on the 1st December 1971 deals with four unconnected topics, two of which relate to the law of rent restrictions.

The first matter dealt with by the Act is an attempt to remedy the unsatisfactory position in which sports clubs found themselves where they could not qualify for reversionary leases under the provisions of the 1958 Act because the lands which they held were too extensive or were not subsidiary and ancillary to the buildings on the land. The new provisions will enable a club which either holds its land, called "qualifying land", for the purpose of sport under a lease for twenty-one years or longer or has been in continuous occupation or possession for that purpose for not less than twenty-one years and has spent (other than on maintenance) sums of at least fifteen times the yearly rent, with a minimum of £1,000.00, on permanent buildings or structures or on developing the land for sport, to obtain a "sporting lease". Note that if the qualifying land ceases to be primarily used for the purpose of carrying on the sport in respect of which the lease was originally granted, the landlord may terminate the lease. In addition where a sports club holds other land other than that on which the buildings have been built or the development carried out on which there are no buildings but which are used in conjunction with qualifying land for the same purpose as the qualifying land the club can obtain a sporting lease of the additional land so long as it is not more than a quarter of the total area of the qualifying land and the other land. The provisions of the 1958 Act apply generally to sporting leases. If the terms of the lease have to be fixed by the Court it will contain rent review clauses to operate at the expiration of the first twenty-four years of the term of ninety-nine years and further reviews at twenty-five year intervals.

The second matter dealt with by the Act is the problem created by certain leases which fell outside the terms of the 1958 Act in particular on the Proby Estate in County Dublin. It is known that considerable difficulty was being experienced in drafting any legislation which would cover the case of the Proby lessees, who were generally considered to be worthy of protection, but which would not open the flood gates to numerous other tenants whose claims were not so just. The solution adopted in the Act is first to repeal and re-enact with amendments Section 10 of the 1958 Act. This provided that where a new lease or a renewal of a lease which would have been a building or proprietary lease if the 1958 Act had been in force was granted to the person entitled to the lessee's interest under the old lease the renewed lease was to be deemed to be a building lease. This provision did not cover the Proby Estate cases because the renewed or new leases were not granted to the persons entitled to the lessee's interest under the old lease. Section 10 has therefore been amended so that it provides now under Section 8 of the 1971 Act that where the renewal or new lease was granted either to a person entitled to the lessee's interest under the old lease as heretofore or at a rent less than the rateable valuation of the property at the date of the granting of the new lease then the new lease will be deemed to be a building lease.

As some of the Proby leases had in fact expired prior to the passing of the Act a further section provides that where this had happened within eight years before the passing of the Act and subject to certain other requirements the lessees are given a period of twelve months following the passing of the Act to claim reversionary leases under the 1958 Act.

The third matter covered by the Act, which incidentally was not in the Bill as originally introduced, gives a further opportunity to landlords of less than six controlled dwellings to apply to the District Court to have the basic rent of any or all of these dwellings reviewed. This is in fact a reactivation of the provisions of Section 8 (1a) of the Rent Restrictions Act, 1960, which, of course, was inserted in the 1960 Act by Section 4 (1) of the 1967 Act. This provision originally had a life of two years but many landlords who would have been entitled to make use of the provision apparently were unaware of the existence of the provisions and many practitioners may not have fully appreciated the purpose of the extremely complex Section 4 of the 1967 Act. At any rate such landlords have now been given a further year to bring applications for a review to the District Court.

The last matter dealt with by the Act is one which will give great relief to conveyancing practitioners because it clarifies, by amendment, the effect of the notorious Section 10 of the Rent Restrictions (Amendment) Act, 1967, which was so wide in its provisions as to require lessees of property held under long leases and who would for all practical purposes have been regarded as the "owners" of the premises to get their ground landlord's consent to the assignment of the premises on sale. The new Act excludes from the necessity for consent any house occupied for the purposes of his own residence by a person who holds it under a lease the term of which is more than twenty-one years.

It should be noted that two of the provisions of the Act are retrospective, those relating to the right to a sporting lease which is to be retrospective to the 3rd March 1970, being the date on which the Department of Justice announced that amending legislation was to be introduced to deal with this matter and the second being the amendment of Section 10 of the Rent Restrictions Act of 1967 which is to be retrospective to the date of the passing of that Act.

JOHN F. BUCKLEY

Statutes of the Oireachtas, 1971

No.	Title	Signed by President
1.	International Health Bodies (Corporate Status) Act, 1971	3 3 1971
2.	Broadcasting Authority (Amendment) Act, 1971	3 3 1971
3.	Fuel (Control of Supplies) Act, 1971	8 3 1971
4.	Irish Steel Holdings Limited (Amendment) Act, 1971	11 3 1971
5.	Control of Exports (Temporary Provisions) Act, 1956 (Continuance) Act, 1971	31 3 1971
6.	Local Government Services (Corporate Bodies) Act, 1971	7 4 1971
7.	Gaeltacht Industries (Amendment) Act, 1971	7 4 1971
8.	Road Transport Act, 1971	7 4 1971
9.	Industrial Credit (Amendment) Act, 1971	18 5 1971
10.	Insurance Act, 1971	22 6 1971
11.	British and Irish Steampacket Company Ltd. (Acquisition) (Amendment) Act, 1971	29 6 1971
12.	Nuclear Energy (An Bord Fuinnimh Nuicleigh) Act, 1971	5 7 1971
13.	Firearms Act, 1971	6 7 1971
14.	Transport (Miscellaneous Provisions) Act, 1971	10 7 1971
15.	Local Government (Rateability of Rents) (Abolition) Act, 1971	13 7 1971
16.	Social Welfare Act, 1971	14 7 1971
17.	Standard Time (Amendment) Act, 1971	20 7 1971
18.	Electricity Supply (Amendment) Act, 1971	21 7 1971
19.	Air Navigation. (Eurocontrol) Act, 1971	21 7 1971
20.	Redundancy Payments Act, 1971	27 7 1971
21.	Health Contributions Act, 1971	27 7 1971
22.	Higher Education Authority Act, 1971	27 7 1971
23.	Finance Act, 1971	28 7 1971
24.	Central Bank Act, 1971	28 7 1971
25.	Prohibition of Forcible Entry and Occupation Act, 1971	1 9 1971
26.	Army Pensions Act, 1971	1 9 1971
27.	Employment Agency Act, 1971	25 11 1971
28.	National College of Art and Design Act, 1971	1 12 1971
29.	Imposition of Duties (Confirmation of Orders) Act, 1971	7 12 1971
30.	Landlord and Tenant (Amendment) Act, 1971	7 12 1971
31.	Industrial and Provident Societies (Amendment) Act, 1971	7 12 1971
32.	Agriculture (Amendment) Act, 1971	8 12 1971
33.	Trade Union Act, 1971	10 12 1971
34.	Export Promotion (Amendment) Act, 1971	15 12 1971
35.	International Development Association (Amendment) Act, 1971	15 12 1971
36.	Courts Act, 1971	15 12 1971
37.	Appropriation Act, 1971	27 12 1971

Solicitors Remuneration: Schedule 2

The following General Order under the Solicitors Remuneration Act, 1881, was laid before the Oireachtas in December 1971. It will not come into operation until one month from the date when it was laid before each House of the Oireachtas. It will take effect on the expiration of approximately one month unless a negative resolution is passed in either House. The Houses of the Oireachtas (Laying of Documents) Act 1966 defines a month as 4 weeks during each of which there is a sitting of the House. It follows that Seanad Eireann must hold four sitting days in four different weeks, before this Order will have been laid before the House. It is consequently not possible at the moment to state exactly when the Order will come into force, but it is hoped that this will be some time before the end of February 1972. This order proposes to increase charges (other than discretionary charges) under Schedule 1 by 42 per cent.

EUROPEAN SECTION

Young Solicitors' Seminar, Wexford

More than 200 members attended a very successful Seminar which was organised jointly by the Society of Young Solicitors, and the Provincial Solicitors Association, which was held in the Talbot Hotel, Wexford, on Saturday 6th and Sunday 7th November.

The relevant topic chosen was "Solicitors in Europe". Mr. Fintan O'Connor, Chairman of the Wexford Bar Association, first welcomed the guests, the distinguished speakers, and the President of the Law Society, Mr. McGrath.

The first paper was given by Mr. Stanley Crossick, Secretary of the English Solicitors European Group, on "Common Market Entry"—the effect on domestic law and the implications for the legal profession.

Mr. Crossick first mentioned that there was some controversy as to whether English or French should be the working language of the Community. The Treaty of Rome was a framework where the legislative powers resided jointly in the Council of Ministers and in the Commission, whereas the administrative powers resided resided jointly in the Commission and in the Council of Ministers, whereas the administrative powers resided legal language. It was to be noted, however, that no administrative enforcement machinery had been devised. The European Community was essentially a bureaucracy; the effect of this was that Community legislation was rarely hastily thought out; there was plenty of dialogue between the Commission and other institutions, and amongst the sections of the Commission itself. The European Parliament was the weakest institution in the fabric, although it could in theory dismiss the Commission by a two thirds majority adverse vote; it was in practice, however, merely a consultative assembly.

Regulations issued by the Commission are directly effective throughout the Community whereas Directives are only effective when they have been implemented by the respective national Parliaments of the Member States. By Article 177, the highest Court of a member State must refer any questions affecting the construction of any part of the Treaty of Rome and associated documents for a ruling to the European Court in Luxemburg. Article 2 sets out clearly the aims of the Community. It was clear that the pure domestic law of Member States was largely unaffected by Community law, but there would be some changes in laws affecting customs duties, movement of labour, agriculture, transport, and taxation.

There would be substantial innovations in the laws affecting restrictive practices and monopolies. As regards freedom of services and of persons, the Treaty abolished broadly all discriminations based on nationality. As regards the free movement of capital, little progress had been made in the negotiations so far. The Sterling Exchange Area will have to be reorganised. The benefits arising out of the laws of employment and of social security and of labour law, will be freely transferable amongst Member States. A Common Road-Rail Policy has been formulated in transport, but negotiations are not very advanced. The Community regulations giving a guarantee that road transport workers will be protected against unfair competition are stringent.

Over one thousand regulations affecting different agricultural products had been issued by the Commission. It would seem that the methods of financing Irish agriculture would not be approved by the Community. Discussions were still in progress about fishery limits, but the control of the quality and standard of foods was far more stringent than now.

There had not been much progress to report in the harmonisation of laws contemplated by Article 100 of the Treaty. However an important Convention on the Recognition and Enforcement of Judgments amongst Member States had been concluded. It was intended to standardise bankruptcy and winding up proceedings. The European Company had been proposed for larger units, but the Dunlop-Pirelli case illustrated the restrictions imposed by the present law. Mergers and amalgamations appeared to be limited by fiscal problems. The added value tax system had to be introduced in all member states, but the rates need not be standardised.

With regard to the problem of the incorporation of Community law into Irish law, it was necessary to stress that the whole Community law would have to be accepted in toto, including all Regulations in force. The new member states will have to sign a short accession treaty; but it would be wise to embody the Regulations in detail. In any event, in relation to matters covered by the Treaty of Rome, it was essential to note that Community law must take precedence over national law, even though some national Courts had tried not to subscribe to this principle.

The sovereignty of modern states is in any event much restricted, and the alleged loss of sovereignty was more than compensated by belonging to a large trading partnership for the benefit of all concerned. It was stressed that no major decision affecting the Community would be taken save by a unanimous vote of all member states. The lecturer thought that serious problems of translation would arise if Irish were to become an official language.

It was necessary to realise that, upon adhesion to the Community, new subjects would have to be studied, and there will be an increase in trade. It should be stressed that lawyers should not generally as professional men, regard Community law as being beyond their scope. Irish legal experts would have to recognise the difference in law which would affect the entire approach to national law. For instance the law of agency would require reconsideration in the light of Continental practice.

As regards Freedom of Establishment the present position in England was that foreign lawyers were free to practise in most branches, provided they do not hold themselves out to be barristers or solicitors, and do not draw deeds. In France, one was entitled to practise as a "Conseiller juridique".

There were severe restrictions upon practice as a lawyer in Germany, as even German lawyers were confined to practise in their own 17 specified districts.

The services to be provided are defined in Article 60 of the Treaty, and this includes "activities of all liberal professions".

A modest draft directive to enable lawyers to practise within limits in the Community was turned down by the German and Luxemburg delegations on the ground that, under Article 55, these might encompass State activities which were specifically excluded. It was decided recently in Milan that either bi-literal or multi-lateral Conventions should be concluded between member states as to the rights of their respective lawyers to practise within one another's country. Satisfactory agreements had already been reached between the Bars of Paris and Brussels, and the Bars of Paris and Rome. On 1st September 1971, a Benelux Convention on pleading and practice was ratified by Belgium and Luxemburg. In principle, barristers and solicitors would have an equal status before the European Court and National Courts of member states, subject to the terms of the Convention. In England it was agreed that the same barristers only should appear on behalf of clients, if an English Judge sought a ruling from the European Court under Article 177 of the Treaty, if they had appeared before the English Court. It was essential to note that we were not exporting a divided legal profession into Europe.

In answer to questions, Mr. Crossick made the following points:

(1) He was not aware of any Community legislation which would hinder restrictions to be imposed upon aliens purchasing land in any of the member states. Mr. Temple Lang pointed out that the present provisions of the Land Act 1965 restricting the purchase of land by aliens are contrary to Article 7, which prohibited discrimination on the grounds of nationality as well as to the principles of freedom of establishment. If any controls were to be retained, they would have to be non-discriminatory.

(2) It would be possible for the larger firms of English Solicitors to establish branches in Ireland. The only effective way to prevent this would be for a sufficient number of Irish lawyers to become recognized experts in European Community Law.

(3) In answer to the President, it was stated that we should have some knowledge of Community legislation, and we must keep track of the legal developments on other states. It would be most useful to create a centralised Law Institute to co-ordinate legal research. It was regrettable that official contact between the two legal professions was not more amicable.

(4) He propounded the joke about Gallic Modesty, Prussian Charm, Italian efficiency and Irish succinctness in speech.

(5) Despite the Hague Convention of 1964 on the Unification of Laws governing the International Sale of Goods, and the subsequent English Act passed, the "Uniform Laws on International Sales Act 1967", relatively little progress had so far been achieved in this field.

(6) It would be useful to have tax havens, Luxemburg was not a tax haven, but gave tax concessions to holding companies.

(7) The problem of numerous trade unions in England was a barrier to trade. The German system was preferable, whereby there was one trade union per industry, as against one trade union per trade.

(8) In France, the two professions of "Avocat" and "Avoué" were about to be unified. The profitable profession of "Notaire" was strictly controlled, while a "Conseiller Juridique" had no legal standing in France.

Mr. David Hall, a legal official of the Commission in Brussels, spoke on "Monopolies and Restrictive Practices Legislation in the Common Market". This referred in particular to some aspects of competition, as contemplated in Articles 85 and 86 of the Treaty; these Articles should be read in the context of the whole Treaty of Rome. Article 85 laid down that agreements incompatible with the Common Market, such as price-fixing and Market-sharing were consequently prohibited; this was an all embracing Article, which had to be considered in relation to the European Court decisions and the regulations and notices issued by the Commission. Regulation 17 lays down provisions for granting exemption but does not affect Article 85. Many large industries have applied for exemption from the strict application of Article 85, but block exemptions have not been adopted. In the smaller cases, the norms for granting exemption have been laid down by the Commission. On the other hand in the more important matters, such as the *Machine Tool Decision* (March 1969); the *International Textile Decision* (October 1971); and the *Société Technique Miniere v. Maschinenbau Ulm.* the European Court laid down definite principles.

The *Konstam Grundig Case* established that any separation of the national markets is invalid as conflicting with the competition rules. In certain circumstances the Commission would be prepared to limit the application of Article 85 (1). It would not be possible to apply Article 85 (2) rigidly. Any doubts however about the specific application of Article 85 should be referred to the Comission but an agreement remains valid until the Commission decides otherwise; it is therefore necessary to notify the Commission. If it is possible to sever valid provisions of an agreement from invalid ones, this will be done.

The *Omega Watchmakers Exclusive Dealers Case* (November 1970) established the procedure. Here it was held that the retail distribution system of that company was valid as being beneficial. The *German Tyremakers Case* (December 1970) was based on a principle that rebates would be given to bought articles; this was held to be an infringement of Art. 85. The *Van Kalbeck Case* (October 1970) related to an agreement between Belgian and Dutch companies in regard to cardboard tubings. *Dentsche Gramofon Gesellschaft* case was a conflict between Siemens and Phillips in regard to the rights to sell Polydor S.A. Records. In this case a Hamburg firm had sold the records at a lower price by purchasing them from a Swiss retailer; it established that the exercise of exclusive rights could contravene Article 85.

Article 86 prohibits any action undertaken by one or more large enterprise to take improper advantage of its dominant position within the market, if it thereby affects trade between member States. These improper transactions include limitation of production, or the compulsory receipt of additional supplies by the purchaser if the vendor is to sign the contract. Fines were actually imposed in the *Analyn Dyestuff Case.*

In reply to questions, it was stated:

(1) In an application for an exemption, the Commission acts on information received from various sources. All interested parties may appear before the Court, but the Court does not normally reduce the amount of the fines. So far, there have been 9,500 applications for exemption under Article 85 (3).

(2) Article 85 does not apply to mergers, but Article 86 does.

(3) Article 85 does not apply to solicitors, as they do not trade.

(4) Many agreements will have to be examined in detail before exemption is granted, and this may take years.

Herr Dr. Arved Deringer a former Chairman of the Legal Committee of the European Parliament then gave a lecture on "The European Court—how a case comes to court, is presented and decided". It was emphasised that Community law was neither International law nor National law, but a new category of law. The European Community was an evolving political society where the process of integration was transforming the nations into one living Community. The basis of this Community or *Primary Law* consists of the Treaty of Rome, and the Treaties establishing *Euratom* and the Coal and Steel Community. Secondary Community Law consists of all legal instruments (regulations, directives, and decisions) produced by the Council of Ministers and by the Commission. While most provisions affect only member States there are some provisions such as the Competition and anti-trust provisions as well as all regulations which bind the citizens of those States directly. The European Court has evolved the theory of direct applicability to citizens, even though apparently directed to States. It follows that, if any citizen can deduce individual rights from these provisions, these rights would have to be observed by national Courts.

What might be termed Tertiary Law are the Conventions between Member State arising out of Article 220 (such as reciprocal recognition of companies) or even outside the Treaty (such as Conventions about patents and about the European corporation). As regards the conflict between Community Law and National Law, it is important to note that any National Law passed after accession of a Member State is invalid if it conflicts with the Treaty of Rome.

It is emphasised that after the Council of Ministers it is the Commission which has to act as the highest executive body within the Community and which issues decisions in individual cases on the basis of Community Law. The main cases to be brought before the European Court either by the Commission or by another member State are the following :

(1) Against another member State for violation of the Treaty. In this case Governments are usually represented by their officials.

(2) Articles 173 to 176—by which complaints may be made against the Council of Ministers or the Commission either :

(a) to contest the validity of an act issued by them, or

(b) against a regulation or decision directed to a third party provided the complainant is affected directly by it.

This ground is important, but technically hard to prove.

(3) The reference of preliminary rulings as to validity and interpretation under Article 177 to the European Court, which is the only competent authority to decide the issue. National Courts have no alternative but to refer questions of interpretation of the Treaty to the Court. In this event, it is for the lawyers of the national courts to formulate the referable questions.

(4) Apart from this, the Court deals with :

(a) Proceedings for non-contractural liability of the Community, and

(b) Arbitration proceedings under Article 182.

In considering the question when a national lawyer has to act within Community Law, it is to be stressed that this will take place :

(1) Before the European Commission. Under Article 85 — for instance — a lawyer may request for a negative clearance or an exemption, or may try to mitigate a fine. Remember that the position is complex, as the lawyers of different nationalities in Brussels have different traditions. You may have to talk for some hours, first with the Director of the Section, then with the Director-General, and finally with the Legal Section; this may well present difficulties if all these officials are of different nationalities.

It follows that a reasonable knowledge of French and of German systems of law is essential, as well as a knowledge of comparative law and procedure. It is quite an art which can only be gained by experience as to how to draft the relevant questions. The same legal terms have not the same meanings in all languages.

(2) The future European Court will have 11 (now 7) Judges as well as 3 (at present 2) Advocates General. The function of this Advocate General is to give an impartial assessment of the case to the Court. Lawyers admitted to practise before their national Courts may plead orally before the European Court even in their own language, if it is an official language; this is normally the language of the plaintiff. All documents are translated by the staff of the Court into the other official languages. Today any lawyer not pleading in French is at a disadvantage—but upon the accession of Britain, Ireland, Norway and Denmark, English and German will tend to displace French. It is to be noted that there are very strict rules about time limits and presentation of documents and these will not be extended. An appeal against a decision of the Commission must be made within 2 months after the client is notified of the decision, and in the notice of appeal, all relevant legal arguments and facts must be stated in detail. Within one further month, the defendant must reply stating all relevant arguments and facts in detail. The plaintiff has a further month to reply in detail to defendant's arguments, and the defendant has a month after that to reply to plaintiff's further argument after this. No further new arguments or facts may be adduced. Within from 4 to 6 weeks later, an oral hearing before the court will be arranged; within a further 4 weeks, the Advocate-General will deliver his *plaidoyer* or opinion; and the Court will give its final decision about four weeks after that. It will, therefore, be appreciated that a heavy burden is thrown on the lawyer, who has to act quickly to have his documents in order. As the Judges come from various nationalities, the Court will tend to base its decision rather more in promoting the political aims of the Community rather than on strict law. It is finally essential for Irish lawyers to follow closely the legal developments within the Community, and to become acquainted with the legal system of the other Member States.

In answer to questions, Dr. Deringer stated :

(1) The Treaty on the whole is being interpreted by the Court in a Community spirit.

(2) The Court is not necessarily bound by its previous decision.

(3) There are no fees payable to the Court—only to your lawyer, and if you lose, to the lawyer representing the Commission.

(4) Judgments are first drafted in French, but subsequently submitted to the parties in their own lan-

guage, and afterwards translated into all other official languages. No dissenting judgments are allowed. The Advocate General is absolutely impartial in presenting the case to the Court.

(5) In preparing documents, it is essential to put the case as simply as possible. It would be wise to have a few specialist lawyers who would appear before the Court.

(6) The Advocate General sits with the Bench, and his proposals are published, as well as the judgments. The question of interpretation in the Court depends to a large extent as to whether a Latin or English or Germanic group predominates.

(7) There is a system of rotation for appointing the Judges, and they are usually appointed for six years, and can be re-appointed. Normally the Court sits at present as a full Court of 7 Judges, and the majority opinion forms the judgment.

Mr. John Temple Lang gave the final lecture on "Companies in Europe" and stated that in the member States, there were different laws governing particular types of companies. As regards domicil, a company normally has to comply with the local law where the principal place of management is. There was normally a very strict national control over the formation of the company. The requirements about the accounts were less stringent, and bearer shares were more common. Even by comparison with the proposed European Company, Irish law was more advanced, inasmuch as it gave greater protection to minority rights, and the English Act of 1967 gave wider power to appoint independent inspectors to investigate companies. In each member State there is only a single company tax, and the principle of floating charges is as yet unknown.

The essential object of the Community was to create a single economic unit. It should be noted that the head office of a company cannot be moved from one country to another, nor can mergers be generally made between companies in different countries. The law relating to disclosures of directors and the *ultra vires* rule are very broadly similar as in Ireland but there are formal requirements about incorporation.

The minimum capital requirement for European type companies will depend on the purposes for which they are formed. A compulsory valuation must be made of any property purchased by the promoter within two years of incorporation. A draft directive has been made about mergers of public companies of the same nationality, which makes adequate provision for the protection of creditors. It was essential, however, to disclose the effect of this merger to the shareholders.

The object of the new European type of company to be incorporated under Community law was to avoid delays in the harmonisation of national laws. The Community was effectively worried by American competition.

The board of directors of Euro-Companies will have to be nationals of member States. In some cases works councils are to have a power of veto over certain decisions. There was also a supervisory council, one-third of whose members would be appointed by the trade unions. It should be noted that, in Germany, the same personnel cannot be elected to the management board as well as to the supervisory board. The works council itself is elected and is entitled to veto various matters; one-third of the supervisory board is to consist of representatives of employees of the company. There is provision for protection of minority shareholders within the Euro-Company.

Finally it should be mentioned that there are technical Draft Conventions on bankruptcy and liquidation, as well as on taxation. In answer to questions, it was stated that :

(1) A floating charge could well be introduced, as a means of promoting the obtaining of capital.

(2) Freely negotiable bearer warrants will increase in the long run, once sterling has been liberalised.

(3) Copies of documents about the Euro-Company proposals can be obtained from the European Information Office, Merrion Square, Dublin. However, the existing E.E.C. Directives on Companies will not apply to State corporations.

The organisers must be congratulated upon a week-end where many of us learnt much in a very pleasant atmosphere.

Dublin Solicitors Bar Association

The following were among matters before the Council of the Dublin Solicitors' Bar Association at recent meetings :

Proposed Pre-Contract Enquiries

A Sub-Committee reported that it had been unable to agree on a recommendation for the introduction of standard forms of pre-contract enquiries in conveyancing transactions along the lines of the English system. The Council decided that in view of its Sub-Committee's inability to make a unanimous recommendation the Council would not recommend the introduction of a pre-contract enquiry system.

Delays by Building Societies

The Council had a number of complaints about delays in the approval of loans, the issue of instructions to a Building Society's solicitors, the issue of cheques following the approval of title by the Society's solicitors, the furnishing of "pay-off" figures by the Society and the release of title documents on accountable receipt. It was decided to consider what steps the Association might usefully take in the matter.

Annual Dinner

The Annual Dinner of the Association was held in The Library, Solicitors Buildings, Dublin on Friday 10th December 1971. 190 members and guests were present, and the toast of the Guests was proposed by the President, Mr. Gordon Henderson and responded to by the Chief Justice, the Hon. Cearbhall O Dálaigh. The President of the Incorporated Law Society, Mr. B. A. McGrath, proposed the toast of "The Association" to which Mr. Maurice Kenny responded.

BOOK REVIEWS

European Business Law by G. A. Zaphiriou, LL.M. (Lond.); Sweet & Maxwell, London, 1970; 8vo.; £3.75.

The compulsory approximation of some business laws within the framework of the European Community entitles the author to call this book "*European* Business Law".

The work deals with a variety of legal rules irrespective of their nature. They include those which relate to contract and tort, private and administrative law, and rules which fall within the sphere of internal, community and international law. The connection is not systematic but organic, as they all relate to business and trading in Europe.

The author does not confine himself to the broad expanse of European business law so called, but also includes references to the impact and cross-fertilisation of other European legal entities, such as *Comecon*. Amongst the various jurisdictions other than those of the EEC countries drawn upon for material are Czechoslovakia, Denmark, Finland, Greece, Norway, Roumania, Sweden, Switzerland, the U.S.A. and the U.S.S.R. The breadth of the writer's learning is impressive, particularly when one considers that he has covered all this ground in the short space of only 264 pages.

However, in order to keep the book as close to practical realities as possible, its scope is inevitably limited to general principles affecting business enterprises trading with or within the European Community. This must of course limit its usefulness to the practitioner. An interesting feature is that material updating this book will be published regularly in the *Journal of Business Law*, in a section entitled *European Business Law*, of which Mr. Zaphiriou is Co-Editor.

Unfortunately, many of the topics covered, e.g., the taxation of enterprises, or anti-trust law, are by nature not interesting reading and the writer's style does not help. The book is quite boring to read.

This small criticism alone should not deter anyone with an interest in the EEC from investing in a copy. Indeed, the preliminary chapters provide an excellent introduction to the law of the EEC generally for those who have little knowledge of the Community's legal structure.

GRAHAM GOLDING

C. J. Charlesworth: The Law of Negligence (fifth edition) by R. A. Percy; Sweet & Maxwell, London, 1971; 8vo, pp. cii+802; £9.50.

Dr. Charlesworth, who was a County Court Judge, is rightly known for his learned work on the law and principles of negligence. The first edition was published in 1938, and contained 576 pages including a comprehensive index of more than thirty pages. Dr. Charlesworth subsequently edited the second edition in 1947 and the third edition in 1956. Mr. Percy, the present editor, took over the editorship of the fourth edition in 1962, when this famous book became part of Sweet & Maxwell's well-known Common Law Library. This fourth edition had been extended to 666 pages, including 642 of text. In the intervening years, no less than seven cumulative supplements had appeared.

It was thus time for Mr. Percy to prepare a new edition, a task which he has most successfully accomplished. There have inevitably been so many intervening developments in the law of negligence that it has been necessary to extend the text to 802 pages, including 780 pages of text.

If one compares the 1938 chapter headings with the 1971 chapter headings, one will find that headings such as "Causation and Remoteness of Damage"; "Persons Professing some Special Skill"; "Parties to the Action and Vicarious Liability"; appear as new. On the other hand, such matters as gas, electricity, explosives, and poison together with nuclear installations, are now inserted amongst "Dangerous Things". Lord Campbell's Act has naturally become the "Fatal Accidents Act". "Negligence Committed Abroad" is specially covered. The net effect is that the original thirty chapters are reduced in a more orderly way to nineteen, of which no less than ten have required substantial reorganisation.

A very convenient method of having paragraph numbers at the beginning of each heading has been successfully maintained. Mr. Percy is to be congratulated on achieving a task which would have seemed well-nigh insuperable save to an expert in his chosen subject; unfortunately a spot check in the index of cases appears to reveal that he has not taken cognisance of some of our vital Irish Supreme Court decisions, nor does there appear to be any mention of the vital Civil Liability Act, 1961. If future editions are to be useful to Irish practitioners, it is vital for Mr. Percy to realise that this is a grave lacuna. However, on the whole English law is sufficiently close to Irish law now for one to be in a position to recommend whole-heartedly this valuable textbook.

The printing is, as usual, excellent, and, as the work contains more than 900 pages, the price is not unduly high.

CGD

Lindley (Hon. Nathaniel): The Law of Partnership (thirteenth edition) by Ernest H. Scammell; Sweet & Maxwell, London, 1971; 8vo; pp. cliii+950; £15.

The Hon. Nathaniel Lindley, subsequently Master of the Rolls and Law Lord, published the first edition of his famous work on partnership, as long ago as 1860. The Partnership Act, 1890, and the Limited Partnership Act, 1907, had been so well drafted, that, despite many subsequent changes in other aspects of law, they have remained substantially unaltered and authoritative to the present day. Lord Lindley published the first five editions of this work up to 1893, the next five editions up to 1935 were published by his son, Judge Lindley. Mr. Salt, K.C., published the eleventh edition in 1950, while the present editor, Mr. Ernest Scammell, is responsible for the twelfth edition, 1962, as well as the present one.

Mr. Scammell must be congratulated upon being able to incorporate all modern decisions, and yet managing to reduce the volume by some 300 pages. The eighth edition, published by Judge Lindley in 1912, contained a text of 1015 pages and a minutely prepared index of more than 200 pages, which is a masterpiece in the art of indexing. Contd. on page 24

CORRESPONDENCE

Society of St. Vincent de Paul,
St. Anthony's Conference,
Law Library,
Four Courts,
Dublin 7
2nd December 1971

Dear Editor,

We will be most grateful if you will draw attention to our Annual Appeal, your Dublin members will receive a personal notice of the appeal. We have recently trebled the area of our care and attention with a correspondingly increased call on our resources. The Society expends £750,000 annually on direly necessitous cases. £250,000 is annually expended in the city of Dublin alone and our Conference expends about £2,000 annually. Our Christmas appeal is our main hope of meeting this expenditure. Subscriptions will be gratefully received by the President or Treasurer at the Law Library or at the Franciscan Friary, Merchants Quay, where we meet each week in term and in vacation.

Sincerely and Gratefully yours,

Noel K. McDonald, *President.*

Roinn Tailte
Department of Lands
Dublin
November, 1971

Dear Mr. Finnegan,

I have your letter of the 18th instant concerning quotation of the Folio No. on half-yearly demands issued for land annuity instalments.

Since my letter of 15th February 1971, and as promised therein, we have carried out the operations necessary for inclusion of the Folio reference as part of the data on these demands and, in general, the current issues carries the appropriate references.

As you are aware, not all lands charged with a Land Purchase Annuity, or analogous payment, are registered. The exceptions fall mainly in the category of lands purchased under the Acts prior to 1891 before registration was made compulsory, or in the category where the fee-simple interest is not yet vested in the purchasing tenant or allottee. In such cases, of course, the demand will carry no Folio reference as there is none.

There is another situation in which the reference, though existing, may be lacking in our records. In my letter of 15th February last (5th paragraph) I mentioned the fact that we cannot guarantee absolute accuracy for a Folio reference supplied at second hand. That circumstance may extend to a lack of the Folio reference altogether in a very small percentage of our records, and the Nov./Dec. 1971 issue, being the first run of Folio annotated demands, we are conscious that omissions of the past will be reflected in the absence of the appropriate Folio reference in the very odd case, just as obtained, I should emphasise, in the era of the Ten-Yearly Receivable Order. We hope to correct the record as far as possible according as these exceptional instances are brought to light and we have provided the necessary systems to that end.

The case at issue is, I am sure, accounted for by one or other of the exceptional situations referred to. If you care to let me have particulars—the reference numbers of the offending demands, I will have the matter investigated fully.

Yours sincerely,

T. O'Brien, *Secretary.*

Joseph G. Finnegan, Esq.,
Asst. Secretary,
Incorporated Law Society,
Dublin 7.

Faculty of Law
University College
Galway
31st December 1971

Dear Sir,

A propos of Mr. John F. Buckley's letter in your November 1971 issue (as well as the Minister for Justice's suggestion reported in the same issue that French or German should be a compulsory subject for all university law degrees), it may be of interest to mention that there is at present a proposal before the Faculty of Arts in University College, Galway, for a change in the syllabus which will enable students to take law in combination with other non-legal subjects such as French or German. If the changes suggested by a committee are accepted, Galway will, I think, be the only college in this country where a "mixed" degree on the lines of those obtainable in some British universities will be available. Moreover, it will probably be possible to combine a wider range of subjects with law here than is possible in Britain where (judging from the Wilson Report) the possible combinations are somewhat limited.

Yours faithfully,

J. M. G. Sweeney.

Contd. from page 23

Mr. Scammell's twelfth edition (1962) contained 949 pages, including 908 pages of text. The present edition is no longer than the twelfth. Mr. Scammell explains this by stating that there are relatively few decisions on the law of partnership. Sections 120 and 121 of the English Companies Act, 1967, which makes it possible for certain professional partnerships to be created without any limitation on the number of partners, do not apply in Ireland as yet, but if we enter the European Community, some similar provisions will probably have to be evolved. It is also stressed that many partnership decisions are now regulated by arbitration. This volume has as usual been written with the clarity and precision which have become associated with this learned work.

As regards Irish decisions, while *Gargan v Ruttle* (1931) and *Meagher v Meagher* (1961) are mentioned, one is surprised that *Provincial Bank of Ireland v Tallon* (1938) and *Macken v Revenue Commissioners* (1962) are omitted. The printing is up to its usual high standard. Practitioners who deal in a large way with business partnerships should not hesitate to acquire this most valuable volume.

CGD

15 Solicitors among New Recorders

Only 15 Solicitors are among 70 new Recorders whose appointment under the Courts Act is announced. Under the Act, Solicitors qualify for the first time for appointment as part-time Recorders. After five years' service as a Recorder, they are eligible for appointment as a full-time Circuit Judge.

The 70 Recorders, chosen from lawyers practising in the South-Eastern, Northern and Wales and Chester circuit areas, as well as the Midland, North-Eastern and Western Circuits, will try the less serious indictable offences when the new Crown Court system replaces Quarter Sessions and Assizes from January 1st.

Recorders will not necessarily sit at courts in the circuits where they practised.

House prices soar 15p.c. in one year

House prices have risen by 15 p.c. in the past year. The cost of the average new house has gone up from £5,261 to £6,071 during the 12-month period.

These national figures, published by the Department of Local Government, cover even sharper house price inflation in some areas of the country. Worst hit is Galway county where average house prices rose by more than a quarter to £6,781—even higher than the national average.

The Department's statistics are for the quarter ended September 30th this year and they show no slowing up in the trend which has pushed house prices up by nearly 45 p.c. since 1968. If anything it is worsening. The yearly increase recorded in the second quarter of this year was only 11 p.c. compared with the new figure of 15 p.c.

This rate of inflation is about equal to the rate of increase in average wages which have been rising at 16 p.c. a year but it far exceeds the average rate of price rises. During the same period consumer prices as a whole rose by 9 p.c.

Galway shows the most startling rise with the average house price going up by 26 p.c. during the year. The average price of houses bought with building societies loans went up by 30 p.c. It now has the highest average house prices in the country.

More Built

Dublin house prices rose by 14 p.c. to £6,409. Prices in Cork rose by 10 p.c. to an average of £5,955 while Limerick fared better with only a 5 p.c. increase to £5,020. Prices in other areas went up by about 19 p.c. to an average of £5,490.

The statistics also disclose that the number of houses completed during the quarter under review rose by 11 p.c. on the corresponding period of 1970 to reach 3,627. The number of dwellings started during the period was 5,139, of which 2,023 were local authority houses.

Total payments by loan agencies continue to run at a very high level. In the first nine months of this year these payments amounted to £32.1 million, which is substantially higher than the corresponding figure for any previous year.

House purchase loan approvals in the quarter by building societies, assurance companies and local authorities amounted to £13.3 million, of which building societies accounted for £8.2 million. Payments in the quarter amounted to £10.8 million and the total value of unpaid applications on hands at the end of the quarter was £42.1 million.

Costs of flats in Dublin decried

Miss Catherine Collins, assistant secretary of the Flat Dwellers' Association, said in Dublin last night that "by no stretch of imagination" could flats or bedsitters in the city be described as being good value for money. She was speaking at a Forum discussion meeting on the question.

The present bad conditions in flats and bedsitters had come about because Dublin had never been planned to accommodate one-third of the country's entire population. This had resulted in a housing shortage which reflected the present conditions whereby "extortionate" rents could be demanded and obtained, she said.

Miss Collins said that a tenant's weekly rent should be related to his income. In some cases tenants paid up to 40% of their income on rent, while the majority paid from a quarter to a third. This did not include heating or lighting and in many instances it had been noted by the association that meters were tampered with by landlords and advanced to much higher rates.

Some of the most vulnerable flatdwellers were single women, Miss Collins said. They were among the lowest wage earners, yet were still expected to pay similar rents to single males who might be earning up to 20% more.

The majority of flats in Dublin were furnished, and therefore uncontrolled, Miss Collins said. This resulted in lack of security for the tenant and superiority of rights by the landlord over the tenant. She said that any increase in rates or taxes incurred by landlords were frequently pushed on to the tenant's rent.

Among the demands of the association was the establishment of a rent tribunal or some court to which flatdwellers could have recourse.

Lawyer in Almshouse had £58,500 will

A retired solicitor, who spent the last 10 years of his life in a Church of England home for the destitute, left £58,557 before duty. Of this £100 was left to the home, St. Cross Hospital, Winchester, Hants. Canon Kenneth Felstead, in charge of the home, said yesterday: "This has shocked me." It has cost "well over £3,000" to keep Mr. William Young since he was admitted as a "red brother" in 1961.

"Someone else, a genuine destitute, could have benefitted. He told us he had no money, and being a Christian organisation we don't start asking for proof," said Canon Falstead.

Red Brother

The home was set up to house poor men who are called "black brothers", and later extended under a second foundation scheme for men of "noble poverty" who were known as "red brothers".

Mr. Young came into the second category, but his will has disclosed that he had German and Chelsea porcelain valued at £23,000 and thousands of pounds worth of shares.

Canon Felstead said: "I find this rather embarrassing. It certainly isn't funny. If men of his intellectual calibre have these sort of financial benefits they have no right to come here. We are certainly going to have to scrutinise other entrants more carefully," he added.

Mr. Peter Pitt, a Winchester solicitor, acting as executor of the will, said last night: "I can't remember when the will was made. He certainly made it out while he was staying here."

The porcelain and much of the estate had been left to the Ashmolean Museum, Oxford, he said. Some of the money has been left to his two remaining brothers, his only living relatives.

"I knew he was a brother at the hospital, but it's not up to one solicitor to tell another solicitor how to make out his will."

(*Daily Telegraph*, 11 December 1971)

Record £123,375 damages for student car crash victim

A record award of damages in a personal injuries action in this country was made by a jury in the High Court, Dublin, yesterday, when it assessed damages at £123,375 in an action brought by a 23-year-old U.C.G. arts student who was paralysed from the neck down as a result of a road accident.

He is John Mitchell of Ballisodare in County Sligo, and the jury, after a four-day hearing, brought in its verdict after an absence of three hours.

Mr. Mitchell brought his action against Michael Malee, also of Ballisodare. He stated that, on the morning of 30th December 1968 he was a passenger in a motor-car owned by Mr. Malee and driven by Mr. Malee's son, Michael John Malee. They were returning from a dance at Strandhill, County Sligo, when the motor-car left the road and collided with a tree.

Mr. Mitchell said that at the time of the accident he had passed his first arts examinations at U.C.G. and planned to be a vocational teacher.

In the accident he received, among his injuries, a badly comminuted fracture of the sixth and seventh cervical vertebrae, with paralysis below this point. He had suffered loss of sensation and loss of bowel, bladder and sex functions.

It was stated that he would always be confined to a wheelchair and that he would require constant attendance for the remainder of his life. His enjoyment of life had been totally destroyed.

The defendant, in his defence, denied that there had been any negligence in the driving of his motor-car and claimed that the accident was caused by a condition of ice on the surface of the road which could not reasonably have been foreseen, anticipated or observed, the effect of which was to produce an uncontrollable skid involving no negligence on the part of the defendant.

The jury found that there had been negligence on the part of the defendant's driver and assessed loss to date at £1,575; future loss of earnings at £31,000; extra cost of building a special house, £2,500; cost of employing staff in house, £35,000; medical attendance in the future, £1,500; miscellaneous, £1,800, and general damages, £50,000.

The previous highest figure awarded in an action of this type was £96,796, to a 32-year-old Co. Donegal miner, Thomas McGeehan, in April, 1970. This award was taken to the Supreme Court on appeal, but the case was settled out of court for £70,000.

(*Irish Times*, 11 December 1971)

Two Senior Counsel Briefed For Each Party In Superior Courts

Bar Council and Minister for Justice

BAR COUNCIL'S STATEMENT

Only one of 15 reports from the Committee on Court Practice and Procedure, submitted to the Department of Justice since 1962, had been adopted, says a statement from the General Council of the Bar in Ireland issued yesterday.

It criticises the attitude of the Minister for Justice, Mr. O'Malley, and describes his recent statements as a public manifestation of the hostility of his Department towards the Bar.

Mr. O'Malley is expected to reply to the statement today.

The Bar Council refers to the Minister's statement, especially his choice of language in designating as "a bit of a racket" the use of two Senior Counsel in cases before the Courts. It stresses in the statement that the work load falling on the Supreme Court and High Court Judges cannot be disposed of if there is any waste of judicial time, which would necessarily result if dates of the trial and actions and appeals were fixed in advance.

Uncertain

The statement says that as a result, the barrister cannot normally expect any more than 24 hours notice of when a case will be tried and quite commonly it is uncertain whether a case listed for the following day will be taken that day.

"When Senior Counsel is asked by a solicitor even a week before the probable date of trial to give exclusive attention to an action without the assistance of a second Senior Counsel he is put in a difficult position. He does not know what other briefs he will have to return or decline if he agrees because the same uncertainty as to the date of trial afflicts most of his briefs. If he accepts the invitation any reasonable fee will probably exceed what would be paid for the part-time services of two Senior Counsel.

"In most cases where a single Senior Counsel is briefed it can be assumed that the client can afford to pay a very substantial fee irrespective of the outcome of the action."

The ordinary citizen pursuing a claim for damages for personal injuries against an insurance company does not fall into that class, it is stated.

The Minister for Justice, at Belgrade for a conference of the World Peace through Law Centre and more recently in the Dail, had pleaded in mitigation of the State's failure to introduce a scheme for legal aid in civil cases, that it was the tradition of the Irish Bar to act for litigants who could not afford to pay Counsel's fees.

"The Minister appears now to have designated as 'a kind of a racket' the practice of two Senior Counsels which makes this service possible. At the same time in the new Courts of Justice Bill the Minister is taking away the exclusive right of Barristers to appear in the High Court and Supreme Court, which is the foundation of the tradition on which the Minister relies," the statement says.

Barristers believed that they had an obligation to appear for poor litigants because Barristers had up to now the exclusive right to audience in the Superior Courts and failure of the Bar to act in that way would have deprived their fellow citizens who could not afford Counsel's fees of the right of access to the Courts.

Outrageous

The Minister appears to have said it was 'outrageous' to have two Senior Counsel briefed for the same party in the High Court in an action which the amount involved might be only £700. The Bar Council agreed with the Minister, but would point out that this situation is solely due to the failure of the Department of Justice to keep the jurisdiction of the Circuit Court in line with the falling value of money. The present jurisdiction of the Circuit Court was fixed at £600 in 1953 and had remained unaltered for 18 years.

"If the Minister wanted to be reasonable he could have told the Dail that in these small cases fees are allowed by the Taxing Master to one Senior Counsel only. It is not the practice of the Bar to ask a poor litigant to pay out of the damages he has recovered, fees to Counsel whom it was necessary for him to employ but which are not allowed on taxation."

Fees

In its criticism of the Minister's proposed regulations for the Taxing Master, the Bar Council says that the Minister's statement that he intended to give directions to Taxing Masters not to allow fees to more than one Counsel except in serious cases would appear to indicate either lack of knowledge on the Minister's part of the constitutional limits of his authority, or perhaps an intention to act in violation of the Constitution.

The Taxing Masters were administering justice and determining matters in dispute in regard to costs. Any attempt by the Minister to impose his views on the Taxing Masters would appear to be a flagrant interference with the constitutional right of citizens to have their cases determined by due process of law.

"The Minister's statement bears a more sinister appearance in the light of the unprecedented invasion last week of the Taxing Masters Office by the Department of Justice, when over the weekend a Taxing Master's files were surreptitiously removed and he was barricaded out of his office.

If this can be done to an officer of the Court, a little more temerity might suggest it could be attempted on the Judges, though this would be unnecessary if the Minister succeeded in usurping power over the officers. If the Minister can control the officers of the Court and dictate to Taxing Masters what costs they are to allow it would be easy to control the citizens' right of access to Justice," the statement concluded.

(*Irish Independent*, 8th December 1971)

MINISTER'S REPLY

The Minister for Justice, Mr. O'Malley, has refuted some allegations against him and his Department by the General Council of the Bar in Ireland earlier this week. Mr. O'Malley said it was regrettable that a body like the Bar Council should issue its statement without checking its facts.

The Minister in his statement dealt with each allegation and gave an explanation and comment. The first he refers to is that he said it was "a bit of a racket" where more than one counsel appeared for a client in the High Court. "What I said was that the public tend to look on it that way and they do so because of the practice of employing three Counsels obtains even in relatively unimportant cases where legal costs sometimes exceed the amount in dispute," Mr. O'Malley says.

He adds that this comment could be verified by reference to the Official Debates of Dail Eireann for December 1st. "In denying the statement attributed to me by the Bar Council, I do not wish to be taken as denying the fact that I believe that the present practice is difficult to defend."

Of the Bar Council's allegation that he intended to give directions to the Taxing Masters not to allow fees to more than one Counsel except in serious cases and that this indicated either ignorance on the Minister's part or an intention to violate the Constitution; Mr. O'Malley said he never made that statement.

No Controls

The context of what he (the Minister) said was expressed by an Opposition deputy, himself a solicitor, that the High Court practice of having two Senior Counsel and one Junior on each side might creep into the Circuit Court. "I agreed with him that that would be highly undesirable but said I had no direct control. I went on to say that I supposed that I could have indirect control by saying that the costs of more than one Counsel should be allowed only in very unusual cases.

"Contrary to what the Bar Council said this had nothing at all to do with giving directions to Taxing Masters, of whom there were none in the Circuit Court, or for that matter anybody else. The Circuit Court Rules did not in any circumstances allow costs of two Senior Counsel. If there were to be any question of allowing taxed costs for two Senior Counsel in the Circuit Court, these statutory rules of Court would have to be changed," Mr. O'Malley went on.

"As my formal consent is necessary by law for any such change I have the power and, as I conceive it, the clear duty in the public interest, to say 'no' if any proposal to change the rules in the manner feared by the Opposition in the Dail were made—not, of course, that I have any reason whatsoever to think that any such proposal would be made."

It is interesting, Mr. O'Malley continued, to note that the Bar Council did not challenge the statement by a Fine Gael Deputy, or the much stronger statement made by a colleague of his, who went so far as to canvass the idea that the solution to the problem of high legal costs might have to be found in a system of State-employed advocates.

Mr. O'Malley described as "grossly misleading" references to the fact that accommodation previously occupied by the Taxing Master in the Four Courts, was recently taken over to make available an additional courtroom urgently required for the Circuit Court. "Public allegations had been made that what was done arbitrarily and without prior consultation with the officials concerned. The statement of the Bar Council is in terms which are calculated to give support and credence to these allegations. Since I shall be dealing further with this matter in reply to a Parliamentary question I do not propose to say more at this point than that the allegations of arbitrary action taken without notice are without foundation."

On the Bar Council's reference to the fact that solicitors are to be given right of audience in the High Court and the Supreme Court, Mr. O'Malley said the Bar Council seemed to suggest that it was because members of the Bar had, up to now, the exclusive right to appear in these Courts that they felt it their duty to act for poor litigants in certain cases without any assurances that they would be paid.

Mr. O'Malley pointed out that the Bar Council did not specifically criticise the new provision. It confined itself to a scarcely veiled threat that, if their right of exclusive audience went, Counsel could no longer feel there was a need for them or a duty for them to assist a poor litigant.

Mr. O'Malley added that the official representations made him by the Bar Council on the Courts Bill, were in marked contrast to the approach indicated in their statement. "No concern was expressed for poor litigants. The case made practically in so many words, was that the public coulc have no assurance that members of the solicitors' profession were fit to be allowed to appear in the High Court or Supreme Court. "If the Council feels that that interpretation of what they said does them any injustice, I am perfectly willing to release their letter for publication."

He concluded that he had every confidence in the Bar in this country. He believed that Deputy T. F. O'Higgins, F.G., was closer to their thinking than were the people responsible for the letter from the Bar Council. "Likewise, I believe that the tone and content of the attack now made on me by the Council does not reflect the views of the members of the Bar for whose professional and personal competence, integrity, and sense of fair play I, from my personal experience, have nothing but the highest respect and gratitude." He hoped that the Council would leave aside what appeared to be a policy of resistance to any change.

(*Irish Independent*, 10th December 1971)

Row over Young Lawyers' Union in England

Britain's trainee solicitors are in revolt against their employers. An attempt by them to register as a trade union under the new Industrial Relations Act has brought a threat by the Law Society, representing their employers, that it will stop employing trainees as "articled clerks", and will stop any help it gives at the moment to them.

The Law Society's threat is aimed at the clerks' Associate Members Committee. This represents their interests within the Law Society, which itself theoretically represents both solicitors and their clerks.

It also administers the training programme for articled clerks, runs their qualifying examinations, and contributes £2,000 a year to help with the committee members' travelling expenses.

The clerks are also trying to negotiate with local law societies to persuade individual employers to pay a decent basic wage to clerks. One society settled on a rate of between £3 and £5 a week for a beginner. "That sort of thing is ludicrous," said Rodney King, chairman of the Associate Members' Committee. "Although, to be fair, some employers pay a reasonable wage, the trouble is that there are far too many law graduates, many of them married, working for £7 or £8 a week."

The decision to register as a trade union was taken by the 25-strong National Committee which represents some 9,000 trainee solicitors. The first application for registration is blocked by a constitutional point, but the committee think they can overcome this by emending the constitution.

Last week the situation was complicated by the entry on the scene of Clive Jenkins of the ASTMS. The articled clerks booked a room in the Law Society Hall and invited him along to tell them how to go about setting up a trade union. Brandishing a fistful of successful actions on behalf of solicitors in industry, Jenkins told them that setting up a trade union was "an act of faith." This alarmed the Law Society which suspects Jenkins' intentions.

The official view of the articled clerks' action is that they are receiving training which will quickly take them into the upper middle-class earning bracket, and that until they are trained they are a net liability. The clerks claim that by carrying out lucrative conveyancing work for their employers they make a profit for their offices.

The threat to withdraw the Law Society's help was given by William Brown, chairman of its Education and Training Committee at a later meeting with the clerks.

Dennis Gordon, secretary of Holborn Law Society, Britain's largest local group, said: "This trade union issue is not very real. If they set their sights too high they will price themselves out of the market and the future training of the legal profession in this country will break down because solicitors will not be able to afford clerks.

"It is true that the clerks doing conveyancing are engaged in profitable work, but no self-respecting solicitor uses his clerk purely for conveyancing. They are given a legal training and that is what costs the money.

"In my own area office rents are £6 a sq. ft. That is enough space to stand your waste paper basket in. Articled clerks take up more space, of course, and they cost money for additional services. These are the sort of factors that ought to be looked at."

(*Sunday Telegraph*, 12th December 1971)

FIRST IRISH EXAMINATION

In the November 1971 *Gazette*, at page 152 of volume 65, amongst candidates who passed the First Irish Examination in September 1971 the following is the correct name of the following candidate: Martin, Celine Mary.

The following additional candidate should also have been inserted: Meagher, Aideen Mary.

UNREPORTED IRISH CASES

(Defective locking device on trailer not inspected. Plaintiff injured when Jockey wheels collapse. Defendants liable.)

The first defendant, a haulage contractor, was the owner of a detachable articulated trailer drawn by a motor tractor. Once the tractor is detached from the trailer, the front end of the trailer is supported by jockey wheels containing a locking mechanism which prevents the jockey wheels from retracting; a special pulling bar can be attached to the front of the trailer, enabling persons to steer it. If the locking mechanism is not in position, there is a danger that, when the traileri s drawn forward, the assembly may collapse, and the front end of the trailer may fall to the ground and, if fully laden, could cause serious injuries to anyone nearby.

The second defendants carried on business as sack manufacturers in Barrow Street, Dublin. In January 1970 Bergin, the first defendant, carried goods on the trailer in a container from the B&I Company to the premises of second defendants. The trailer was left in the yard to be unloaded, duly supported by the jockey wheels in front. The first defendant then left with his tractor. The locking mechanism was defective, but this could be observed from the side. The unloading proceeded without incident; when this was completed, the second defendants decided to remove the trailer to another part of the yard to get it out of the way. This entailed the assistance of several persons, including the foreman, the plaintiff in this action, after moving some distance, the jockey wheel assembly collapsed, and severely injured the plaintiff.

The second defendants were accustomed to loading and unloading of trailers and moving them subsequently, so that there would be room in the unloading bay. The plaintiff as foreman summoned some of the second defandants' workmen to help him in this operation.

The jury found as follows :

(1) That the first defendant was negligent in failing to anticipate that the trailer would be manhandled, and would thereby collapse because of its defective condition.

(2) That the second defendants were negligent in failing to ascertain that the trailer was in a safe condition before permitting the plaintiff to assist in manhandling it.

The jury apportioned 80 per cent of the fault to the first defendant and 20 per cent to the second defendant. The first defendant appeals against this apportionment and also contends that Mr. Justice Henchy should have withdrawn the case from the jury on the ground that this defendant could not reasonably have anticipated that the trailer would be moved in the yard of the second defendant. This ground fails as there was ample evidence on which the Jury could hold that the locking device was dangerous at the time.

The second defendants contended that there were no reasonable grounds upon which a jury could find them negligent. As the second defendants should have satisfied themselves by inspection that the trailer and its locking device were in a fit condition to be manhandled, this objection fails. This was a patent defect immediately apparent to anyone who took the trouble to look at it.

The apportionment as such was justified, as the first defendant had created the danger initially and had failed to give any warning of it. The Supreme Court (O Dalaigh, C.J., Walsh and Fitzgerald J.J.) accordingly dismissed the appeal.

[Keenan v Bergin and S. Bishop & Co.; Supreme Court; 29th October 1971.]

Statutory Instruments

SOLICITORS' PRACTISING CERTIFICATE FEES REGULATIONS 1971

S.I. No. 341 of 1971

By virtue and in pursuance of Sections 4, 5, 79 and 82 of the Solicitors Act, 1954, the Incorporated Law Society of Ireland hereby make the following regulations:

(1) From and after the date of these regulations the fees specified in the schedule hereto shall be paid to the Society by the applicant in respect of the matters therein mentioned.

(2) These regulations shall come into operation on the 13th Day of December 1971.

(3) The Solicitors Act 1954 (Fees) Regulations 1968 (S.I. No. 240 of 1968) and the Solicitors Act (Fees) (Amendment) Regulations 1970 (S.I. No. 275 of 1970) are revoked as from the date of operation of these regulations as regards applications for practising certificates for the practice year 1972/73 or any later practice year but shall continue to apply to applications for practising certificates for the practice year 1971/72 or any earlier practice year.

(4) These regulations may be cited as the Solicitors' Practising Certificate Fees Regulations 1971.

Schedule

(1) On application for a practising certificate for the year 1972/73 or any later practice year by a solicitor who practises or carries on his business in the City of Dublin or within three miles therefrom £31.00

(2) On application for a practising certificate by a solicitor who does not practise or carry on his business in the City of Dublin or within three miles therefrom £28.00

(3) On application under Section 17 of the Solicitors (Amendment) Act 1960 for a copy of an entry on File A or File B £1.00

Dated this 13th Day of December 1971.

Signed on behalf of the Incorporated Law Society of Ireland.

BRENDAN A. McGRATH
President of the Incorporated Law Society of Ireland.

Explanatory Note

This note is not part of the regulations and does not purport to be a legal interpretation thereof.

The fee payable by a solicitor on taking out a practising certificate is raised from £21 to £31 in the case of a solicitor practising in Dublin and from £18 to £28 in the case of a solicitor practising elsewhere. The fee payable for a copy of an entry on File A or File B is unchanged.

SOLICITORS' (PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE) (AMENDMENT) REGULATIONS 1971

S.I. No. 344 of 1971

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by Sections 4, 5 and 71 of the Solicitors Act 1954 hereby make the following regulations:

(1) These regulations may be cited as the Solicitors' (Professional Practice, Conduct and Discipline) (Amendment) Regulations 1971.

(2) These regulations shall come into operation on the 16th Day of December 1971.

(3) In these regulations the term "the Principal Regulations" means the Solicitors Act 1954 (Professional Practice, Conduct and Discipline) Regulations 1955 (S.I. No. 151 of 1955).

(4) These regulations shall be read together with the Principal Regulations and shall insofar as they are inconsistent therewith alter and amend the same and may be cited as the Solicitors' (Professional Practice, Conduct and Discipline) Regulations 1955-71.

(5) Paragraph 5 of the Principal Regulations is hereby revoked and the following paragraph is substituted.

> (5) A solicitor shall not obtain or attempt to obtain professional business by directly or indirectly without reasonable justification inviting instructions for such business or doing or permitting to be done without reasonable justification anything which by its manner, frequency or otherwise advertises his practice as a solicitor or doing or permitting to be done anything which may reasonably be regarded as touting and it shall be the duty of a solicitor to make reasonable enquiry before accepting instructions for the purpose of ascertaining whether the acceptance of such instructions would involve a breach of this regulation.

(6) Paragraph 8 of the Principal Regulations is hereby revoked and the following paragraph is substituted.

> (8) A solicitor shall not accept an appointment by or act as solicitor for any client or body other than the State on the basis that he will be remunerated by a fixed salary irrespective of the amount of work performed or to be performed by him as solicitor for such client or body unless such solicitor shall hold a wholetime appointment under a contract which provides that he shall act as solicitor for such client or body exclusively.

Dated this 16th day of December 1971.

Signed on behalf of the Incorporated Law Society of Ireland.

JAMES S. O'DONOVAN
President of the Incorporated Law Society of Ireland.

Explanatory Note

This note is not part of the regulations and does not purport to be a legal interpretation thereof.

The regulations (1) restate the restrictions on the manner in which solicitors may obtain or attempt to obtain professional business and (2) clarify an ambiguity in paragraph 8 of the principal regulations.

OBITUARY

CONSTANTINE CURRAN, S.C., D.Litt.

An Appreciation

Con Curran as he was known to generations of solicitors was a familiar figure in the Four Courts where he worked for more than forty years until his retirement twenty years ago. There can be few if any members who still remember him as a young clerk in the King's Bench Division where he commenced his career serving under the judges of the old regime. There he would have met solicitors who had been admitted as attornies before the Judicature Act, 1875. To those like the writer who began practice in the thirties he was a beloved and respected figure. He belonged to a corps of experts who saved the sum of things when the heavens were falling between 1922 and 1924. It is sometimes forgotten that to Curran and his colleagues the registrars, examiners and officers of the Courts, even more almost than to the judges, belongs a credit of keeping a legal system in being during those momentuous years. The names of Phipps, Pilkington, Adderley, Healy and others were symbols of awe to the tyro. Con Curran always adopted the paternal approach with a mixture of expertise and humility. To a zealous practitioner who had diffidently pointed out a slip in a document which Curran had drafted he once said : "You seem to be the only person who ever reads my orders."

What a pity he left no memoirs. His recollections must have included all the worthies and eccentrics of more than half a century in the legal and literary world. He could remember the time when the repository of Court files was in the gallery high in the dome above the round hall of the old Four Courts from which baskets of documents were lowered by ropes on pulleys when required in the various Courts. For some reason of indolence or diffidence his literary output was scattered and comparatively small but it had the quality of rarity. He once confided to the writer that writing excited but exhausted him. His memories included such varied characters as Joyce, Synge, Pallas, Kennedy and the survivors of the old and the progenitors of the new legal regime. His interests covered the fields of law literature, architecture and the pictorial art. Senior Counsel and doctor of literature, he adorned the profession and if he had been bold enough to write his own epitaph it might be :

Home sum; humani
Nil a me alienum puto.

He did, however, leave a memorial which is of interest to members of the legal profession in a contribution to the record of the centenary of the Society's charter in 1952. It is entitled "Figures in the Hall" and will be reproduced in the February *Gazette*.

Con Curran, who died recently at the age of ninety years, was called to the Bar in 1910, and to the Senior Bar in 1935. He eventually became Registrar of the Supreme Court in 1946 and retired in 1952. He became a Doctor of Literature *Honoris Causa* of the National University of Ireland in 1949.

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

JANUARY 1972

Contents

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THE SOCIETY

Proceedings of the Council

16 DECEMBER 1971

Mr. McGrath and afterwards Mr. O'Donovan in the chair also present, Messrs W. B. Allen, Walter Beatty, Bruce Blake, John Carrigan, Anthony Collins, Laurence Cullen, Gerard M. Doyle, Joseph Dundon, Thomas J. Fitzpatrick, James R. C. Green, Christopher Hogan, Michael P. Houlihan, Nicholas S. Hughes, John B. Jermyn, Francis Lanigan, Eunan McCarron, Patrick J. McEllin, Patrick McEntee, John Maher, Gerald J. Moloney, Patrick C. Moore, Senator J. J. Nash, George A. Nolan, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Rory O'Connor, Thomas V. O'Connor, Patrick F. O'Donnell, John O'Meara, William A. Osborne, David R. Pigot, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor, Ralph J. Walker.

The following was among the business transacted.

Taxing Masters' Offices.

The Council passed the following resolution.

While appreciating the need for allocating any available space in the Four Courts to the best advantage the Council of the Incorporated Law Society of Ireland deprecate the undignified treatment to which the Taxing Masters of the High Court were recently subjected by the Department of Justice when possession was taken of their offices. The Council feel that had the matter been referred to the Chief Justice under whose jurisdiction the Taxing Masters serve it would have been readily resolved to the satisfaction of all parties.

Prices Bill 1971

A report circulated by the Secretary was considered followed by a general discussion. It was decided that the President with a deputation should seek an interview with the Minister for Industry and Commerce and if advised with the Minister for Justice to make representation against the application of the existing Prices legislation to solicitors' charges which are already subject to statutory control.

Pending applications for increases in legal remuneration

It was reported to the Council that the statutory body under the Solicitors Remuneration Act 1881 had received a communication from the Minister for Justice asking them to reconsider the increase of 42% on Schedule 2 made by the Solicitors Remuneration General Order 1971. This order must lie before the Oireachtas for a period of one month before it can become effective. It was decided that the President and Secretary should attend the next meeting of the Statutory body to submit the views of the Society against the request made by the Department. It was also reported to the Council that the Circuit and District Courts Rules Committees had received a communication from the Department of Justice asking them to reconsider the orders which they had made and to substitute an increase of 20% for the amounts already included in the rules. It was decided that representations should be made to the Council by the Society to these committees pointing out that the increase of 42% barely covers the increase in the cost of living since 1964 and that in the case of the Circuit Court it is considerably less than the increase in the cost of living since the present scale of costs was prescribed in 1961.

13 JANUARY 1972

The President in the chair, also present Messrs W. B. Allen, Walter Beatty, Bruce Blake, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, James R. C. Green, Gerald Hickey, Thomas Jackson, John B. Jermyn, Francis Lanigan, Eunan McCarron, Patrick McEntee, Brandan A. McGrath, John Maher, Patrick C. Moore, Senator John J. Nash, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Rory O'Connor, Thomas V. O'Connor, Patrick F. O'Donnell, William A. Osborne, David R. Pigot, Peter D. M. Prentice and Robert McD. Taylor.

The following was among the business transacted.

Legal aid—change of solicitor

The Council expressed the following opinion.

Where a solicitor is assigned a legal aid matter another solicitor should not accept a retainer from the client until the first solicitor's assignment has been discharged. The accused has a right to retain another solicitor and is not deprived of that right by the legal aid assignment. It appears to the Council that a solicitor assigned in a legal aid case is not entitled to costs under the legal aid scheme until evidence has been taken and until the case has been concluded. If costs are legally payable in a legal aid case to a solicitor assigned under the Act a solicitor should not accept a retainer on a change of solicitor until a certificate for payment of the original solicitor's costs has been issued.

Change of solicitor—general rule

As a matter of professional etiquette a solicitor who has been requested to accept a retainer in a matter in which a colleague has already been retained and whose retainer is being discharged should obtain the client's instructions and agreement to notifying the colleague of the change and should thereupon notify the colleague reserving his rights to act in the matter having regard to the circumstances of the case and the interests of justice. This opinion is issued as supplemental to opinion DR 22 (1) in the Members' Handbook 1968 edition.

The Constitution–A Time for Change

The inaugural meeting of the Law Society was held in University College, Earlsfort Terrace, Dublin, on the 2nd December 1971. The Auditor, Mr. Aindrias O Ruairc, delivered his address on "The Constitution—A Time for Change", and Dr. Geoffrey Hand, Dean of the Faculty of Law, presided.

Mr. O Ruairc said in the course of his auditorial address:

Our Constitution, though it is the fundamental law of this country and is, therefore, the law to which all others must conform, is also a political document because its very enactment was a conscious political decision taken by a majority of the electorate who voted in the referendum of 1937. Therefore, it is essential that the layman as well as the lawyer should be concerned with it and should be very slow to acquiesce in any proposed amendment to its provisions. In order to facilitate the task set, I shall conveniently divide my paper into two areas—one, a review of what I would roughly term "political" provisions. The other a consideration of "legal" provisions. The dividing line between them is not very clear.

When one speaks of "political" provisions, one includes those articles which many people would like to see amended or deleted in order to convert the Constitution into a purely pluralist one, part of their reason being to make it allegedly more acceptable to Northern Unionists in the event of the re-unification of our country. That particular reason does not appeal to me. If it is considered that the Constitution should be amended, the *only valid reason for doing so should be to improve its provisions* and not to use it as a sop to Northern Unionists. If we are honest with ourselves then the Unionists may be more inclined to listen to us. If we feel that certain provisions would discriminate against Northern Unionists then, surely, these same provisions must at the present time discriminate against the small minority of Southern Protestants. If we are to amend these provisions let us do so because justice demands they be amended and not in the hope that it will fool our Northern neighbours into believing that we are truly ecumenical when in fact we are not.

Recognition of specified denominations

Article 44 recognises, by virtue of Subsection 2, the special position of the Roman Catholic Church in this country. Subsection 3 recognises four named Protestant Churches, the Jewish congregation and "the other religious denominations existing in Ireland at the date of the coming into operation of this Constitution". It is generally believed now that these two subsections are superfluous and that their removal could not change in any way, the status of religion in Ireland. The All-Party Committee on the Constitution (1967) recommended unanimously that Subsections 2 and 3 be deleted from the Constitution. Church leaders in Ireland voiced no objection to this proposal so it would appear that in any referendum to amend Article 44 little or no opposition would be made to the deletion of these provisions which have only led to confusion. Therefore, their removal would clarify once and for all the other provisions in the Constitution which guarantee freedom of religion. Any misunderstanding which might now exist would thus be removed.

Amendment to Divorce Prohibition

A far more serious problem is posed by Article 41 (3) (1) which reads as follows: "No law shall be enacted providing for the grant of a dissolution of marriage." The All-Party Committee recommended its deletion and its replacement by a provision on the following lines: "In the case of a person who was married in accordance with the rites of a religion, no law shall be enacted providing for the grant of a dissolution of that marriage on grounds other than those acceptable to that religion." The reason they recommended such a change was that they considered that the Article as it now stands discriminates against a minority and that in the context of North-South relations, it is a barrier to reconciliation. This is a submission which should be rejected.

Any discussion on the introduction of facilities for divorce should centre around the effect it would have on society as a whole and not on the tenets of a particular religion. Personally, I would oppose the introduction of divorce, because I believe it would fundamentally damage Irish society, embracing both Catholics and non-Catholics. The many people who would disagree with me would argue that the absolute prohibition on divorce is nothing more than a majority of the people forcing their beliefs on a minority. It is admitted that this is in effect what happens, but it is submitted that there are certain values inherent in every society and to safeguard these values, it is sometimes necessary to make absolute laws. A society must protect itself and if in so doing it deprives a minority of certain rights demanded, then that minority, if it desires to remain part of that society, must needs submit to the will of the majority.

Lord Devlin on the Protection of Society

Lord Devlin in his work *The Enforcement of Morals* stated the position thus: "... The law exists for the protection of society. It does not discharge its function by protecting the individual from injury, annoyance, corruption, and exploitation, the law must protect also the institutions and the community of ideals, political and moral, without which people cannot live together. Society cannot ignore the morality of the individual any more than it can his loyalty; it flourishes on both and without either it dies." Lord Devlin's statement was not made in the context of divorce, but rather in that of the enforcement of morality *vis-à-vis* the criminal law and whether or not the State had a right to legislate against such matters as abortion, homosexuality, etc., I believe, however, that the general principle he outlines is particularly relevant in the present context.

My opposition to divorce has now been clearly stated. If, however, a majority in this country decided to delete Article 41 (3) (2) from the Constitution and thereby permit divorce, it is to be hoped the deleted clause would not be replaced by the one recommended by the All-Party Committee, and which has already been quoted. Their proposal amounts to the following: That divorce (and later remarriage) should be allowed, but only for those whose religion permits it. In an article in the *Gazette*, a year ago, Mr. John Temple Lang put forward a number of seriously valid objections to this idea. The Committee's provision would compel the Protestant Churches to take official positions on divorce,

which they would almost certainly be unwilling to take. The proposed amendment would not solve in a way compatible with any religion the position of a person who alters his or her beliefs. It would fail to deal adequately with certain mixed marriages. In effect, the result would be total confusion. Finally, the proposal would seem to be incompatible with Article 44 (2) (1) and (3) which is worded as follows: "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen" and "The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status."

If divorce is to be introduced into this country, it should be available to all the people, not just those whose religion allows it. It is not the function of the State to enforce any particular religious beliefs, be it Catholicism or Protestantism, but if the recommendation of the All-Party Committee were accepted this is in actual fact what would happen. Therefore, any public debate on the subject of permitting divorce should centre around its effect on a society which proclaims itself both North and South of the border, to be a Christian society and not on the beliefs of any one particular religion.

Amendments of Articles 2 and 3

From time to time amendments have been suggested to other articles in the Constitution. These proposals have included among others, a redrafting of Articles 2 and 3, which state that the national territory is the whole island of Ireland and its territorial seas and that, pending the reintegration of the national territory, legislation is only to apply to the present twenty-six county area. Furthermore, a review of the composition of the Seanad and the method of election to it as well as a review of the limited powers of the President, would appear to be called for. Time precludes me from discussing them but as regards Articles 2 and 3 I doubt if any useful purpose would be served by amending them.

Vote recommended at 18 years

I would like to advocate a change in Article 16 (1) (ii) which states that every person who reaches the age of twenty-one shall be entitled to vote in a national election. If the majority of the electorate agrees the age-limit should be reduced to eighteen years. All three main political parties in this country are now apparently in favour of such an amendment so it would seem that if any such proposal were laid before the people in a referendum it would be accepted by a majority. This, I think is only right.

It has already been stated that the Constitution is the fundamental law of the country and it is this aspect of it that I would now like to consider. Before doing so, however, it must be stressed that the guarantees of fundamental and personal rights contained in the Constitution are so important that they deserve to be reviewed at some length. When this has been done I will have only one major change to recommend, whose effects, if accepted, would be so far reaching that any other proposed amendment would, it is submitted, be superfluous.

The Theory of the Separation of Powers

The theory of Separation of Powers maintains that to ensure just government each of the three organs of government, the Executive, the Legislature and the Judiciary must be independent of each other. If there is, as there must be, a certain amount of overlapping between them, then a fair system of checks and balances must operate; i.e. that, though none of the three organs is separate, neither of the other two is sufficiently strong to downgrade the third to a negligible status. The Constitution of the United States is based on this theory. In America the Presidency, the Houses of Congress and the Judiciary are all to a very large extent independent of each other and are seen to be so. In this country, however, due to our unfortunately adopting the British system of cabinet government, there are in practice only two independent branches, the Executive and the Judiciary. The two Houses of the Oireachtas are to all intents and purposes subordinate to the wishes of the Cabinet. For this reason it is imperative that the Judiciary should be as independent as possible of the Executive and that this should be seen to be the case. This has been especially so in latter years, though the method of appointing Judges to the Bench directly by the Executive is questionable.

Independent Judiciary essential

The importance of an independently minded Judiciary must be stressed because it is they who are the custodians of the Constitution by virtue of Articles 26 and 34, and this enables them to declare Acts of the Oireachtas to be unconstitutional. It is they who stand between the people and an oppressive government which would try to deny the people their guaranteed fundamental rights. If the Judiciary fail in this task, the Oireachtas, and therefore the government, can become absolute rulers and this was not envisaged by the Constitution.

Our Constitution contains many guarantees for the citizens of the country, these include among others the right to regular elections and the right to be tried only in accordance with law and by a jury. Articles 40 to 44 are headed "Fundamental Rights", and they provide for certain rights which one would expect to find in any democratic country. However, in discussing these articles of the Constitution we must remember that the important factor is not so much what is written in them, but how they are interpreted by the Judiciary. The following statement, taken from a Canadian Parliamentary debate, illustrates this point: "The experience in many, of the countries that have constitutional guarantees is that it is the state of judicial opinion, in the light of the state of public opinion which determines to what extent constitutional guarantees of human rights and fundamental freedoms are to possess reality and effectiveness and this in spite of all the guarantees which may be given in any Constitution." This view is re-enforced by a statement of the Chief Justice, reported in *The Irish Times* on 9th September 1964: "Judicial review is crucial if the effectiveness of guarantees of personal rights is to be ensured and the other limitations of government are to be observed."

Judicial interpretation as regards freedom of the citizen

Perhaps the most important case in the area of "personal liberty" was that of *in re Offences Against the State (Amendment) Bill 1940* (1940, I.R.). The Bill, which gave the government power to intern people without trial, was referred to the Supreme Court by the President, under Article 26 (1) (i). The issue before the Court was whether the provisions of the Bill were consistent with Article 40 (4) (i) which states: "That no citizen shall be deprived of his personal liberty save in accordance with law." It was obvious that the Court's decision would depend on the interpretation they gave to the phrase "save in accordance with the

law". A majority decided that by virtue of this phrase a person who was detained under the Act was being detained in accordance with the provisions of a statute duly passed by the Oireachtas, and therefore he could not question the constitutionality of the Act. It was, I respetfully submit, a bad decision and one which would not be arrived at today. The narrow interpretation of the phrase "save in accordance with law" could have led to a situation where the other guarantees in the Constitution would have become meaningless.

A far more liberal and, I think, more just interpretation was given to the same phase by Gavan Duffy P. in *The State (Burke) v Lennon* (1940, I.R.), where he said : "Article 40, if I understand it, guarantees that no citizen shall be deprived of liberty save in accordance with a law, which respects his fundamental right to personal liberty and defends and vindicates it, as far as practicable, and protects his person from unjust attack; the Constitution clearly intends that he shall be liable to forfeit that right under the criminal law on being duly tried and found guilty of an offence." However, the decision in the *Offences Against the State* case has not yet been modified though I think that Gavan Duffy P.'s interpretation of the phrase "without accordance with law" would be preferred by our present Supreme Court, in view of some of their more recent decisions.

An interesting comparison exists between the 1940 interpretation of the phrase in the Irish Constitution and its counterpart in the United States Constitution which is "save in due process of law", which to many lay people, and indeed to law students, would appear to be one and the same. The American Supreme Court has interpreted it in a far more liberal fashion in a number of cases. The Supreme Court in the United States has assumed that "due process of law" should be considered as both a safeguard of procedural rights and *a safeguard of substance* and that any action undertaken by the Federal Authority or a State Authority should not violate "fundamental fairness".

Supreme Court should have power to review judgments

The obvious question which must now be put is how are we to overcome the *Offences Against the State Bill* decision? By virtue of Article 34 (3) (iii) which states that "No Court shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President . . ." the Superior Courts cannot overrule their earlier decision. It is therefore suggested that this provision be amended so that the Supreme Court should be entitled to review after a certain number of years, say five, judgements given by that Court on a Bill referred to it by the President. The section in the Article should be amended rather than deleted altogether, as there may be occasions when the President would have good reasons to refer a Bill to the Supreme Court.

This recommendation would be in line with present Supreme Court policy with respect to decisions where the Constitution is not pleaded. In Ryan's case and Wuinn's case, both of which are reported in the 1965 Irish Reports, the Court decided that the common law doctrine of *stare decisis,* by which a Court was bound by its own former decisions, no longer applied, as it had heretofore. There were alleged good reasons for upholding the old doctrine of *stare decisis,* the main one being, of course, that it guarantees certainty in the law. Despite this, I consider that on balance, the Supreme Court's 1965 decisions and the recommendations made in regard to Article 34 (3) (3) would ensure the preservation of our accepted standards and yet take ognisance of the evolution of society in general.

European Convention of Human Rights to be part of municipal law

In order to clarify the situation so that we would know exactly what our rights are, I strongly recommend that a suggestion made by the Chief Justice, in March of this year, and by Professor O'Hanlon, Professor of Criminal and Constitutional Law in this college, some years ago, be adopted. They suggested that the European Convention of Human Rights and Fundamental Freedoms be made part of our municipal law. The Chief Justice said that personal rights in Ireland might be more clearly stated and in some important fields extended if we were to do this. Though Ireland was one of the first signaturies of the Charter, we are not bound by it as Article 29 (6) of our Constitution states that "no international agreement shall be part of the doestic law of the State save as may be determined by the Oireachtas". The Oireachtas has failed to do this with respect to the European Convention as was shown by the Lawless case in 1960.

The present position in Ireland is best summed up by the Chief Justice. "In looking at this part of Ireland today (warts and all) it is a matter for congratulations that the fundamental law not alone protects personal rights but acknowledges certain inalienable rights antecedent and superior to all positive law." This has only become clear in recent years. The Chief Justice continued : "This is not to say that personal rights would not be more clearly stated and, in important fields, considerably extended by the enactment, as part of our municipal law, of the European Convention of Human Rights and Fundamental Freedoms." These are sentiments which, I feel, all of us should endorse.

A State, which has accepted the Convention as binding on it, is under very strict obligations and can only derogate from the Convention "in time of war or other public emergency threatening the life of the nation . . . to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law". Article 15 of the Convention would permit a member State to intern without trial if the necessity really arose, only as a last resort.

Trends of recent decisions

Our Superior Courts are undoubtedly to be praised for some recent decisions in cases which involved constitutional rights other than personal liberty. In *Ryan v A.G.* (the "fluoridation case"), Kenny J. held that there were other rights to be protected besides those guaranteed by the Constitution. *The State (Quinn) v Ryan and Others* showed that the Supreme Court had no hesitation in holding the police authorities in contempt of Court when they removed Quinn from the jurisdiction unlawfully. In the case of *A.G. v O'Brien,* Kingsmill-Moore J. and Walsh J. stated quite decisively that the rules of evidence must conform to the Constitution. Indeed it would appear from the dicta in this case, that the right to personal and bodily inviolability is better protected by the Courts in Ireland than in the United States where, in the case of *Schomber v California,* the American Supreme Court held that evidence of a blood test on an unconscious defendant was admissible despite the fifth amendment in the U.S. Constitution, which says that no person shall be compelled to be a witness against himself in a criminal case. After *A.G. v O'Brien* it is doubtful if the Irish Courts would

follow that decision. In the recent *Paraic Haughey* case the Supreme Court jealously guarded the rights of an individual citizen, where a Committee of the Legislature tried to take upon itself judicial functions contrary to the Constitution. All these cases and others show that, those of us who value freedom, are greatly indebted to our present Courts.

E.E.C. Amendment

The manner in which the Constitution could be amended so as to enable us to enter the European Communities was nebulous until the government published last week the Third Amendment of the Constitution Bill, 1971. Since its publication, reaction has been varied. It seems people are relieved that the amendment is framed so as to avoid saying whether membership of the E.E.C. is compatible with our sovereignty. It would also appear that the proposed amendment would not bind us to any future military undertakings of the Communities.

Part of the proposed amendment reads as follows: "No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State consequent on membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State."

Senator Mary Robinson, Reid Professor of Constitutional Law in Trinity College, stated last week that "This section is dangerously wide because it would grant immunity from constitutional challenge to any Irish legislation or any acts done or measures adopted 'consequent on membership of the Communities'." She continued: "Very far-reaching changes might be made in this way without the possibility of judicial challenge by our Courts, on the grounds that they were 'consequent on' entry."

There are two points I would like to make on this issue. (1) We all know that if we enter Europe the Oireachtas's exclusive power of legislating for this country will no longer exist and that the Supreme Court's status as the final Court of Appeal cannot apply in matters relating to the interpretation of the Treaty of Rome under Article 177. The proposed amendment covers these issues. (2) It does not seem as if the government will be able to use the "consequent on entry" clause to pass legislation which will deprive us of certain fundamental freedoms. If they tried to do so, it would appear to be open to the Courts to ask the government to prove that certain legislation was "consequent on entry" and if they failed to do this, then the proposed legislation could be examined in the ordinary way by the Courts.

If the reasoning on this issue is not correct than it is suggested that, the recommendation made earlier about the enacting of the European Convention on Human Rights as part of our domestic law, be brought a step further. It could be made part of the Constitution itself by making another amendment to Article 29 which would state that the Convention was to be considered as part of the Constitution.

If this were done, we could become members of the E.E.C. and yet have no doubts as to our constitutional stability.

One further very recent development was Mr. Harold Wilson's proposals on a Constitution for a re-united Ireland. It is not intended to discuss Mr. Wilson's recommendations as they lie outside the scope of this paper. However, if that desired result—a re-united country—were to come about it would seem that a new Constitution would have to be drafted, not only to guarantee the rights of Northern Unionists in certain matters but also to cover North-South relations and the powers and functions of the reconstituted local authorities. In short, this would seem to entail a federal Constitution somewhat similar to Canada's which would have to be drafted and ratified.

We have at the moment, in this part of our tragically divided country, a Constitution with a number of defects, some of which have been outlined. Despite these defects we should be reasonably proud of it as it gives us the basis for democratic and just government. It is suggested that if some of the amendments proposed, taken in conjunction with the present Supreme Court policy, were accepted, our Constitution would be one of which any democratic country could be proud.

In conclusion the following point which is perhaps the most important of all should be stressed. A Constitution by its wording and contents may appear to be perfect, but its functioning as a perfect Constitution depends on those who are granted power under it—the executive, the legislature and the judiciary. It is they who are responsible for maintaining a true and just democracy in a country and if they were so minded they could ignore all constitutional guarantees and impose a tyrannical system on the people. We are dependent on our rulers and it is up to us to ensure that we elect rulers who act justly. Our rulers, like all human beings, are not infallible—and are thus prone to make mistakes. Therefore, the onus lies on the electorate to ensure that the rulers they choose are just and adhere to a genuine democracy. Ultimately it is the people who can insist on freedom, justice and fair government. Though we have been reasonably fortunate in this country so far—let us not become complacent. There is still much room for improvement.

The **Minister for Lands, Mr. Sean Flanagan** said that in considering the theme of the inaugural address by the auditor, Andrias O Ruiarc, "The Constitution—A Time for Change", one had regard to the Constitution as it was administered under the Supreme Court.

In this context one could ask whether in limited cases the Supreme Court had gone too far. "What of the rights of the elderly?" asked the Minister. "What of the plight of people, old and feeble, who were being attacked by young thugs, who were being robbed and intimidated? Was it proper that when these thugs were brought to justice they should be freed on bail?"

Time to reconsider position of bail

One saw bail granted to robbers masquerading as patriots, said Mr. Flanagan. In such cases, he felt, there should be provision for the Supreme Court to reverse its own decisions. "I believe," he said, "that in the attitude laid down in the decision in the O'Callaghan case (1966) on bail, the Court was misguided."

"I am not taking from the objectives of those who framed the Constitution; I went out and actively sought support for it," he continued. "But times change and circumstances change, the fact must now be recognised that they tried to say and do too much."

Mr. Flanagan referred to the development of a united Ireland as he saw it. "What matters," he said, "is that the British recognise our right to unity and, given good will, the rest will follow.

"Would a new Parliament for the whole of Ireland endorse divorce?" he asked. "Would it copy the British health service? These and other problems will be easily solved, accepting as a basic fact the laying aside of our present Constitution."

He added that it was important to remember that on the whole question of changes to the Constitution, the final decision lay with the people of Ireland, but in this he was confident. Forty years ago, when the bishops were trying to push a specific line the people weren't foolish enough to follow as they awaited the time when the Church was to purify itself in the ecumenical atmosphere of today.

Mr. Austin Currie, M.P., dismissed the present Constitution as "an imperfect vehicle to bring about reunification. It will have to be scrapped", he said.

United approach essential

He rejected the idea that the introduction of divorce, contraception and abortion in the South would in any way bring Northern Protestants into a thirty-two-county Ireland. "They are not all anxious to be Protestants in a Durex Republic," he said. Never, either in public or in private, had he heard Unionists seek this. Mr. Currie said that the greatest difficulty to him and his colleagues in the North was brought about by Southern politicians making purely political speeches on Northern affairs and he appealed for a united approach which would in Southern political circles raise the issue above the level of party politics.

Mr. Declan Costello, S.C., welcomed the proposal by the Taoiseach for an all-party committee on the Constitution. It was, however, a great mistake to think that legislative changes in the South would end the difficulties in regard to unity.

The present legislation before the Dail in relation to E.E.C. entry and the related amendments to the Constitution were, he regarded, excessive in their latitude. He suggested that such proposals should provide exemption from the Constitution for such laws as were necessitated by membership. (This amendment was subsequently adopted).

Mr. Justice Walsh referred to a Constitution as a type of institution which was usually meant to last for centuries. In the United States, the Constitution was now in force for 180 years and it was still yielding "nuggets." It had been said of our Constitution, no later than last Tuesday on television by a very prominent politician, that it was enacted for twenty-six counties. The Constitution itself states the contrary. In this regard, the U.S. Constitution had been enacted to embrace thirteen states, but now was endorsed as adequate, with its various amendments, for the whole of the United States of America.

Votes at eighteen open to argument

There were many issues which, he felt, were regarded as needing a referendum before a change could be enforced but in some instances this was opn to argument. Votes at eighteen, he said, represented a demand for which he thought it was open to argument whether any referendum before a change could be made was required.

The Constitution guaranteed as an entrenched right the granting of votes at the age of twenty-one, but there was nothing expressed in it to prohibit Parliament extending this as a statutory right to younger people. This had already happened in the U.S. On this issue, Mr. Justice Walsh concluded, the government could get a decision simply by passing a Bill and submitting it to the Supreme Court, an exercise which might save the cost of a referendum.

Similarly, the Courts, envisaged by the Constitution, were not set up until 1961 so there was room for argument on the issues of the former Supreme Court rulings on the Offences Against the State (Amendment) Bill and other Bills referred to it.

One could argue as to whether the former Supreme Court, as it existed prior to 1961, had any jurisdiction to rule on the three Bills referred to it as it was not the Supreme Court referred to in Article 26 of the Constitution.

There was also room for argument on the attitude of the Department of Social Welfare in recently ruling against the payment of deserted wives' allowance to women whose husbands had divorced them in the British courts. Under British law, all that was required was a residence qualification, but in private international law more was required.

One had to be domiciled in a country to have a divorce in that country recognised internationally. This, in regard to the Irish Courts, could have a particular pertinence in relation to the Succession Act.

In the Offences Against the State (Amendment) Bill case in 1940, said Mr. Justice Walsh, the ruling of the former Supreme Court, in relation to Article 40 (4) (1) of the Constitution, was that one could be detained according to law only if the law was constitutionally sound.

EDITORIAL

Professional Independence

The man in the street going about his business in a democratic regime in times of peace takes his constitutional rights for granted—that is if he thinks of them at all. Two events during the past few weeks throw a vivid light on the role of our profession in standing between the executive and the citizen and their relevance in present conditions deserves more emphasis than they have publicly received. On February 10 a meeting of 400 lawyers was held in Belfast under the chairmanship of the President of the Law Society of Northern Ireland to consider resolutions protesting against the denial of proper facilities to solicitors to interview clients suffering internment, or properly speaking the rights of the internees to proper facilities for professional assistance and advice. The question at issue is the rights of the public not merely the claim of the profession. As the total number of practising solicitors in the North does not exceed 600 it may be taken that the meeting was a cross-section of the profession and that the 400 present were probably roughly representative of divergent professional opinion on policital issues. The decision was unanimous in opposing the present attitude of the authorities towards the rights of prisoners and detainees and also commenting on certain other matters not strictly within the legal sphere, such as facilities for regular medical inspection of internees. A full report of the meeting is printed on page 43.

The second highlight of the month was the decision of the County Court judge at Armagh in *Moore v Shillington and the Ministry of Defence* in which damages were awarded to the plaintiff, an ex-detainee, for illegal detention and illegal treatment while under detention. The judge rejected the evidence tendered for the defendants on questions of fact and criticised the attitude of army medical doctors. It has been commented that his decision undermines the whole procedure of internment and interrogation of internees as at present conducted. This cannot have been a welcome decision for Stormont and is, of course, open to appeal to the High Court.

Whatever criticism may be justly expressed on Stormont and the Northern Ireland regime, the judiciary and the legal profession there are completely independent of the executive power. The profession, the rules of Court, the regulation of costs and ancillary matters are controlled and prescribed solely by judicial committees in which the Lord Chief Justice exercises a predominant role. The Ministry of Home Affairs has no function in the administration of justice or control of the legal profession. An independent judiciary cannot function without an independent profession and to the extent to which the executive establishes control of the profession the independent functions of the judiciary and the freedom of the individual is likewise curtailed.

What has happened in the North is not without its lesson for the Republic. The Government has introduced in Dail Eireann the Prices (Amendment) Bill, 1971, which if passed in its present form will significantly reduce the independence of the legal profession by referring its entire remuneration to a committee which will be directly responsible to the Minister for Justice. The Minister will thus secure the power to control the profession through its remuneration. The powers sought in the Bill are without precedent in Northern Ireland, England or Scotland.

The legal profession unlike any other is directly concerned with the rights of individual citizens. In every State the greatest danger to the rights of the small man comes from the State and big business interests. It is a necessary corollary that the profession should be under the control of the judiciary not the State. In the nature of its duties it cannot be compared with any other profession or occupation. The Society in 1969 made proposals for the establishment of a Central Costs Committee broadly representative of the judiciary, the profession, the public and financial experts and responsible directly to the Oireachtas. It would regulate fees without recourse to the State but its orders would be subject to annulment in either House of the Oireachtas. The sole question in issue between the profession and the Government is that while the Government wish to hand control of fees to the Minister for Justice the profession wish to retain judicial control responsible to the Oireachtas.

The examples quoted above from experience in Northern Irelnd are directly relevant in this connection. It is now more than ever important that the principle of independent judicial control of the solicitors' profession should be firmly upheld.

N.I. Solicitors call for Strict Rules to Protect Detainees

A statement was issued recently in Belfast following a meeting by about 400 solicitors, members of the Incorporated Law Society of Northern Ireland, in Belfast.

The meeting was specially requisitioned in the King George VI Hall, May Street, by a number of solicitors who wished to have a full discussion on the Special Powers Act and the effect of its operation in regard to members of the legal profession.

Members were also concerned in regard to arrests and interrogation of children and young people and there are reported to have been complaints of obstruction of members of the legal profession in attempting to carry out their professional duties.

The statement issued after the meeting, which went on all afternoon, is as follows—

"At a special general meeting of the Incorporated Law Society of Northern Ireland, held this afternoon, February 10th, 1972, the members present, while recognising the difficulties facing the security forces, passed the following resolution :—

"This meeting, having received reports from members of the society as to the operation of the Civil Authorities (Special Powers) Act (Northern Ireland), 1922, and while acknowledging that some lawyers are of the opinion that, in exceptional circumstances, legislation of such nature may be necessary :

(1) Expresses its dissatisfaction with the treatment which has been accorded to solicitors in the exercise of their professional duties while representing persons arrested, with the interference with such solicitors, by members of the security forces, and the disregard by such members of the privileges attaching to communications between solicitor and client, and acknowledges the assurances given by the Permanent Secretary of the Ministry of Home Affairs in his letter of February 10th, 1972, in relation to such matters.

(2) Recognising that the operation of the Act is a matter of law administration with which the members of the society must be involved expresses concern at the harmful effect of the enforcement of the Act, welcomes the information given by the Permanent Secretary in his said letter, and calls on those responsible for its enforcement to ensure that during such time as the Act remains in operation—

(a) The procedures for arrest under the Act are clearly defined for the information of the public and those members of the security forces entrusted with the exercise of such powers.

(b) The fact of arrest is made known forthwith to the next-of-kin and to the solicitor of a person arrested and that the solicitor appointed by the family of that person immediately, upon request, should, without delay, have access to a person arrested.

(c) The procedure for submission of applications to the Advisory Committee is made known to the legal profession, the officials concerned with the administration of the Act, and those who are detained or interned.

(d) Procedures under the Act are reconsidered and amended to provide that detailed allegations against a person arrested are made known to him and his solicitor and that appeals to the Advisory Committee are heard with expedition, with the right to full legal representation on such appeals; the case of each internee is reviewed automatically at specified intervals not exceeding six months; proper and defined machinery is established to enable complaints of ill treatment to be submitted and, when established, to be effectively remedied there is proper provision for continuous medical supervision and the keeping of medical records; rules are formulated relating to the treatment of detainees and internees containing reasonable provisions for the avoidance of hardship.

(e) That proper protection be afforded to children and young persons subjected to interrogation, and that, if necessary, legislation be enacted to ensure such protection."

(*Irish Times*, 11 February, 1972)

Some Problems of Irish Solicitors in Dealing with Foreign Law

Max W. Abrahamson

The effect of entry into the Common Market on the work of Irish lawyers has been the subject of learned discussion. These jottings on practical problems of advising on disputes with a foreign element may be of some interest.

It is reassuring to find that lawyers in many countries appear to have in common not merely vices, as has been well recognised through the ages, but also virtues. Irish lawyers will generally find that, despite differences in outlook and approach, their continental colleagues share with them an understanding beyond that usually possessed by the layman of the importance of clear-headed analysis of facts and marshalling of arguments. They may also find surprising the extent to which the Common Law and continental codes have fundamental principles in common and reach the same result on legal problems, although often by a quite different route.

Similarity of foreign law a trap

Unfortunately there lies a trap. Ninety-nine per cent

of the provisions of two legal systems which apply to a problem may be identical, but the one per cent difference—either in the abstract law or in practice—may produce a completely different solution to a dispute. For example, contracts which have been running in West Pakistan for many years include a clause prohibiting claims by one party unless they are made within certain times limits. This clause would, of course, be perfectly valid under English law. The contract law of West Pakistan is codified in the Indian Contract Act, 1872, which is largely a codification of English contract law at the time: consequently this clause has been treated as valid by many foreign lawyers advising on these contracts and even by some local lawyers involved. In fact, the Contract Act contains one peculiar section, which says:

> Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Example of suing in foreign court

I referred also to differences in practice. Professor E. J. Cohn gives an interesting example ("The Rules of Arbitration of the International Chamber of Commerce" [1965], *Fourteenth International and Comparative Law Quarterly*, p. 132):

> Perhaps a more practical lesson is provided by a recent actual, though unpublished, case. Negotiations had taken place between an English firm represented by two members of its board and a German firm represented by a leading employee. The participants in these negotiations afterwards differed in their views as to what had been agreed at the conference table. The English firm, contrary to advice given to them, sued the German firm in the German courts, relying on the fact that the evidence of their two representatives would be preferred to that of the one German representative. This was wrong: the German court was not even capable of hearing any evidence for the English firm, members of the board of a company under German law were not eligible to give evidence on behalf of their company. No such difficulty presented itself to the German side whose witness consequently gave evidence. The English party, being unable to offer any evidence of its own, could not submit any proof for its allegations and necessarily lost a case which it would perhaps have won in a court applying the common law rules of evidence.

Differences of outlook and of temperament

Most difficult to evaluate are the differences in results which may be produced by differences of outlook and temperament. One of the most advanced systems on paper is the Civil and Commercial Code of Libya, for example, but one would, I think, be loth to advise a client to become involved in litigation there. I was once taken aback on being told by a Spanish lawyer that arbitration would take three months to reach hearing in his country, and congratulated him on doing in three months what would take about three years in Ireland. When we left his room my companion, who knew more of Spain than I did, suggested that the time estimate should not be taken too seriously, and in fact it was more than three months before the lawyer acknowledged his instructions. An extreme example is the recent pronouncement by a spokesman of the Nigerian Government, that the public hanging of thieves was justified by the common law maxim that justice must not only be done but must be seen to be done.

No doubt travel is useful in broadening academic, as it does other, minds. Because of the effect the actual practice may have on theoretical rules, however, practitioners might be advised to rely with caution on the results of academic travel expressed in treatises on comparative law which are not based on practice.

Certainly, however straightforward the problem seems to be and however wide his knowledge, the Irish lawyer advising a foreign client on Irish law relative to a dispute or advising an Irish client on foreign law, will work in conjunction with the advice of a foreign correspondent.

Foreign correspondent to be chosen with care

If the correspondent is not nominated by the client, the choice must be made with very great care. A foreign correspondent once chosen normally will be the sole source of advice. It is also very difficult for an Irish lawyer to judge the quality of advice on foreign law. The phraseology may be strange, generally there will not be quotation of decided cases which can be checked, and it may be very difficult to decide whether vagueness in the advice is due to lack of ability on the part of the adviser or the state of the foreign law.

A choice of correspondent made with a pin from a list of foreign lawyers can be disastrous. There is considerable variance in quality even amongst those foreign lawyers with dual qualifications who practice in chambers in England.

At the same time the Irish lawyer should not rely blindly on his correspondent, but must try to achieve an understanding of the foreign law involved by wherever possible going to basic tests and commentaries. Only in this way can he be certain that there is no failure of communication between himself and the correspondent —that he has asked all the necessary questions and that he has brought to the correspondent's attention all the relevant facts.

Irish lawyer's opinions should be clear and unambiguous

The converse also applies. An Irish lawyer advising a foreigner on our own law may receive undeserved acclaim for an opinion in our traditional form, from foreign clients who are not used to the relative certainty and detailed support from decided cases, compared to continental opinions. The Irish lawyer must remember nevertheless that the foreign client may not fully understand the effect of the opinion. If the lawyer in that opinion has referred to some doctrine as a rule of equity, for example, the client may believe that Irish judges have discretion to temper the law with equity in the wide sense. The lawyer will then have to explain that this is not so, usually many times, since it is not too easy to explain to continental businessmen the history of the division between common law and equity. Foreigners (understandably) find some of our legal attitudes very strange indeed—particularly the literal and inflexible application of contracts however unfair or unreasonable they may be—and like all clients may tend to think that it is the adviser and not the law which is the ass. They may also omit to mention important facts because under their legal system they are irrelevant. The Irish lawyer therefore must be on his guard in obtaining instructions, and must be prepared to explain and defend the law and his opinion in order to persuade the client that the opinion should be accepted and acted upon, and to make quite certain that it has been understood correctly.

Arbitration in international contracts

Some of these problems may be illustrated in relation to arbitration, which is particularly important because of the established practice of including provision for arbitration in commercial contracts with an international element. Increasingly the provision is for arbitration under the rules of an international body such as the International Chamber of Commerce.

An inexperienced practitioner may rashly assume that arbitration is arbitration—that whatever the legal system which governs, the activity is much the same. In fact Anglo-Irish and continental arbitration differ fundamentally.

Under the Anglo-Irish system an arbitrator must of course state a case on any question of law for decision by the courts, when required to do so by either party. As a result arbitrators are not free to concoct their own legal system. Against this a prudent arbitrator does not give reasons for his award, because his award once made cannot be set aside unless he shows an error on the face of the award. On the continent there is no such thing as a case stated, but the arbitrator gives reasons for his award, and under German law, for example, an award may be set aside if reasons are not given or are not "logical, clear and easily understandable".

Differences in arbitration procedure

The procedure is also quite different. In Ireland and England the ridiculous practice is entrenched of treating an arbitration as a miniature or informal court action, and most of the proceedings are conducted orally before the arbitrator. On the continent the arguments and evidence must generally be stated in writing and there will only be a short, if any, hearing. At its worst this has been called justice by pen pushing, but it has very many advantages over our "system". An Irish lawyer involved in a foreign arbitration must therefore be prepared to state his client's case at length in writing and to support it by written evidence. He is unlikely to help his client by writing the necessary documents in pleading language, particularly if his pleading is of the appalling standard accepted by the Bar in this country.

In addition under the procedural law of most countries the questioning is mainly carried out by the judge or arbitrator. Cross-examination is neither permitted nor, indeed, understood by continental judges or arbitrators, or the litigants themselves.

In advising on the inclusion of an arbitration clause in a contract, or on whether to compromise or fight, an adviser will have to keep these differences very much in mind.

Questions of jurisdiction to be considered

One of the other results of differences in local law and practice is that the lawyer may have to consider very difficult questions of jurisdiction, and manoeuvre accordingly. Not only the law which governs the particular legal transaction may be relevant but also the choice of forum in which to litigate, since it is the law of the forum which governs procedure. In a recent case, for example, the House of Lords held that although the proper law of a contract was English law, nevertheless because the arbitration was held in Scotland a party had no right to apply to the court for a case stated, since the procedure is also unknown under Scottish law.

In addition the courts of different jurisdictions may arrive at different results as to what is the proper law of a contract. The attitude of the English courts that a statement by the parties of the proper law in their contract is binding is not followed by some other systems.

A party therefore may be in a position to initiate proceedings in several jurisdictions, and his adviser's choice may be decisive for the success or failure of his client's case in arbitration, or claim to set aside an arbitration award.

To help with these problems there are several useful publications by the International Chamber of Commerce (28 Cours Albert 1er Paris VIII). For example, the *Rules of Conciliation and Arbitration, Commercial Arbitration and the Law throughout the World* and *Commercial Agency-Guide for the Drawing up of Contracts.*

Minimum employment of counsel urged

A solicitor in Dublin, now unfortunately no longer with us, was an outstanding practitioner but knew his own limitations, and if a case appeared to have anything whatsoever to do with the law he used to pronounce that it "reeked of law" and despatch it straight down to the Bar Library. An Irish solicitor may find himself sitting around a table with a valuable foreign client who is waiting for a reply to a question about Irish law, with the Bar Library very far away indeed. Irish solicitors also will have to compete with large firms of solicitors in England (often with branches abroad) who give a very full service with the minimum employment of counsel. This is part of a much wider problem, but one on which the profession might well commission a very full research project. The Bar, of course, realises that as such it will have no future if there is fusion, but solicitors should surely consider what their future as a learned profession will be if the present system continues unaltered.

A fairly obvious conclusion is that to advise on disputes with an international element will require a good knowledge of the national law and above all of the basic principles of procedure and jurisprudence which will make it possible to understand other systems and to co-operate fruitfully with colleagues in other countries; that the Common Market is going to bring with it demanding but extremely interesting work; and that it is for our educational authorities to ensure that Irish solicitors are properly equipped to obtain a share of this new work, and are able to cope with the share they obtain.

Long-Term Tenancies

Leo McCarthy

Agriculture in the West of Ireland: A Study of the Low Farm Income Problem by Dr. John J. Scully, Western Regional Officer of the Department of Agriculture and Fisheries, has recently appeared. This "Report is being published, without any commitment on the part of the government to the views and recommendations contained therein, in order to create a better understanding of the nature of the problems of agriculture in the West, to encourage wider discussions of those problems and to stimulate constructive suggestions for their possible solution."

Agricultural journalists have commented widely on this Report and it is well that provincial practitioners should have a summary of those suggestions of Dr. Scully which are of a legal nature. The third chapter deals with land tenure and instances five specific defects in this connection. The status of farm titles is regarded as one such defect because it leaves the farmer uncertain as to the future control of his land. This is regarded as uneconomic as it reduces his incentive to increase productivity. Having examined the official folios in the various county registrars' offices it is stated that of the total number of farmers who took part in the survey (5,052) 62.7 per cent have fully-registered titles to their farms. One-third of the farmers concerned had not got registered titles. In between there was a small percentage (4.4) who had a registered title to part of their farm. In a footnote the author states "part-registration of farm titles usually results when farmers purchase or otherwise acquire additional land and in the process secure a legally-administered title to it, while at the same time neglecting, for one reason or another, to obtain a proper title to the remainder of the farm." The figures obtained by examining the official folios are compiled thus:

Percentage Distribution of Farms according to Title Status, by County

County	*Status of farm title* registered	part-registered	not registered
Cavan ...	49.0	12.8	38.2
Clare ...	53.7	0.6	45.7
Donegal ...	42.6	5.1	52.3
Galway ...	65.8	2.8	31.4
Kerry ...	80.5	1.4	18.1
Leitrim ...	71.6	3.3	25.1
Longford ...	68.0	5.0	27.0
Mayo ...	59.9	5.3	34.8
Monaghan ...	68.8	5.3	25.9
Roscommon ...	69.2	4.9	25.9
Sligo ...	67.0	6.0	27.0
West Cork ...	67.6	1.0	31.4
All Counties ...	62.7	4.4	32.9

Other land-tenure factors which come under the author's critical eye and are listed as defects are short-term leasing arrangements and the use of communal grazing rights. The eleven months or conacre renting of land is regarded as uneconomical. The reason given is because this method of taking land is largely confined to small farmers and the rent imposes a heavy burden on them. 13.2 per cent of the farmers had communal grazing rights on mountain, hill or lowland commonages and it appears from the survey that these rights were not being fully used. So much so that the author suggested that the commonages be sub-divided provided a development plan was started. Detailed figures illustrate the two remaining land tenure defects namely farm size and fragmentation. Chapter four is entitled "Demography" and it includes a section on farm succession where further statistics show that of the farmers who took part in the survey one-third of those over fifty have no prospective heirs.

Land Bonds

Chapter ten is entitled "Western Development in Historical Perspective". The Report goes back to the Purchase of Land (Ireland) Act, 1891, establishing the Congested Districts Board. The work of the Land Commission is also reviewed and reference is made to compensation being paid in land bonds. Reference is not made to the widespread dissatisfaction about payment in land bonds in their present form (see the Law Society's excellent representations printed on page 154 of the *Gazette* for November 1971). In dealing with the 1965 Land Act it is stated that the life annuity scheme and the self migration loan scheme have not met with much success.

The most interesting section of the Report is the third and final part listing Dr. Scully's recommendations. Coming out strongly in favour of long-term tenancies the Report states that what is needed is a system of assessing fair and equitable rents, an adequate tenancy period to allow the tenant sufficient time to get a satisfactory return on his investment, provision, if necessary, for revising rents at the end of the tenancy period, and a guarantee of renewal of tenancy contracts. It is hoped that the transfer of tenancies to heirs could be arranged and that it could be written into every tenancy contract that compensation would be made to the tenant for permanent farm improvements. The Report admits that any suggestion of a return to the rental system of land tenure would appear to be forsaking the cause of tenant purchase begun over one hundred years ago. The writer believes it was under the Irish Church Act of 1869 that for the first time State funds were given to help tenants to purchase their holdings. A minimum of ten years is suggested for the tenancy period. It is suggested that any shorter period would not enable the tenant to obtain a satisfactory return on permanent investments such as land reclamation. It is also stated that the tenant should have a right to a new tenancy and the writer is reminded of the 1931 Landlard and Tenant Act.

It is recognised that the establishment of an equitable rent would be all important to the success of this scheme. As a suitable guideline for the purpose of rent fixation it is suggested that the rent should not exceed 5 per cent of the prevailing price of land at the beginning of the tenancy period. One is reminded that the Land Commission fixed rents during its early years and it is envisaged that a similar statutory body would perform this function again. To deal with inefficient lessees the insertion of a penalty clause in all tenancy contracts is suggested. If such a scheme became widespread the Report states that it would lead to a stabilisation of rents over a predetermined period of time which in turn should lead to a stabilisation of land prices.

Figures in the Hall

C. P. Curran, S.C. D. Litt.

Gandon's Great Hall

Gandon's Great Hall differs little from its original form. Certain levels have been altered between the hall, vestibule, and portico. The vestibule still bears its panels displaying the mace and staff, fasces, axe, and scales of justice, but in Gandon's day a second vestibule beyond the clock gave on to the Rolls Court which approximately occupied the present site of the Supreme Court and marked the northern limit of his building. This Court was taken down and replaced in 1835 by a differently sited Rolls Court, when the new Nisi Prius Court was also erected.

There was, however, a material difference in its general aspect. Time, which, in Sir Thomas Browne's phrase, antiquates antiquity, did not spare its minor monuments. The hall as we knew it before 1922 was at once more severe and more appropriately ornate. It was flagged in echoing stone and, though the niches which Gandon had designed for allegorical figures were never filled, statues of judges were set around the walls and the bare unpainted pillars rose austerely to a richer and more significant decoration of the inner dome. On the occasion of the opening of the building for public use in Michaelmas 1796 a writer in the *Dublin Evening Post* (19th November 1796) gave an account of this decoration :

"Round the inside of the dome is a continued large frieze of foliage, festoons of oak leaves, etc., and on the centre over each window, united with their ornaments are eight medallions of the antient legislators, much larger than life, viz. : Solon, Confucius, Numa, Lycurgus, Alfred, Moses, Manco Capac, and the Irish Legislator, Ollamh Fodhla. In the piers between the windows are executed in stucco eight colossal statues in basso-relievo emblematic of Justice, Eloquence, Wisdom, Liberty, Mercy, Prudence, Law, and Punishment, all executed to the bold masterly true style of the antique-grotesque—but the eye is particularly attracted by the statue of Punishment who stands with the fasces, the axe surrounded with rods, the strings of which are unbound as letting them loose to execute judgment, whilst the statue has its head averted and the hand before the eyes as loth to behold the punishment that Justice obliges Law to put in force." This is the work which Gandon mentioned in 1794 as having been cast and then modelled *in situ* the better to emphasise its relief. To this contemporary description we may add a few words of our own. The frieze ran scroll-wise above the windows and was lightly connected between the piers with the eight bas-relief statues which stood on consoles. Of these allegorical figures other than Punishment I can record only that Law was a noble female figure helmeted and with a scroll in her left hand, holding aloft in her right the lightnings of the Law, while Mercy, garlanded, carried on her left arm an olive branch and, graciously extending her right arm, trod on a sword and axe. Tablets on the consoles carried the names. The medallions were circular. Solon was bald and clean-shaven; Confucius, bearded, had a sun-hat of reeds or straw, and Manco Capac wore a high crown of feathers. The identity of this Peruvian legislator, son of the sun, who introduced the arts of civilisation to his country, began early to baffle guide-book writers who invented Latin titles for him like Marcello Capae, though his name like the others was clearly written below. Not much later the French sculptor, Chaudet, was carving some of the same subjects on the Legislation pediment of one of the Louvre pavilions. His statues included Moses, Numa, and Manco Capac. Manco Capac also appears in Samuel Humphrey's translation from the French of certain *Peruvian Tales* published in Dublin in 1784 in a fifth edition. The translator's introduction to my copy, written in 1734, largely consists of a long account of Manco Capac drawn from Sir William Temple's essay on Heroic Virtue. It is evident that the Peruvian still stood for American Jurisprudence in European eyes in the very decade which saw Thomas Jefferson draw up the Declaration of Independence.

The Dome

The interior dome which carried this decoration opened through a balustraded aperture upon an outside dome of hardly less dimensions, lit by twelve windows in the drum. Gandon, as was evident in the Custom House, was partial to lantern lighting and certainly the light which poured into the hall from this source fell with fine effect. There is reason to think that the external dome was intended for use as a library, but, in fact, from its earliest days it became a depository for the Auditor General's records. Up to 1812 his books and documents had accumulated here to the enormous mass of fifty-two tons, threatening the safety of the entire fabric. When this great bulk was eventually removed, the dome continued to be used for storing records of which my predecessor in the King's Bench, Mr. Henry Vivian Yeo, had charge as a young man, and I have seen the groove in the gallery rail worn by the rope and pulley by means of which, as he told me, these records were lowered to the hall. On the attic pedestal above the continuous entablature which ran around the inner dome, there were also four panels in bas-relief placed over the openings to the Court. Whether these pseudo-historical designs were by Edward Smyth himself or were the work of an assistant they hardly deserved the encomia with which they were received as being "elegantly designed and executed with strict adherence to costume, in the habits, arms, and decorations of the times". In fact the Normans appeared in plate armour and the general composition exhibited only mediocre ability.

The Hall, a bustling meeting place

This hall in the absence of library or consultation rooms was the meeting-place of counsel, attorney, client and witnesses. Its bustling life was a perennial source of interested comment by visitors. It had become the rallying point of the wits of the town and the focus of town gossip. It doubled the parts of consulting room and fashionable promenade, foreseeing which we find from a King's Inns minute of 1796 the prudent Benchers appointing thirteen tipstaves wearing black gowns and black caps and carrying staves "for the purpose of keeping the hall quiet and free from improper and

ill-disposed persons". The hall was lifted to a higher plane when in 1823 the Benchers gave permission to the rector and church wardens of St. Michan's to use the hall for divine service while repairs were proceeding in the old church. On the other hand, the Benchers showed themselves more reluctant to provide for carnal man—at least in this hall. A minute of 1852 records the application of the Dublin Shoeblacks' Society to allow one of their members to stand in the great hall of the Four Courts to black the boots of the Bar and Judges, etc. The application was granted but only so far as to permit a shoeblack to stand under the piazza of each square of the Courts. Two years later the Court officers got busy and "on the solicitation of several of the officials of the Courts, permission was given to Margaret Heffernan to have a stand for the sale of oysters in the yard". The hall itself was still *tabu*. In 1886 it was formally decided that: "No tables be allowed in the hall of the Four Courts for the sale of eatables," but in 1867 the concession was made "on the recommendation of Edward Litton, Master in Chancery, that Mary Sullivan be permitted to have a fruit and cake stand outside the entrance to the Masters' offices." I do not know at what date or under what circumstances Mary Sullivan and her family won their way inside, but win it they did.

The Hall used for Lord Chancellor's Levee

The hall was also the assembly place of the Judges after the Lord Chancellor's *levée* at the opening of the Easter Term and before they proceeded in processional order to the Benchers' Chamber. On the morning of *levée* day the Bar in robes called upon the Lord Chancellor at his residence and made their bows to him in his drawing room. The tipstaves, as Mr. Matthew Taylor has told me, took fast trotting horses and cars to the Court, followed after a decent interval by the Lord Chancellor and Judges, the Lord Chancellor in Court dress, velvet suit, long knee breeches with lace ruffles at neck and sleeves, the Judges of the Court of Appeal in their black and gold-edged robes, and the High Court Judges in red. The Lord Chancellor's carriage stopped at the front entrance and, preceded by the two tipstaves and his mace bearer and followed by his train bearer, and purse-bearer, the Lord Chancellor entered the hall and passing up on a red drugget carpet took his place opposite the entrance on a scarlet carpet under the clock, his tipstaves and attendants lining up at the side. The other judges then alighted from their carriages and in order of precedence passed before the Lord Chancellor and remained at either side until the Lord Chancellor turned and headed the procession in the same order to the Benchers' Chamber at the rere of the building.

The Hall, a place for consultations

Long after the hall had ceased to be a gapeseed and lounge for idlers it remained a place for consultation until by slow degrees library accommodation was provided. As that provision was made the loungers in the hall gave way to statues, and the two apple-women, who down to our own day had their stands for oranges, apples, and gingerbread under the clock, enjoyed only a professional *clientéle*. In the place of the gossipers a new figure took up its place in the centre of the hall. No one knows whence came this figure of Truth nor at what date she alighted on our stony ground, holding her torch aloft. I find her first mentioned in *The Citizen* (December 1840) when she is already the butt of ribaldry "For the interior of the Courts," says its correspondent (probably Mulvany), "we daily tremble. The Gas Woman whom we have recently been scandalised to see established in the centre of the hall is below all comment of a critical kind. Who subscribed for it? Who made it? To what inspiration of the Board of Works was it due? Was it set up in allegory or satire? Was her torch, in truth, gas-lit?" I do not know. But in April 1880 Truth or the Gas Woman quit the precincts. The *Daily Express* of that date notes that "this extraordinary figure was removed to an unknown destination". This was on the occasion of the erection of the Whiteside statue. She is now in the garden of the King's Inns and the Under-Treasurer tells me that the boys of the neighbourhood know her as Henrietta.

Sir Michael O'Loghlen

As the years went on six statues were set up in the hall in front of the niches in the great piers. Four were standing figures, two sitting, and there was place for two more. Reading from the left of the clock their position to the best of my recollection was: Plunket, O'Loghlen, Joy, Sheil, Whiteside and O'Hagan. This was not their original order for O'Loghlen and Joy were moved round when Whiteside took his stand. The first to go up was Sir Michael Colman O'Loghlen, Master of the Rolls. The Bar met to consider this memorial in January 1843 a few weeks after his death but whether action immediately followed I do not know. The statue, a figure of the Rolls, robed and seated, was by the Belfast sculptor Patrick McDowell, R.A. O'Loghlen was a compact little gentleman with a large head expressing caution, sagacity and kindness. The first Catholic to be appointed Law Officer or Judge since 1688, he was the subject of three such memorials, all seated figures, this one in the hall subscribed for by the Irish Bar, another by Christopher Moore, R.H.A., erected by the solicitors which adorned their hall in the Four Courts until June 1922, and a third, less successful, by Thomas Kirk, R.H.A., erected by public subscription in the Ennis Courthouse, for O'Loghlen was a Clareman. Our statue was in its place to the left of the entrance certainly in 1851, as appears from verses of that date in the *Irish Quarterly Review,* and seems to have been then the only statue in the hall. In 1880 its position was changed to the entrance of the Chancery Court.

Chief Baron Joy

Next I think, came Chief Baron Joy (1763-1835)—the work of his grand-nephew, Bruce Joy, who was the sculptor of the fine seated figure of Whiteside in the northern aisle of St. Patrick's. The statue was presented to the Benchers by the Dean and Chapter of St. Patrick's, and was erected in the hall in 1865. It was originally placed beside the Queen's Bench but on Whiteside's advent in 1880 it was moved to a more appropriate place by his own Exchequer. Sitting in his robes he made a rather formidable figure, an impressive monument larger than life-size with, I thought, an Egyptian severity which tallied well with Sheil's unflattering description of the man: "His deportment is in keeping with his physiognomy ... the figure of a mandarin receiving an ambassador and, with contemptuous courtesy, proposing to him the ceremony of the *ko-tou*. He is extremely polite, but his politeness is as Chinese as his look, and appears to be dictated rather by a sense of what he owes to himself than by any deference to the person who has the misfortune to be its object, and yet with all this assumption of dignity, Mr. Joy is not precisely dignified. He is in a perpetual effort to sustain his consequence ... a spy upon his own impor-

tance." Sheil's acerbity, more lasting than the stone, was softened a little perhaps by the sculptor's nepotism. But only a little. Sheil's description of the living man can stand well enough for the effigy. Joy looked as dry a stick as any in his beloved herbarium and the twenty-line eulogy of his pedestal was no answer to Sheil.

Chief Justice Whiteside

Whiteside was unveiled at the opening of the Easter Term, 15th April 1880—the newspapers disrespectfully said "by the broom handle of the hall sweeper". Anyway there was no ceremony when four years after his death he was set up at the right of the clock beside the Queen's Bench. The sculptor was the pre-Raphaelite, Thomas Woolner, sculptor *en titre* to the Victorian men of letters. He also carved Bacon for Acland's new Museum in Oxford, and when he placed Moses with the tables of the law on the apex of the Manchester Assize Courts we may guess that he took a hint from our Four Courts. Whiteside stood, a tall commanding figure in frock-coat and trousers, before a pile of books, his left hand hanging by his side with the notes of his speech, his right crossed over his breast. The attitude was very different from what the Parliamentary correspondent of *The Nation* saw in Westminster on 3rd May 1856: "Whiteside talked thirteen columns. People forgot that gigantic gesticulations of apish arms and acrobatish vertebrae and listened with amazed admiration at the frightfully fluent Counsellor. You could see the midnight oil in his hair!" Woolner's statue showed a buttoned-up intellectual with bald head, the hair clutering at the back; the expression was severe and contemporary writers took exception to the head as lacking its proper breadth and massiveness, and to the expression as not exhibiting the variety and genial nature of the orator. These are the sculptor's tribulations of which posterity is an indifferent judge. Certainly Bruce Joy's seated figure in St. Patrick's does, in profile and front, skilfully indicate his subject's changing lineaments. The Four Courts statue, as I recall it justly or not, made a single impression of rigid authority and its civilian attire was just redeemed from banality by its simple severity. It was no masterpiece except by Victorian standards and was hardly adequate to Whiteside's distinction, but it had the stance of an orator and looked well. The pedestal was inscribed "Whiteside".

Lord Chancellor Plunket

Plunket stood to the left of the clock. Erected by the Bar of Ireland and so inscribed, the sculptor was again Patrick McDowell and the statue was placed in 1884, thirty years after the sculptor had laid down his chisel. Actually the statue had been executed in August 1863. It would appear that in the middle eighties there was some individual initiative or concerted movement amongst the Benchers of this date, to complete the sculptural decoration of the hall with memorials of the more-distinguished members of the Bench and Bar. We find Whiteside, 1880, Plunket and Sheil, 1884, and OHagan, 1887, commemorated in the same decade. If the series had been completed by O'Connell and Curran, if Hogan, instead of the Academicians, had been timely commissioned, the representation, honourable to subject and subscribers, would have been more justly fulfilled.

There was a blunt directness about this statue of Plunket that made up for its shortcomings. He stood, balancing Whiteside, in a curious short double-breasted coat with tails, his left arm akimbo, his right extended, a cloak draping the back at half length. There was assurance in the pose and the head was convincing. W. H. Curran and Phillips tell us how he struck his contemporaries: "A tall, squire-built, robust, ascetic, his aspect was the reverse of his companionable nature, but it quared with his vigorous intellect and its masculine expression. He disdained the externals of the oratory of which he was a master. His gestures were few, his lips unsmiling, his features blunt and harsh." These also were characteristics that marked McDowell's statue, riveted one's attention, and diverted it from some gracelessness in the natural forms.

Sheil standing near the old Common Pleas—now Court II—was the entertaining opposite. It is worth reviving Christopher North's description of him though it does not in every respect confirm the statue. Sheil was actually five feet, four inches in height. North notes him as: "The smallest of the small in stature, shabbiest of the shabby in attire, voice like a gimlet, eyes large, deeply set, dark, liquid, and flashing, fixing you as a basilisk, but after ten minutes you feel yourself in the presence of a man of genius." This statue and Plunket's alone continually held and renewed my interest. Each represented an opposite facet of genius so plainly as to put any spectator on enquiry. Like Plunket and Whiteside, Sheil was in civilian dress and, as I remember him, small and dapper with no touch of slovenliness. There was something bird-like and brilliant in the set of the head, and animation of the eyes, and the erect hair. Memory perhaps cheats me and a willing subjugation to the subject-interest, for though Thomas Farrell, R.H.A., fabricated some mildly dignified figures and many wholly unhappy, I cannot think him equal to the image that remains in my mind. But there must have been something sufficient in the modelling of the head and in the alert poise to reflect the sparkle of this brilliant rhetorician. The statue was the gift to the Benchers of Lord Gormanstown as trustee of Montesquieu Belew and it was erected below the niche between the Queen's Bench and Common Pleas on 15th November 1884.

Lord Chancellor O'Hagan

O'Hagan, modelled by the same sculptor in 1885, was erected in 1886-87—two years after his death. A few years later and it would not have occurred to anyone so to commemorate him. He stood near Whiteside on the other side of King's Bench I, head bare, in court dress and Chancellor's robes with a book in his right hand, a dignified banality. The head "the face of the melancholy Melanchthon" was reasonably well modelled but the gesture of the arms, though more fully draped, repeated the Whiteside almost as obviously as the legs so unfortunately repeat themselves in Farrell's Smith O'Brien and Sir John Grey in O'Connell Street.

On the whole we were fortunate in these statues though the greatest names were absent and one or two present who were only slightly meritable. As sculpture none was unmeritorious though none was comparable with Hogan's O'Connell or Drummond or Smyth's Lucas in the City Hall. They added an appropriate dignity to Gandon's architecture. Now they are crumbled into dust, finer than that which covers the vain titles of Justinian's victories. On the 3rd July 1922 I saw them prostrate under the open sky. Smyth's work fallen into indistinction, Lord Chancellor, judges and advocates broken and calcined. I stuck my thumb into Joy—he had the consistency of cream cheese.

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the differences between English and Irish statute law.

Evidence

See under *Crime;* January *Gazette,* p. 7; Regina v Hilton; C. of A.; 22/7/1971.

See under *Crime,* January *Gazette,* p. 7; Regina v Prager; C. of A.; 11/11/1/971.

See under *Crime;* January *Gazette,* p. 7; Regina v Oyesiku; C. of A.; 14/12/1971.

Family

Though the court will not have regard to the conduct of the parties in determining the property rights of husband and wife in proceedings under Section 17 of the Married Women's Property Act, 1882, it may take conduct into account in deciding, where a house is jointly owned and one party continues to pay all the mortgage instalments after the parties separate, whether the other party shall be given credit for one-half the instalments on the ground that the person remaining in occupation has had the use and benefit of the house.

[Cracknell v Cracknell; C. of A.; 22/7/1971.]

See under *Succession;* in re Cummins (deceased); C. of A.; 13/7/1971; see March *Gazette.*

When a court makes a maintenance order in favour of a wife after considering the conduct of the parties under Section 5 of the Matrimonial Proceedings and Property Act, 1970, the court should assess a maximum discount figure, a percentage by which, having regard to the conduct of the parties and the duration of the marriage, it would be just to reduce the wife's maintenance if, but only if, no other variable matters had to be considered.

[A v A; Probate, Divorce and Admiralty Div.; 12/7/1971.]

A judge in a custody case is entitled to take into account his suspicions about a mother's behaviour, even though there is no admissible evidence to support them, and is entitled to question a child in private about such behaviour if it is necessary to determine what is best for the child's welfare.

[S v S; C. of A.; 14/7/1971.]

A young wife should not expect her husband to maintain her for life, his Lordship said when granting a decree nisi to Lance Sergeant Albert Mathias, The Scots Guards, of Wellington Barracks, London, under Section 2 (1) of the Divorce Reform Act, 1969, on the ground that the marriage had irretrievably broken down following five years' living apart.

[Mathias v Mathias; 24/11/1971.]

When a former wife applies under Section 26 of the Matrimonial Causes Act, 1965, for reasonable provision out of her deceased husband's estate, the value of the deceased's net estate should be taken at the date of the hearing and not at the date of his death for deciding questions of quantum. Their Lordships also said that there is no prima facie rule of law that any order under Section 26 should be backdated to the date of the deceased's death.

[Lusterick v Lusterick; C. of A.; 11/11/1971.]

Section 2 (5) of the Divorce Reform Act, 1969, which provides that a husband and wife are living apart "unless they are living with each other in the same household" was declaratory of the existing law, his Lordship held. The law had not been altered in any way by new legislation.

[Mouncer v Mouncer; Family Div.; 2/11/1971.]

A magistrates' court has jurisdiction to grant an application for a provisional maintenance order by a wife who is ordinarily resident within its jurisdiction although the husband has never been within the jurisdiction and lives in one of the territories covered by the Maintenance Orders (Facilities for Enforcement) Act, 1920.

[Collister v Collister; Family Div.; 18/10/1971.]

The parties to an adoption application in the county court have no absolute right to see the guardian ad litem's confidential report to the court. It is in the discretion of the judge what he should put before them. Rule 9 (2) of the Adoption (County Court) Rules, 1959, which provides for the confidential report to be made, is not ultra vires Section 9 (3) of the Adoption Act, 1958.

[In re P. A. (an infant); C. of A.; 24/6/1971.]

Gaming and Lotteries

A person who used premises for collecting correspondence connected with a chain-letter scheme known as World Wide Roulette was guilty of conducting an unlawful lottery, contrary to Section 42 (1) (f) of the Betting, Gaming and Lotteries Act, 1963. Their Lordships dismissed an appeal by George Atkinson against his conviction by the City of London justices at Guildhall on three counts of using premises for the conduct of an unlawful lottery.

Section 42 provides: "(1) ... every person who in connection with any lottery ... (f) uses any premises ... for purposes connected with the promotion or conduct of the lottery ... shall be guilty of an offence."

[Atkinson v Murrell; C. of A.; 22/12/1971.]

See under *De Minimis;* January *Gazette,* p. 8; Regina v Decorum Gaming Licensing Committee; Q.B.D.; 20/7/1971.

Insurance

The word "storm" in a policy insuring against risk of damage or destruction by "storm, tempest or flood" must be something more prolonged and widespread than a gust of wind, Mr. Justice Thesiger said when giving judgment with costs for insurers in an action for a declaration that they were liable to the assured.

[S&M Hotels Ltd. v Legal and General Assurance Society Ltd.; Q.B.D.; 18/11/1971.]

Interpretation of Statute

When a word or phrase was undefined in a statute, the judges had to work out its meaning doing the best they could to interpret the will of the legislature in regard to it. A tenant's claim to acquire the freehold or an extended lease under the Leasehold Reform Act, 1967, was made in good faith when it was made honestly and with no ulterior motive. Where a tenant desired to buy the freehold in order to avoid the forfeiture of his lease after a conviction for keeping a brothel his claim was not made in good faith.

[Central Estates (Belgravia) Ltd. v Woolger; C. of A.; 28/7/1971.]

Landlord and Tenant

The Queen's Bench Divisional Court (the Lord Chief Justice, Mr. Justice O'Connor and Mr. Justice Lawson) refused an application by Frey Investments Ltd. for leave to apply for an order of prohibition prohibiting the Barnet and Camden Rent Tribunal from proceeding with the hearing and determination of references in respect of twenty-two tenancies owned by them by the London Borough of Camden in the exercise of powers conferred by Section 72 of the Rent Act, 1968, on the ground, inter alia, that the borough had not received from any of the tenants any indication that they desired to refer their tenancies to the tribunal.

[Regina v Barnet and Camden Town Tribunal; C. of A.; 29/7/1971.]

A contractual tenant of premises within the ratable value limits laid down by the Rent Act, 1965, is entitled to apply to the rent officer to fix a fair rent for the premises and have the tenancy registered at that rent even though he does not personally occupy the premises as his home.

[Feather Suppliers Ltd. v Ingham; C. of A. 10/6/1971.]

Their Lordships, in reserved judgments, dismissed an appeal by the tenant, Mr. G. Husan, from the decision of Judge Edward Jones at Liverpool County Court last January that the landlords, Llverpool Corporation, were at liberty to commence forfeiture proceedings for breach of repairing covenants in a lease dated 6th August 1898, of 33 Falkner Square, Liverpool.

[Liverpool Corporation v Husan; C. of A.; 28/7/1971.]

A lease, which conveys an interest in land, is a demise and

does not come to an end like an ordinary contract by repudiation and acceptance. The better view is that a lease cannot come to an end by frustration.

[Tolel Oil Great Britain Ltd. v Thompson Garages (Biggin Hill) Ltd.; C. of A.; 8/10/1971.]

The service of full meals at lunchtime and light refreshments during the rest of the day was held to be within a covenant restricting the use of premises to "a high-class coffee bar and lounge".

[Property Developments (Commercial) Ltd. v Fugaccih; 29/11/1971.]

See under *Interpretation of Statute;* Central Estates (Belgravia) Ltd. v Woolger.

Local Authority

See under *Negligence;* Dutton v Regis U.D.C.; C. of A.; 17/12/1971.

Master and Servant

An injunction would be granted to restrain employers, who had been under pressure from a powerful trade union, from wrongfully purporting to terminate the employment of an employee of thirty-five years' standing, where damages would not be an adequate remedy.

[Hall v C. A. Persons and Co. Ltd.; C. of A.; 10/11/1971.]

Motor Insurance

The owner of a car who had for eight years regularly given lifts to fellow workers to and from work, expecting to be paid either in cash or in kind, and whose passengers expected to make such payment, was operating an unofficial taxi service of a business character and should have been covered by a policy of insurance for passengers under the Road Traffic Act, 1960, because his car was a "vehicle in which passengers are carried for hire or reward" within the proviso of Section 203 (4) of the Act.

[Albert v Motor Insurers Bureau; H. of L.; 9/7/1971.]

Natural Justice

The court decided that the expulsion of Miss G. L. Ward from the Margaret McMillan Memorial College of Education, Bradford, for having a man in her room was not contrary to natural justice. The question arose whether some disciplinary action ought to be taken. The college had recently been given a constitution in accordance with the Education (No. 2) Act, 1968. It had an instrument of government and articles of government. It had a disciplinary committee—three members of the governing body, three members of the staff and three students. It was specially entrusted with the consideration of cases of misconduct.

Miss Ward submitted that only the principal could refer cases to the disciplinary committee. But his Lordship saw no reason, under the rules, why the governing body should not have made a rule by which they themselves could refer cases to it. In doing so they had to be careful to see that justice was done because they were also the deciding body. Unless they were careful, they might lay themselves open to the criticism that they were acting as prosecutor and judge.

To avoid that criticism it would be desirable that the reference to the disciplinary committee should be made by a subcommittee of the governing body, none of whom was a member of the committee. That had not been done. But the governing body had been careful not to discuss the merits of any individual cases. His Lordship saw nothing unfair or unjust in what they had done.

Nor was there anything wrong in the fact that the amendment which the governing body had made had operated retrospectively. Miss Ward said that Mr. Naismith's presence invalidated the disciplinary committee's decision, especially as he had actively participated in the discussions.

The general rule that no person ought to participate in the deliberations of a judicial or quasi-judicial body unless he was a member of it was subject to exceptions. The present case came within the exceptions. According to the instrument of government, the director of education or his representative was entitled to attend every meeting of the governing body or its committees.

Miss Ward also said that, on the wording of the articles of government, she should have been given a right of appeal from the disciplinary committee. His Lordship could not accept that submission. Nor did natural justice require the provision of an appeal. So long as the party had a fair hearing by a fair-minded man or body of men that was enough.

[Ward v Bradford Corporation and Others; Ch. D.; 8/7/1971.]

Mr. John Strachan Malloch, an Aberdeen certificated teacher who declined to register under the Teachers Council (Scotland) Act, 1965, and regulations made thereunder by the Secretary of State for Scotland in 1967, won his appeal against dismissal. The House of Lords by a majority (Lord Morris and Lord Guest dissenting) reversed the decision of the Court of Session (Lord Walker, Lord Hunter and Lord Kissen) last July and held that as he was the holder of a public office fortified by statute, his dismissal by Aberdeen Corporation, the education authority, on the ground that he was an unregistered teacher, without giving him the opportunity to be heard, was a nullity.

[Malloch v Aberdeen Corporation; H. of L.; 29/6/1971.]

See under *Tribunal;* Maxwell v Stable and Others; Vacation Court; 30/9/1971. See March *Gazette*.

Negligence

A moped driver, who, when riding at 20 m.p.h. in a busy traffic area, sustained head injuries when a car negligently driven by the defendant collided with him, was held to be guilty of contributory negligence in not wearing a crash helmet which would have reduced his injuries.

[O'Connell v Jackson; C. of A.; 7/7/1971.]

A motorist in whose favour traffic lights at a road junction have changed to green is still under a duty to look out for traffic already lawfully on the junction which might still be crossing and he must not enter the junction until it is clear of such traffic. Therefore a motorist who entered a junction when the lights changed while a cyclist was two-thirds of the way across and whose car struck the cyclist was held to be wholly to blame for the accident.

[Redburn v Kemp; C. of A.; 5/7/1971.]

A majority of the Court of Appeal, Lord Justice Salmon dissenting, decided that a learner driver owes the same duty of care of a person teaching her to drive as is owed by every driver on the road, namely, to drive with reasonable care and skill, and that that standard is not lowered by reason of the fact that the instructor knows that the learner is not an experienced driver. Where, therefore, a man undertook to give a friend's wife driving lessons, after making sure that the car insurance policy covered him, he was entitled to bring an action for damages for negligence when he was injured by the learner's lack of skill in manoeuvring the car.

[Nettleship v Weston; C. of A.; 30/6/1971.]

A plaintiff in a personal injuries case is to be asked to submit to an examination by a named psychiatrist on behalf of the defendant. If he fails to do so without reasonable cause all further proceedings in the action will be stayed.

[Lane v Willis; C. of A.; 1/12/1971.]

The trial of an action for damages, brought on behalf of a man in a coma who is not expected to live long, was postponed from next month to next June in order to give his dependants the chance of obtaining a much larger sum of damages after he is dead than he could obtain if the action is tried while he is still alive, because in the existing state of the common law compensation for the "lost years" of life is not allowed.

[Murray v Shuter and Others; C. of A.; 7/10/1971.]

An engine driver injured by his employers' negligence in 1948, who did not realise how serious his injuries were until about 1959 or that he had a worthwhile cause of action until January 1969 and who subsequently issued his writ within one year, was held to be entitled by virtue of the Limitation Act, 1963, to recover damages in respect of that negligence. He could not by accepting compensation under the Workmen's Compensation Act, 1925 (now repealed), exercise an option under Section 29 of that Act unless he knew of the option.

[Tripe v British Railways Board; C. of A.; 8/11/1971.]

When, in a building being demolished, floorboards were raised on each floor to allow rubble to fall down to the ground but some boards were left to form passageways for workmen, the passageways were held to be working places within the meaning of Regulation 28 of the Construction (Working Places) Regulations, 1966, and it was not impracticable to erect guard rails to prevent the men from falling off the building.

[Baytin v Willment Brothers Ltd.; C. of A.; 7/7/1971.]

Newport Corporation, as the local school authority, were held wholly liable for damages for injuries sustained by a six-year-old boy who was knocked down by a van when he darted across a pedestrian crossing on a busy main raod, because the authority's servant, the school traffic warden on duty at the time, who was

said to be "getting on in years", was not doing enough to make sure that the children crossed in safety.

[Toole (an infant) v Shelbourne Pouffes Ltd. and Another; 28/7/1971.]

The law of negligence was extended to a new area when a local council was held liable to the purchaser of a house which developed defects some years after it had been built because the council's building inspector had been negligent in approving the building at foundation level and had failed to see that it was being built on an old rubbish tip.

[Dutton v Bognor Regis U.D.C.; C. of A.; 17/12/1971.]

Patents

Their Lordships, sitting as patents appeal tribunal, in a reserved judgment, allowed an appeal by Schering AG, of Berkamen, Germany, from the refusal of the superintending examiner of patents to register a method of contraception on the ground that the process was incapable of protection under the Patents Act, 1949, as it was a process for the treatment of human beings. They directed that the application should be allowed to proceed.

[In re Schering AG Application; Ch. Div.; 12/7/1971.]

The manufacture and sale of a substance which is blended with others in such a way that its identity is not discoverable from the product sold was held not to be a non-secret prior user within Section 14 (1) (e) and (3) of the Patents Act, 1949, so as to prevent the subsequent grant of a patent to someone else for the substance.

[Ex parte Beecham Group Ltd.; Q.B.D.; 13/10/1971.]

Planning

Advertisements on the walls of public houses depicting the figure of a man, an open packet of cigarettes and a glass of beer did not contain "figures, symbols, emblems or devices within the meaning of Regulation 14 (2) (a) of the Town and Country Planning (Control of Advertisements) Regulations, 1969, so that the height limit of 0.75 metre did not apply to the subjects depicted. The Divisional Court so decided in a reserved judgment dismissingwith costs the appeal of a prosecutor against the decision of Bury justices last November.

[McDonald v Howard Cook Advt. Ltd.; Q.B.D.; 19/10/71.]

Privilege

His Lordship rejected claims by the Commissioners of Customs and Excise for legal professional privilege and Crown privilege in respect of certain documents obtained for assessing purchase tax valuation in arbitration proceedings between them and Alfred Crompton Amusement Machines Ltd., of Clapham.

He ordered the commissioners to file within fifteen days a further affidavit specifying the documents which were communications between them and their solicitors for the purpose solely of obtaining or giving legal advice or assistance, and to produce for inspection immediately thereafter the remaining documents. He granted leave to appeal.

The rule as to professional privilege was one which protected communications between a client and his professional legal adviser. It did not protect communications inside any organisation which had an internal legal branch or department with that legal branch. By no stretch of imagination could the commissioners be regarded as lay clients of their own legal branch.

[Alfred Crompton Amusement Machines Ltd. v Commissioners of Customs and Excise; Q.B.D.; 15/7/1971.]

Procedure

See under *Damages;* January *Gazette,* p. 8; Thornton v Swan Hunter (Shipbuilders) Ltd.; C. of A.; 25/10/1971.

See under *Negligence;* Lane v Willis; C. of A.; 1/12/1971. (page 48)

Because of uncertainty about what was said in the summing-up due to the inadequacy of a shorthand note taken by an inexperienced shorthand writer, the court allowed an appeal by John Raymond Spillane, and quashed his conviction. Lord Justice Megaw emphasised that it was the duty of the judge, counsel and court officials to see that the evidence and summing-up in a criminal trial were properly recorded.

[Regina v Spillane; C. of A.; 8/10/1971.]

Property

See under *Family;* Cracknell v Cracknell; C. of A.; 22/7/1971. (page 49)

Race Relations

A rule by Ealing London Borough Council that to be accepted on its waiting list, an applicant for housing accommodation must be a British subject was held not to be unlawful as being a discrimination on the ground of "national origins" within Sections 1 (1) and 5 of the Race Relations Act, 1968, and the authority was entitled to seek a declaration to that effect in the High Court.

[Ealing London Borough Council v Race Relations Board; H. of L.; 16/12/1971.]

See under *Clubs;* January *Gazette,* p. 6; Race Relations Board v Cheeter and Others; C. of A.; 14/12/1971.

Redundancy

His Lordship ruled that journalists employed by Associated Newspapers Ltd., made redundant by the absorption of the *Daily Sketch* by the *Daily Mail* and by changes in the production of the London *Evening News* were not persons "retiring with the consent of the company" so as to entitle them to deferred pensions under an early retirement clause in the rules of the Harmsworth Pension Fund, a non-contributory pension scheme.

His Lordship further ruled that such persons were not entitled to redundancy payments under the terms of their contracts of employment.

[Young and Others v Associated Newspapers Ltd and Others; Ch. Div.; 22/7/1971.]

An offer in writing under Section 3 (2) (b) of the Redundancy Payments Act, 1965, need not be contained in one document provided that the document refers to other documents intended to form part of the offer or that the circumstances imply that they could be understood as forming part of the offer.

[Ramseyer Motors Ltd. v Broadway and Another; C. of A.; 7/10/1971.]

A strike or lock-out can continue after the strikers have been dismissed. Therefore, where a workman is dismissed by his employer while on strike and is afterwards re-engaged, the period between his dismissal and his re-engagement does not break the continuity of his employment for the purposes of claiming under the Redundancy Payments Act, 1965.

[Bloomfield and Others v Springfield Hosiery Finishing Co. Ltd.]

A taxicab driver who gave the taxi owner 65 per cent of the takings registered on the clock and the cost of an employed person's national insurance stamp was not an "employee" for the purposes of the Redundancy Payments Act, 1965, and therefore not entitled to a redundancy payment when the taxi was sold.

[Challinor v Taylor National; National Industrial Relations Court; 22/10/1971.]

In deciding whether an employee is not to be taken to be dismissed by his employer under Section 3 (2) of the Redundancy Payments Act, 1965, if his contract of employment is renewed or he is re-engaged by the same employer under a new contract, the individual terms of the contracts are to be looked at and not the contracts as a whole.

[Rose v Harry Trickett and Son Ltd.; Q.B.D.; 19/7/1971.]

Registered Lands

A caution under Section 54 (1) of the Land Registration Act, 1925, can be lodged by a person with an interest in the proceeds of sale of land. This is in accordance rather than against the scheme of the Act.

[Elias Mitchell and Another; Ch. Div.; 9/12/1971.]

Road Traffic Acts

Justices who accepted a motorist's plea of guilty to a charge of failing without reasonable excuse to provide a specimen for a laboratory test contrary to Section 3 (3) of the Road Safety Act, 1967, were wrong to conclude that matters of possible defence were special reasons for not ordering him to be disqualified in accordance with Section 5 (1) of the Road Traffic Act, 1962.

[Hockin v Weston; Q.B.D.; 29/7/1971.]

A woman who drove in the wrong direction on the fast lane of a dual carriageway road at midnight and was convicted of dangerous driving without being allowed to give evidence explaining that it was not her fault that she was there, succeeded in an appeal against conviction.

[Regina v Gosrey; C. of A.; 5/7/1971.]

See under *Negligence;* Radburn v Kemp; C. of A.; 5/7/1971. (page 49).

See under *Motor Insurance;* Albert v Motor Insurance Bureau; H. of L.; 9/7/1971 (page 49).

The hard shoulder of a motorway was held to be part of the verge and not part of the carriageway. The Divisional Court held that the appellant, Mr. H. Wallwork, biscuit technician, of Cleveleys, near Blackpool, had been wrongly convicted by Bolton magistrates of unlawfully causing a motor car to remain on the carriageway contrary to Regulation 7 of the Motorways Regulations, 1959, and that he should have been prosecuted under Regulation 9 for allowing his car to stop or remain at rest on the verge.

[Wallwork v Roland; Q.B.D.; 9/11/1971.]

Under the transitional provisions of the Road Traffic (Disqualification) Act, 1970, justices have no power to remove a driving disqualification unless it was imposed "in consequence of a conviction of an offence under Section 110 (b) of the Road Traffic Act, 1960" (driving while disqualified), and was a disqualification for "an additional period" in consequence of the conviction. The purpose of the 1970 Act was to strike at the cumulative effect of one order being imposed after another on so-called compulsive drivers who drove and went on driving when disqualified.

[Regina v Bradfield Sonning Justices ex parte Holdsworth; Q.B.D.; 22/11/1971.]

Justices considering mitigating circumstances in deciding whether not to impose a driving disqualification for speeding under the totting up procedure in Section 5 (3) of the Road Traffic Act, 1962, were held by a majority to be wrong to allow the offending motorist to adduce evidence showing that two previous speeding offences were trivial.

But the Divisional Court gave leave to appeal to the House of Lords on a certificate that a point of law of general public importance was involved in the decision. The point is "whether evidence of the circumstances attending previous convictions which bring Section 5 (3) into operation is admissible after conviction of an instant offence within Section 5 (3) as circumstances to which the court may have regard as mitigating the normal consequences of the instant conviction."

[Woodage v Lambie; Q.B.D.; 21/7/1971.]

Sale of Goods

See under *Contract;* January *Gazette,* p. 7; Worcester Works Finance Ltd. v Cooder Engineering Co. Ltd.; C. of A.; 20/7/1971.

UNREPORTED IRISH CASES

English divorce valid if the husband and wife were both domiciled in England at the time.

Husband, born in 1896, married his first wife Yvonne, in St. Marylebone, London, in 1928. They were domiciled in England, and had no children. In March 1956, the husband presented a petition for divorce *a vinculo* in the English High Court, on the ground that his first wife had deserted him in March 1953. There was no appearance, and the decree of divorce was eventually made absolute in June 1956. In July 1956, the husband married his second wife, Kathleen, a widow, in the registrar's office in Dublin. Subsequently the husband acquired a domicil of choice in Ireland by residing with his second wife there until his death in April 1970. They had no children, but he left a gross estate valued at £68,000 at the time of his death.

The second wife, Kathleen, has elected to take the one-half share of the estate,which she alleges she is entitled to, as there were no children, under Section 111 of the Succession Act, 1965; this is in lieu of any benefit given to her in the will and codicil of her late husband. Whether she is entitled to the share depends upon the construction the Court puts on Article 41, Section 3, Subsection 3, of the Constitution which reads as follows: "No person whose marriage has been dissolved under the civil law of any other State, but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the government and parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage dissolved."

In 1921, the Courts in Ireland and in England recognised the validity of a decree of divorce *a vinculo* made by the Courts of the country where the husband and wife were both domiciled. Article 73 of the Constitution of 1922 provided that, subject to the extent to which they were not inconsistent therewith, the laws in force in the Irish Free State at the date of coming into operation of the Constitution, should continue to be of full force and effect until they were repealed or amended by enactment of the Oireachtas. It follows that the Oireachtas had power to pass legislation dissolving a marriage and to give jurisdiction to the Courts to grant divorces *a vinculo.*

As Kingsmill-Moore, O'Daly and Lavery JJ decided in *Mayo-Perrott v Mayo-Perrott* (1958, I.R.)—the recognition of orders of divorce made by the Courts of another country, where the husband and wife had their domicile, has no logical connection with the power of the Oireachtas to dissolve a marriage. Thus the restrictions imposed on divorce by the Constitution do not involve a general principle that the Courts should not recognise orders for the dissolution of a marriage made by the Courts of another country, when the parties to the marriage were domiciled in that country at the time of the Court proceedings. The present Oireachtas has not legislated in the matter—and so for the time being the law in force under Article 73 of the Constitution of 1922, and under Article 50 of the present Constitution is that the Irish Courts do recognise a dissolution of marriage granted by the Courts of the country where the parties were domiciled. Even though desertion is not recognised as a ground for judicial separation under Irish law. as the husband and first wife were throughout domiciled in England, the grounds upon which a divorce *a vinculo* are to be granted should be determined by English law.

Accordingly the second wife, Kathleen, is deemed to be the official spouse under the Succession Act, 1965, and is entitled to the share of her legal right without giving any notice of election to the first wife, Yvonne.

[Re Haden Caffin, deceased, Bank of Ireland and Goodbody v Kathleen Caffin and Yvonne Caffin; Kenny J.; unreported; 22nd December 1971.]

Claim for fraudulent conversion upheld.

Plaintiff, an English barrister, came to live in Ireland, resided at Kilternan, and had plenty of capital which

he wished to invest. The first defendant was a solicitor practising in Dublin, who took up residence in New Zealand before the appeal and failed to lodge security for costs. The second defendant is a costs drawer who has taken this appeal against a judgment of May 1953 of Davitt P. awarding the plaintiff £2,603 for damages for conspiracy and fraud.

In May 1951 the solicitor told the plaintiff about a building site of ten acres at Dundrum and the plaintiff agreed that the solicitor would act for him in the purchase; he was subsequently shown these lands by the solicitor and he agreed to purchase for £8,000. The costs drawer was closely associated with the solicitor in the development of the land, he had an option to purchase these lands for £5,500, the option to be exercised before 31st August 1951. The solicitor concerned wrote on behalf of the costs drawer that he was prepared to exercise his option, and sent provisional cheques for £1,380. The solicitor got a cheque for £1,380 from the plaintiff on September 10th. The plaintiff had meanwhile given him definite instructions to purchase. The solicitor finally closed in the costs accountant office on 21st December 1951, by the plaintiff delivering to the solicitor a cheque for £6,689; out of this sum, the solicitor paid on behalf of the costs drawers a cheque for £3,835 to the owner of the lands. The following day, the solicitor handed the costs drawer a cheque for £2,540 which the drawer lodged to his personal account. It was only on 31st December 1951, when the plaintiff got the deeds from the solicitor that he learnt of the costs drawers position in reference to the option, and of the £2,500 paid to the drawer. The plaintiff's immediate reaction was that he had been deceived and kept in ignorance of the facts. The plaintiff then brought an action for fraud and fraudulent conversion and after a patient hearing, Davitt P. assessed damages against the two defendants combined —the solicitor and the costs drawer in the sum of £2,500 for the loss sustained on the purchase of the lands, and a further £105 in respect of architect's fees incurred by the plaintiff for development plans. At the trial there was direct and irreconcilable controversy between the evidence of the plaintiff and that of the defendants. The President had the benefit of seeing and observing the parties and witnesses, as well as their demeanour and reaction, and accepted fully the evidence of the plaintiff. The inferences the President drew from the evidence were unavoidable and inescapable. It is not for an appellate court to rehear the evidence. Throughout the costs drawer was fully aware of the relationship of the solicitor and of the plaintiff and took full advantage of it, and cannot now attempt to allege that the solicitor was inexperienced and consequently negligent. The Supreme Court (Conor Maguire, C.J., Lavery, Kingsmill-Moore, O Dalaigh and Martin Maguire J.J.) consequently dismissed the appeal.

[Oakes v Lynch and White; Supreme Court; unreported; 21st December 1954.]

Claim for contribution by one defendant against another rejected.

Plaintiff was a plasterer in employment of first defendant. The second defendants are general contractors, who were engaged to carry out extensive renovations in a house near Carrickmacross. The second defendants subcontracted the plastering work to the first defendant and agreed they would provide the necessary scaffolding required by the plasterers of first defendants in connection with their work. The plaintiff was injured from an insecurely supported scaffold, and he sued the first defendants, his employer, and the second defendants. The employers were acquitted by the jury of all negligence, but the second defendants were found liable to the extent of one-third, and the plaintiff was found liable to the extent of two-thirds of the damage. The net result was a verdict for the plaintiff for £2,546. The second defendants duly paid this amount and costs to the plaintiff, and are now seeking a contribution from the plaintiff's employers, the first defendants. As the plaintiff was paid, he took no part in the appeal.

The scaffolding equipment which the second defendants provided was good and sound. The plaintiff, of his own accord, nailed a batten to a door jamb with a single nail and supported one end of the scaffolding planking on this batten. Later the batten and the scaffolding came away.

The main grounds of appeal was that Henchy J. had misdirected himself in law in directing the jury that the first-named defendants could be absolved from their primary inability to provide a safe system for their employee. The ground is rejected on the ground that there was ample evidence on which the jury were justified in answering all the answers, it did in respect of the first defendants. The appeal of the second defendants is consequently dismissed by the full Supreme Court.

Per Walsh J.: There was no substantial case against the first-named defendants and by their election not to join the plaintiff as a party to this appeal the second-named defendants have put it out of their power to have the judgment against them set aside. ... There are certainly no grounds upon which the judgment which was given against one defendant can be transferred either in whole or in part on to the shoulders of the other defendants.

[Thomas O'Reilly v Creedon Ltd., and Messrs Clifton and Cooper Ltd.; Supreme Court; unreported; 4th February 1970.]

EUROPEAN SECTION

Recent Developments in Community Law

Rolf Waegenbaur (Official in the Commission's Legal Service)

National courts may submit to the Community Court of Justice issues concerning Community law, under a procedure set out in Article 177, in cases where a court in a member State has to decide on the interpretation or validity of Community law. In such cases National Courts may (and, in certain circumstances, must) apply to the Community Court of Justice for a "preliminary" ruling. Decisive for the establishment of this procedure was the fact that Community law must be applied by all institutions of the member states, including the courts. This meant, however, that there was a serious risk that the provisions of Community law—which are, of course, the same for all six member States—might be interpreted differently in Rome, Paris, The Hague and Frankfurt, for example.

It was therefore essential to have a procedure which would maintain unity in the interpretation of the Community Treaties and the validity of subsequent enactments of the Community institutions under those Treaties. In order to achieve this, the authors of the Rome Treaty did not provide for a cumbersome court of appeal, but simply established a system of prior consultation by which the Community Court of Justice can be asked for general rulings on the interpretation of or the validity of subsequent enactments. Any Court or tribunal in the member states—even at the lowest level —may submit such questions to the Court of Justice for a ruling, if it considers this necessary to enable it to give judgment. Those national courts or tribunals against whose judgments there is no further appeal under national law not only may but *must* submit such questions for a ruling. This, of course, includes the courts of final appeal in all the member States.

Validity

The procedure of Article 177 is very simple. It is sufficient for the national court to convey to the Court of Justice the substance of the problem. The Court of Justice informs all the member States, the Council and the Commission, and the parties to the initial dispute, and they may all express their views on the matter. The Court pronounces its judgment after written and oral proceedings. The time taken for the whole procedure doe not usually exceed five to six months.

After initial hesitations on the part of many national Courts, the procedure of preliminary rulings is today fully accepted in the legal sector of the Community. By the end of 1970, the Court of Justice had in this way ruled in 87 cases on the interpretation or validity of important provisions of Community law, thereby giving a lead to all national Courts.

Certain provisions of Community law—cartel law, for instance—create obligations and rights for firms and individuals. Other provisions are expressly and directly aimed at the member States—and the member States only—requiring them to do, or to refrain from doing, certain things. According to the Treaty, it is primarily the Commission that has to ensure that the member States fulfil these obligations. If necessary, the Commission—and even another member State, in certain circumstances—may bring an action before the Court of Justice for infringement of the Treaty. But private persons (i.e. firms and individuals) may also be concerned that the member States should comply with Community law. Member States are, for example, forbidden to introduce new quotas or measures with equivalent effect, or new restrictions on the right of establishment accorded to the nationals of other member States. As was to be expected, private persons have pleaded before the Courts and tribunals of their countries that certain internal regulations did not accord with Community law. In some cases, the Community Court of Justice was asked, under Article 177 of the EEC Treaty, whether certain provisions of the Treaty had "internal effect"—in other words, whether "citizens of the member States can enforce individual rights which the Courts of the member State should protect" (as formulated in the first case of this kind, Case 26/62, Van Gend and Loos, judgment of 2nd February 1963). Behind this question lies the issue whether, in case of conflict, Community law prevails over national law.

In that case the Community Court had to deal with the Treaty provision preventing member States from introducing new customs duties. According to classical international law, it would be hardly conceivable for a private person to base an action on such a provision which, according to the terms used, binds only the member States. However, the Court of Justice found in the Community law itself and its objectives the necessary basis for the ruling that "not only the member States but also their nationals" are subject to the Community legal system.

Following the case-law established in that dispute, the Court of Justice later established that neither a member State nor the Commission could interfere with the execution or effect of such an obligation to abstain from action, or to act. The obligation was therefore "complete in itself, legally perfect and consequently capable of producing immediate effect as regards the relations between member States and their subjects" (Case 6/64).

In several of its judgments the Court of Justice has proclaimed the priority of Community law : "The authorities and especially the competent judicial authorities in member States" are bound to safeguard the interests of their nationals who may be affected by any violation of (immediately effective) provisions (Case 13/68). In another dispute (Case 34/67), the Court indicated that

the immediate effect of a given provision "excludes the application of all measures incompatible with this provision". The Court of Justice leaves it to the judge of the State concerned to decide whether the relevant national provision is "void", "without effect", or "inapplicable".

Community regulations

The Court of Justice has not yet had an opportunity of expressing an opinion on the direct applicability of Community Regulations. In the light of present case law, regulations may have just as much immediate effect as the Treaty provisions. This follows from Article 189 of the EEC Treaty, which states that a regulation has general application, is binding in its entirety and takes direct effect not only on, but also in, every member State.

On the other hand, there are difficulties with Directives and Decisions. These two types of Community acts may be taken by the Council or by the Commission, within the limits of their existing powers. According to Article 189 of the EEC Treaty, the Directive is binding, as to the results to be achieved, on each member State to which it is addressed, but leaves to national authorities the choice of form and methods.

A Decision is binding in its entirety on each member State to which it is addressed. Both these enactments must therefore be given full legal status. But can they confer rights on the citizen before they have been given this status? The Community Court's view on the immediate effect of Community law enacted by the Institutions was expressed in three almost identical judgments, on 6th October 1970, in Case 9/70; and on 21st October 1970, in Cases 20/70 and 23/70.

National courts

The facts and problems were similar in all three cases. In the proceedings before the national courts which asked for guidance from the Community Court, the point in dispute was whether Community law could be invoked to oppose a tax introduced in Germany in 1968 on commercial road transport services. The basis of a possible conflict was provided by the Council's decision of 13th May 1965 that all member States introduce the common Value-added Tax (VAT) system in place of any specific taxes levied on the transport of goods by rail, road and inland waterways, by the date on which the system had entered into force generally.

Germany introduced VAT on 1st January 1968. The system was to be applied in all member States from 1st January 1972 in accordance with two Council directies of 11th April 1967 (subsequently amended to let Belgium and Italy postpone the introduction of VAT). The Court of Justice has confirmed that the decision of 13th May 1965 contains, in addition to an obligation to act (i.e. to introduce the value-added tax by a given date in place of certain specific taxes), an implicit obligation to abstain (i.e. not to introduce or reintroduce these specific taxes, so that the common VAT turnover tax system in the transport sector does not overlap with similar and additional tax regulations).

Germany, the only member State to participate in the proceedings before the Court of Justice, maintained that Decisions and Directives do not have the immediate effect of Treaty Provisions and Regulations. The Court of Justice, nevertheless, decided the opposite. The Court held that Article 189 of the EEC Treaty does not exclude this interpretation and that it would be inconsistent with the binding effect which the Treaty acknowledged for decisions, if the principle were established that persons concerned could not invoke the obligation imposed by a decision.

Immediate effects

The Court considered that each case must be examined to see "whether the provision concerned is appropriate in its legal form, structure and wording, to produce immediate effects in the legal relations between the addressee and third parties" (Case 9/70). Having laid down this principle, the Court of Justice scrutinised the provision in the Council decision of 13th May 1965 and decided that, taken together with the Directive on the introduction of the Value-added Tax (for which a time-limit was laid down), it "is sufficiently clear and exact to produce immediate effects in the legal relations between member States and individuals".

The Court's opinion concerned only a provision contained in a Decision. It did not formally decide whether the same criteria also apply to Directives. Parts of the reasoning underlying the Court's findings, however, suggest that they do, and the judgment in Case 33/70, of 17th December 1970 also argues in favour of equating directives with decisions.

In Case 9/70 the Court gave an opinion on an obligation to refrain and left open the question of obligations to act. Case 33-70, however, seems to establish the principle that obligations to act can also have direct effects. This does not mean that all Council Directives on such important sectors as the right of establishment and freedom to supply services, harmonisation of laws, movement of capital, and harmonisation of taxes will now produce immediate effects that can be invoked by private persons. Each case must be examined to see whether the provision in question is, in its legal form, structure and wording, such that it can produce immediate effects. Often directives in these sectors will not lend themselves to such an interpretation.

The subjective formula

The Court of Justice has ruled that the Rome Treaty and Regulations prevail over national law. For Community Decisions and Directives the question is still open. The Court in Case 9/70 stated that the relevant provision in the Council's decision may "produce immediate effects in the legal relations between the member States to which the decision is addressed and individuals, and may give the latter the right to invoke this provision before a court". This formula contains a strong subjective element in comparison with that which the Court of Justice had hitherto used for provisions of the Treaty: "Article X ... produces immediate effects and creates individual rights which (national) courts must respect."

By offering individuals the possibility of invoking Decisions and even Directives before National Courts, the Community Court strengthens the legal protection of the citizen and facilitates the quicker execution of Community Law. The protection of fundamental rights in the Community features in all member countries, but particularly in Italy and Germany: although the constitutions of all six member States guarantee a number of fundamental rights, only Italy and Germany have Constitutional Courts.

No catalogue of fundamental rights was included in the EEC Treaty, but some individual provisions reflect certain aspects of these rights, especially the principles of equality or non-discrimination (Articles 7, 85, 86, 119), and the principles of freedom, which are found in the Treaty in the form of freedom of movement for

goods and capital, the right of establishment, and the freedom to supply services.

The Community Institutions are subject only to Community Law, and not to national Constitutions. No other view would be consistent with the character of Community law as an independent, specific and original legal system. The Court declared in 1964 that "the rights created by the (Rome) Treaty, by virtue of their specific original nature, cannot be judicially contradicted by (any national) law without losing their Community character and without undermining the legal basis of the Community" (Case 6/67). The Court of Justice has on several occasions pointed out that it was not part of its duties to judge whether acts of the Community authorities were compatible with the provisions of national constitutions.

Values

Nevertheless, the protection of fundamental human rights in the EEC does not depend on elements of such rights as have been included in the EEC Treaty. For it can be assumed that the guarantees written into the Treaty are extended by unwritten general legal principles in the member States and that it is for the Court to determine and, where appropriate, apply those principles. To quote former Commission member Hans von der Groeben : "While the Community is not bound by the fundamental rights as part of national law, it must accept the values which those who drewu up the constitutions of the member States embodied in the fundamental rights."

In a ruling of 12th November 1969 (Case 29/69), the Court dismissed the plea that a Commission decision had violated the basic rights to human dignity and equality of treatment.

It held that "the decision in question does not contain any element that might jeopardise the fundamental rights of the individual contained in the general principles of the law of the Community, of which the Court must ensure the observance."

In December 1970, the Court confirmed (Case 11/70) its earlier judgments and emphasised that "it is necessary, however, to consider whether there has been a failure to provide under Community law a guarantee that corresponds (to fundamental rights under national constitutions), for **respect of fundamental rights belongs to the general legal principles whose observance the Court of Justice must ensure.**"

Community law does not constitute a code which merely needs to be applied. New fields are being incorporated into the Community sphere, new law is being made daily, and this is constantly leading to fresh developments. Despite these developments, the structural principles of the Community are still firmly bedded in the Rome Treaty. But there, too, things are moving, as shown by the tendency to accept that decisions and directives can have immediate legal effects.

Memorandum to the Minister for Justice Pending Appli cation for Increases based on the Cost of Living Figure

Solicitors' Remuneration

Solicitors' remuneration is regulated by five different committees. Unlike the public service and other sections of the community, fees are not raised concurrently with the national wage rounds. Applications must be considered by the various judicial committees and in certain cases then submitted to the Minister for Justice. In the case of non-contentious work (by far the largest area of remuneration) the Minister has no direct function but orders of the judicial body are laid directly by them before the Oireachtas. The result has been that the level of fees for some frequent services which are charged on an item basis lags far behind the national price index by the time increases become effective. In contrast to this solicitors' office expenses rise automatically with the level of wages and prices. There have been six wage rounds since 1961 which operated directly on solicitors' office expenses. By contrast there has been only one increase (12 per cent) in solicitors' item charges and this applied only to three out of the five classes of work (Superior Courts, District Court and non-contentious business). Orders authorising increases of 12 per cent for Circuit Court and Land Registry business were submitted by the judicial committees to the Minister for Justice but he refused to concur. The Council are unaware why an exception should have been made for two out of the five committees as no reason was given.

Where the Minister has a concurring function there has been an average time lag of three and a half years between date of application and date of operation of increases. In the case of the Circuit Court an application submitted to the Committee on the 1st August 1961 was sanctioned by the Department on 2nd October 1967 while in the District Court an application submitted on 14th September 1961 was sanctioned by the Department on 1st January 1965. By contrast an application in relation to non-contentious costs which was laid directly before the Oireachtas by the statutory body under the Solicitors' Remuneration Act in May 1964 became effective on 1st August 1964.

The applications at present under consideration are for an increase of 42 per cent on the level of fees fixed

	1961	1971 (Nov.)	Effective increases to date.
Cost of living	100	174	74%
Judicial salaries (average)	100	200	100%
Higher civil service (average) (base November 1961) ...	100	185	85%
Oireachtas			
Dáil	100	250	150%
Seanad	100	200	100%
Solicitors' item charges			
Superior Courts (base 1962) ...	100	112	12%
Circuit Court	100	100	—
District Court	100	112	12%
Non-contentious (Schedule 2)	100	112	12%
Land Registry (Schedule 2) (fixed on RV x 50)	100	100	—
Criminal legal aid (base 1965)	100	125	25%

in 1964. This is in accordance with the increase in the cost of living figure between 1964 and *February* 1971. The following table shows the comparison between the official cost of living index with salaries of the judiciary, members of the Oireachtas, higher officers in the public service (including Court officials) and solicitors' fees between 1961 and February 1971. It is understood that further increases in public service salaries stated in the press to be in the order of 10 per cent are expected. It should further be noted that in most cases increases in public service salaries are retrospective for considerable periods before announcement while increases in solicitors' costs are in all cases prospective to a future date. The public service has also received additional fringe benefits in the shape of pensions which, of course, are not enjoyed by solicitors in private practice, although they are applicable to solicitors in the public service.

It will be conceded that the solicitors' profession in regard to these matters is placed in a most unfavourable position as compared with the other professions and persons of comparable responsibility and status and this applies both in relation to the method and amount of increases and the delays which have occurred. Chartered accountants, medical practitioners and other professions fix their own fees having regard to prevailing conditions from year to year, and the ever-increasing impact of inflation. A typical accountant's fee of £300 in 1970 rose to £500 in 1971 and was justified on a time-cost basis. Solicitors who operate under the same conditions and who in addition to the usual professional risks are answerable for very large sums in client bank accounts are subject to an outmoded, expensive and dilatory system of fee assessment and control.

For these reasons, in addition to the present applications which barely cover the cost of living increases in 1971 (February) a completely new system is urgently needed to simplify bills, expedite review where required and to preserve and where necessary extend the functions of the Judiciary and the Oireachtas.

None of the applications already mentioned apply to commission scale fees or discretionary fees in the Schedule. They relate solely to item charges. If there had not been an element of compensation in the commission fees for conveyancing and discretionary fees solicitors would have been unable to continue in practice if they adhered to the item fees even with the increases now sought. As regards country and to an increasing extent urban practice remuneration from conveyancing is being progressively halved as the result of the extension of registration of title.

Eric A. Plunkett (*Secretary*)

3rd January 1972.
The Incorporated Law Society of Ireland,
Solicitors' Buildings, Four Courts, Dublin 7.

Note : The abovementioned applications to the various Committees were made in July 1971.

Complaints

The Society in the ordinary course receives a number of letters from clients with complaints about solicitors, and has a settled procedure for dealing with them.

It is better, in the interest of clients and their solicitors, that complaints should be dealt with in this way rather than by representations to government departments and outside bodies, who have not the advantage of knowing the particular circumstances of a solicitor's practice.

The practice of the Society is to send a copy of the letter of complaint to the member concerned, even where it seems to disclose no reasonable cause of complaint. In such circumstances the member is asked for his comments and normally a copy of his reply is sent to the Society's correspondent.

The attention of members is drawn to the fact that the issue of such a letter does not mean that the matter has been prejudged in any way, and that the object of the Society is to obtain sufficient information to enable the Society to answer the complaint, and, where appropriate, to clear the member concerned from any unjustified accusation.

Where, as happens in the majority of cases, there is no question of misconduct the matter is dealt with by the Society's secretariat without reference to the Council or any Committee.

In cases in which, having regard to all the circumstances and the correspondence, there appears to be an unsatisfied cause for complaint the matter is referred to the appropriate Committee of the Council.

Landlord and Tenant (Amendment) Act 1971—Important Notice

The attention of members is particularly drawn to a letter from the Department of Justice dated 14th Jan. 1972 published at page 62 of this issue. It deals with an amendment made at the suggestion of the Society to Section 10 of the Rent Restrictions (Amendment) Act 1967 which was considered to have imposed an obligation on owner-occupiers of controlled dwellings to obtain the landlord's consent to an assignment of the dwellings. The amendment remedies this position and validates any assignments which may have been made void by reason of Section 10 of the 1967 Act.

The Department's letter also draws attention to the revival *for a period of one year* from 7th Dec. 1971 to the spent provisions contained in Section 8 (1A) of the Rent Restrictions Act, 1960, which enable "small" landlords who come within its provisions to have certain basic rents revised during a further period of one year from the date of the passing of the Act.

The Law Society's Digest

Fourth (Cumulative) Supplement to Volume 1

The Fourth (Cumulative) Supplement to Volume 1 on "Conveyancing Practice and Costs" (1954) of *The Law Society's Digest* has now been published and copies are available from the Accounts Department at the Law Society's Hall, Chancery Lane, London WC2, price £1. each, including postage.

This Supplement contains, as well as the contents of the previous Supplement, over fifty additional epitomes of case law and opinions of the Council, a new Part for Registered Land Conveyancing Practice, a list of local law societies and associations and their honorary secretaries and many additions to the list of articles and practice notes published in the *Gazette*.

The Supplement is necessarily incomplete without a copy of Volume 1 of *The Law Society's Digest,* which contains 1,662 epitomes of case law and opinions of the Council, together with copies of the Remuneration Orders, the relevant Solicitors' Practice Rules and a list of articles and practice notes on non-contentious matters published in the *Gazette* going back to 1937. Copies of Volume 1 are still available at the original price of £1.25, including postage.

Copies of the Solicitors' Remuneration Order 1970 and the Solicitors' Remuneration (Registered Land) Order 1970 will be found in the January issue of the English *Gazette* at pp. 2-5. Those Orders could not be included in this Supplement, as it went to press before they were published.

The principal changes necessary to the Opinions of the Council contained in Volume 1 of the Digest consequent upon those Orders are as follows:

(a) delete Opinion No. 1045, having regard to par. 7 of the Solicitors' Remuneration Order 1970;

(b) amend Opinion No. 1256 so that the lessee's solicitors' charges are expressed as one half of the lessor's solicitors' charges;

(c) annotate Opinion No. 1136 with a reference to par. 4 of the 1970 Remuneration Orders.

Famous Lawyer leaves South Africa

South Africa's most famous lawyer, Mr. Joel Carlson, who made his formidable reputation defending Africans in political trials, quietly left the country this week and is now in London, it was disclosed yesterday.

Mr. Carlson (45) left the airport at Johannesburg, where his wife and children are still living. His South Afrian passport was seized by the police in June 1969 without explanation and subsequent attempts to have it returned failed. But Mr. Carlson used a British passport, which he did not surrender, for his departure.

Mr. Carlson's wife told reporters that her husband had left on Monday and flown to London, where he would stay for a while before taking up a senior fellowship at a New York university. The fellowship was for one year, but she did not know whether he would return to South Africa when it expired. "I have made no plans,' she said. "The children and I are staying here until we hear from Joel what he wants to do."

Mr. Carlson has practised as a lawyer for fifteen years, and has for several years been the South African representative of the International Commission of Jurists. He has defended Africans held under the Suppression of Communism Act and the Terrorism Act, including the twenty-two Africans who were acquitted after two lengthy trials last year.

For South Africa's white liberal minority, Mr. Carlson is an outstanding hero whose courage is widely admired. His adventures during his career read like the script of one of those American television serials about lawyers battling for justice against fearful odds.

He has been sent bombs through the post. His office has been shot up. He has frequently been threatened by telephone and poison pen letter. His car has been fired upon. A petrol bomb was thrown at his house.

There have been so many such incidents in recent years, including a tiny explosive device in a copy of *The Selected Works of Mao Tse-tung,* that it soon became clear that he had become the victim of a planned harrassment campaign, designed to frighten rather than to maim.

Mr. Carlson, who has also been the South African representative of the International Press Institute, put up with the harrassment for more than four years. He has now left. He will surprise many people if he ever comes back.

Times Service

BOOK REVIEWS

International Law by Daniel P. O'Connell (second edition); two volumes. Vol. 1 : 8vo; pp. xxxii, 1-595; Index, pp. 35. Vol. 2 : pp. xxiii, 599-1309; Index, pp. 35. London, Stevens, 1970; £17.00.

Professor O'Connell's well known work on Public International Law received well-deserved encomiums when the first edition was published in 1965, and it need only be said that the second edition is even better, as it has taken detailed cognisance of the major developments in International Law, in case law as much as in textbooks, written since then. It would hardly be fitting for anyone other than an expert in the subject to criticise Professor O'Connell, particularly as he has been appointed to a Chair in Oxford University since the publication of this learned work. An endeavour will however be made to give an idea of the vast material contained in the volumes. Part One deals with General Principles. In discussing the formation of international Law, a well recognised distinction is made between the general principles of law and custom. The law formative agancies are set down as—Treaties, codification, judicial decisions and text writings. It is then pointed out that the Monism position of Kelsen aims at the elimination of the old scholastic problem of the relationship between intellect and will. On the other hand Hegelian Dualism implies that law is an act of the sovereign will of the ruler. The Transformation Doctrine by which, in order to become part of municipal law, each individual who is the subject of international law must be consciously incorporated in it, applies in Ireland. The supreme Adoption Theory on the other hand presumes a mandate from the sovereign to incorporate international law. The Harmonisation Doctrine implies that international law and municipal law form one body of doctrine and that potential conflicts between their respective roles must be minimised by a process of judicial harmonisation. As regards the municipal law rules in the relationship of International Law and of municipal law, the position in England, the United States, France, Italy and Germany is fully discussed. In discussing the problem of Personality in International Law, the problems of *de facto* insurgent governments and of International Organisations receives full treatment. The individual is declared to have fully protected rights in international law.

Part Two deals with Recognition and details the circumstances in which it applies in relation to either independence of new states, or of change of government, or of territorial change, or of belligerency. In dealing with the problem of judicial cognisance of unrecognised governments, the position of English, American and Continental Law is examined The question of retroactivity of recognition will doubtless arise in Bangla Desh.

Part Three deals with Treaties and emphasises that there is no recognised test for determining what is a treaty—it depends on the intention and good faith of the parties. The full rules as to signature, ratification and reservation to treaties are given, as well as to registration. As regards the operation of treaties, the rules as to interpretation are vital, particularly by reference to such matters as —the common interpretation of the parties, customary international law, traditional policies, the "travaux préparatoires". The problems of termination and of revision of treaties are fully considered.

Part Four deals with Sovereignty. The State as a person in international law is supposed to have a permanent population, a definite territory, a government, and capacity to enter into relations with other States. States are then defined for the purposes of the United Nations, and mention is then made of sovereign entities which are not typical States, such as the Vatican, Switzerland, Monaco, etc. The Fundamental Rights of State include those of independence, self-defence and legal equality. Problems like the Monroe Doctrine and the rule against intervention by the United Nations are fully considered. An example of titular, residual and distributed sovereignty is the Panama Canal Zone. A full description is given of the trust territories administered by the United Nations. A comparison is then made between the British Commonwealth, the French Community and the Netherlands Ream.

Part Five deals with State Succession, which may itself arise from cession, or annexation, or emancipation, or the formation of a union, or federation. Normally the personal treaties of the predecessor State do not bind the successor State but dispositive treaties relating to railways and rivers are binding. The bulk of the legal system of the predecessor State is usually unaffected by the change. Changes of government do not of course effect the personality of the State.

Part Six deals with Territory, which is defined as "any area of the earth's surface which is the subject of sovereign rights and interests". The modes of acquisition of territory are occupation, or historic rights, or prescription, or accretion, or annexation, or cession, or debellatio, which is the conquest of a foreign State which is so total that it includes the devolution of sovereignty; this was the status of Germany after the War. Maritime Territory deals with the character of the territorial sea under the various legal systems and the methods of measurement of territorial seas. Problems like the rights of innocent passage through straits and the extent and division of the continental shelf receive full treatment. As regards Airspace, the law applicable to aircraft in flight, particularly in relation to the Tokyo, Chicago, Warsaw and Guadalajara Conventions, are fully considered. The Rights in respect of foreign territory are considered under the headings of International Servitures, such as Customs-Free Zones and Fishery Rights, the law governing transit, International Rivers such as the Nile, the Rhine, the Danube, the Mississippi, the Amazon, etc. —then International Canals like the Suez and Panama Canals.

Part Seven deals with Jurisdiction. It first considers Maritime Jusisdiction under such headings as—the Nationality of a merchant ship, the Territoriality Doctrine under the various law systems, jurisdiction over territorial sea, the problem of innocent passage, freedom of the seas limited by pollution, nuclear damage, and broadcasting at sea by pirate stations, the problem of piracy, and the doctrine of hot pursuit, by which a state is entitled to continue on the high seas a pur-

suit begun within its territorial waters. As regards personal jurisdiction, the question of nationality is fully examined, particularly in relation to such matters as the admission of Commonwealth citizens to England, statelessness and passports. The reception, treatment, expulsion and taxation of aliens is fully considered; the problems of extradition and asylum receive full descriptons in the light of modern developments. A special chapter is devoted to the problem of human rights. As regards alien acquired rights, for instance if their property is nationalised, they are entitled to compensation. The rules relating to expropriation of foreign property under the various systems of law are fully set out.

Part Eight deals with Immunity from Jurisdiction which rests on independence, extraterritoriality and diplomatic function. This includes such matters as diplomatic imunity from public suit, as well as that of public ships, of state agents, and of sovereigns from taxation. Diplomatic and Consular Immunity receive very large coverage.

Part Nine deals with State Responsibility involving the various ways in which a State would be responsible to an alien in respect of injuries received. As regards liability in tort, such matters as acts of the Executive, as well as that of mobs and of revolutionaries would have to be considered. As regards contract, it is important to ascertain where the contract was made, and to observe the rules governing performance of contracts, including bond obligations. The International Rules relating to monetary policy such as exchange controls are fully set out.

The final part, Ten, deals with International Litigation. The intricate problem of the nationality of claims, as well as that of the impediments of making a claim receive full consideration. The procedure of the international tribunal, whether the International Court of Justice or the Court of the European Community receives full treatment and the detailed procedure at the hearing is given full scope. The forms of reparation for international wrongs are fully explored, such as compensation and damages, the valuation of loss and the problem of interest. The learned work ends with a most useful list of Treaties, Principal English and Irish Statutes, International Cases, and Municipal Cases alphabetical by country, as well as a table of Treatises on International Law.

From this summary of this vast subject it will be appreciated that the learned author is a master of his subject. He has given us the very last work on the intricate problems which arise from international law and the work is written in a style which is easy and a pleasure to read. The vast erudition displayed can rarely have been equalled, and Professor O'Connell is assured of being among the foremost international lawyers of to-day. The printing and presentation are excellent.

International Law for Students by D. P. O'Connell; 8vo; pp. xviii, 445; London, Stevens, 1971; (paperback) £3.25.

This is a most useful summary for students of the learned work which has just been reviewed. The chapter headings are identical to the main work and it is thus easy to refer to it for a more detailed description. It will prove a great boon for study.

The Will Draftsman's Aid by D. T. Davies; 8vo; pp. vii, 91; London, Oyez Publications, 1971.

An English solicitor has prepared a short collection of precedents which aims to speed the preparation of wills. Useful clauses such as funeral wishes, residential use of house as long as required, absolute gift of jewellery or of specific chattels, power to transfer capital to surviving spouse, Investment powers, Powers of appropriation, executor and trustee charging clause, coomorientes, etc. The forms used are clearly set out, and there is an explanatory note at the end.

Charlesworth (Judge): Mercantile Law (twelfth edition) edited by Clive Schmitthoff and David A. G. Sarre; 8vo; pp. xlix, 485; London, Stevens, 1972; (paperback) £1.00.

This well known student's textbook has now reached its twelfth edition, and has been under the editorship of Dr. Schmitthoff and of Mr. Sarre since the 9th edition (1960). There has been a gradual expansion in the contents as is evidenced by the fact that the 10th edition contained 390 pages, the 11th edition, 409 and the present edition, 484 pages. There is a useful new chapter on the Contract of Employment and the chapter on Hire-purchase has been greatly increased. There is a most useful Select Bibliography of books and articles at the end of each chapter. The editors have as usual added to our store of knowledge of this intricate subject with their great clarity and precision. A most useful *vade-mecum* for the practitioner.

Nutshell Series. 0.60 each, published by Sweet and Maxwell. **General Principles of Law** by Clive Davies; 8vo; pp. xvi, 117; second edition; London, 1972; 0.75.

This book is intended for "A" Level candidates in English Secondary Schools in this subject. It includes chapters on "The Law and its Administration", "The Law of Persons", "The Law of Contract" and "The Law of Property". Needless to say this book is rather elementary, although the candidate who had a good knowledge of the text and footnotes would be well grounded in general legal principles.

Jurisprudence by Charles Conway; 8vo; pp. vi, 69.

It has always been difficult for candidates in jurisprudence to revise this intricate subject at the last minute for an examination. This booklet performs this service in a most useful way together with test questions.

CORRESPONDENCE

Amendment of the Constitution

79 Barton Drive,
Rathfarnham, Dublin 14.

The Editor of the Gazette,
Incorporated Law Society,

Dear Sir,

I wish to commend your courage in challenging the proposed amendment to the Constitution which has been put forward by the Government and supported in a slightly altered form by Fine Gael.

You say that the amendment is unduly wide and unnecessary and with this I wholeheartedly agree. However, your implied suggestion that an amendment which would exclude fundamental rights from its operation could be supported, is questionable. Articles 1 and 2 proclaim respectively the sovereignty of the Irish nation and define its territory as 'the whole island of Ireland, its islands and the territorial seas'.

Should it transpire that the third amendment has abrogated that claim in any way, future generations will not thank us. Indeed, in view of the short history of our State, those who reside or work in the Four Courts should show very great caution when implying that these articles are not important or relevant to-day.

The substantial transfer of power from national institutions to the E.E.C. requires, I suggest, a very careful approach to Constitutional amendments. What will be the effect of the proposed amendment on Article 28. 3. 1., which states that 'War shall not be declared and the State shall not participate in any war save with the assent of Dail Eireann'. And how will the amendment affect the provisions of Article 29 (paras 5 and 6) which concerns International Agreements. Neutrality appears to be ruled out by the Treaty of Rome. A safeguard in the amendment would appear necessary. The transfer of all questions of interpretation of the Treaty of Rome to the Court of the European Community *de facto* makes that Court the interpreter of our Constitution under the proposed amendment. This, surely, is an aspect of the matter requiring pause and reflection. Indeed the blanketing and indiscriminate nature of the amendment raises, at this state, the question whether this form of amendment is in itself unconstitutional.

Another fundamental issue is the absence of democratic and constitutional control over the actions of our Minister in the Council of Ministers. By virtue of Article 235 of the Treaty, described elsewhere as 'Henry VIII Clause', our Minister by unanimous agreement with his colleagues in the Council, can procure the enactment of any provision necessary to achieve the aims of the Treaty, and there is, apparently, no constitutional means of controlling this executive action. This is a most dangerous departure from the safeguards enhrined in our Constitution. (The law on 'European companies' has, I understand, been introduced under the powers conferred by Section 235).

These are but a few of the major issues, which in addition to fundamental rights, are raised by the Government's proposals. As the aim of the Treaty of Rome is to progressively approximate the economic policies of Member States, we may sadly conclude that the shape and style of our Constitution is to be remoulded in the procrustean design of Common Market economics and bureaucratic requirements.

To put it another way. Our Constitution is to be prised open by a powerful economic instrument. For the sake of future generations we must sincerely hope that by assenting to it we are not opening a Pandora's bos, which will have unsavoury, uncontrollable and unforeseeable Constitutional consequences.

Yours sincerely,
Franklin J. O'Sullivan (Solicitor).

Hotel Licences and Publican's Licences

20th December 1971

to The Secretary
Incorporated Law Society

Dear Mr. Plunkett,

Recently I came across a case which I think would be of great interest to the profession. A colleague purchased a hotel to which was attached what was described as a publican's licence. The sale was completed in the normal way and the licence duly transferred to the new owner of the hotel. Some time later the owner of the hotel decided to extend his premises and instructed his solicitor to apply to have the licence expended to cover the new buildings. The usual statutory notice was served on the Guards, the District Court Clerk and other appropriate authorities. On receipt of this notice by the Gardai authorities, the Superintendent phoned the solicitor and informed him that the licence attaching to the hotel was not a publican's licence but a hotel licence. Enquiries were made at the local District Court Office when the official there confirmed that the licence was in fact a publican's licence according to the records in his office. The solicitor informed the Garda Superintendent of this fact, but the latter indicated that reference should be made to the original order made by the Circuit Court on the granting of the licence approximately fifteen years previously. On enquiring at the Circuit Court Office, the solicitor was informed that the order in fact was for a hotel licence. The Gardai then moved in on the premises and informed the proprietor that he would have to cease operating the bar. The sequel to this case was

that the unfortunate owner ot the hotel had to purchase another licence at the cost of over £2,000.

The difficulty is that the revenue authorities issued the same form of licence in each case. In other words, what the recipient gets is a document marked "Publican's Licence". There is no reference to a hotel or anything of this nature on the form.

It is interesting to note in Mr. Shillman's book on the *Licensing Laws of Ireland* that he states as follows:

"Before the passing of the 1902 Act, the Revenue Commissioners had authority, under Section 43 (4) of the Inland Revenue Act, 1880, to issue what were then known as 'Hotel Licences'. But there is now no such thing as a hotel licence. The licence which can now be granted to a hotel under Section 2 of the 1902 Act, is an ordinary publican's licence, subject to the provisions applicable to retailers' licences (see pages 168 to 171). Accordingly, with respect to such a licence, there is no prohibition against sales to the general public. This was decided in Burke's case (1906), where the owner of the Phoenix Park Hotel, Dublin, was convicted by a Dublin Police Magistrate of selling intoxicating liquors to persons not being travellers or lodgers in the hotel, but this conviction was reversed by the King's Bench Division."

The main effect, of course, of a hotel licence is that the hotel cannot have a bar.

One can foresee the danger in a case where a solicitor acting for the purchaser of a hotel completes the sale on the basis of the hotel having a publican's licence whereas, in fact. it may only have a hotel licence. In such a case a bar cannot be operated and the unfortunate solicitor might be open to an action for negligence in not so advising his client.

Happily the case I mentioned had no come back on the solicitor involved as his client was a reasonable man. While the solicitor suggested he might have an action against the vendor for contracting to sell a publican's licence whereas, in fact, he had only a hotel licence, the client expressed the view that this was done by the vendor in good faith and proceeded to purchase another licence at a cost of over £2,000.

It might be worth considering putting a note in a future issue of the *Gazette* to warn our colleagues of the possible danger and indeed, you might also consider it appropriate to bring the matter before the Department of Justice with a view to having some different type of licence issued in the case of a hotel and which would clearly on the face of the form indicate the nature of the licence.

Of course, the whole system of differentiating between a publican's licence and a hotel licence is rather stupid and it would be much better just to have the one type of licence relating to all premises where liquor is consumed on the premises. Being virtually a teetotaler, perhaps I should not express too strong an opinion.

Dublin Solicitor.

Folio Numbers on Land Commission Demands

18th November 1971

T. O'Brien, Esq.,
Secretary, Department of Lands,
24 Upper Merrion St., Dublin 2.

Dear Mr. O'Brien,

I refer to your letter of the 15th February 1971 on the matter of having folio numbers marked on half-yearly demands.

I have now received correspondence from a member to the effect that the folio number has not appeared on some November demands.

Perhaps you would let me know the present position in this matter at your convenience.

Yours sincerely,

Joseph G. Finnegan (Assistant Secretary).

* * *

Department of Lands, Dublin.
30th November 1971.

Joeph G. Finnegan, Esq.,
Assistant Secretary, Incorporated Law Society,

Dear Mr. Finnegan,

I have your letter of the 18th instant concerning quotation of the folio number on half-yearly demands issued for land annuity instalments.

Since my letter of 15th February, 1971, and as promised therein, we have carried out the operations necessary for inclusion of the folio reference as part of the data on these demands and, in general, the current issue carries the appropriate references.

As you are aware, not all lands charged with a land purchase annuity, or analogous payment, are registered. The exceptions fall mainly in the category of lands purchased under the Acts prior to 1891 before registration was made compulsory, or in the category where the fee-simple interest is not yet vested in the purchasing tenant or allottee. In such cases, of course, the demand will carry no folio reference as there is none.

There is another situation in which the reference, though existing, may be lacking in our records. In my letter of 15th February last (fifth paragraph) I mentioned the fact that we cannot guarantee absolute accuracy for a folio reference supplied at second hand. That circumstance may extend to a lack of the folio reference altogether in a very small percentage of our records and the November/December 1971 issue, being the first run of folio annotated demands, we are conscious that omissions of the past will be reflected in the absence of the appropriate folio reference in the very odd case, just as obtained, I should emphasise, in the era of the ten-yearly receivable order. We hope to correct the record as far as possible according as these exceptional instances are brought to light and we have provided the necessary systems to that end.

The case at issue is, I am sure, accounted for by one or other of the exceptional situations referred to. If you care to let me have particulars—the reference numbers of the offending demands—I will have the matter investigated fully.

Yours sincerely,

T. O'Brien (Secretary).

Rent Restrictions (Amendment) Act 1971

Department of Justice,
72/76 St. Stephen's Green, Dublin 2.
14th January 1972.

Eric A. Plunkett, Esq,
Secretary, Incorporated Law Society of Ireland.

re Rent Restrictions Amentment Act, 1967, S. 10

Dear Sir,

I am directed by the Minister for Justice to refer to your letter of 13th February, 1970 (EAP. L/5. L/55/70), and earlier correspondence concerning Section 10 of the Rent Restrictions (Amendment) Act, 1967. The question of the amendment of this section was discussed at a meeting between representatives of this Department and representatives of the Incorporated Law Society on 20th December 1968. An amendment of the section on the lines indicated in the course of that discussion has been made by Section 11 of the Landlord and Tenant (Amendment) Act, 1971, which became law on December 7th. The amending provision is designed not only to relieve owner-occupiers of controlled dwellings of the necessity (imposed on them in many cases by Section 10 of the 1967 Rent Act) to obtain the landlord's consent to an assignment of the dwelling, but also to validate any assignments that may have been made void by Section 10 of the 1967 Act.

Section 10 of the Landlord and Tenant (Amendment) Act, 1971, revives, for a period of one year from 7th December 1971 (i.e. the date of the passing of the Act), the spent provisions contained in Section 8 (1A) of the Rent Restrictions Act, 1960. These provisions were inserted in Section 8 of the Act of 1960 by Section 4 (1) of the Rent Restrictions (Amendment) Act, 1967, and in accordance with Section 4 (3) of the 1967 Act they had a life of two years which expired on 8th May 1969. Section 10 of the 1971 Act is designed to enable "small" landlords who come within its provisions to have certain basic rents revised during a further period of one year from 7th December 1971. This matter also has been the subject of correspondence and your letter of 13th May 1969 (EAP. L5/69) refers together with reply dated 4th June 1969. In the course of the final debate in Seanad Eireann (1st December 1971) on the Bill of the 1971 Act Senator O'Higgins stressed the desirability of giving publicity to the provision for reviving Section 8 (1A) of the 1960 Rent Act and suggested that the Incorporated Law Society might bring the matter to the notice of its members. The Minister wishes to draw this suggestion to the Society's attention.

Yours faithfully,

R. B. Toal.

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 issues in respect o fthe lands specified in the schedule which oriinal 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 29th day of February, 1972.

D. L. McALLISTER
Registrar of Titles.

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

Schedule

(1) Registered Owner: Deborah Martin; Folio 35738; Lands, Coolfadda, County Cork; Area 39 perches.

(2) Registered Owner: Annie Rochford Kenny; Folio 1434L; Lands, The leasehold estate in the dwellinghouse and premises known as No. 39 Larkfiedl Grove situate on the east side of Larkfiedl Grove in the District of Rathmines, Parish of St. Peter and City of Dublin; City of Dublin.

(3) Registered Owner: Patrick Joseph Garvey; Folio 5141; Lands, Jamestown, Sallaghan, Rue, County Leitrim; Area, 1a. 0r. 6p., 20a. 3r. 37p., 10a. 0r. 25p.

(4) Registered Owner: James J Jennings; Folio 5173; Lands, Churchfield, County Mayo; Area, 35 perches.

(5) Registered Owner: Patrick Bean; Folio, 1445; Lands, Ballygoran, County Kildare; Area, 3a. 1r. 22p.

(6) Registered Owner, John Folwy; Folio, 4337; County Kerry; Area, 121a. 3r. 26p.

(7) Registered Owner: Bridget Duane; Folio 4200; County Galway; Area, 67a 0r. 37p.

(8) Registered Owner: Robert J. Daly; Folio 6050L; City of Dublin; Lands, the leasehold interest in the property situate in the North of the Howth Road in the Parish of Kilbarrack and District of Howth and City of Dublin.

The Register

Wil any person knowing of the whereabouts of a Will of Brian Henessy late of Cournellan, Borris in the County of Carlow, Farmer, Deceased, who died on the 15th January, 1972 please communicate with John M. Foley, Solicitor, Bagenalstown, Co. Carlow.

Dublin Solicitor requires young energetic Assistant Solicitor. Please reply giving particulars of experience and age. Salary negotiable. Box No. A285.

For Sale: Solicitor desiring to retire from practice in south County Tipperary invites enquiries as to purchase of practice, with or without offices and dwelling accommodation. Box No. A286.

Assistant Solicitor required for Cork City Office with some experience of litigation. Reply in confidence to Box No. A287.

Midland long-established small practice for sale. Box No. A288.

For Sale: Complete set of Irish Statutes, 1922-1967 (I); 15 vols. out of print; £110, and complete set of Irish Law Times, 1867-1970, 103 vols. bound; Vol. 104 unbound, save Vo. 16 (1882), £250. Carriage extra. Box No. A.289.

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

MARCH 1972
Vol 66 No. 3

Contents

EDITORIAL

Constitutional Implications of the Third Amendment Bill

The Third Amendment to the Constitution Bill enables the State to accede to the Treaties relating to (1) The European Economic Community; (2) The European Coal and Steel Community; and (3) The European Atomic Energy Committee. This is in the form of an additional sub-section to Article 29, which relates to international relations. The final sentence of the amendment reads: "No provisions of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities, or institutions thereof, from having the force of the law in the State."

It was already pointed out in the January *Gazette* that it was unwise to substitute a wide omnibus amendment to replace specific amendments relating for instance to the powers of the Oireachtas and of the Supreme Court. It was also stressed that fundamental rights should be specifically protected. This appears to be reinforced by the Irish version of Article 46 of the Constitution, which suggests that the Constitution can be amended only disjunctively, either by variation or by addition, or by repeal in respect of each amendment. The First Amendment to the Constitution Act, 1939, which was specifically passed to protect our status of neutrality in time of war, specifically amended the definition of "time of war". In the Schedule to the Second Amendment to the Constitution Act, 1941, each deletion or variation was specifically referred to by reference number. It is difficult to see why these precedents were not adhered to in this instance as it is quite clear that by way of a simple explanatory memorandum the average voter would be in a position to grasp the effect of each separate amendment. An interpretation by the Supreme Court would appear to be desirable particularly as the issue has never been ruled on.

It is known that, by virtue of Article 235 of the Treaty of Rome, the Council of Ministers are given the right to enact any legislation necessary to achieve the aim of economic harmony under the Treaty. It may be thought that no legislation detrimental to Irish interests could be passed, in view of the fact that the Ministers have to be unanimous, but it is well known that pressures can be brought against recalcitrant Ministers. Whether one is a protagonist or an antagonist of the Community, constitutional propriety demands that each amendment necessary to enable us to enter the Community should be clearly and unequivocally spelled out.

Legal Protection of Detainees

The absolute independence of the Judiciary in Northern Ireland has been amply demonstrated recently. Not only has Judge Conaghan awarded the maximum amount within his jurisdiction to a detainee for brutal ill-treatment by the authorities, but also the Northern Court of Appeal in (*R*) *Hume v Attorney-General* has unanimously found a vital regulation unconstitutional. There it was held that the British Army as "security forces" could not legally be included in the term "Commissioned officers of Her Majesty's Forces" in Regulation 38 (1) issued under the Civil Authorities (Special Powers) Acts which authorise the police to quell a riotous assembly on the ground that the Regulation infringed the Government of Ireland Act, 1920, as that Act gave no power to the Northern Ireland Parliament to make any regulations concerning the British Army. The effect of this judgment was that John Hume and others had been improperly convicted of riotous assembly in Derry and that their convictions were subsequently quashed.

However, by having the Northern Ireland Act, 1972, passed in a few hours, the British Government tried to set at naught the effect of this judgment. As Mr. Boyle has shown, it is doubtful whether this legislation is valid, particularly as it purported to amend the Government of Ireland Act, 1920. Professor Palley has shown the enormous powers which the Stormont Parliament now possesses over the British Army. Let us hope that this outrageous legislation will also be found invalid soon.

Note—This Editorial was written before Mr. Heath announced the imposition of direct rule upon Northern Ireland on March 24th.

THE SOCIETY

Proceedings of the Council

17th FEBRUARY 1972

The President in the chair, also present Messrs William B. Allen, Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, Thomas J. Fitzpatrick, James R C. Green, Christopher Hogan, Michael P. Houlihan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, Eunan McCarron, Patrick J. McEllin, Patrick McEntee, Brendan A. McGrath, John Maher, Patrick Moore, Senator J. J. Nash, John C. O'Carroll, Peter E. O'Connell, Thomas V. O'Connor, William A. Osborne, David R. Pigot, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor, Ralph J. Walker.

The following was among the business transacted.

Legal Remuneration

The Solicitors' Remuneration General Order 1972 which provided for an increase of 42 per cent on the existing item charges (excluding commission scale fees and discretionary charges) was laid before the Oireachtas. The Secretary stated that a motion had been put down in Seanad Eireann to disallow the Order. Letters signed by the President had been sent to each member of the Oireachtas and to the Government stating the case for the increase which was based merely on the increase in the cost of living since the last increase of 12 per cent made in 1964. Rules had also been made by the various Court Costs Committees providing for a similar increase and these Orders had been submitted by the Committees to the Department of Justice. No action had been taken thereon by the Department as the Minister had not as yet given his concurrence.

Prices Bill 1971

The Secretary stated that meetings of Bar Associations had been held and that resolutions had been sent direct to An Taoiseach from the Bar Associations opposing the application of the prices legislation to the legal profession on the ground that orders fixing legal remuneration should be made by judicial committees with representation from the public and experts such as chartered accountants and should be submitted direct by the central costs fixing committee to the Oireachtas. An amendment proposing to exclude professions whose charges are fixed by statute from the operation of the Prices (Amendment) Bill 1971 had been drafted and would be moved on the committee stage of the Bill.

Costs and rules for increased jurisdiction in Circuit and District Courts

The Secretary reported that the District Court Rules Committee had submitted a new scale of costs to the Department on January 28th. No action had been taken by the Department. The Circuit Court Rules Committee had almost completed the work of drafting a new scale of costs and it was expected that this would be submitted to the Department within the near future.

Professional liability insurance scheme

The Council received a report from Irish Underwriting Agencies Ltd. on the operation of the scheme since its inception. A copy of the report will be published in a future issue of the Society's *Gazette*.

Commissioners for Oaths

The Society received a letter from the Chief Justice containing adverse comments on the practice of Commissioners for Oaths in certain parts of the country in the attestation of affidavits. The Chief Justice stated that he had become aware that in a number of cases affidavits were attested by Commissioners for Oaths in the absence of the deponent. He strongly condemned this procedure and had stated that unless he was satisfied that it would be discontinued he considered withdrawing all existing commissions to swear affidavits and reappointing only Commissioners who are prepared to give an undertaking that the proper procedure will be observed. It was decided that the attention of the profession should be drawn to this matter. It was also decided to make representations in the proper quarters that the only documents which should require attestation before Commissioners for Oaths would be documents for use in the Courts and that schedules of assets and other documents for extra judicial proceedings such as revenue and tax purposes might be attested by Peace Commissioners. The reason for this proposal in many towns where it is extremely difficult to obtain the services for Commissioners for Oaths as most of them are not solicitors and in some cases clients have made long journies from the country to make affidavits only to find that a Commissioner is not available.

Income Tax Act 1967, Section 173

The Secretary stated that he had received a notice requiring a return of fees paid to third parties not in the Society's employment. From examination of the Section it appears that this notice would not affect solicitors engaging third parties on their clients' business. It would apply only in the case of a person employing a third party in connection with his own business. It was decided that no action was required on behalf of the profession.

Unfair attraction of business by builders' solicitors

A member wrote to the Society referring to cases in which builders and developers of housing estates recommend to prospective purchasers of a new house that they should use the builder's or developer's solicitors who would act for them at a fee well below the scale under the Solicitors' Remuneration General Orders. In a particular instance a client asked him to quote a charge for the purchase of a house for £6,000. He informed the client of the fee recommended in the March/April edition of the Society's *Gazette*, vz. £90 for a purchase without a mortgage and £120 for a purchase with a mortgage. The client said that the transaction would be carried out by the builder's solicitor for £50 and that the builder had requested him to go to his own solicitor which he subsequently did. It was decided that the attention of the profession should

be drawn to the provisions of paragraph five of the Solicitors (Professional Practice Conduct and Discipline) (Amendment) Regulations 1971 which are as follows:

A solicitor shall not obtain or attempt to obtain professional business by directly or indirectly without reasonable justification inviting instructions for such business or doing or permitting to be done without reasonable justification anything which by its manner, frequency, or otherwise advertises his practice as a solicitor or doing or permitting to be done anything which may reasonably be regarded as touting and it shall be the duty of the solicitor to make raasonable enquiry before accepting instructions for the purpose of ascertaining whether the acceptance of such instructions would involve a breach of the undertaking.

Paragraph six of the Principal Regulations is as follows:

A solicitor shall not hold himself out or allow himself to be held out directly or indirectly by name or otherwise as being prepared to do professional business in contentious matters in less than the scale fees fixed by rules of Court and in non-contentious matters at less than the scale fees fixed by general orders under the Solicitors' Remuneration Act 1881 or rules made under the Registration of Title Act 1891 as amended in force for the time being or such lower scales as may be authorised by the Council for any particular class or classes of work.

In the opinion of the Council the practice indicated by member is in contravention of these regulations and instances accompanied by evidence if available should be brought to the attention of the Society for appropriate action under the Solicitors Acts 1954 and 1960.

8th MARCH 1972

The President in the chair, also present Messrs S. B. Allen, Walter Beatty, Bruce St. J. Blake, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, Thomas J. Fitzpatrick, James R. C. Green, Gerald Hickey, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, Eunan McCarron, Brendan A. McGrath, Gerald J. Moloney, Patrick C. Moore, Senator John J. Nash, John C. O'Carroll, Peter E. O'Connell, Rory O'Connor, Thomas V. O'Connor, William A. Osborne, David R. Pigot, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

A special meeting of the Council was held to consider the provisions of the Prices Bill 1971 and the Solicitors Remuneration General Order 1971 (Disallowance) Order 1972. After a general discussion it was decided that a special meeting of representatives of Bar Associations should be convened for Wednesday, March 15th, for the submission of a report and to obtain the views of the Associations.

Solicitors Apprentices Debating Society Inaugural on the Irish Constitution

The inaugural address of the Solicitors Apprentices Debating Society of Ireland was held in the Library, Solicitors Buildings, Four Courts, Dublin, on Friday, 25th February 1972, when the Auditor, **Mr. Laurence K. Shields, B.C.L.,** delivered an address entitled: "Bunreacht na hEireann: Quo Vadis?" In the course of his address, Mr. Shields made the following points.

It would not be realistic if indeed possible to attempt to cover all that the title of this address embraces. All that I can do, restricted as I am by time and qualification, is to indicate some of the areas that are considered to be the more important and to make a few suggestions. For this purpose I have accordingly decided to divide my address into three parts. (1) General changes, which I believe if adopted would undoubtedly improve our Bunreacht and lead to a more democratic society. (2) Fundamental human rights. (3) A Constitution for a united Ireland and also the question of the possible advent of this country into the E.E.C.

Democratic nature of State could be improved

The general changes cover a wide area. Ireland, according to Article 5, is a sovereign, independent, democratic state. It seems that the democratic nature of the Republic of Ireland — and indeed in the future, of a United Ireland — could be considerably improved. Abraham Lincoln has defined democracy as a government of all the people, by all the people, for all the people; a government after the principles of eternal justice and the ever-changing law of God. Democracy, therefore, connotes simply the participation of the greatest possible number of the people in the decision making process. It is clear that in Ireland we are unfortunately not availing of some of the processes of direct democracy known to the modern world. The introduction of more direct democracy to a revised Constitution would seem necessary. This I feel could be achieved in different ways: (1) by the retention of the so-called "compulsory referendum" procedure as enunciated in our present Constitution, namely a referendum implied by the nature of the legislation, for example, a constitutional amendment; (2) by the introduction of the "protest referendum" which enables a group of people who object to a particular piece of legislation to ensure that a referendum would be held by the presentation of a petition; (3) by the reintroduction of the "initiative" to our Bunreacht; this form of direct democracy which exists both in Switzerland and in the United States of America provides the electorate with an opportunity to initiate leigslation at their own request. The initiative obviously does not extend to specified legislation like budgets or treaties. The protest referendum and the initiative should require the signature of from 30,000 to 50,000 petitioners. Article 48 of the Free State Constitution of 1922 contained somewhat similar provisions but were not re-enacted in the 1937 Constitution. But for these procedures to work effectively the people must involve themselves wholeheartedly and with enthusiasm.

Votes at eighteen should be introduced. There is no justification for excluding people from the democratic processes who are eligible to join the Army, to get married and are obliged to pay taxes. Mr. Justice Walsh recently pointed out that it is open to argument whether a change in the Constitution is necessary to facilitate votes at eighteen. The present Constitution, he stated, guaranteed as a right the granting of votes at the age of twenty-one but there was nothing embodied in it to prohibit parliament extending this right to younger people. (It has been announced that a Referendum on this issue will be held in the Autumn.)

Constitutional review every ten years

It would seem that an article dealing with the question of constitutional review should be incorporated in our Constitution. It should be mandatory that the Constitution be reviewed say every ten years by a commission. The late Taoiseach, Mr. Seán Lemass, agreed with the idea of a regular review. He was reported in the *Irish Times* in March 1966 as saying: "The democratic principles on which the Constitution was founded had a strong emotional and intellectual appeal here. The manner in which these principles were expressed and the procedures by which it was decided to apply them might not, however, be as suitable to our present requirements as they were thirty years ago. ... There was a case for carrying out a general review of the provisions of the Constitution." He continued: "That was something that might be worth doing every twenty-five years or so." It seems to me that this period should be shortened to a ten-year period. The commission could usefully sit from time to time throughout the ten years and put forward constitutional proposals every tenth year. The composition of such a constitutional commission is of the utmost importance. While the Report of the Committee on the Constitution published in December 1967 contains some useful material, yet it is undoubtedly too politically orientated. The following sentiment is too often expressed in the report: "We feel political considerations are more relevant." This is understandable when one considers that that committee was confined to parliamentary representatives. Indubitably, any future constitutional commission should be vocational in nature, composed of persons representing as far as possible all interests throughout the State, as for instance political parties, trade unions, religious bodies, professional organisations and the judiciary.

Bills referred by President to Supreme Court

The most important prerogative conferred upon the President under the Constitution is his power by virtue of Article 26 to refer Bills to the Supreme Court after consultation with the Council of State. This Article has been criticised on three grounds by a number of academic writers and in particular by Professor R. J. O'Hanlon. (1) Bills are considered in vacuo—that is before they have had a chance to operate in practice. (2) Once a decision has been handed down by the

Supreme Court that is the end of the matter for all time, as the decision is not open to review (Article 34.3.3). (3) As a result of Article 26.2.2 only the decision of the majority is delivered and this by a single judge. No other opinion whether assenting or dissenting is permitted. The Constitution deserves amendment to deal with these criticisms. The first criticism could be met by conferring on the President an additional power to enable him to refer an Act to the Supreme Court within a year or so of its being brought into operation, as distinct from its enactment. He would retain his present power of referring Bills as obviously some Bills by their very nature need not be put into practice to decide on their constitutionality, but would also have this additional power. The second criticism was considered by the Committee on the Constitution in the following words: "The best solution would be to retain the existing provisions with an amendment to the effect that the Supreme Court decision could be challenged in further legal proceedings after a period of say seven years. This would provide some answer to the criticism that the existing arrangements have the effect of calcifying the law for all time, and it would be in harmony with the abandonment of Stare Decisis for ordinary proceedings." Finally I believe that judges should have the opportunity to express their opinions as freely as they do in the United States, and as recommended by the Committee on Court Practice and Procedure.

Danger of administrative tribunals

It is a reasonable assumption that any revised Constitution would again be founded on the doctrine of the separation of powers. The growth on a large scale in our society of administrative tribunals frightens me. These are undoubtedly dangerous symptoms of a disease —the ever-increasing encroachment by the administrators and the executive into the judicial domain. This disease ought to be checked in its prime before it becomes cancerous. I would recommend as a remedial measure the same cure enunciated by the Editor when he wrote in the *Gazette* in July/August 1971, namely the appointment as chairmen of these tribunals of experienced legal practitioners such as Senior Counsel. This would ensure a degree of rationality to the proceedings and bring them more in line with the spirit of the Constitution. It may, however, produce some difficulties with the text of the Constitution which declares in Article 34 that "Justice shall be administered in courts established by law by judges appointed in the manner provided by the Constitution." There are other improvements which should be made to ensure the independence of the judicial arm of State. A better system of appointing judges is the most often cited. It would seem that the best alternative method so far suggested is that the Government should appoint whoever meets jointly with their approval as well as that of the Bar Council and of the Council of the Incorporated Law Socity. Clauses should be added to the present provisions for appointment which would firstly fix the number of judges there are to be in the Supreme Court and would also provide that the age of retirement of a judge, irrespective of any change in the law after he had taken office, would be the age limit in force on his taking office.

Human Rights

The second part of my paper is concerned with "Human Rights"—a topic which, since the last war, has received considerable attention from both governments and international bodies as a result of the atrocities perpetrated during and immediately after that war and the fear of Communism particularly after the Russian invasion of Czechoslovakia in 1948. In 1948 the United Nations Universal Declaration of Human Rights was issued and 1949 saw the foundation of the Council of Europe which was to lead to the European Convention on Human Rights signed in Rome in 1950. The question of Fundamental Rights is to the fore in the Six Counties at the present time. Many people have advocated the drawing up of a Bill of Rights as a major contribution towards a solution. The Irish Government has brought the British Government before the Commission of Human Rights in Strasbourg in regard to specified violations of human rights by British forces in the Six Counties. The importance of this topic cannot be over-emphasised.

State of emergency suspends Constitution

Articles 40 to 44 of our Constitution set out the Fundamental Rights. While these Articles were commendable at the time when the Constitution was adopted some flaws have since appeared and it would seem that in the modern world they are far from adequate. Let us first protest at such an abhorrent Article as Article 28.3.3 by which we are, even at this very moment, living in the Republic of Ireland in a "State of Emergency". When it is invoked it prevents anything in the Constitution from being used to invalidate any law enacted by the Oireachtas—or in simple terms the Constitution can be suspended. Such an Article makes nonsense of the Constitution and must find no permanent place in a revised document.

Importance of Natural Law

Assuming that item 28.3.3 disappears it would be necessary that the Fundamental Rights articles be extended to cover "all persons" and not just "citizens". It was stated in the High Court in *The State (Nicolaou) v The Adoption Board* (1966) I.R., that any rights guaranteed to "citizens" as opposed to "persons" could only be availed of by Irish citizens. It seems hard to see why the liberties of our citizens alone should be protected but not those of others, as surely these rights ae basic to the human person. There is little doubt but that a revised Constitution should contain an express recognition of the natural law—a vague reference to it in the Preamble seems insufficient. We note with satisfaction that our courts are returning to this concept in recent years. It seemed at first that Chief Justice Kennedy's dissenting judgment in *The State (Ryan) v Lennon* (1935) I.R., had fallen on stony ground but there has been a reappraisal and such cases as *MacDonald v Bord na gCon* (1965) I.R., and *Macauley v Minister for Posts and Telegraphs* (1966) I.R. 345, demonstrate that the Bench is again actively engaged in a more dynamic way in guarding the natural rights of the people. Such a recognition in our fundamental law could be used by the Courts to enable them to give more equitable decisions. There are obvious cases of injustice and the system of Equity as we know it today is in its own way as rigid as the Common Law. These two systems should be fully integrated and a new Equity allowed to flourish using as its basis the Constitution and all that is guaranteed therein. Is not "justice" to be administered in the courts? Perhaps the most liberal and reasonable interpretation of the fundamental rights articles was given by Mr. Justice Kenny in *Ryan v A.G.* (1965)—the famous "fluoridation case". He declared in the course of his judgment, that, apart from the Fundamental Rights formally listed in the Constitution, all those rights which resulted from the Christian and democratic nature of the State were implied therein.

I believe that the insertion of such a declaration in a revised Constitution would be most beneficial.

Human Rights Conventions should be ratified

Dr. Hillery, the Minister for Foreign Affairs, speaking in the Dáil on 10th March 1971 is reported to have said that the establishment of full fundamental rights and freedoms for everyone, irrespective of religion or political opinion, was "a standard against which we should consciously measure our policies in relation eventually to the country as a whole, as well as to their performance in the twenty-six counties in the meantime." These views are fully acceptable but why has the European Convention on Human Rights, which Mr. Seán MacBride described at a recent meeting of this Society as "a cornerstone of our civilization even more important than Magna Carta, the American Declaration of Independence, or the French Declaration of the Rights of Man" never been made part of our municipal law? The Chief Justice the Hon. Cearbhaill Ó Dálaigh has suggested that personal rights in Ireland might be more clearly stated and in some important fields extended if we were to make this Convention and several of the United Nations Conventions part of our municipal law. The United Nations Conventions referred to are the International Convention on the Elimination of all forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Mr. Seán MacBride has said that "our failure to ratify Human Rights Conventions and to participate actively in the United Nations on Human Rights issues has put into question our sincerity when we profess loudly our attachment to the ideals of human liberty—and when we appeal to that organisation to intervene to protect civil liberties in Northern Ireland." He continued: "Is the feet dragging which is so evident in our behaviour on human rights issues due to a deliberate policy or is it due to sheer negligence? These are questions which must be answered."

Prohibition of divorce an infringement of religious liberty

It is felt that the problem of religious liberty, which is extremely important in the Irish context, cannot be ignored. The Vatican II *Declaration on Religious Liberty* declared that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, or whether alone or in association with others within due limits. It is submitted that the prohibition on divorce in our Constitution is forcing people in this country to act contrary to their beliefs and is an infringement of their right to religious liberty. One cannot just argue "that civil divorce is evil and one cannot have a right to what is evil" and say that is the end of the matter. The proponents of divorce do not believe the basic premise that divorce is evil.

Undoubtedly fundamental rights must be protected by effective procedural measures. Judicial review of legislation is essential in this regard and must be retained more especially in a united Ireland.

A Constitution for a United Ireland

Recent events such as the burials which were taking place of the thirteen civilians who were murdered in Derry on Sunday, January 30th, have influenced this part of the paper. That Sunday was another black day in Anglo-Irish relations and one may well ask the question: Will the English ever learn? Our past has demonstrated quite clearly that direct rule of all Ireland or part of it was doomed to failure and that the artificial situation created in part of Ulster has been a disaster. The Government of Ireland Act 1920—the so-called constitution of Northern Ireland—was admirably described by the late Mr. Justice Gavan-Duffy in *Cogan v Minister for Finance* (1941) I.R., as "A statutory abortion of December 1920 sardonically entitled 'An Act to provide for the better government of Ireland'." The only logical final step remaining, and one which the English have never tried, is to clear out of Ireland completely. It would be well-nigh impossible to devise any solution to the problems in the Six Counties but the type of Constitution which ought to be adopted by a united Ireland deserves consideration. I advocate a Federal Constitution with a Central Government and regional parliaments for the four provinces. I emphasise the necessity for regional parliaments because of the special problems which exist in each of the provinces and because it would seem that if these problems are to be solved by anyone the best people to try to solve them are the people of the region with the aid and encouragement of the Central Government. An example of the problem is "the West"—a solution to which is most likely to be found by the people of that region with the co-operation of the central authority. These regional parliaments should consist of a single house. In a country of our size it would not be realistic to have two houses for each region. The Central Parliament should, however, contain two houses—a Dáil and a Senate. Undoubtedly a second house is valuable for delaying hasty legislation. The Dáil should be the more powerful assembly but the Senate of a united Ireland should have greater powers than our Senate, which, as it exists, is a sham and ought to be either revised or abolished. It should, as has been suggested, have a delaying power of at least a year, sit for the same length of time as the Dáil and have greater powers of amendment. A united Ireland Dáil I would envisage as consisting of 200 deputies elected on a basis of proportional representation for a maximum of four years. To be eligible for election to the Dáil one should have attained eighteen years and in the case of the Senate thirty years. A united Ireland Senate should consist of 90 senators elected for a period of six years with a third retiring every two years. Of these 90—there should be two elected from each county on a proportional representation basis, six elected from the universities and twenty vocational seats, of whom at least ten ought to be elected direct from the registered nominating bodies.

There would be no need to draft a Bill of Rights for this new Constitution—what I suggested earlier in relation to the 1937 Constitution would be sufficient. The Supreme Court and High Court could retain their present roles but I would envisage the establishment of Regional Courts in the provinces to supersede the functions of the present County or Magistrates Courts and the Circuit and District Courts.

The other large problem facing the Irish people at the moment is the possible advent of this country into the European Communities. While I am strongly opposed to E.E.C. entry, this paper is concerned with the Constitution and the E.E.C. and not the merits or demerits of entry.

Implications of entering the European Community

The Third Amendment to the Constitution Bill 1971 which was introduced to enable Ireland to join the three European Communities although short is open to criticism. It now permits the adoption of any law or

measure "necessitated by membership" and gives any Community measure the force of law irrespective of our Constitution. The Dáil had the good sense to amend the original Bill by changing the words "consequent on" to "necessitated by". Mr. John Temple Lang, had suggested such an alteration when writing in the *Irish Times* last December. I expressed the hope then that the phrase "consequent on membership" was the result of shoddy draftmanship and not a deliberate policy. There are still one or two matters which have not been dealt with. As has been pointed out the Fundamental Rights articles are not excluded and I believe like the Editor that they should be. The Court of Justice of the Communities in December 1970 emphasised that "it is necessary to consider whether there has been a failure to provide under Community law a guarantee that corresponds [to fundamental rights under national consttutions] for respect of fundamental rights belongs to the general legal principles whose observance the Courts of Justice must ensure."

There is also considerable doubt as to the desirability of an omnibus clause being added to the Constitution. There are several valid reasons why the changes needed to the Constitution for example by altering the statement that the Supreme Court is the Final Court of Appeal, should be set out clearly, and not covered by an omnibus clause.

Minister opposed to change in Constitution

When the Minister for Justice, **Mr. O'Malley,** rose to propose a vote of thanks to the auditor, a group of people at the back of the hall began to shout "Sieg Heil," "Release the Republican prisoners," and "Suspend the Offences against the State Act". After Gardai spoke to the hecklers the interruptions diminished. Some had to be ejected.

Mr. O'Malley said before beginning his address that he wanted to take the opportunity to express his regret and horror at the attempt earlier in the evening, in Armagh, to murder Mr. John Taylor. "I abhor and deplore activity of that kind and I express the hope that Mr. Taylor will make a speedy and full recovery."

Constitution will stay

Our present Constitution was described by Mr. O'Malley as an admirable fundamental law—even if a few of its provisions might legitimately be the subject of argument. He told the meeting that he wished to scotch a notion that appeared to be entertained by quite a number of people—namely, that Bunreacht na hEireann was tottering to its grave and that a brand new Constitution was lurking in the wings ready to make a dramatic entrance. Nothing could be further from the truth, he said, adding that he did not accept that the Constitution was sectarian and that he was certain it did not operate as such.

Freedom distinguished from licence

Declaring that he believed some decisions on the part of our Courts had been too restrictive in their interpretation of the Constitution, Mr. O'Malley said that he accepted that insofar as this tendency was motivated by concern for the freedom of the individual it had its merits. However, individual freedom must conform to the freedom of the community and freedom, like property, had its duties no less than its rights.

"Freedom must be defended but freedom must not be confused with licence and should be so restricted in the general interest that it does not lead to anarchy."

Asking if it was not fair to suggest that the criminal law must take full account of the need to protect society as well as the need to protect the individual, the Minister commented that democracy and the protection of people's liberties and homes had been slowly and painfully won in this country.

"All our gains would disappear very rapidly if we were to allow those who represent nobody except themselves to take over the Government of this country and to terrify the people of this country into submission to distorted notions of freedom, liberty and human rights."

He said it was salutary to reflect that most of those who shout loudest about certain actions being anti-democratic were invariably those who, if they came to power, would quickly put an end to democracy.

Present guarantees on divorce and religion should stay

The Minister said that if the Constitution was being put before the people for the first time now, some of its provisions might not find a place in it—at any rate not in their present form. The provisions, which attracted most criticism in recent times, were those relating to divorce and to religion. It was mainly on the basis of those particular provisions that the Constitution had been castigated as being sectarian.

Article 44 did not provide a basis for discriminating in favour of any particular religion nor was it in any way offensive to persons who had no religion. While the prohibition on divorce might accord with the official teaching of the Catholic Church, it also reflected the thinking of the vast majority in the 1930s and he had no doubt it now commanded very strong support in the thirty-two counties, not because it was the teaching of the Catholic Church but because very many people considered that social stability suffered where divorce was permitted.

Divorce was not introduced in the North until 1939 and it was still far less easy to obtain it there than it was in England. The general experience in other countries was that once divorce was introduced, any restrictions on the right thereto which originally obtained were gradually whittled away until divorce by mutual consent was finally permitted.

The Minister suggested that if it were proposed to remove or amend the prohibition on divorce there would be strong opposition from people whose interests were in no sense sectarian. Articles 41 and 44 might have to be changed but it would not be easy to frame an acceptable law on divorce. However, a prohibition on divorce for one's own citizens did not mean that foreign divorces could not be recognised, even under existing law.

No real defects in Constitution

Mr. O'Malley added that the academic exercises undertaken to dissect the Constitution and expose its defects had produced little more than a limited list of possible abuses that could arise if both the Legislature and the Judiciary at one and the same time were perverse. These alleged defects were of no great practical consequence but they would naturally come up for consideration if the Constitution was being reviewed at all.

Distorted notion of freedom

In a reference to democracy, the Minister said that all our gains would disappear very rapidly if we were to allow those who represented nobody but themselves to take over the Government of this country and to terrify the people of this country into submission to distorted notions of freedom, liberty and human rights.

At this stage the group of people at the back of the hall began to chant: "No military courts." They were

approached by Gardai, there was a brief scuffle and a number of them were removed from the hall.

Mr. Justice Kenny drew attention to the fact that the British and French traditions had clashed in Canada, and that the solution had been a liberal one; it was to be hoped that the problem of Northern Ireland could be resolved in the same way. He disagreed with the Auditor that a constant revision of the Constitution was necessary; the 1922 Constitution had been too often amended.

Dr. Garrett Fitzgerald, T.D., said that the Judiciary was a powerful protection against the Executive, and that it would not be possible to define all human rights in the Constitution. It was unnecessary to make frequent revisions of the Constitution. The O'Callaghan decision on bail had shown that it was difficult to achieve a balance in the law. In order to achieve a useful measure of federation in the North it would be necessary to grant much more devolution there, to satisfy the majority. There was no realisation as yet in Ireland, North or South, that it was essential to change our society into a pluralist one, there were too many groups on both sides who did not want any change.

Mr. John Temple Lang said that it was unnecessary to turn the country into a theocratic banana republic, and that a statesmanlike gesture to the Unionists was essential. It will be necessaryt o emphasise that in future Ireland must be a non-denominational State. It was also necessary to rid ourselves of laws that are deemed sectarian, as for instance in matters of health and of education. It was a catastrophic blunder of the Government to reject Dr. Browne's Bill liberalising the sale under medical prescription of birth-control pills. It was a real problem for Irish Protestants to obtain facilities permitted to them, but this should be resolved in a Federal Constitution. There would be no more effective gesture to the Unionists than that a referendum should be held on the suppression of the so-called "sectarian" clauses".

The **President, Mr. O'Donovan,** having thanked the speakers for an interesting and stimulating debate, then closed the meeting.

Society's Standard Conditions on Sale and Requisitions on Title

Members raised a query on requisition No. 50 in the Society's standard form which is as follows:

50. Has there been in relation to the property any development within the meaning of the Local Government (Planning and Development) Act 1963 on or after 1st October 1964? If so, produce the permission necessary under the Act and confirm that all the terms thereof and the conditions attached thereto have been properly and fully complied with.

Members acted for a purchaser using the Society's standard form of contract and requisitions. The reply to requisition 50 was "herewith photocopy grant of planning permission". The planning permission revealed four conditions and members wrote to the County Council seeking confirmation that they had been complied with. The County Council replied that the builder and first owner of the property had not complied with one of the conditions. When members took the matter up with the solicitors for the vendors they received the following reply:

> "When our client sold his property the contract for sale was not conditional on compliance with conditions set out in the Planning approval".

The matter was submitted for his opinion to learned Counsel who drafted the Society's standard forms and the following is a copy of his comment.

"If, in answer to Requisition 50, it appears that either no Planning Permission was obtained, or there is a Condition attached to the Permission which has not been complied with, the Purchaser has his remedy.

"In the first case the Vendor has not shown a good title to the property, as the house can be ordered to be pulled down, and the Purchaser is entitled at law to rescind, if Permission is not obtained.

"In the second case, if the existence of the Condition was not disclosed to the Purchaser or his Solicitor before the Contract was signed, the Purchaser is entitled, if Vendor does not comply with it, to rescind the sale under Condition 16(c) of the Society's Conditions of Sale.

"If the Purchaser, before he signs, knows either that no Permission has been obtained, or that there is a Condition which remains uncomplied with, it is up to him or his Solicitor to insert the appropriate Special Condition for his protection.

"As to the taking over of roads, etc. the Purchaser can quite easily make the necessary inquiries himself, and in many cases it will be quite obvious that they have not been taken over. No Vendor could safely take on the obligation of compelling the Local Authority to take over the roads.

"It must be remembered that, primarily, Conditions of Sale are for the protection of the Vendor, not of the Purchaser."

Special Powers Act challenge succeeds in N.I. High Court

DECISION AFFECTS AUTHORITY OF TROOPS

A challenge to the British Army's authority under part of the Stormont Special Powers Act was upheld by Northern Ireland's Lord Chief Justice, Sir Robert Lowry, and two other High Court Judges. The Crown is to appeal to the House of Lords against the decision announced at a special sitting of the High Court in Belfast when the three judges ordered convictions to be quashed against five men, including two M.P.s.

The decision follows court proceeding stretching back to last August involving the M.P.s John Hume and Ivan Cooper, and Michael Canavan, Hugh Logue and William Gallagher. They were fined £20 each at Derry Magistrates' Court last September after they " remained in an assembly of three or more persons, after the persons constituting that assembly had been ordered to disperse by a commissioned officer of H.M. Forces then on duty, contrary to Regulation 38 (1) of the regulations under the Civil Authorities (Special Powers Act) 1922-43."

Mr. James McSparran, Q.C., appealed on the following grounds:

1. That having regard to Section 4 (1) (3) of the Government of Ireland Act, 1920 (hereinafter referred to as " the 1920 Act ") Regulation 38 (1) in purporting to confer the powers which it does on " any commissioned officer of Her Majesty's forces on duty " and on " any member of . . . Her Majesty's forces on duty acting on his behalf," is outside the competence of the Northern Ireland Parliament and of the Minister who purported to make the regulations.

2. That Regulation 38 (1) does not conform to the powers of the Northern Ireland Parliament or Executive under the 1920 Act to make laws for the peace, order and good government of Northern Ireland or to the power of the Minister of Home Affairs under Section 1(3) of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 (hereinafter referred to as " the Secial Powers Act ") to make regulations for the preservation of the peace and the maintenance of order, because it is not conclusive to peace, order or good government or in particular to the preservation of the peace and the maintenance of order and because it is excessively far-reaching and oppressive."

Convictions Bad on their Face

In the course of his judgment yesterday, Sir Robert Lowry said: " If the first of these submissions is sound, it follows that Regulation 38 (1) is *ultra vires*, at least in so far as it contains a reference to officers and members of Her Majesty's forces on duty, and that each conviction is bad on its face and ought to be brought up for the purpose of being quashed. The effect of the second submission depends on the length to which it can be carried as I shall later indicate. The parties agree that the validity of regulations made under the Minister must be tested not only by looking at the statutory provision (in this case Section 1 (3) of the Special Powers Act), conferring power to make the regulations but also by resorting to the powers and limitations contained in Section 4 (1) of the 1920 Act.

" Regulation 38 was first introduced by means of S.R. and O. (Northern Ireland) 1966, No. 173.

New Reguation of 1970 replacing that of 1966

" A new regulation was substituted by S.R. and O. (Northern Ireland) 1970, No. 214:

" 38.—(1) Where any member of the Royal Ulster Constabulary not below the rank of inspector or any commissioned officer of Her Majesty's forces on duty suspects that any assembly of three or more persons may lead to a breach of the peace or serious public disorder or may make undue demands upon the police force or upon Her Majesty's forces, he, or any member of the Royal Ulster Constabulary or Her Majesty's forces on duty acting on his behalf, may order the persons constituting the assembly to disperse forthwith and any person who thereafter joins or remains in the assembly or otherwise fails to comply with such order shall be guilty of an offence against these regulations.

" (2) Without prejudice to Section 20 (1) of the Interpretation Act (Northern Ireland) 1964, nothing in this regulation shall, derogate from the operation of any statutory provision or rule of law whereby any conduct of a person is made an offence".

The Government of Ireland Act 1920

He added: " The statutory provision relevant to the applicants' primary argument is Section 4 (1) of the 1920 Act which, as far as material, provides:

" 4 (1) Subject to the provisions of this Act . . . the Parliament of Northern Ireland shall . . . have power to make laws for the peace, order and good government of . . . Northern Ireland with the following limitations, namely, that they shall not have power to make laws except in respect of matters exclusively relating to the portion of Ireland within their jurisdiction, or some part thereof, and (without prejudice to that general limitation) that they shall not have power to make laws in respect of the following matters in particular, namely:

" (3) The Navy, the Army, the Air Force, the Territorial Army, or any other naval, military or air force, or the defence of the realm, or any other naval, military or air farce matter (including any pensions and allowances payable to persons who have been members of or in respect of service in such force or their widows or dependants, and provision for the training, education, employment and assistance for the reinstatement in civil life or persons who have ceased to be members of any such force):

" Any law made in contravention of the limitations imposed by this section shall, so far as it contravenes these limitations, be void".

Appellants' Claim succeeds, because Regulations overrule 1920 Act

Sir Robert Lowry went on: " Mr. McSparran submits that Regulation 38 (1), because of its specific conferment powers on 'any commissioned officer' and 'any members of Her Majesty's forces on duty, is a law made in contravention of the limitations imposed by Section 4 and is therefore (without prejudice to his second point) void so far as it contravenes those limitations".

In summarising his decisions, Sir Robert said:

" (1) The words 'any commissioned officer of Her Majesty's forces on duty' and 'any member of . . . Her Majesty's forces on duty' are descriptive of subject matter within the forbidden field comprised in Section 4 (1)(3) of the 1920 Government of Ireland Act.

" (2) Regulation 38(1) of the Special Powers Act is a law 'in respect of ' that subject matter; (3) The words 'in respect of ' have the same general meaning throughout Section 4(1) and are nowhere confined to the imposition of burdens, controls or obligations:

"(4) The intention of the legislature is to be derived from the words of Section 4(1); (5) The reference to the forbidden subject matter is not a matter of incidental effect as defined by Gallagher v. Lynn, but is an example of the achievement of a lawful object by invalid methods; and (6) Even though Regulation 38(1) is in respect of the preservation of peace and the maintenance of order, it is also, by virtue of the powers conferred on officers and members of Her Majesty's forces on duty, in respect of the subject matter included in Paragraph (3) of Section 4(1) and to that extent contravenes the limitations thereby imposed".

Convictions quashed, and leave granted to appeol to the House of Lords

He added: " Mr. McSparran's second point for the applicants was that Regulation 38(1) is not conducive to peace, order and good government or in particular to the pereservation of the peace and the maintenance of order and is excessively far-reaching and oppressive. It is unnecessary, having regard to the conclusion I have already expressed, to analyse fully the arguments on this point and I will refrain from doing so".

Finally Sir Robert said: " Lest there be any misunderstanding it should be pointed out that the conclusion reached in these proceedings does not affect whatever powers members of Her Majesty's forces have at common law or by virtue of any valid statutory provisions or regulations which may exist or be enacted or made".

Sir Robert said the appeal was therefore upheld and and the conviction on each of the five quashed. For the Crown. Mr. R. J. Carswell asked leave to appeal on the grounds that the House of Lords should examine the judgment as a matter of public importance. Mr. McSparran agreed that the matter was of urgent public importance and after consultation and a brief adjournment an agreed wording for the certificate was arrived at. It was to ask the House of Lords to decide whether Regulation 38(1) of the Special Powers Act is void as contravening the limits imposed by the Government of Irealnd Act, 1920. Section 4(1) in so far as it provides that any commissioned officer on duty or any member of Her Majestys' forces acting on his behalf may order the persons in the assembly to disperse forthwith".

Sir Robert was sitting with Mr. Justice Gibson and Mr. Justice O'Donnell. As well as Mr. McSparran, Mr. Charles Hill appeared for the five appellants.

Three-in-one Accounting Systems for Solicitors

Irish solicitors have been much slower than their English counterparts to appreciate the advantages of the three-in-one system of accounting. Many Irish solicitors may not appreciate that such systems do comply with the Solicitors Accounts Regulations at present in force. In addition the systems now available designed specially for solicitors incorporate the benefits of research and experience in England where the systems have been widely used for a number of years.

Time wasting

The two important advantages of the three-in-one system are its ease of operation and the saving of time for both the solicitor and the cashier which its introduction can effect. From these other advantages spring.

The conventional method of book-keeping usually consists of all or a number of the following books of prime entry, clients' account cash book office account cash book, petty cash book, transfer journal and bills book. Entries are made to the appropriate book of prime entry and are subsequently posted to the client ledger. From the time to time the clients' ledger accounts will require to be balanced. The three-in-one system is so called because these three operations—original entry, ledger posting, balancing—are reduced virtually to a single operation.

Three-in-one method

The actual operation of a three-in-one system is as follows. An entry is made on, for example, the clients' bank account sheet. This sheet is placed in position so that it registers with the appropriate client's ledger card both vertically and horizontally. One entry is then made on the client's bank account sheet and by means of carbon this registers on the client's ledger card. The effect of this is to reduce the amount of writing by 50 per cent, a worthwhile saving in a busy office. By the same token the possibility of a copying error is eliminated. The client's ledger card has a 'Balance Column' in addition to the DR and CR columns in both client's account and office account sections. All the sheets of the books of prime entry have an "Old Balance" column. An entry thus entails listing the transaction (DR to CR), updating the balance and bringing down the old balance figure to the column provided. To prove the accuracy of the entries made it is then necessary only to add the four columns of figures on any of the books of prime entry that is DR, CR, Balance, Old Balance and to apply the simple formula that the old balance plus receipts minus payments must be equal to the balance. To this extent the three-in-one system may be said to be self-balancing. A proven balance is available on each client account at any time and each client account is fully up to date. The availability of a proven balance in each client account is of great assistance to an auditor who can easily extract the information which allows him to furnish the certificate required under the Solicitors Accounts Regulations to the effect that the total of the balances in the clients account of the clients ledger agrees with the amount in the client account at the bank.

Varying equipment

The great advantage of the system also is its adaptability. There are systems suitable for the smallest and the largest of offices and the smaller systems are capable of developing to keep pace with the development of the practice. A variety of equipment is available to meet individual needs. In some systems registration of prime entry and ledger sheet is achieved by the use of a peg board. The three-in-one system utilises a collator which is a flat writing surface with a row of studs and which is placed under the sheets to be written together while the sheets remain secure in a binder thus eliminating the possibility of the forms being soiled or mislaid.

Advantages

Some of the advantages of the system have already been referred to. Obviously the amount of writing and the risk of error by transcription are considerably reduced and balancing is greatly simplified with a consequent saving in time for the cashier and the auditor. The ledger is always posted up to date and the latest position with regard to a client's account can be ascertained at a glance. The systems are cheap, compact and adaptable. Finally the three-in-one system is simple to operate and neither you nor your cashier will have any difficulty in adapting to it.

Problems of Late Farm Inheritance

Views of solicitors on the problems of late farm inheritance are urgently sought by a working party assigned by the President, Mr. James W. O'Donovan, to prepare a submission on the subject to a Study Group set up by Macra na Feirme. Macra has invited the Law Society to advise specifically on the legal aspects of the problem, but the broad inquiry also covers economic and social aspects.

The overall purpose of the project is to provide information for the survey which has been commissioned in conjunction with An Foras Taluntais to indicate possible areas where new Government policy and educational programmes might be initiated.

Macra na Feirme has received submissions over the past two years from people with special experience relevant to the problem.

The current research programme was drawn up by the Agricultural Institute at the instigation of Macra na Feirme; Allied Irish Banks are providing £5,000 to sponsor the project. The Late Inheritance Study Group hopes to submit its report to the Government by September of this year.

To assist early completion of the Law Society's submission on the subject members are asked to send their comments as early as possible, but not later than 15th April 1972.

Wide Implications of Northern Ireland Act 1972

by PROFESSOR CLAIRE PALLEY, Dean of the Faculty of Law, Queen's University, Belfast

With the implications of the emergency legislation passed by the Westminster Commons and Lords yesterday likely to be wide-ranging in relation to the behaviour of British troops in the North, legal experts in Northern Ireland are already expressing concern about the powers now given to the Stormont Government to legislate with respect ot the British armed forces.

Up to now such powers, under the Government of Ireland Act—which set up the State and Parliaments of the Free State and of Northern Ireland—have been the strict preserve of British Parliaments. In the following interview with our Northern editor, Henry Kelly, Dr. Claire Palley, Professor of Public Law and Dean of the Faculty of Law at Queen's University, Belfast, answers some important questions and discusses the implications.

Dr. Palley, what precisely has been done by the new Northern Ireland Act, 1972?

Basically the British Army operating in Northern Ireland has been given full powers which it was thought to have under regulations of the Special Powers Act. That is, powers to deal with disorder and so on. But the Act goes much further than that, and in my opinion much further than it needed to. It doesn't merely give the necessary powers to the Army, it is in fact a major amendment to the Government of Ireland Act, 1920, in a very definite and important way.

What do you mean exactly?

What has happened is that the Westminster Parliament has passed a law empowering the Government of Northern Ireland at Stormont to pass laws conferring powers, authorities, privileges and indemnity on the armed forces. This is not what was originally intended or indeed legislated for in the 1920 Act. It should be made clear that Stormont will have no authority to *order* or *control* the Army but it does mean that Stormont is now allowed to give the Army additional powers which they don't have at common law. Not only that, but it can now pass laws at Stormont to protect the British Army from litigation in the courts as a consequence of their activity. The Government of Northern Ireland can now also pass laws, if it so desires, to allow the Army to use interrogation techniques for which the Westminster Parliament would never legislate.

Are there other implications?

The Northern Ireland Act now permits the Parliament of Northern Ireland and the Northern Ireland Minister of Home Affairs to pass such measures in a far less public forum, without an effective opposition, and without involving Parliament at Westminster in the odium attaching to the passage of such measures. In effect the Northern Ireland Act means that everything the Army did under the regulations of the Special Powers Act which the Courts here found wanting has now been granted retrospective validity. It has not of course altered the position of what troops may have done outside the regulations. But it does mean that Parliament at Stormont can now protect the Army here against the consequences of any illegalities it has committed in Northern Ireland.

How can this be done?

Simply by passing an Indemnity Act indemnifying anything or everything that has been done by soldiers and effectively stopping any action against them in the Courts. Such an Act would mean that a soldier could simply say that such and such an action of his was taken in good faith or for the public safety or in the public interest, depending on the terms of the Indemnity Act, and this would be virtually impossible to use as a basis for action in the courts.

Do you accept that some legislation was necessary to clear up the loophole found in the Special Powers Act by the Lord Chief Justice and his colleagues and if this is so then could Westminster have done anything else?

Of course I accept the first point. As to the second, it raises the whole fundamental question of who legislates for the armed forces. Now the Government of Ireland Act quite clearly makes legislation for the armed forces forbidden ground to Stormont and so the legislation should have been Westminster legislation, giving the Special Powers Act regulations retrospective validity, giving them current validity and providing that they would be valid in the future. Such legislation could have been subject to yearly or half-yearly review at Westminster. But as it is, as I have pointed out, this has been done in part but much more has been added : and what has been added is to give Stormont powers to legislate for the armed forces and that this is a major departure from the Government of Ireland Act, 1920.

Are you in effect saying that the High Court of Northern Ireland upheld and, as it were, defended the constitution of Northern Ireland—the 1920 Act—and that this was altered by Westminster?

That is the position. There was a strong and, as it proved, successful challenge to the British Government to exercise the powers it has under the Government of Ireland Act, 1920. When the challenge was upheld by our highest legal authority it was simply reversed by the Westminster Parliament.

Apart from the frightening possibilities of abuse of this new power by Stormont, are there deeper legal implications in your opinion for the law in Northern Ireland? Even for the wider community as a whole?

Well it really demonstrates that the British Government has no real respect for the High Court of Northern Ireland. It is not just a simple question that they have protected the Army no more than the original case was brought on appeal simply to attack the Army. It means that a British Parliament has altered the decision of the High Court on a point of interpretation of a Westminister Act. It is a tremendous reflection on the Courts here who, in my opinion, were absolutely correct and quite proper in their judgment.

Any other implications? Say with respect to recent decisions which have clearly gone against the military and indicted their actions?

It will mean, depending on the terms of the Indemnity Act, that, for example, the case of Moore, the former detainee who was awarded the maximum damages by Judge Conaghan at Lurgan last week, could, if the Government here so wished, be appealed and under the terms of the new Act, with everything retrospectively "legalised", he would perhaps lose his case. Again of course it means that there is no point in anyone trying, on the strength of our High Court decision, to bring any action against troops for, say, arrest, for detention or internment, for the treatment meted out which the Compton Report verified, for anything, in other words, that soldiers have done that might have been dubious under the law and open to challenge.

To your knowledge is there such an Indemnity Act in preparation?

As far as I know there has been one on the stocks for several months. Ever since the introduction of internment and the possibility raised by it that some time—normally this is used when disturbances have ended—an indemnity process might be needed. But if the indemnity process were introduced now it could have the effect of giving a freer hand than would be under any circumstances desirable, to soldiers. The whole thing is disturbing for many reasons.

Finally, Dr. Palley, do you think this has affected in any way the current speculation and demands about the transfer of security control to Westminster?

It would appear to have made it highly unlikely that there will be any such transfer. After all you don't pass a law one week and then take it off the statute books the next. The Westminster Government had a perfect opportunity in this situation to make clear where the power and control over security lies but in fact by the Northern Ireland Act, 1972, they have given Stormont more power. It would be unlikely that they would do this today and take away all security power tomorrow.

All the objectives of protecting and empowering the Army could have been achieved by an act validating the existing regulations under the Civil Authorities (Special Powers) Act and action thereunder. In addition the regulations could have been validated for a future limited period of time, say for one year. This time period would then have necessitated proper consideration by Parliament at Westminster of the question as to which Parliament should control, co-ordinate and authorise security and law and order powers. Now what has been substituted is a major constitutional amendment in the form of the Northern Ireland Act 1972 and a projected Parliamentary debate on security powers.

The Irish Times (25th February 1972)

Note—This article was written before the British Government introduced the Northern Ireland (Consequential Provisions) Bill 1972 on March 28th.

Should Builders' and Developers' Solicitors act for Purchasers?

A member wrote to the Society referring to the situation in Dublin and other parts of the country whereby builders and developers of housing estates recommended to a prospective purchaser of a new house that they should use the builders' or developers' solicitors who would act for them at a fee well below the scale under the Solicitors Remuneration General Orders. Member says that he knows from his personal knowledge and has been informed by a number of colleagues that this practice is widespread and that solicitors for builders and developers accept these prospective purchasers as their clients and charge fees which are a great deal less than the statutory scale fee. In the present example he cites a case in which a client asked him to state his charge for the purchase of a house for £6,000. He informed the client of the fee recommended in the March/April edition of the Society's *Gazette*, £90 for property without a mortgage and £120 for a property with a mortgage. The client said that the transaction would be done by the builder's solicitor for £50 and that the builder had asked him to go to his own solicitor which he subsequently did. Member suggests that the Council should make a regulation forbidding solicitors for builders and developers from acting for prospective purchasers from their own clients.

The Council referred to the Solicitors (Professional Practice Conduct and Discipline) (Amendment) Regulations 1971 (S.I. No. 344 of 1971) made by the Council on 16th December 1971 substituting a new paragraph five of the principal regulations as follows.

"(5) A solicitor shall not obtain or attempt to obtain professional business by directly or indirectly without reasonable justification inviting instructions for such business or doing or permitting to be done without reasonable justification anything which by its manner, frequency or otherwise advertises his practice as a solicitor or doing or permitting to be done anything which may reasonably be regarded as touting and it shall be the duty of a solicitor to make reasonable enquiry before accepting instructions for the purpose of ascertaining whether the acceptance of such instructions would involve a breach of this regulation."

In the opinion of the Council the practice indicated by member would be in contravention of this regulation and it was decided that this matter should be brought to the attention of members of the Society.

Britain "in breach of Anglo-Irish Treaty of 1921"

The Northern Ireland Act, 1972, recently passed at Westminster, is a breach of the Anglo-Irish Treaty, 1921, and on the basis of this, the Irish Government can bring the British Government before the World Court for an infringement of international law.

This view was expressed last night by Mr. Kevin Boyle, lecturer in law, at Queens University, and an executive member of the Northern Ireland Civil Rights Association.

Mr. Boyle said that the traditional Unionist contention that the South had no right to interfere in the internal affairs of Northern Ireland was invalid, as the 1921 Treaty explicitly gave it this right and he said that legally the Dublin Government must be consulted now, if any interference with the powers of Stormont is contemplated by Westminster.

This analysis of the constitutional position has been confirmed in the last few days by international law experts at Queen's, Cambridge and Oxford Universities.

The Northern Ireland Act 1972

Mr. Boyle, outlining his argument, told us in an exclusive interview :

"The Northern Ireland Act, 1972, which last week was rushed through the Westminster Parliament, may open up a new sore with the Republic of Ireland. It is my contention that the Act is in breach of an international treaty with the Republic, whose remedy now lies in diplomatic protest or in international judicial proceedings.

"The Northern Ireland Act, 1972, allows the Northern Ireland Parliament to confer 'powers, authorities, privileges or immunities' on the armed forces of the United Kingdom.

"Prior to this Act, any legislation with respect to the Army was outside the competence of the Northern Ireland Parliament and reserved by the Constitution of Northern Ireland—the Government of Ireland Act, 1920—to Westminster.

"The Northern Ireland Act was passed following the decision of the High Court of Northern Ireland in the case of Queen and Hume, declaring that the use by the Army of powers under the Northern Ireland legislation, the Secial Powers Act, was illegal.

"By passing this new Act, enhancing the powers of the Northern Ireland Government and Parliament, the United Kingdom Government is in clear breach of the Articles of Agreement between Great Britain and Ireland, dated 6th December 1921, as amended by Agreements in 1925 and 1938.

"The 1921 Treaty followed on a period of armed conflict in Southern Ireland, when Sinn Fein rejected the settlement for Ireland proposed in the Government of Ireland Act, 1920. This conflict was resolved by a truce followed by the famous negotiations conducted for the British by Lloyd George and for the Irish by Arthur Griffith and Michael Collins.

"The negotiations led to the Articles of Agreement signed by both sides on 6th December 1921 and embodied in the Irish Free State (Agreement) Act, 1922, by the British Parliament. This was the British point of view.

Government of Ireland Act 1920 not to be altered

"Under the Treaty, the Irish Free State was constituted as a Dominion, and by Article 12, Northern Ireland, which by then had been functioning under its own Parliament for some months was given a choice in relation to the new entity. It might either join the Free State or opt out of any relation with it.

"If it chose the latter course (as it was to do), then Article 12 provided, inter alia, that 'the provisions of the Government of Ireland Act, 1920 (including those relating to the Council of Ireland), shall, so far as they relate to Northern Ireland, continue to be of full force and effect.'

"The crucial importance of Article 12 at the time was explained in a Cabinet memorandum of March 1922. 'It was clearly agreed with Mr. Griffith that, if Northern Ireland declined to enter the Irish Free State, her position must remain as created by the Government of Ireland Act, 1920, without alterations.

" 'Her powers, privileges and revenues, were to be no greater and no less than they would have been under that Act.' The understanding was explicit, for the Government of Northern Ireland had formally demanded in their letter of November 11th an equality of status with the Irish Free State and 'the transfer or reserved services.'

"There was no secrecy in the understanding, which was notified to the Government of Northern Ireland in the letter of December 5th, under cover of which the Treaty was conveyed to Sir James Craig. 'You will observe,' wrote the Prime Minister in that letter, 'that there are two alternatives between which the Government of Northern Ireland is invited to choose.

" 'Under the first, retaining all her existing powers, she will enter the Irish Free State with such additional guarantees as may be arranged in conference. Under the second alternative, she will still retain her present powers, but in respect of all matters not already delegated to her will share the rights and obligations of Great Britain.'

"The reserve powers are thus to be administered by the British Government, in the Parliament of which Northern Ireland continues to be represented. Of these reserve powers, the most important are imperial and foreign relations and military control."

That was Mr. Boyle's argument.

Memorandum prepared by Jones and Curtis

The memorandum referred to above was prepared for the British Cabinet by its two most important advisers on Irish affairs, Lionel Curtis and Thomas Jones. Both were concerned at the constitutional confusion in Ulster as to who was carrying out military functions, either the Northern Ireland Government, through its B Specials, or the British Government, through the Army. In advising Lloyd George of the memorandum, Jones said "It was of the essence of the bargain you made with the South that Northern Ireland was to remain part of the United Kingdom with a provisional government, but with powers no greater and no less than under the 1920 Act."

The Treaty was amended in 1925, when, by agree-

ment, the British Government and the Irish Free State transferred certain powers connected with the defunct Council of Ireland to the Government and Parliament of Northern Ireland. The Agreement of 1921, including Article 12, remains in force and is included in the Index to British Treaties (HMSO).

Has the 1921 Agreement the status of an international treaty? This question has caused controversy before.

Anglo-Irish Treaty registered with League of Nations

In 1923 the Irish Government registered the Treaty of 1921 with the League of Nations. The U.K. at once protested, arguing that the Agreement was not registerable as an international treaty.

The Irish Government maintained it was and in the opinion of some international lawyers, the International Court would have preferred the arguments of the Irish.

Despite its initial protest, the British Government's view of the Treaty had clearly changed by the following decade. During debates on moves by the Free State to abandon the Oath of Allegiance contained in the Treaty, the binding and international character of the 1921 Agreement was emphasised.

In May 1933, in the House of Lords, Viscount Hailsham, father of the present British Lord Chancellor, described the Treaty as a bargain between his country and the Irish Free State. Neither country party to the bargain can, by unilateral action, alter the terms of the bargain and it, therefore, follows that even if one party or the other purports to alter the bargain, that attempt has no legal or no international effect at all.

The clearest recognition that the Treaty had international effect is contained in Viscount Hailsham's answer to his own query: "But what is the effect in international law on the Treaty which is the arrangement, the bargain made between the Irish Free State and this country?

"I have no hesitation in saying that a Treaty between two nations—I do not care what exact descriptions you give them, whether dominions, foreign nations, subordinate states, or whatever they may be—an agreement between two different entities of that character cannot be altered without the consent of both and any attempt by one to make an alteration is inoperative, unless agreed by the other."

Irish Government should protest

What steps might the Irish Government now take, forty years later, in the light of the breach of the Treaty by Britain? Clearly it has cause for protest. At a time when the Stormont Parliament is being boycotted by the minority's representatives, who are calling for a suspension, the U.K. Government has chosen to strengthen that Parliament without consultation or agreement with the Irish Government.

By virtue of the Northern Ireland Act, 1972, the British Government and Parliament has passed over to Stormont, power relating to the military, which the original British participants in the Treaty flatly refused to the Unionists, and rightly considered as their most fundamental reserved matters.

The Irish Republic is clearly free to protest through diplomatic channels at the action of the British Government. They may also initiate proceedings in the international court at The Hague.

However, since the Irish Government has not accepted the compulsory jurisdiction of the World Court, the U.K. could stop proceedings.

If the U.K. did not object to the course of jurisidction, the court could proceed to interpret the Treaty and pronounce on its breach.

The Irish Government has since announced that it is bringing forward the breach of the Anglo-Irish Treaty as an additional ground to be determined by the Commission of Human Rights in Strasbourg.

Irish Press (5th March 1972)

EUROPEAN SECTION

Lawyers and European Communities

by PROFESSOR J. B. MITCHELL

Text of a Lecture given in Queen's University, Belfast, on 24th February 1971

(Reprinted by kind permission from the Northern Ireland Legal Quarterly)

PART I

(Footnotes appear at the end of each part of the lecture)

Once in my foolish youth I approved as a title of a thesis "The sublime—with special reference to Edmund Burke". It is not the splendour of Burke's prose, but the scope of the main theme which is in my mind at the moment. "Lawyers and the European Communities" is a theme of like dimensions, since for lawyers of all types the fact of British membership would have wide-ranging consequences. At one end of the scale, for example, the relationship between customer and nationalized industry becomes subject to new and more effective rules of competition; at the other end, regulations governing the social security benefits of migrant workers can clearly affect simple individuals. Between these extremes the range of rules which could be touched by Community law is such that it would require an encyclopaedist to treat them all, and he certainly could not do it within an hour. I am no encyclopaedist. Instead I want to emphasize certain fundamental characteristics of Community law, and to demonstrate their implications for national legal systems in general and our own system in particular. For lawyers will be faced by a new legal order which, if they are to serve their clients well, they will need to know and will need to be able to apply it and to blend two systems—national and Community. This is an opportunity which they should welcome, for within this new setting law assumes a much greater significance than currently it does with us. The Communities are, of necessity, highly legal structures and their law, as I have indicated affects not merely States but individuals.

Enlargement of freedom

Let me be clear. By "affects" I do not mean affect adversely, far from it. Through the corpus of law, the individual may well receive stronger protection of his interests than that which is at present available to him under his national system as it exists. Thus there arises an enlargement of his freedom. This is, however, not merely a matter of lawyers serving their clients efficiently —there is much more to it than that. The lawyer in this situation finds himself liberated and engaged in a much more rewarding task. Law and hence lawyers regain a formative role, which once was theirs but which has almost disappeared. It is tempting to cast one's eye back to the great formative periods of the common law, when either through major constitutional decisions lawyers were contributing to the essential shape of the Kingdom, or else through a whole range of decisions in commercial matters, or even in real property, they were contributing to the economic and social shape of the Kingdom. Those activities were possible in a political society which was steadily evolving, but they later declined. Internally this role has ceased to be significant—either it is said that equity is past the age of childbearing, or else, by Lord Devlin, that the common law has no longer the resilience to deal with the problems of modern government.[1] In the Communities a fresh opportunity occurs. Once again a new political society is being formed, and once again law and lawyers are essential to its formation. It has even been said that it is the lawyers who will finally make Europe if only the politicians will listen to them. This then is the challenge, but it would be absurd to assert that lawyers can accept it, or regain their place in society, unless they will both re-examine their own pre-suppositions and learn the nature and broad purposes of this new law.

Fundamental legal doctrines relative

These matters form the substance of this lecture, but before dealing with them I must make another preliminary observation. Lawyers must keep legal doctrines in perspective. By this I mean that many of their doctrines, including some which any particular society may regard as being fundamental, may indeed only be so in a relative sense. They relate to that particular society, to its history and to certain conditions within it, but do not have the character of one of the eternal verities.[2] If you change the conditions, then the rules must change. Lawyers must then, in this new setting, be prepared to ask themselves what is the object or the conditioning cause of many of the rules which they have been brought up to accept, for law is the servant of society. It is wrongly regarded when by reason of dogmatic adherence to doctrines, which lack eternal virtue, it is used as an obstacle to the evolution of accepted and acceptable societies. In saying that, of course, I am not denying that in the western world there are fundamental purposes which the law should serve. All I am saying is that there are many ways in which those purposes may be served, and further that Community law is consistent with those purposes, or else my interest in it would not be as it is. Certainly, having moved from system to system in my career, I accept that adaptation of patterns of thought may not always be easy. Without disrespect, any monkey that has learnt one set of tricks may take less easily to a change in its repertoire. Nevertheless, I

recognise the pleasure, and indeed the insights into my original system of law, which have come from struggling, with what success I know not, with this process of adaptation.

The meaning of Community Law

That said, I must emphasize the word "Community". If it is not the key it is at least a word of considerable importance in this context. Among other things, in economic terms, it means a sharing of gains and costs; the whole cannot remain healthy if it leaves one partner unduly burdened or unduly privileged. In the more specific context of this paper the emphasis matters in a number of ways. First, the law of which I am speaking is the common law of the members of a community. It is law made by them, for themselves. The idea of the imposition of rules by detached bureaucrats is unreal and untrue. The dialogue between the Commission and the Council of Ministers, from which the law emerges, is a dialogue between the whole and the parts of one entity, with the Commission representing the general interest and the dialogue extending beyond the narrow setting that I have indicated.[3] Secondly, it is Community law in the sense that it is the body of law which must be common through the Community, if the Community is to be able to work as a whole. Without distortion, it is impossible in broad terms to have different laws of competition in different parts of the unit. After all, the Restrictive Practices Court is one of the few completely United Kingdom Courts and it must be remembered how quickly and how richly non-tariff barriers burgeon once tariff walls are down, and the second crop of devils, we are assured on good authority, may be worse than the first. Thus, within a community the price of gaining advantages elsewhere is to admit others to the same chances. In a further sense, as I have indicated, Community law is thus the material out of which the Community is being built. Thirdly, it is Community law in that it partakes of the nature of the Community. The same interpenetration of part and whole is apparent in it, and the same practical and factual approach marks the law just as clearly as it marks other aspects of the Community. It is law, not built on dogma, but upon practical needs, and by doing practical things the whole structure is evolved. Fourthly, it is Community law in the sense that it is and remains a new and distinct legal order, being neither national nor international, but being purely itself—the legal order of a unity or polity to which the members belong. Their relationships with and within that polity are novel and continuously evolving. It follows therefore that the law must share these characteristicss of novelty and continuous evolution. The law becomes part of the process of integration, and it is thus that lawyers regain a creative role. Finally, this sense of community is not confined to Member States, for the law and the interpretation of it through the court reaches out in ways that are of fundamental importance to individuals.[4] These propositions I must justify and elaborate, but it seemed best at the outset to set forth some principles which both dominate the law and govern its relationship with national law.

The need for Community Law

The need for Community legislation is obvious. The techniques of international legislation in a traditional sense are deficient; they are too slow, too uncertain, and too much exposed to pressures for compromise. In this setting they are inappropriate, for absent from them is any strong consequence of the representation of the interest of the whole for which the legislation is to exist —for in this setting legislation is not (in one sense at leasts) *for* the Member States, it is *for* the Community. Equally, the attempt to manage the situation within such a Community by means of uniform laws in the traditional sense suffers from even greater defects. "Malheureusement, il y a autant de systèmes de conflits de lois qu'il ya d'Etats, si bien que le recherche d'une doctrine qui serait commune à tous est trop aleátoire pour qu'on puisse s'y adventurer" remarked the Avocat-Général, M. Gand, in one case.[5] Thus these essential characteristics of the Community endeavour are immediately apparent when one looks at Community legislation.

Regulations and Directives

Article 189 (and for the most part I am speaking of the Treaty of Rome) gives to regulations a direct effect within each Member State and is binding in its entirety. (In the background it must be remembered that regulations have emerged from the process of dialogue to which I have referred.) It would be tempting to see in these the primary legislative instrument of the Communities. In practice I doubt if this is entirely so. Directives (which are binding as to result but leave the Member States free as to method and form) may in substance be as truly legislative, even though in order to carry them out further State action, by enactment or repeal, may be needed. When they are looked at in that way, in the Treaty they are frequently related to fundamental questions of policy which are appropriate (at any rate would be so within a nation state) to primary legislation.

The point is made by looking at the first three chapters of Title III of Part Two of the Treaty. The free movement of workers was to be established by either Regulations or Directives; the right of establishment and the freedom to provide services were to be achieved through Directives.[6] One can discern or guess reasons why at the time of drafting the Treaty a particular choice was made for one form or another or options were left open. The Directives had not only the apparent virtue of impinging least upon the national legislature.[7] Their true legislative character—which the constitution of the Vth French Republic would have recognised by including their fields in those reserved to *une loi*—lies in their declaration of binding principle. Decisions must in many (but certainly not all) cases be regarded as legislative, where, for example, they may be the *causa causans* of national legislation; hence the validity of that legislation can only be judged against the content of the decision.[8] Through the latter techniques an attempt was made to preserve the place of the parts while giving due weight to the whole, and beyond that to recognize the problems of welding together six existing legal systems and a seventh emerging one. The diversity of law and the conflicts of legal order, until certain principles had been worked out,, could have produced not difficulty, but chaos. Thus it is permissible to argue that, granted the

terms in which Article 189 was drawn, when a choice had to be made in fundamental matters, the final choice had to be for a Regulation having direct effect immediately. In agriculture the initial choice was open; as it was on the industrial side, as far as competition policy was concerned. In both cases the choice was made for Regulations.[9] Because in each case the matter was fundamental, there had to be uniformity, and the appropriate instrument appeared therefore to be the Regulation. May I remind you again that within the full economic and customs Union of Great Britain not merely had there to be uniformity on restrictive practices but also of tax—what can receive immunity as a charity had to be the same in England and Scotland.[10] May I also remind you that all these decisions were taken at the time when unanimity was the only permitted rule of the Council. Thus it may fairly be said that Member States imposed those rules upon themselves within the decision-making process of Article 149.

Conventions

It would be a mistake to limit the idea of legislation in a Community sense to these more obvious forms under the Treaty. Clearly Conventions concluded under Article 220 are, for example, to be included. To lawyers such Conventions may be of particular importance; that, for example, on the enforcement of civil and commercial judgments has an immediate and important impact in practice, and by its terms, it should be noted, it affects judgments in any of the Member States whether or not the parties to the litigation are exclusively Community subjects. While it could be argued from the wording of Article 220 "Member States shall, as far as necessary, enter into negotiations . . ." that the resulting conventions partook of the nature of traditional international conventions, it is nevertheless clear from cases such as *Commission c. Republique Italienne*[11] that this is not so. Such agreements must be contained within the framework of Community law.

REFERENCES

1. "The Common Law, Public Policy and the Executive" (1956) 9 *C.L.P.* at p. 14.
2. I include among such principles the British one of the Sovereignty of Parliament (in relation to which I have reserpations, see my *Constitutional Law* (2nd ed., 1968), chapter IV. It was, so far as it has validity, appropriate to the historical circumstances of British constitutional history, and in particular to an "enclosed" constitutional system. Changed circumstances change it. A perfect example of what I mean by relativity in this context is afforded by Aff. 11/70 *Internationale Handelgesellschaft GmbH.c. Einfuhr und Vorratstel.e fur Getreide und Futtermittel* in relation to human rights under the Basic Law of the Federal Republic and under Community law, as to which see the subsequent discussion.
3. The extended dialogue underlies the almost theological debates which lasted for a time about the words "par l'entremise des représentants permanents" in the Luxembourg compromise—a debate happily now dead.
4. All of this may be summed up in a brief quotation from the decision in Aff. 26/62 *Van Gend en Loos* IX R.I., 23: "la Communauté constitue un nouvel ordre juridique de droit international au profit duquel les Etats ont limité, bien que dans des domains restreints, leurs droits souverains, et dont les sujets sont non seulement les Etats membres mais egalement leurs ressortissants".
5. *Hessische Knappschaft c. Maison Singer* Aff. 44/65 XI R. 1191, 1209.
6. Compare Articles 49 and 54.
7. In practice this is untrue—it can result in converting the national legislature into a rubber stamp, e.g., when it requires the repeal of a specific provision. This too entered into the "Luxembourg Crisis". In practice in many cases no other choice was open to the Communities, but this somewhat specific use of Directives.
8. The absurdity in this context of the traditional sort of theoretical classification exercise is immediately apparent. What is the nature, e.g., of a decision fixing the price of a particular kind of wheat, a price which thereafter affects the lives of millions, as against a regulation which, though general, affects few. The paradox is familiar.
9. Articles 43(2) and 87(1) carried out in Regs. 19-24 of 1962, J.O. 933/62 *et seq.*: Reg. 17 of 1962, J.O. 204/62.
10. *I.R.C. v. City of Glasgow Police Athletic Association* (1953) S.C. 13 (H.L.).
11. Aff. 38/69 XVI R. 47.

Common Market Law Reports

Contents—February 1972

Constitutional Implications of the Third Amendment Bill

by FRANKLIN O'SULLIVAN, LL.B. (Solicitor)

Delivered at Nullamore University Residence on February 24th

The Government's proposal to amend a number of Articles of the Constitution by way of an addition to Article 29 raises initially the question whether this method of amendment is itself constitutional or morally just and the Courts should be asked to give a ruling on the issue before the amendment is submitted to the people for decision by way of referendum. Article 46 of the Constitution allows for amendment by way of variation, addition or repeal. The amendment, however, in effect proposes to alter unspecified sections of the Constitution by adding to Article 29 a sub-section which enables the State to accede to the European Coal and Steel Community, European Atomic Energy Community and the European Economic Community (EEC) and states that "no provisions of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State."

People should know precisely extent of amendments

It seems, to say the least, contrary to the spirit of constitutional amendments, to leave the people uncertain of the extent to which their fundamental law will be altered or possibly abrogated by the measure to which the Government is seeking assent. The interpretation of the amendment ultimately will not lie with our own Courts but with the Court established under the Treaty of Rome.

Our national role in world peacemaking as a neutral nation may be irrevocably lost; our claim that Ireland is a thirty-two county island may be abrogated, and our fundamental rights in the fields of religion, freedom of association, family and property may be affected. The proposals by Dr. Mansholt to withdraw family allowances from large families demonstrate that those rights will in fact be affected seriously. We should as a people be fully aware of the extent and meaning of the constitutional consequences which will flow from this Third Amendment Bill. Our legislators in failing to demand this clarification are failing in their public responsibility and when elected leaders fail in their responsibilities the people, on the record of history, have a habit of seeking leaders who will not fail them.

Article 235 of the Treaty of Rome

In the longer term view we must be seriously concerned by the provisions of Article 235 of the Treaty of Rome which confers on the Council of Ministers the right to enact, on the recommendation of the Commissioners, any legislation necessary to achieve the (psychologically unattainable) aim of economic harmony, under the Treaty.

This clause has been described as Henry VIII clause which, under the Statute of Proclamations passed in 1539, conferred on the King the right to set forth proclamations with legislative effect. It was repealed in the reign of Edward the Sixth because it was contrary to the whole tenor of the Common Law. We are now asked to consent to its reintroduction despite our unsavoury experience with executive orders under the coercion acts and our unceasing efforts to bring executive action under the control of a supreme constitutional law. This is far too serious to be approved under a general amendment as proposed in the present Bill now passed by Dail and Seanad.

Methods of constitutional alteration

Looking to the future we must observe that Constitutions are altered by more than formal amendments. Judicial review, usage and convention, ecological development, semantic evolution, all contribute to constitutional change. Marx saw economics as the determinant of man's condition but as a Christian people we have never accepted this simplification but, following the Papal Social Encyclicals, we have seen that defects in man's condition are not due to a simple cause—whether economic, spiritual or psychological. The various aspects are inter-related and as Erich Fromm has brilliantly shown "only by simultaneous changes in the sphere of industrial and political organisation, of spiritual and philosophical orientation, of character structure and of cultural activities" can sanity and mental health be achieved.

In 1864 a commentator saw that the transition from mother and daughter power to water and steam power was a great one—"greater by far than many have as yet begun to conceive, one that is to carry with it a complete revolution of domestic life and social manners."

Radical transplant of Constitution

In the proposed amendment we are asked to accept a radical and untried transplant which subjects our Constitution to the over-riding control of an economic organisation. We must sincerely hope that by agreeing to this radical surgery we are not submitting our lives to a change which is "greater by far than many have as yet begun to conceive."

Hitherto we have relied on our Courts to protect our constitutional rights. We do not have the strong democratic maturity of the Swiss people who do not rely on the Courts in these matters but use instead their right of initiative in referenda.

The style of our Constitution with its strong emphasis on the spiritual dimensions of society is to be remoulded in the procrustean design of a new Brussels bureaucracy and a semi-secret Council of Ministers.

As societies pass through and beyond the mass-consumption style of living, man may look forward to the creation, in Rostows imaginative phrase, of "new inner frontiers in substitution for the imperatives of scarcity."

Before subjecting our Constitution to the imperatives of current economic theory, we should satisfy ourselves, before we take that irrevocable constitutional decision, that we are not submitting the supreme law of our land to a deadly metamorphosis which will deprive us of our freedom to act in accordance with our style and expressed aspirations, and which will have uncontrollable, unhealthy and unpredictable effects on our society, on our culture and in our personal lives.

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the differences in English and Irish Statute Law.

Shipping

Clause 13 in the Baltic charterparty, stated to have been in general commercial use since at least 1909, which exempts shipowners from liability for "damage or delay whatsoever and howsoever caused, even if caused by the neglect or default of their servants" was held to protect shipowners against claims by charterers for financial losses sutsained as a result of the ship's master wrongfully refusing to take the vessel into a Nicaraguan port during the currency of the charterparty. The word "damage" in the context of that clause, the court held, was not limited to physical damage or loss.

[The Charalambos A Pateres; C. of A.; 13/10/1971.]

Social Welfare

Where the officers and tribunals appointed under the National Insurance (Industrial Injuries) Acts to decide whether an insured person is entitled to injury benefit, because of injury through accident at work, decide the nature of the injury, that decision is "final" and binds the medical authorities who have under the Acts to decide whether the injured person is entitled to disablement benefit.

[Jones v Secretary of State for Social Services; Hudson v Same; H. of L.; 20/12/1971.]

An inspector appointed by the Minister under Section 90 of the National Insurance Act, 1965, has power to require an insured person to furnish information as to the name and address of his employer when such a person claims to be employed under a contract of service.

[Smith v Hawkins; Q.B.D.; 15/11/1971.]

Solicitors

A solicitor's lien on his client's deeds is based on possession, and if there is a voluntary parting with possession, not brought about by any wrongdoing, the lien will be lost unless the parting with possession is accompanied by some effective arrangement which preserves possession for the solicitor, such as an agreement to hold the deeds on his behalf.

Megarry J. in a reserved judgment, refused to grant interlocutory injunctions restraining the solicitors for the plaintiff in the action from paying to Mrs. Caldwell or any third party on her behalf £1,250 now held by the solicitors and representing part of the proceeds of sale of a house in Brighton. The motion was issued by the defendants, Sumpters (a firm).

His Lordship said that the matter arose out of the proposed sale of a house in Brighton owned by Mrs. Caldwell. She intended Sumpters to act for her and left the title deeds with them for the purpose. The sale was delayed by difficulties in obtaining vacant possession and in the end Mrs. Caldwell instructed her present solicitors in place of Sumpters. They pressed Sumpters for the title deeds, but Sumpters claimed a solicitor's lien on them.

The question of lien turned on a single sentence in a letter dated 15th January 1970 from Sumpters to Mrs. Caldwell's solicitors enclosing the deeds. The sentence was: "These deeds and documents are being sent to you on the understanding that you will hold them to our order, pending the payment of our fees and your undertakings which we have given on behalf of Mrs. Caldwell, on her instructions, and the payment of fees, &c., of other professional firms who have acted on Mrs. Caldwell's instructions and have not yet been paid by her."

Mrs. Caldwell's solicitors replied promptly on 20th January 1970 referring to the fact that the writ had already been issued (claiming the deeds and damages for their retention, an account of various rents and profits, and payment of what was due). The letter went on: "In the circumstances we are unable to accede to your request eithert o hold the deeds to your order or to give you our undertakings as mentioned by you."

[Caldwell v Sumpters (a firm); Ch. Div.; (1971) 3 AER 982.]

Solicitors who had a lien over deeds belonging to a former client did not lose it by sending them to her new solicitors under cover of a letter stating that they were sent "on the understanding that you will hold them to our order".

The court allowed an appeal by the defendants from the refusal of Mister Justice Megarry ([1971] 3 WLR 309] to grant them injunctions restraining Margolis and Co., the present solicitors of Mrs. D. M. Caldwell, from paying to her or to any third party on her behalf £1,250 now held by them and restraining her from causing or allowing them to do so.

[Caldwell v Sumpters (a firm) and Another; C. of A.; (Salmon and Scamal J.J.); (1972) 1 AER 567.]

Succession

The principle that a wife is entitled to share with her husband in property or the proceeds of property bought out of the profits of a business which she helped him to build up without receiving wages applies also where the husband has died and the wife claims a like share in the assets standing in the husband's name immediately before his death, even though the claim is against the estate of a dead man who had left a will.

[In re Cummins (deceased); C. of A.; 13/7/1971.]

Tax Law

A transfer of shares worth £7,000 by a controlling shareholder as consideration for the taxpayer's agreement to enter into service with the company was held not to be a taxable emolument. Megarry J. upheld a decision by the special commissioners in favour of Mr. C. L. Arundale, joint managing director of Kenneth Lowe (Holdings) Ltd.

[Pritchard (Inspector of Taxes) v Arundale; Ch. Div.; (1971) 3 AER 1011.]

Schemes of "forward dividend stripping" entered into by the appellant taxpayers, Mr. H. Greenberg and Mr. W. A. Tunnicliffe, failed in that instalments of the purchase price of shares paid to them by finance companies after 5th April 1960 were liable to tax.

Their Lordships dismissed appeals by the taxpayers from decisions of the Court of Appeal in November 1969 ([1971] Ch. 286) allowing appeals by the Inland Revenue Commissioners from decisions of Mr. Justice Buckley.

[Greenberg v Inland Revenue Commissioners; Tunnicliffe v Inland Revenue Commissioners; House of Lords; (1971) 3 AER 136.]

The Incorporated Council of Law Reporting for England and Wales, which published the *Law Reports* and the *Weekly Law Reports*, is a charity within the Charities Act, 1960. Their Lordships, in reserved judgments, dismissed an appeal by the Commissioners of Inland Revenue from a decision of Mr. Justice Foster (*The Times*, 4th December 1970; [1971] Ch. 626) granting a declaration that the Council was entitled to registration as a charity under Section 4 of the Act. Leave to appeal to the House of Lords was refused.

[Incorporated Council of Law Reporting v Attorney-General; C. of A.; (1971) 3 AER 1029.]

All civil servants employed abroad, apart from those whose duties have no public content such as ambassadors' valets, are prima facie liable to United Kingdom income tax on their emolumets even though not remitted.

His Lordship dismissed an appeal by Mr. W. Graham against assessments to income tax in respect of years when he was a civil servant employed wholly abroad. For part of the time he was working in Brunei, where there was no tax.

[Graham v White (Inspector of Taxes); Ch. Div.; 7/12/71.]

A mortgage of property followed by a conveyance of the equity of redemption to the mortgagee in consideration of the release of the mortgagor from the obligation to repay the mortgage amounted to a disposal of the property giving rise to a chargeable gain for the purposes of Case VII of Schedule D (short-term capital gains tax).

His Lordship so held in allowing an appeal by the Crown from a determination of the General Commissioners for Central Birmingham that the taxpayer, Mohammed Salah, was not liable to pay tax under Case VII in respect of a gain realised by his wife as a result of such transactions.

[Thompson (Inspector of Taxes) v Salah; Ch. Div.; 30/11/1971.]

Flowers dried to last indefinitely and artistically arranged in

sealed containers are not chargeable to purchase tax under Group 29 of Schedule 1 to the Purchase Tax Act, 1963.

[Indoor Gardening Ltd. v Commissioners of Customs and Excise; Ch. Div.; 25/11/1971.]

Notice of an expression of dissatisfaction at the determination of an appeal communicated by the inspector of taxes to the general commissioners thirteen days after the determination, was held to have been made "immediately after the determination" within the meaning of Section 64 of the Income Tax Act, 1952, in the circumstances of the case. But in any event the statutory requirement in Section 64 that notice should be given immediately was a directory and not a mandatory provision.

[Regina v H.M. Inspector of Taxes ex parte Clarke; C. of A.; (1972) 1 AER 545.]

A "dividend stripping" transaction, though carried out by dealers in stocks and shares, which, viewed as a whole, was entered into and carried out in order to recover tax as a loss under Section 341 of the Income Tax Act, 1952, was not a valid transaction in the course o ftrade but "the planning and execution of a raid on the Treasury, using the technacalities of revenue and company law as the necessary weapons".

[F.A.&A.B. Ltd. v Lupton (Inspector of Taxes); H. of L. 21/10/1971.]

The court dismissed an appeal by Mr C. M. Owen, county surveyor for Denbighshire, from the decision of Mr. Justice Plowman (*The Times,* March 23rd) that the expenses he incurred when he went to Tokyo to attend a world road conference were not incurred wholly, necessarily and exclusively in the performance of his duties and accordingly were not allowable deductions against income tax.

[Owen v Burden (Inspector of Taxes; C. of A.; 21/10/71.]

His Lordship, giving a reserved judgment on a summons by the Royal Bank of Canada of Lothbury, London, held that on the true construction of Section 414 of the Income Tax Act, 1952, the bank was bound to furnish all the particulars required by the Inland Revenue Commissioners by a notice dated 11th September 1969.

Section 414 (1) provides that the commissioners may, by notice in writing, require any person to furnish them within a specified time with such particulars as they think necessary for the purposes of Chapter IV of the Act, headed: "Transactions resulting in transfer of income to persons abroad".

[Royal Bank of Canada v Inland Revenue Commissioners; Ch. D.; 15/11/1971.]

Mr. Justice Megarry, in the Chancery Division, decided that a taxpayer against whom a penalty had been awarded summarily by general commissioners under Section 53 of the Taxes Management Act, 1970, was not liable to the further penalty of up to £10 a day under Section 98 (1) (ii) because the hearing when the summary award was made did not constitute "proceedings" for a penalty. His Lordship held that for the further penalty to apply there must be "proceedings" within Section 100.

[Script and Play Productions Ltd. v General Commissioners (Income Tax); Ch. D.; 25/11/1971.]

Payments by a company to a trust set up to acquire shares in the company for the benefit of the employees and to prevent outside interference were held to be deductible for the purposes of corporation tax. The payments were held to be payments of a revenue nature made wholly and exclusively for the purposes of the company's trade. An appeal by the Crown against a decision of the special commissioners in favour of P-E Consulting Group Ltd. was dismissed with costs.

[Heather (Inspector of Taxes) v P-E Consulting Group Ltd.; Ch. D.; 14/12/1971.]

Trade Unions

In giving directions to delegates to the Trades Union Congress next week as to how to vote on the question of Britain's entry into the Common Market, the national executive council of the National Association of Local Government Officers was held to have exceeded its powers and the mandate or direction to delegates made pursuant to an executive council motion was ordered to be withdrawn.

[Hodgson and Others v NALGO and Others; Vacation Court; 3/9/1971.]

Tribunals

His Lordship held that the inspectors appointed by the Department of Trade and Industry to report on Pergamon Press Ltd. and International Learning Systems Corporation probably erred in the procedure they adopted for their inquiry by failing to put the substance of their tentative conclusions to Mr. Robert Maxwell, the former chairman, and give him an opportunity to rebut their criticisms of him. The error amounted to a denial of natural justice, which might invalidate their interim report.

[Maxwell v Stable and Others; Vacation Court; 30/9/71.]

The court issued an order of prohibition to prohibit Dr. R. C. Brown, chief medical officer to Kent Constabulary, from determining whether Chief Inspector D. G. Godden was permanently disabled within the Police Pension Regulations, and an order of mandamus to Kent Police Authority that if at any time an inquiry was being made as to whether Mr. Godden was permanently disabled within the regulations, they should supply to his medical consultant all reports, letters, and other documentary material used by them or any other doctors concerned

[Regina v Kent Police Authority and Others ex parte Godden; C. of A.; 17/6/1971.]

The court dismissed an appeal by landlords, Frey Investments Ltd., against the Divisional Court's refusal of an order of prohibition to prevent Barnet and Camden Rent Tribunal from considering 22 tenancy agreements referred to them by Camden London Borough in the exercise of their powers under Section 72 of the Rent Act, 1968, on the ground that they had exceeded their powers ([1971] 3 All ER 759).

Their Lordships held that unless it could be shown that the council had acted frivolously or vexatiously or with mala fides, it was impossible to say that the matter was ultra vires, and that the council's power to refer a contract of letting to a rent tribunal could not be inhibited by the fact that the tenants themselves did not want the references to be made.

[Frey Investments Ltd. v Camden London Borough; C. of A.]

See under *Social Welfare;* Jones v Secretary of State for Social Services; H. of L.; 20/12/1971; ante.

Trusts

Where by a deed of appointment the appointor directed trustees to hold a fund for such of the children of his two sons "whenever born as being a son or sons shall attain the age of 21 or being a daughter or daughters shall attain that age or marry as a single class and if more than one in equal shares", the words "whenever born" were held to exclude the rule in *Andrews v Partington* ([1791] 3 Bro CC 401) so that children born after the first child who became entitled to his share were not excluded.

[In re Edmondson's Will Trusts; C. of A.; 22/11/1971.]

Vendor and Purchaser

Brightman J. held that specific performance of an agreement for the transfer of certain shares ought not to be granted unless the transferor's equitable lien as unpaid vendor was duly safeguarded.

[Langen and Wind Ltd. and Others v Bell; Ch. Div.; (1972) 2 WLR 170.]

A prospective purchaser who pays a deposit to an estate agent, who accepts it "as stakeholder", for a sale which subsequently falls through cannot, if he obtains an unsatisfied judgment against the agent for the unreturned deposit, subsequently obtain judgment for the amount of the deposit against the prospective vendor.

[Barrington v Lee; C. of A.; (1971) 3 AER 1231.]

Words and Phrases

An employer of dock labour who applies for an employer's licence under the Docks and Harbours Act, 1966—one purpose of which was to regulate the employment of dock workers—may withdraw his application at any time before it is determined; but once it has been withdrawn it ceases to exist and there is thereafter no power in the licensing authority or the Minister to grant or refuse a licence and no right in the applicant to compensation under the Act.

Their Lordships so held in dismissing an interlocutory appeal by Boal Quay Wharfingers Ltd., of Felixstowe, from the decision of Mr. Justice Ackner in March that on the facts found by an arbitrator in a consultative case and on the true construction of the Act, there had not been a "refusal" of their application for a licence originally made to the King's Lynn Conservancy Board, the licensing authority under the Act, because they had withdrawn it before the Minister of

Transport on their appeal purported to "refuse" the licence applied for.

[Boal Quay Wharfingers Ltd. v King's Lynn Conservancy Board; C. of A.; (1971 3 AER 597.]

Their Lordships held that where an act was to be done "not later than 21 days before" the happening of an event the day on which the event happened had to be excluded and 21 clear days were to be counted backwards to arrive at the last day on which the act could be done.

[Carapaney and Co. Ltd. v Comptoir Commerical Andre and Cie SA; C. of A.; 8/12/1971.]

His Lordship ruled that apparatus which could only heat two rooms, if they were adjoining rooms and if the dividing wall between central heating systems joined on to an outside wall, was not a central heating system.

[Wilkins and Mitchell Ltd. v Commissioners of Customs and Excise; Ch. Div.; 9/12/1971.]

See under *Landlord and Tenant;* Property Developments (Commercial) Ltd. v Fugaccia; "coffee bar and lounge"; 29/11/71. February *Gazette*, p. 49.

See under *Negligence;* Bayton v Willment Brothers; C. of A.; 7/7/1971; "working place". February *Gazette*, p. 49.

See under *Road Traffic Acts;* Wallwork v Roland; Q.B.D.; 9/11/1971; "hard shoulder". February *Gazette*, p. 51.

See under *Redundancy;* Challinor v Taylor; N.I.R.C.; 22/12/1971; "employee". February *Gazette*, p. 50.

See under *Trusts;* in re Edmondson's Will Trusts; C. of A.; 22/11/1971; "children whenever born"; above.

UNREPORTED IRISH CASES

Former Prisoner gets £300 in Test Case for Ill-Treatment

A Northern Ireland judge ruled that men were detained in "primitive circumstances", which were "deliberate, unlawful and harsh", following their arrests by security forces during the big internment scoop on August 9th last year.

Judge Rory Conaghan was giving his reserved judgment at Lurgan County Court in a civil action brought by a former detainee, William John Moore, of Bleary, Portadown, against Mr. Graham Shillington, Chief Constable of the R.U.C., and the British Ministry of Defence for alleged wrongful arrest and assault.

Mr. Moore was awarded the total damages he had claimed, £300, which is the highest amount a County Court judge can award. The hearing of the action, at Armagh County Court in January lasted seven days. Mr. Moore was released from the prison ship Maidstone after 13 days' detention.

In his lengthy judgment which took 47 minutes to deliver, Judge Conaghan said three British Army witnesses had lied in their evidence about how the physical exercises which detainees were forced to undergo had started. He referred to "a deafening silence" from the R.U.C. and the higher ranks of the army about what went on in the detention huts at Ballykinlar army camp. Authority for the rigid discipline and regimentation at both places must have come from top-ranking officers.

Judge Conaghan also suggested that an Army doctor "shut his eyes" to what was happening to the detainees and said that a military police officer in charge of 89 detainees "abandoned responsibility" for them to his N.C.O.s.

Test case—plaintiff absent for fear of arrest

The action is regarded as a test case and it is likely that similar actions may be initiated by other detainees and internees.

When the action was heard in Armagh, Mr. Moore, who is married and has two children, did not attend. He has been living in the South for several months and did not come to the hearing because the police and army refused to give an undertaking that if he did come North he would not be arrested. At a preliminary hearing the defendants' counsel informed the judge that the security forces wanted to interview Mr. Moore and that if he came within the jurisdiction he would be arrested for interrogation.

Judge Conaghan said that the points at issue were—was the plaintiff unlawfully arrested in the early hours of August 9th, and was he treated afterwards in such a manner as to give rise to an action for assault, trespass to or battery of his person against the defendants or either of them by reasons of the acts of their servants and agents in the course of their employment?

After considering the evidence of arrest, and the authorisation for it, he held that the original arrest was wrongful and that the plaintiff was entitled to damages. Mr. Moore should have been informed, at least, that he was being detained for interrogation for a period of 48 hours and if he was going to be charged with an offence, then he should have been told with what offence he was going to be charged. Thus the family would have known what situation he had to meet and they would have known what to tell a solicitor.

It was a pure technicality which should never have occurred, but one upon which the plaintiff could rely, the judge said.

At the start of his outline of what happened after Mr. Moore's arrest, Judge Conaghan said there was one contradiction which remained unexplained. It was agreed that ten soldiers in three vehicles came to the plaintiff's home. However, Mr. Moore said the army burst open the lock on his front door at 4 a.m., came into his home and arrested him. The military version was that the plaintiff had opened the door for them some time after 4.30 a.m. in response to their knocking. "The dispute matters little in the final analysis, but the curious circumstance is that, although the arrest report records the arrest as 04.35 hours, the records at Ballykinlar show it is 4 a.m.", Judge Conaghan said.

Ill-treatment at Lurgan and Ballykinlar

There was undisputed evidence from both sides as to what happened in the converted factory at Pinehurst, near Lurgan, where Moore said others were first taken. Each person arrested had to sit on a chair facing a wall and the rule was—no talking, looking around, smoking or sleeping. "A soldier stationed behind each man enforced the rule, and where necessary nudged or poked the arrested with a truncheon or struck the chair to secure compliance. Nobody was allowed to nod."

At the Ballykinlar holding centre, where the men were taken at about 10 a.m. on August 9th, they were put into reception huts some of which were denuded of all furnishings, racks, presses and stools, and the same strict rules were applied as at Pinehurst. "The doors of the huts were dirty, and nails and screws had been left on the floor at points where they had fallen, if indeed any were removed." Custody of the 89 arrested men was entrusted to Lieutenant Ian Roger Barton of the Royal Military Police, with the assistance of Sergeant Smith and Sergeant Love and their separate platoons, each of about 15 men.

Judge Conaghan said the M.P.s admitted that exercises, or as they preferred to call them, "changes of position" went on in the huts, yet Superintendent Magill of the R.U.C. said that he saw none and heard no commands being given. He did not appear to have had much contact with the huts, the Judge said.

The exercise went on until midnight on August 9th and were resumed in some fashion at about 3 a.m. and continued on Tuesday except in the hut reserved for people who were to be released.

Judge Conaghan quoted the Compton Report as saying: "compulsory exercises must have caused hardship to some, at least, of those who were made to do them, especially those in poor physical condition, and we have noticed as a particular hardship that some men were woken up to do them in order to secure uniformity of action in the hut."

Judge Conaghan commented: "The evidence before me also warrants such a finding."

Particulars of brutality inflicted

Moore and his witnesses had given evidence that

coarse and foul language involving anti-Catholic expressions were used in ordering them to do the exercises. They also alleged deliberate delay in permitting detainees to go to the lavatory and also blows and kicks and the handcuffing of a detainee Gregory Creaney. They also described detainees moaning, symptoms of general distress and gave incidents of people collapsing, including the plaintiff himself. They also alleged being made to "run on the spot" and to do movement "at the double." "Indeed there was no real effort made to contradict evidence that people had to move on the double and that there was the aura of compulsion and authority in going to latrines: the wash and interrogation running on-the-spot was conceded by Corporal Graham," the judge said.

Turning to how the exercises were initiated, the judge said that the military witnesses gave evidence in the absence of each other, as did some of the plaintiff's witnesses. Three army witnesses, Lieutenant Barton, Sergeant Smith and Corporal Robert Melville Graham gave three conflicting accounts. Judge Conaghan said: "I have come to the conclusion that all three are telling lies about this matter. It is also inconceivable the detail of so important an operation would be left to work itself out haphazardly."

Army witnesses lying

From further replies of Lieut. Barton's, the judge said he gathered that there was truth in the allegation that the men were obliged to face the wall and were not allowed to look around or have visual communication with each other any more than verbal.

The army witnesses had denied that harsh words or action or certain of the alleged actions had taken place. They admitted other exercises including press-ups.

Delays in escorting people to the latrines were attributed by the defendants to a shortage of personnel.

After referring to other parts of Lieut. Barton's evidence, Judge Conaghan commented: "It seems to me, therefore, that he left the conduct of the huts to his own N.C.O.s, abandoned responsibility himself, even for putting on or removing handcuffs ...".

He later stated: "I cannot cover all of his (Lieut. Barton's) evidence, but from the foregoing it will be seen that one could not confidently rely upon his evidence to refute the complaint of over exercise, obscenity and complaints generally made by the plaintiff and his witness."

Army doctor indicted

Judge Conaghan then turned to the evidence of Captain Dr. David Plant who examined the detainees at Ballykinlar. His evidence was that on the Monday the men were tired, and on Tuesday were more tired, but he would not accept phrases such as "exhausted" or "prostrate" or any colourful word or that the men showed signs of having been the subject of cruelty or ill-treatment.

Examining other aspects of the doctor's evidence, Judge Conaghan recalled that the witness withdrew a statement that he had seen men moving about outside the huts to latrines and also "going to food, I think," after it was pointed out to him that there had been unchallenged evidence that the men had all been fed where they were confined. Dr. Plant had also given two different answers when asked if he knew the detainees were going to be interrogated. The judge said: "Perhaps these are just slips but they may very well not be and should not appear in the evidence of a doctor."

After again referring to the doctor's evidence on several points, Judge Conaghan said: "I certainly would not reject the events described in paragraph 27 as exagerated or dishonest on the evidence of Dr. Plant, especially as the defendants have access to persons who could give more evidence concerning this incident, but who were not produced at the trial."

The judge was referring to a paragraph in Moore's affidavit in which he had alleged that an M.P. held a sheath knife at his throat telling him "I'll cut your fucking Pope head throat." The doctor had come in and pulled the M.P. off Moore. He then complained about his being roused from bed to treat "these boys conking out."

Story not invented by defendant

The judge continued: "Moreover, it is very difficult to see how the plaintiff could have invented or would dare to invent a story as circumstantial as that set forth in his affidavit. Whether or not the detail of the incident is exaggerated. I take the view that, in so far as this incident be admitted, it corroborates the many allegations of the continuity and intensity of the exercise which the men in the huts were asked to carry out and that Dr. Plant, unless the plaintiff's version be untrue, was prepared to ask no questions about how the men had been or would be treated: in short, he has shut his eyes, or thinks the matter should not be pursued."

The judge said that the plaintiff's case was not borne out by evidence from the two doctors who received the men when they were moved from Ballykinlar to the Maidstone since neither of them supported Moore's allegation that his buttocks were then raw and blistered and that he was in an anxiety state. Even if the plaintiff had exaggerated about the alleged sores and his anxiety state, it still would not mean that his case should fail because they were only relevant to the issue of damage.

No complaint to "Maidstone" doctors

Referring to the evidence of the two doctors, Judge Conaghan said that they had asked each person: "Have you any history of operation or recent illness? As far as you know are you in good health at the moment?"

He said: "Having regard to what admittedly went on in Ballykinlar, and having regard to the fact that Superintendent Magill said that admitted constant exercises ought not to have been tolerated, and having regard to the fact that prisoners did have a bad time and their complaints had not received much attention, I do not fault anybody who failed to make a complaint to either doctor on Maidstone, persons from whom they had no reason to expect any better treatment than that which they had already received. Moreover, I do not think that I should attach any weight to an entry of "No complaints" in documents where no complaint was expressly invited, nor do I infer from the fact of no complaint was expressly invited, nor do I infer from the fact of no complaints having been written in a document that no matter of complaint had actually arisen. It was, quite simply, the doctors, as a matter of practice recording factually what happened."

Deafening silence about hut conditions

The judge later went on to say: "There is a deafening silence from the R.U.C. generally and anybody of army rank higher than Lieutenant Barton (who admits he is the senior officer referred to in paragraph 152 of the Compton Report) as to what went on in the huts and

how and why the procedures which admittedly did develop there were allowed to do so, and why the circumstances in which the men were kept were so primitive, notwithstanding the duty of the defendants under the regulations. The urgency of the decision to arrest may be a reason, but not justification. I take the view that the primitive circumstances must have been foreseen by commanders of greater seniority than Lieutenant Barton, that the entire pattern from Monday 04.00 hours was one of authority, rigid discipline and regimentation, even to the point where people travelling in motor transport between Pinehurst and Ballykinlar were not supposed to look around them or out of the windscreen or any other window of the vehicle, and was preconceived."

Authority for impugned procedures

The judge continued: "Both Mr. McMahon and Mr. Crossey say they saw high-ranking officers visit the camp, and heard them instruct hut guards to continue the exercises. Superintendent Magill says that General Tuzo, the Colonel and Brigadier visited the camp, I infer that authority for the procedures impugned, and their continuance, stemmed from a source higher than a corporal, staff sergeant or lieutenant. This course was adopted irrespective of whether the people were guilty or innocent, or the relative gravity of matter available in each case to create suspicion.

"Considering how uniformly the men were organised from their beds finally to Ballykinlar, I have no reason to suppose that the manner in which they were treated in Ballykinlar was not similarily pre-conceived and organised: certainly it was deliberate, unlawful and harsh.

"It is not for me to say whether this is a moral thing, or to be defended as expedient in the circumstances now obtaining in the province, nor for me to institute comparisons between my findings on Special Powers Act, interrogations and other things which have happened, and are happening in the province. I am asked to hear evidence on a specific issue and to decide in law what is the balance of probability. I find on the balance of probability that the plaintiff has suffered the wrong of which he complains in the civil bill and give him a decree for £300."

Malicious release of mink entitled applicant to compensation under Malicious Injuries Code.

The breeding of mink for their furs is a highly complex business and requires involved records giving detailed particulars.

In March 1966, 340 live mink animals were released from their cages at the applicant's mink farm under circumstances pointing to deliberate and malicious interference with the cages on the part of persons unknown. 245 animals were recovered alive, 83 were found dead, and 13 remained untraced. The animals recovered were unfit to resume breeding, and fit only for pelting. The loss arising to the applicants in their business was calculated at £9,180, and they have instituted a malicious injury claim against the Dublin County Council for this amount. The applicant's claim failed in the Circuit Court, and, upon the appeal, Henchy, J. stated a case under Section 38 of the Courts of Justice Act 1936, having posed the following questions:

(1) Does the mere release of the mink without physical damage constitute malicious damage within the Malicious Injury Code mentioned in paragraph 2 hereof? Answer: Yes.

(2) Is the malicious damage to captive mink compensatable under the Malicious Injury Code? Answer: This does not arise.

(3) If the applicants are entitled to recover compensation for malicious damage, what is the proper basis for the assessment of the compensation payable? Answer: Compensation should be assessed at the value of the escaped mink considered as breeding mink, less such sum as was realised from pelting of the recaptured mink.

Per O'Dalaigh, C. J.: The applicants' claim is that it arose, not from consequential, but from direct loss. The applicants are right, as the loss they suffered arose immediately upon the release of the mink; it was the direct result of that action. Judgments of Murnaghan and of Meredith, J.J., in Supreme Court, in *Purcell v Minister for Finance* (1939) I.R. 124—approved.

[Irish Rexi Mink Ltd. v. Dublin County Council; Supreme Court (O'Dalaigh, C.J., Walsh and Fitzgerald, J.J.); unreported; 16th July 1971.]

Practice—Principle of Priority of Trial upheld

On 21st October 1971, Murnaghan, J. made an Order whereby the trial of *Troy v. C.I.E.* was not to proceed until the trial of *Slattery v. C.I.E., Troy 3rd Party*—had been heard.

The two actions arose out of a collision on 12th March 1969 between a car driven by Thomas Troy, husband of Joan Troy, and a C.I.E. Bus. Thomas Troy was killed, and Mrs. Troy took her action under Part IV of the Civil Liability Act 1961. Slattery was a passenger in Troy's car, but he had sued only C.I.E. C.I.E. served a third party notice on Mrs. Troy claiming indemnity or contribution in respect of her late husband's alleged contributory negligence. In this connection Henchy J. had already directed that the issue of liability as between C.I.E. and Mrs. Troy should be tried as separate issues.

Mrs. Troy's action was set down for trial before Mr. Slattery's, but Murnaghan, J.'s order deprived Mrs. Troy of her priority; this had been delivered *ex tempore*.

The full Supreme Court held, per the Chief Justice:

(1) The Court will not in the ordinary way interfere with the administrative aspects of fixing the High Court list, but, where the arrangement of the list impinges upon the rights of the parties, it is the duty of this Court to re-examine the matter on appeal.

(2) Murnaghan, J.'s personal preference for trial by jury of the issue of liability alone separately from that of damages is irrelevant, as the law requires normally that the same jury should try the whole case.

(3) It is wholly unacceptable that a jury which, as ordinarily happens, hears evidence of damages in a widow's claim under Part IV of the Civil Liability Act 1961 is not to be relied upon to render a just verdict on the issue of liability.

(4) The finding of respective degrees of fault in Mrs. Troy's case will rule the issue in the third party proceedings in Slattery's case and determine what contribution Mrs. Troy as her husband's personal representative, must make in respect of the damages payable to Slattery.

Accordingly Mrs. Troy is entitled to retain the priority of trial and the appeal will be allowed.

[Troy v. C.I.E.; Supreme Court; unreported; 29th November 1971.]

Certiorari made absolute where Justice acts outside jurisdiction

Martin Dolphin was arrested on 29 September 1970, and charged with assaulting a Garda, and two civilians. On 1st October, he was admitted to bail. He was also charged with using abusive language on 7th October On that day he behaved in an insulting manner, and was sentenced to seven days for contempt of Court. On 22nd October medical evidence was adduced in the District Court to the effect that he was unfit to plead. On 3rd December, the Justice heard the evidence of four psychiatrists confirming this, and he was remanded until 4th February 1972. On 4th December 1970, the Minister for Justice made an Order under the Lunatic Asylums Act, 1875, that the accused be removed to the Central Mental Hospital in Dundrum. On 29th January 1971, a friend of the accused, who was concerned about his condition, applied to Kenny, J. for a conditional order of *habeas corpus* and of *certiorari* for the purpose of quashing the orders made by the Justice on 3rd December 1970. The Governor of the Central Mental Hospital then stated that Dolphin was then fit to plead, and he was released from there on 2nd February 1972. The Justice made an affidavit to the effect that Dolphin was not in a fit state to comprehend the proceedings on 3rd December. The friend of the applicant now applied to make the conditional order of *Certiorari* which had been duly granted by Kenny, J., absolute. The main ground was that the District Justice should not have considered whether Dolphin was fit to plead or not in his absence. Dolphin himself, as a leading Maoist, has throughout refused to recognise the jurisdiction of the Courts.

Accordingly Kenny, J. held :

(1) That Dolphin's friend was competent to represent him at these hearings, as much for *habeas corpus* —as for *certiorari.*

(2) The only jurisdiction the Justice had on 3rd December 1970, under section 24 of the Criminal Procedure Act 1967, was to remand the accused for a further period. There was no jurisdiction to decide the issue whether the accused was unfit to plead, particularly when the accused was not present. The order of the Justice was made without jurisdiction.

Accordingly the conditional order of *Certiorari* should be made absolute.

[In re Dolphin—The State (Egan) v the Governor of the Central Mental Hospital and District Justice O'Huadhaigh; unreported; Kenny, J.; 27th January 1972.]

Contract: A late higher offer for premises is not acceptable if the Court has approved the terms of the contract for sale, and if this contract has been signed by the first purchaser.

Appeal against Kenny J.'s decision of 11th October 1971 that the United Dominions Trust (Ireland) Ltd. were the purchasers of Hibernian House, Fleet Street, Dublin, for £65,000. The reserve price had previously been fixed by the Court at £70,000 but there was no bid at the auction. Subsequently a bid was made by U.D.T. to purchase for £65,000. After the contract for purchase had been signed by U.D.T., but not by the official liquidator of Hibernian Transport, the solicitor for the Irish Permanent Building Society handed the Judge a document, which was an offer by them to purchase the premises for £101,000. The Judge held that, as there had been prior agreement to sell to U.D.T., that agreement must stand. Originally the U.D.T. offer was the only one on the market, and it was only later that the other offer appeared. Furthermore it had been communicated with the approval of the Judge. The Court accordingly had agreed to a bargain. It was unfortunate that the higher offer was not made in time. The Judge was quite right to regard himself as being bound to permit the liquidator to complete the contract signed by the purchaser. The appeal was accordingly dismissed.

[In re Hibernian Transport Companies and in re Companies Act 1963; full Supreme Court; unreported; 20th December 1971; judgment of Walsh J.]

Guardianship of Infants: Custody of girl infants awarded on appeal to father.

The facts of this case have been fully set out in the September/October *Gazette* 1971 at page 131.

Kenny J. had awarded the custody of the three infant daughters to the guilty mother, on the ground that they would be happier at home than in a boarding school in Dublin. The full Supreme Court reversed this decision.

Per Walsh J. : By staying in a boarding school, the children are leading a stable existence. The school concerned specialises in catering for children from broken homes. If possible, the father wishes to set up the family life again with the assistance of a housekeeper. The children are being brought up in proximity to their father an to their grandparents. The mother should have access, but the children cannot be taken out of the jurisdiction.

[W. v W.; Supreme Court; unreported; 10th Dec. 1971.]

Ruling against Union on Bar Waitresses: Breach of constitutional rights to compel employers to dismiss them under threat of pickets.

In a reserved judgment in the High Court, Mr. Justice Kenny held that the threat of a picket to compel employers to dismiss bar waitresses solely because they were women was a breach of their constitutional rights.

He was giving his decision on the question whether the owners of three Dublin licensed premises had established that they had a reasonable prospect of success in their suit against the Irish National Union of Vintners, Grocers and Allied Trades Assistants and its general secretary, Michael Cleary.

The Court continued an injunction granted to P. T. Prendergast Ltd., owners of The Parkway Bar, Walkinstown Cross; Mr. Francis Walsh, owner of The Chariot Inn, Ranelagh, and the owners of O'Byrnes, Rathgar Road, against Mr. Cleary, restraining him from authorising persons to picket the premises. The order is effective until the trial of the action or until further order.

Mr. Justice Kenny said that two plaintiffs were members of the Licensed Grocers and Vintners Association which had entered into agreements with the first-named defendant, the union, in 1924. Another agreement was made in 1968 in relation to a new category of workers known as bar waiters. There was nothing in the agree-

ment which compelled employers to ensure that part-time bar waiters were members of the union.

Union objects to part-time waitresses

In 1967 one of the plaintiffs employed bar waitresses on a part-time basis to serve customers at tables in the lounges and other publicans had now done this. They worked two or three nights a week from seven o'clock until closing time. None of them was a member of the union.

While there were some female members of the union who were employed in the grocery and provision business, employment in licensed premises was, until 1967, confined to males and the union had never agreed to the employment of females—other than cleaners—in any licensed premises where members of the union worked.

In May 1971 the union wrote to one of the plaintiffs ojecting to the employment of female lounge staff, stating there was no provision in the agreement "for the employment of such labour". On October 1st the union threatened that their members would withdraw their labour and picket the premises in furtherance of a trade dispute, and, although the matter was referred to the Labour Court, agreement was not reached. The union then stated that the premises would be picketed if an undertaking was not given to carry out the agreement which, they maintained, prevented the employment of female labour.

Injunction granted for constitutional breach of equality before the law

On November 19th the High Court granted an interim injunction to the plaintiffs restraining picketing and the question whether an injunction should be granted until the trial was by consent, adjourned until January 25th, when it was debated.

The plaintiffs' first contention on that occasion, said Mr. Justice Kenny, was that the objection by the union to the employment of bar waitresses was based, not on any suggestion that they were unsuitable for the work, but solely because they were female, that this was a breach of the constitutional right of equality before the law, and also that the picket was designed to compel the plaintiffs to infringet hat right which each of the bar waitresses had.

The plaintiffs also contended that each of the waitresses had a constitutional right to earn her livelihood without discrimination on the ground of sex.

The defendants' principal submissions were that the employment of bar waitresses was a breach of the agreement of 1968, that the right of equality before the law had not been infringed and that the Constitution did not create a rigth to earn a livelihood without distinction on the ground of sex.

Prohibition of employment on ground of sex unconstitutional

Article 40 of the Constitution reads: "All citizens 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 difference of capacity, physical and moral and of social function."

Mr. Justice Kenny said that this article was not a guarantee that all citizens shall be treated by the law as equal for all purposes but one that they shall, as human persons, be held equal before the law. It related to their essential attributes as persons, those features which made them human beings. In his opinion, it had nothing to do with their trading activities or with the conditions on which they were employed.

He said that a policy or general rule under which anyone sought to prevent an employer from employing men or women on the ground of sex only was prohibited by the Constitution. A demand that women should not be employed at all in any activity solely because they were women—and not because the work was unsuitable for them or too difficult or too dangerous—was a breach of that right.

"The purpose of the threat of the picket is to compel the employers to dismiss the bar waitresses solely because they are women and this is a breach of their constitutional rights."

He did not think that the use of the word "bar waiter" in the 1968 agreement necessarily implied that men only should be employed in that position.

He thought the plaintiffs had established that they had a reasonable prospect of success in their contention that the threat of the picket was an attempt to coerce them into infringing one of the rights of their employees and that the agreement did not preclude them from relying on this.

[Prendergast and Walsh v I.N.U.V.G.A.T.A.; Kenny J.; unreported; 7th March 1972.]

Irish Press (8th March 1972)

Judge Critical of Union Action against Newspaper for Contempt of Court

The Electricians and Plumbers Union was criticised by a High Court Judge yesterday for taking legal action over a mistake in a newspaper article before bringing it to the attention of the editor.

Mr. Justice Foster said the mistake, in the communist newspaper *Morning Star,* was unlikely to prejudice the union in its defence of two pending Court actions brought by a Glasgow member. He dismissed the union's claim that the article was in contempt of Court.

The newspaper's editor, Mr. George Matthews, and assistant editor, Mr. William Wainwright, who admitted an inaccuracy but denied contempt, were awarded their costs.

The union, the Electrical, Electronic and Telecommunications Union-Plumbing Trades Union, did not press its original application for an order to imprison the two men, but left it to the Judge to decide a penalty.

The Judge said such a procedure, where there was no real case, for committal, was a waste of the Court's time. In his reserved judgment, he said:

"I find it very curious that the editor of the *Morning Star* was not informed by the union of the mistake and asked to correct it before these proceedings were ever brought. The mistake in the article was, of course, unfortunate, but in the absence of any malice on the part of the editor (and none has been suggested) I cannot conceive that the trial of the action can be affected in any way."

The Guardian (26th February 1972)

OBITUARY

Dermod Walsh—An Appreciation

The recent and unexpected death of Dermod M. F. Walsh, Law Agent to Dublin Corporation, has removed from the ranks of the legal profession, not alone one of the foremost authorities on local government law, but also a brilliant all-round lawyer. His demise, after a very short illness, came as a great shock to his many colleagues both in the legal profession, in the local government service and innumerable friends throughout the country. He had been in his office two or three days before then and it was typical o fthe man that he died almost in harness, so devoted was he to his post.

Of Western parentage, Dermod was Dublin born and was educated at Mount St. Joseph's College, Roscrea, and at the Jesuit College, Belvedere, Dublin. He was a brilliant student and after leaving school he decided to study law. He was apprenticed to the late Mr. John S. O'Connor, solicitor and one-time T.D. Here again he enjoyed a brilliant academic career and obtained his B.A. and LL.B. degrees at University College, Dublin, the latter with first class honours. Dermod was admitted as a solicitor in Trinity Term 1933. He was also active in the Solicitors Apprentices Debating Society and in the year 1930-31, during which our Secretary, Mr. Plunkett, was Auditor, Dermod won medals for oratory and legal debate.

Dermod did not neglect sport, and was considered an excellent "blue" in rowing.

Once qualified, Dermod went as an assistant solicitor to the office of Mr. Alfred Thornton, solicitor, Castlebar (who is happily still with us), and who was then both State Solicitor for County Mayo and Solicitor to Mayo County Council (which he still is) Here Dermod got a solid grounding not alone in Court work and practice, but in the many branches of local government law. He was a familiar figure in Courts throughout County Mayo not alone in the District Court but also in the Circuit Court where he was highly respected not alone by Judge or Justice, but by members of the legal profession.

Dermod was appointed assistant law agent to Dublin Corporation in the year 1942 and in 1949 he was appointed law agent succeeding the late Mr. Ignatius Rice. The post of law agent to Dublin Corporation is perhaps the most onerous legal post in the State, but Dermod carried out his onerous and many duties with skill, integrity, ability and efficiency.

A man of large stature, he gave the impression of being austere and distant; in reality, he was nothing of the sort and to those who knew him he was "a big man" in every sense of the word, a man of great personal charm and wit. He suffered perhaps from a reserved disposition which did not make him more sidely known. But those who knew him found him a loyal and devoted friend, a helpful colleague and as one colleague said "he was like a father figure". There was no branch of the law with which he was not familiar and he was also an authority on case law. He took an active interest in the affairs of the profession and at the time of his death he was chairman of the Local Authority Solicitors' Association.

Dermod was a man of simple pursuits. He played golf, enjoyed a day at the races, liked reading, he travelled extensively on the continent, but his great pursuit was gardening and he was an excellent flower grower.

Dermod was never a man for idle talk but on what better note could we finish than to say of him "I have fought a good fight, I have finished my course, I have kept the faith" (2 Timothy 4:1-8).

Mr. Edward Warren, solicitor, died in the District Hospital, Gorey, Co. Wexford, on 26th Feb. 1972. Mr. Warren was admitted in Trinity Term and practised under the style of "Edward Warren & Sons" at Gorey and Enniscorthy.

Mr. Joseph Gilmartin, solicitor, died while on holidays in Spain, 8 March 1972. Mr. Gilmartin was admitted in Michaelmas Term 1961 and was sole partner in the firm of Messrs Garvey, Smith and Flanagan in Castlebar, Co. Mayo.

Clamp-down on Fees Criticised

Over-dramatisation by the Minister for Justice of the claim for increased remuneration by solicitors was criticised by the President of the Incorporated Law Society of Ireland, Mr. James W. O'Donovan.

He said that it was very strange that the Minister objected to an increase of 42% in fees and succeeded in having the Order annulled in the Seanad whose members had increased their own remuneration in the same period by 100%.

The cost of living, said Mr. O'Donovan has risen by 74% since 1960, solicitors remuneration has increased by only 12% in that time. During the period 1961-1971 salaries of Dail deputies have been increased by 150%, of members of the Seanad by 100%, of the judiciary by 100% and of senior civil servants by 85%.

In addition to meeting their own personal increase in the cost of living, solicitors have had to carry over the last eleven years increases in salaries and postal, telephone, heating and lighting charges all in the region of 100%.

All suggested increases in solicitors' remuneration are made by statutory committees, not by the Law Society.

In response to the recent recommendation for a 42% increase by a statutory committee the Minister suggested a compromise figure of 20%, a total of 32% since 1961 in strange contrast to the levels for Dail deputies and others.

Solicitors' gross remuneration in property transactions has, by reason of the increase in property value since 1964, risen by 60% which the Minister apparently regards as more than sufficient to cover the 100% rise in general overheads.

CORRESPONDENCE

Wexford Seminar

21 Ely Place,
London E.C.1.
1st March 1972.

to The Editor of the *Gazette*
Dear Sir,

I congratulate you on the full coverage of the Wexford Seminar on "Solicitors in Europe".

I was privileged to be one of the speakers at this conference which I found most stimulating and also encouraging as to the interest being shown by your legal profession.

The reports of the papers given were obviously put together as quickly as possible in the interests of news but I should like, however, respectfully to draw your attention to the fact that a number of reporting errors crept in to the report on my own paper. I am not proposing to list all of these, but do feel that the following if not corrected might give a misleading impression.

(1) The administrative powers of the Community are vested in the Commission alone and not together with the Council of Ministers.

(2) It is the final appellate courts which must refer any questions affecting construction of the Treaty to the European Court—and this is not necessarily limited to the House of Lords. Any other court may so refer.

(3) Harmonisation and approximation of laws is laid down by Article 200 and not 100.

4) The French profession to which I referred was that of Conseil Juridique.

(5) The Benelux Convention on avocats has been ratified by Belgium and the Netherlands and not by Luxembourg.

Yours faithfully,

S. A. CROSSICK.

Bulletin from Allied Irish Banks Ltd.

Re integration of the Munster and Leinster Bank Limited, Provincial Bank of Ireland Limited, and the Royal Bank of Ireland Limited ("the transferor companies") with Allied Irish Banks Limited and its effect on executor and trustee appointments.

On 1st April 1972 ("the transfer date") the businesses of banking, including the executor and trustee business, carried on by the transferor companies in the Republic of Ireland and in Northern Ireland will with statutory approval be transferred to Allied Irish Banks Limited, a public company of which the transferor companies are wholly owned subsidiaries.

The transfer will not call for any action by solicitors or their clients as regards existing appointments of any of the transferor companies to act as executors and/or trustees of wills or settlements. The application of Section 39 of the Central Bank Act, 1971 (Republic of Ireland) and Section 5 of the Allied Irish Banks Act (Northern Ireland), 1971, to the transfer will operate to secure that after the transfer date in such appointments the name of Allied Irish Banks Limited shall be read for that of any of the transferor companies which may have been named in the original appointment.

In the case of appointments made after the transfer date (1st April 1972) the name of Allied Irish Banks Limited should be used in the place of that of any of the transferor companies. Allied Irish Banks Limited is a trust corporation under the laws of the Republic of Ireland and of Northern Ireland. In the case of wills the appointment clause should read :

> I appoint Allied Irish Banks Limited (hereinafter called "the Bank") to be the Executor and Trustee of this my Will upon the terms and conditions and with and subject to the powers and provisions set forth and contained in the Bank's published regulations (as now in force) governing its appointment to act as executor and trustee to the intent that the same shall apply and have effect as if set forth herein.

New booklets containing the Regulations governing the appointment of Allied Irish Banks Limited to act as executor and/or trustee of wills and settlements are now available and may be obtained on request to either of the undermentioned offices of the Executor and Trustee Department. The terms and conditions under which Allied Irish Banks Limited will take up such appointments will be, by and large, similar to those which applied in the cases of the transferor companies.

Note : Since Allied Irish Banks Limited may now act as executor and trustee in its own right, there is no reason why its name should not be used even before the transfer date in all such appointments, and indeed this course is strongly recommended.

Drawing on the experience and expertise of the combined staffs of the former Executor and Trustee Departments of the Transferor Companies, a new Executor and Trustee Department has been established by Allied Irish Banks Limited on an integrated basis with offices at Dublin and Cork. Enquiries and correspondence may be directed to either of these offices addressed as follows :

Allied Irish Banks Limited, Executor and Trustee Department, 20 College Green, Dublin 2. Telephone (01) 771294.

Allied Irish Banks Limited, Executor and Trustee Department, 66 South Mall, Cork. Telephone (021) 26811.

A. J. GLEESON.
Chief Executor and Trustee Manager.
March 1972.

BOOK REVIEWS

Personal Property by H. W. Wilkinson, LL.M.; 281 pp.; Sweet & Maxwell; £1.75.

This is a new book on personal property. The author is a solicitor and senior lecturer in law in the University of Bristol. The subject of personal property has traditionally embraced such divers and unrelated subjects as sale of goods and donations mortis causa. Of recent years, however, personal property as a subject for university and professional exams has been cut down in extent and absorbed into the subject of commercial law. In this field there is a plethora of text books to choose from for both the student and the practitioner. Yet Mr. Wilkinson has, in some respects, managed to make a distinctive and useful contribution in this field. He has deliberately confined the scope of his book to a small group of subjects. He devotes two-thirds of the book to sale of goods, hire purchase and negotiable instruments. He makes a detailed analysis of these subjects which will certainly be helpful to a law student. The chapter on hire purchase has to be read with caution by Irish readers because of the growing difference in detail between statute law in this country and in England. The subject of sale of goods is given an extensive and detailed treatment and the author uses many recent English decisions to illustrate the law. These are helpful because they relate the subject to contemporary commercial life rather than to horse dealing in the eighteenth and nineteenth centuries. Many readers will find the detailed treatment of the law relating to cheques and the relationship of banker and customer to be of considerable practical importance not alone for the law student but also for the practitioner who wishes to get a quick grasp of this complicated subject. Finally, the book contains a summary of recommendations of the recent British Crother Commission on consumer credit which reported last year with suggestions for major changes in the law relating to sales, loans, lending, and security. The British Government has given no indication as yet that it proposes to implement the recommendations in whole or in part. Nevertheless, it is expected that leglislation along these lines would probobly be introduced in along these lines would probably be introduced in is in the best traditional modern textbook style—it is readable.

Brian O'Connor

Moeran (Edward): Practical Conveyancing; fifth edition; London, Oyez Publications; 1971; 8vo; £2.25).

A reading of Edward Moeran's *Practical Conveyancing* makes one realise how much most conveyancers could improve their efficiency in daily practice. Although this is a work written for the English practitioner it is quite surprising how little adjustment is needed to apply the wisdom and experience it contains to our own rather different circumstances.

The opening sentences set admirably the tone of the book: "The way I go about a conveyancing job is this. Except when they are received by letter, instructions are invariably taken from a client in writing on a special form (Appendix III, Form 1, facing page 226) which is duplicated in my office. This form is on coloured paper, so that it can more readily be picked out from the other papers, because in the course of the matter you will refer more often to this than to any other. The form could as well be printed, except that by using your duplicate you can run off small numbers at a time, and so carry improvements and amendments into it as they are suggested to you in the course of your practice; one of the features of this system is that all the special forms used are adaptable to the particular and changing needs o fa particular practice."

Mr. Moeran's system is based on the use of forms: the Instructions Sheet and three Agendas, one pre-completion, one for completion and one after completion. The Instructions Sheet sets out all the questions you should ask a client when acting for him on a purchase or sale, but one or more of which you may omit if you rely purely on memory. The three Agendas remind you of the steps that occur in a conveyancing transaction and should be amended or expanded by each practitioner on the basis of his own experience until they become, for all practical purposes, comprehensive. When this point is reached, the forms provide an insurance against oversight and a permanent record of the steps in each transaction which will enable the transaction to be taken over in the absence of the person first dealing with it without undue difficulty.

As the author says "like driving a car, good conveyancing is largely a matter of making habitual to the point of reflex action the routine and technique, leaving all one's faculties free to deal with the finer points and the real problems."

The author suggests that every solicitor should have standard form draft Conveyances, Assignments and Land Registry Transfers and also suggests certain standard form letters—such as undertakings to banks to lodge net proceeds of sale—which will ensure that members of his staff can do things in his name with the minimum of supervision.

This book is heartily recommended.

Maurice Curran

STATUTORY INSTRUMENTS

District Court (Court Act, 1971) Rules, 1972
Statutory Instrument No. 68 of 1972
These rules, which come into operation on 1st March 1972 regulate the practice and procedure of the District Court in relation to the following sections of the Courts Act, 1971 : Section 14 (Evidence of decision in cases of summary jurisdiction), Section 18 [Weekly payments under Married Women (Maintenance in case of Desertion) Act, 1886], and Section 21 (Sending forward of actions in the District Court to the Circuit Court or the High Court).

Copies may be obtained from the Government Publications Sale Office, Henry Street Arcade, Dublin 1, for 7½p plus postage.

Solicitors' Remuneration General Order, 1971 (Disallowance) Order, 1972
Statutory Instrument No. 61 of 1972
Whereas the Solicitors' Remuneration General Order, 1971, has been laid before Seanad Eireann and Seanad Eireann has before the expiration of the relevant weeks [within the meaning of the Houses of the Oireachtas (Laying of Documents) Act, 1966 (No. 10 of 1966)] passed a resolution stating that Seanad Eireann was of opinion that the said Order should be disallowed and requested the Government to disallow it :

Now, the Government, in exercise of the powers conferred on them by virtue of Section 6 of the Solicitors' Remuneration Act, 1881, Sections 5 and 10 of the Adaptation of Enactments Act, 1922 (No. 2 of 1922), Section 2 of the Executive Powers (Consequential Provisions) Act, 1937 (No. 20 of 1937), and Section 4 of the Constitution (Consequential Provisions) Act, 1937 (No. 40 of 1937), hereby order as follows :

(1) This Order may be cited as the Solicitors' Remuneration General Order, 1971 (Disallowance) Order, 1972.

(2) The Solicitors' Remuneration General Order, 1971, is hereby disallowed.

Given under the official seal of the Government, this 25th day of February 1972.

JOHN LYNCH (Taoiseach).

District Court (Summons Servers Fees) Rules, 1971
Statutory Instrument No. 352 of 1970
Under the above regulation where any summons, civil process, originating or other Court document is served by registered pre-paid post pursuant to Section 7 of the Courts Act 1964 the amount allowable as solicitors' costs in respect of such service shall be the sum of fifteen pence exclusive of outlay (effective from 3rd January 1972). The fee to be paid to a summons server for the service of any summons, civil process, originating or any other Court document shall be the sum of forty pence payable on proof of each separate service effected (effective from 3rd January 1972).

Announcement
As of 31st March 1972 Stannell & Son have changed their address from 23 Ely Place to 29-31 Fitzwilliam Square where they have merged with Messrs A. & L. Goodbody. Telephone numbers remain unchanged.

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 March 1972.

D. L. McALLISTER
Registrar of Titles.

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

Schedule

(1) Registered owner: Daniel Hughes Folio 20141; Lands, Kilnacarriga, Co. Tipperary; Area, 9a. 1r. 0p. and 21a. 0r. 20p

(2) Registered owner: Margaret O'Brien; Folio 2198; Lands, Caherbullog, Co. Clare; Area, 94a. 3r. 20p.

(3) Registered owner: Margaret Murphy; Folio 1588; Lands, Desert, Co. Cork; Area, 7a. 3r. 28p.

(4) Registered owner: John Cooke Johnston; Folio 246 (Revised); Lands, Ballykeerogemore, Co. Wexford; Area, 51a. 1r. 7p. statute measure.

(5) Registered owner: Matthew Callery; Folios 2479, 2524, 2557; Lands, Bunboggan, Fordrath, and Town Parks, Co. Meath; Area, 16a. 2r. 0p., 10a. 3r. 10p., 9a. 0r. 20p.

(6) Registered owner: Eugene McGillycuddy; Folio 20875; Lands, Castleview, Co. Kerry; Area, 23p.

(7) Registered owner: Patrick Kavanagh; Folio 11069; Lands, Ballynabrigadane, Co. Wexford; Area, 70a. 1r. 5p.

Young, Mary (spinster), deceased, late of Main St., Lismore, Co. Waterford: Will any person having knowledge of any will made by the above-named deceased who died on 8th January 1972 please communicate with E. A. Ryan & Co., Solicitors, Dungarvan.

Wanted—Established South Dublin (city or county) Conveyancing and Commercial Practice for either immediate sale or phased succession. Box No. B298.

THE GAZETTE OF
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LAW SOCIETY
OF IRELAND

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Contents

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EDITORIAL

The Jurisdiction of the Supreme Court

We are once more indebted to the Committee of Court Practice and Procedure for their 11th Interim Report on the Jurisdiction and Practice of the Supreme Court. This valuable report was presented to the then Minister for Justice, Mr. Moran, in March 1970, but there has been a lengthy delay of two years before it has been printed. It is an excellent idea that, by consent, all constitutional issues concerning the constitutionality of legislation initiated in the High Court should be determined by the Supreme Court and that the Supreme Court should broadly be given jurisdiction to determine on a compulsory consultative case stated to it by the District or Circuit Court any constiutional issue that may arise. One of the weaknesses of the Constitution imposed by an amendment in 1941 to the effect that only one judgment could be pronounced in certain constitutional cases is rightly criticised by the Committee who have wisely recommended that, in the interests of fairness and invaluable jurisprudence every Judge should be entitled to give his own opinion freely Undoubtedly copies of Supreme Court judgments, which form the basis of contemporary Irish jurisprudence, should be made available to the public at a reasonable cost. This is a public service, and the objectionable principle that high charges for judgments should prevail in order that the costs of the service should show a profit is to be condemned.

The Criminal Law Revision Committee

One can only view with consternation the alleged proposals which are supposed to be contained in a forthcoming report of the English Criminal Law Revision Committee. It is proposed to abolish the caution, by which the police warn persons that they need not say anything, but if they do, it may be taken down in writing, and used in evidence against them; this is an essential safeguard for the ignorant population who form the vast majority of suspects. By abolishing the caution, it is obvious that the police can induce most persons by pressures to incriminate themselves. There is little doubt that the proposal to admit general evidence of previous convictions before the jury is dangerous, as it may induce the police to pressurise anyone whom they do not like to plead guilty if necessary to trumped-up offences. The average accused will be deterred by all this apparatus in Court from defending himself properly if not given legal aid. This may seem exaggerated, but the number of cases with which police are charged with fraud and ill-treatment of persons in custody is constantly increasing. The manner in which the Judge's Rules and the rules of evidence are ignored by the English police is frightening.

It is also proposed that in future the accused should be required to go into the witness box, where he could refuse to answer questions, and not be punishable for contempt, for doing so. The speeches from the dock, which achieved such notoriety in Irish history, are about to disappear. This proposal appears to savour of the Star Chamber system. It is fortunate that in Ireland the accused can ultimately rely on the Constitution if his rights are infringed, and not be subject to the inexcusable alterations in the law proposed by Lord Justice Davies and his colleagues. One cannot forget that this same Judge proudly imposed deliberately vindictive and retributive sentences in some criminal trials which appear to have achieved little useful purpose.

There should obviously be a standard sentence for all crimes, even aggravated ones, and no Judge should be in a position to impose his purely personal prejudices

One can only view with scepticism the advice tendered by the English Lord Chancellor to lay magistrates to be as severe as possible, and that if necessary they would be put right by a higher Court; this is the gravest distortion of the notion of justice. One must also view with suspicion the proposed changes in the law of evidence which the Irish Minister of Justice proposes to introduce, particularly as he was careful not to give particulars.

THE SOCIETY

Proceedings of the Council

23 MARCH 1972

The President in the chair, also present Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John K. Coakley, Anthony Collins, Laurence Cullen, Gerard M. Doyle, James R. C. Green, Gerald Hickey, Christopher Hogan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, John Maher, Patrick C. Moore, Senator J. J. Nash, George A. Nolan, John C. O'Carroll, Peter E. O'Connell, William A. Osborne, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor, Ralph J. Walker.

The following was among the business transacted.

Solicitors Remuneration General Order 1972

The Secretary reported that on the motion of the Minister for Justice a resolution had been passed in Seanad Eireann disallowing the Solicitors Remuneration General Order 1972 which provided for an increase of 42 per cent on the present item charges. The Minister also indicated to the statutory body that he would be prepared to approve an increase of 20 per cent on the present items. It was decided to ask the statutory body to make a general order providing for such an increase as an interim measure pending the general consideration of the whole question of solicitors' remuneration.

Costs and rules for increased jurisdiction in Circuit and District Courts

The Secretary reported that draft scales had been prepared by the Circuit and District Court Rules Committee and submitted to the Department of Justice and that the rules were still under consideration by the Department. It was decided that urgent representations should be made to bring the scales into operation without delay as there is no provision in the present rules for the costs where the amount claimed falls within the extended jurisdiction.

Professional liability insurance scheme

A meeting was held between Mr. Beatty and the Secretary with Mr. J. G. Carr, Managing Director of Irish Underwriting Agencies Ltd. The report indicated that the insurance companies are seeking an increase in the premiums based partly on anticipated losses and partly on the inflationery trend which is affecting all insurance policies. It was decided that the Secretary should communicate with Irish Underwriting Agencies Ltd. and ask them to report back to the Society before premium rates are raised.

Interest on damages

The Tenth Interim Report of the Committee on Court Practice and Procedure made a number of recommendations as to interest on judgment debts including power to the Court to fix the commencement date for the running of interest from any date from the accrual of the cause of action up to the date of pronouncement of the judgment. No action appeared to have been taken on the committee's report since it was submitted in December 1969. The Secretary was directed to write to the Department of Justice and to the various committee asking that steps should be taken to implement the recommendations.

Costs of search against mortgagor

On repayment of a mortgage the solicitors for the mortgagees required a hand search against the mortgagors on the ground that if a second mortgage appeared on the search they must hold the deeds in trust for the second mortgage. The Council decided to express no view on the legal aspect of this matter but were of the opinion that there is no established practice of mortgagees asking for a search to ascertain the existence of puisne mortgages before executing the reconveyance of the original mortgage on repayment.

Section 94, Income Tax Act, 1967

Members received a notice under the section requiring them to furnish within twenty-one days particulars in regard to all rents or other payments arising from premises in the State belonging to any other person who is chargeable in respect thereof or who would be chargeable if he were resident in the State of which members in whichever capacity are in receipt. Section 94 provides that an inspector of taxes may require any person who as agent manages premises or is in receipt of rent or other payment arising from the premises to furnish the prescribed particulars. The Committee considered the question whether the notice should specify the particular premises in respect of which the information is sought. The notice as drafted required members to make a general search in their books for all clients in respect of whom they receive any rent. Consideration of this matter was adjourned.

Finance Act, 1969, Section 25

This Section applies Section 434 of the Income Tax Act, 1967, to rents collected by agents and payable to non-residents. The obligation of Section 434 is to deduct the appropriate amount of tax from the payment and to account for the amount so deducted to the Revenue Commissioners. There appears to be no obligation to disclose the name and address of the client. The Council on a report from a committee stated that members were obliged to deduct the appropriate tax from the rent received for their client and to remit the tax to the Revenue Commissioners and to remit the net amount of the rent to the client. There is no obligation to disclose the name and address of the client without the client's permission. The client if advised can make an application for a refund or for exemption.

Extended Jurisdiction of Circuit and District Courts

The scales of costs for the extended jurisdiction under the Courts Act 1971 submitted to the Department of Justice for the concurrence of the Minister have not yet been approved. Members who have been instructed by clients to institute proceedings for amounts within the extended jurisdiction have the following alternatives.

(1) To advise the clients to postpone the institution of proceedings until scales of costs are in force.

(2) To advise the clients of the costs which will be payable as between solicitor and client and point out clearly that the only amounts which will be recoverable from the defendants if the proceedings are successful will be the maximum amounts prescribed under the present rules which will leave the clients at a substantial loss as the result of the failure of the Department to bring the scales of costs into operation.

Council Dinner

The Annual Dinner of the Council of the Society was held in the Library, Solicitors Buildings, on Thursday, 27th April 1972.

The President, Mr. O'Donovan, received the guests. The Taoiseach, Mr. Jack Lynch, T.D., was the first Irish Prime Minister who honoured the Society by attending this function. Other guests included the Chief Justice, the President of the High Court, Mr. Justice Budd, Mr. Justice Fitzgerald, Mr. Justice Henchy, Mr. Justice Murnaghan, Mr. Justice Pringel, Mr. Justice Griffin, Judge McGivern, Judge O'Malley, the President of the District Court, Mr. Young (President of the Incorporated Law Society of Northern Ireland) and Mr. Sydney Lomas (Secretary, Northern Ireland Law Society). Twenty-nine members of the Council attended, and eighty guests were present. The toast of "Our Guests" was proposed by Mr. William Osborne, Vice-President, and responded to by Mr. James MacMahon, S.C. The toast of "The Society" was proposed by Mr. Justice Griffin, and reponded to by the President.

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the difference between English and Irish statute law.

A majority of the House of Lords, Lord Cross expressing doubts, decided that on balance of authority parties who had engaged in "mutual dealings" within Section 31 of the Bankruptcy Act, 1914, could not by agreement contract out of the section, so that where a company went into liquidation after an agreement with its bank to keep debit and credit accounts separate for four months the bank was entitled to the benefit of the section and could set off one account against the other. Their Lordships expressed the hope that the reform of bankruptcy law would not be long delayed as the present majority view of Section 31 might be embarrassing to those who wanted to agree to moratoria to assist businesses in financial difficulties.

[National Westminster Bank Ltd. v Halesowen Presswork and Associates Ltd.; House of Lords; (1972) 1 AER 641.]

Bankruptcy

National Westminster Bank Ltd. v Halesowen Presswork and Associates Ltd.; House of Lords; see above.

Building Contract

The Court of Appeal (the Master of the Rolls, Lord Justices Phillimore and Roskill), in dismissing the defendants' appeal from the order of Mr. Justice Bristow that the plaintiffs be entitled to enter final judgment under Order 14, RSC, for £10,008 with leave to defend as to the balance of the plaintiffs' claim. held that the principle of *Dawnays Ltd. v F. G. Minter and Trollope and Colls Ltd.* ([1971] 1 WLR 1205) applied notwithstanding that there was no architect's certificate of value where the defendant sub-contractors had been paid by the main contractors the very sums due to, and claimed by, the plaintiff sub-contractors for the work done. The RIBA "green form" of contract had been brought into the contract with all necessary modifications. Leave to appeal was refused.

[John Thompson Hoesley Bridge Ltd. and Another v Wellingborough Steel and Construction Co. Ltd.; C.A.; 22/2/1972.]

A local authority employing subcontractors for the foundations of blocks of flats was held not to be entitled to withhold from the sum ascertained as due in final payment under a contract based on the RIBA standard form £14,000 as unliquidated damages for alleged delay in completing the foundations.

[GHN Foundations Ltd. v Wandsworth London Borough; C.A.; 15/2/1972.]

Contract

A contract for the sale of a freehold house with a condition that the contract should be "subject to the purchaser obtaining a satisfactory mortgage" was held not to be binding unless or until the condition was fulfilled, such a condition being void for uncertainty.

[Lee-Parker and Another v Izzet and Others; Ch. Div.; 29/2/1972.]

A newly-qualified commercial airline pilot who received "disastrous" advice from his union not to present himself for work, did not do so and thereby repudiated a contract under which he had been trained by the company with whom he had undertaken to enter into a service agreement. As a result his father, who was a party to the contract, was ordered to pay £1,872 with interest and costs to the company for the amount which they had spent on his training.

[A.D.S. (Aerial) Ltd. v Snell; Q.B.D.]

A retired schoolmistress who bought a self-contained flat on the strength of an innocent misrepresentation by the vendor's agent that planning permission for a garage had been granted was held to be entitled to damages in the first case to come before the Court of Appeal since the coming into force of the Misrepresentation Act, 1967.

[Gosling v Anderson; C.A.; 6/2/1972.]

Conveyancing

See under *Contract;* Lee-Parker and Another v Izzet and Others; Ch. Div.; 29/2/1972.

Bankers who take a mortgage from a customer and adopt the common practice of registering a notice of deposit of the land certificate, instead of registering their mortgage as a charge, gain only illusory protection for their mortgage.

[Barclays Bank Ltd. v Taylor and Another; Ch. Div. 24/2/1972.]

Crime

The Court held that the question whether or not an article was indecent for the purposes of Section 11 (1) (b) of the Post Office Act, 1953, was to be determined by a jury and a jury needed no assistance from persons who might have views on the matter or might give evidence as to the effect of the alleged indecent material on them.

[Regina v Stemford; C.A.; 29/2/1972.]

There may be a special reason for not disqualifying a driver where he has moved his car only a few yards without likelihood of his coming in contact with other users of the road, but no special reason exists where he drives a lorry 200 yards through busy streets in circumstances where it is a potential danger to other road users.

[Coombs v Kehoe; Q.B.D.; 8/2/1972.]

A man who in a public place used insulting words and behaved in an insulting manner whereby a breach of the peace was likely to be occasioned had not committed two separate offences under Section 5 of the Public Order Act, 1936, and an information alleging both words and acts was not bad for duplicity.

[Vernon v Paddon; Q.B.D.; 11/2/1972.]

A motorist who had felt drowsy before entering a motorway and stopped his car on the motorway verge in order to rest was held not to have stopped his car in an emergency and was therefore guilty of an offence under Regulation 9 of the Motorways Traffic Regulations, 1959.

[Higgins v Bernard; C.A.; 6/2/1972.]

A postman who overdrew his Post Office Giro account when his wages ceased being credited to it during the strike last year but intended to repay the money after the strike ended was nevertheless guilty of dishonestly obtaining the money by deception, intending permanently to deprive the Post Office of it, contrary to Section 15 of the Theft Act, 1968.

[Helstead v Petel; Q.B.D.; 10/2/1972.]

The Court refused to redefine "special reasons" for mitigating circumstances which could be considered for not imposing disqualification on conviction of an offence against the Road Safety Act, 1967. Lord Goddard's judgment in *Whittall v Kirby* ([1947] KB 194) when he said that "A 'special reason' ... is one special to the facts which constitute the offence. It is a mitigating circumstance—directly connected with the commission of the offence" remained good law.

However, their Lordships decided on the present special facts, that events which took place after the offence and in which the offender had no part constituted circumstances special to the offence, and quashed a mandatory disqualification for twelve months.

[Regina v Anderson; C.A.; L.R. (1972) 1 Q.B. 304.]

There is no proposition of law that a defendant whose past record is well known to a magistrate should not be tried by him, the Lord Chief Justice said in the Divisional Court when refusing an ex parte application for an order of prohibition directing Mr. Neil McElligott, the Old Street Magistrate, not to hear a case against two men charged with loitering with intent.

[Ex parte X and Y; C.A.; 18/2/1972.]

A motorist convicted of being in charge of a motor vehicle when he had 229 milligrammes of alcohol in 100 millilitres of his blood contrary to Section 1 (2) of the Road Safety Act,

1967, failed in an appeal on the ground that the trial judge was wrong in rejecting a submission of no case to answer because there was no evidence o fthe proportion of alcohol in the blood although an analyst's certificate was produced.

Their Lordships, in a reserved judgment, dismissed an appeal by J. Banks, of Accrington, from conviction at Lancashire Quarter Sessions (deputy chairman: Judge Lawton) last July. He was fined £25, and disqualified for twelve months.

Section 2 (2) of the Road Traffic Act, 1962, contains a proviso that an analyst's certificate shall not be evidence of the matters certified "unless a copy has been served on the accused not less than seven days before the hearing", and par. 21 of Schedule 1 to the 1967 Act provides that the copy may be either personally served or sent by registered post or recorded delivery service.

[Regina v Banks; C.A.; 21/2/1972.]

Defamation

It is often very desirable and sometimes necessary that where a plaintiff in a libel action complains of words as defamatory in their natural and ordinary meaning and that meaning is not clear and explicit, he should be required to give particulars of the inferential meanings (the "non-legal innuendo") which he says the words bear and on which he will rely at the trial, so that the defendant may know in advance how to meet the case against him.

[Allsop v Church of England Newspaper Ltd. and Others; C. of A.; 27/2/1972.]

Family

In custody cases under the Guardianship of Minors Act, 1971, it was wrong to say that orders in favour of both parents should be made only in exceptional cases, the Divisional Court said when allowing a father's appeal against an order by magistrates granting legal custody of the three children of the family to the mother, with care and control also to her. The court varied the order by giving custody to both parents, provided they would co-operate for the benefit of the minors.

[In re J (Minors); Div.Ct.; 28/2/1972.]

Names of magistrates should always appear at the top of justices' reasons for their decision in appeals, Sir George Baker, President, said in the Family Division when allowing a father's appeal against an order under the Guardianship of Minors Act, 1971, which gave his daughter's custody to his wife and remitting the case to a new panel of magistrates.

[In re N (a Minor); Q.B.D.; 22/2/1972.]

There was no inference that a wife who worked for a period for payment and thereafter continued to work to help her husband to support her eight children of an association with another man had an equitable interest in the husband's business or in the house bought from the proceeds of his business interests.

[Heyland v Heyland; C.A.; 26/2/1972.]

Adultery is no longer a serious social offence, and there is no reason why direct questions about alleged adultery should not be asked of a party or witness in divorce proceedings by way of pre-trial interrogatories where the answers are necessary for disposing fairly of the cause and for saving costs.

[Nest v Nest and Another; C.A.; 26/2/1972.]

The same principles of law applied in considering a mistress's share in a house as applied when considering a wife's interest in the matrimonial home. The court must look at the equity at the time the parties separated and not at their actual contribution.

Their Lordships so held in allowing an appeal by Miss J. C. Cooke, of Bishop Sutton, near Bristol, from a judgment of Mr. Justice Plowman in which he found that she had a one-twelfth share in a bungalow which she had helped to build with the defendant. Mr. D. Head, St. Leonards -on-Sea, Sussex.

[Cooke v Head; C.A.; 19/1/1972.]

Landlord and Tenant

Lord Justice Roskill, in the Court of Appeal, said that it was desirable, as a matter of practice, that indictments charging the offence of persistently withdrawing or withholding services reasonably required for the occupation of premises let by a landlord, contrary to Section 30 (2) of the Rent Act, 1965. should adequately follow the wording of the statute and "persistently" should be used.

[Regina v Abrol; C. of A.; 24/1/1972.]

Marine Insurance

The Court of Appeal, the Master of the Rolls dissenting, disapproved of the long-established practice whereby defendant insurers are not bound to give further and better particulars of marine insurance for the loss of a ship when the insurers allege that the ship was deliberately scuttled and that the owners had procured or connived at it.

[Astroulanis Compania Neviere SA v Linard; Ch. Div.; 28/2/1972.]

Negligence

The House of Lords decided that a much criticised decision of its own in 1929, that the only duty an occupier of land owed to a trespasser, whether child or adult, was not to act with reckless disregard of the trespasser's safety when he knew that the trespasser was on his land, was out of date in modern social conditions and should be overruled or modified.

[British Railways Board v Harrington; House of Lords; 16/2/1972.]

Planning

The House of Lords, in test cases, decided by a majority a basis for assessing compensation for agricultural land compulsorily acquired for a public scheme which will have the effect of greatly increasing the compensation payable where the scheme and planning permission for it have been approved before the notice to treat is served on the owners of such land.

Lord Simon, in a strong dissenting judgment, considered that the basis approved by the majority would perpetuate valuation on an unreal basis and would augment injustice.

[Rugby Joint Water Board v Footit and Another; Same v Shaw-Fox and Others; 24/2/1972.]

Road Traffic Acts

See under *Crime;* Coombs v Kehoe; Q.B.D.; 8/2/1972. Higgins v Bernard; C. of A.; 6/2/1972.

Tax

Ribena, a product manufactured by Beecham Foods Ltd., was held not to be a drug or medicine and therefore not exempt from purchase tax.

[Customs and Excise Commissioners v Beecham Foods Ltd.; House of Lords; 26/1/1972].

Trade Descriptions

Convictions for offences against the Trade Descriptions Act, 1968, should have been recorded against proprietors of a self-service store who displayed bottles of Ribena priced at 5s 9d with manufacturers' labels worded "The deposit on this bottle is 4d refundable on return" but who exhibited a notice at the check-out point reading "In the interest of hygiene we do not accept the return of any empty bottles. No deposit is charged by us at the time of purchase." Two purchasers were refused a refund.

[Doble v David Greig Ltd.; Q.B.D.; 15/2/1972.]

Words and Phrases

See under *Crime;* "special reasons"; ex parte X and Y; C. of A.; 18/2/1972.

UNREPORTED IRISH CASES

Criminal Law: Accused who pleads guilty to an offence can be sentenced in one Court, even though his co-accused got a suspended sentence in another Court.

Criminal Law

In August 1971 three armed men entered the Five Star Supermarket at Togher, Cork, and robbed the premises of £772 by forcing the manager and his assistant at gunpoint to hand over the keys of the safe. The three men were armed, the applicant with an 1875 revolver in working order, the second one with a pistol and the third man with a cosh. After the robbery they escaped in a stolen car. They were pursued by the guards, and eventually left the car. While the guards were running after them, the man with the pistol fired a shot at them. Eventually the applicant was arrested and found to be in possession of the revolver, but had no ammunition for it. The three accused had up to then been engaged in a business venture which had failed, and planned the robbery to recoup their losses. The accused and Motherway had spent years in the Parachute Regiment of the British Army. However, the manager and his assistant were not ill-treated, and the revolver was incapable of shooting anybody. The applicant had participated in the robbery on the strict understanding that no arms were to be used, but the pursuing guards did not know this.

The applicant made a full confession to the guards when arrested, and co-operated with them in every way. However, he was unable to obtain the £4,000 bail fixed by the District Court, and had spent eleven weeks in jail before he appeared before Judge Neylon in the Cork Circuit Court. His co-accused had not only managed to secure the recognizances required for their bail but had also applied to have their case transferred to the Central Criminal Court in Dublin.

Accordingly when the accused appeared before the Cork Circuit Court, the accused pleaded guilty to armed robbery, for which he was sentenced to four years, to conspiracy—twelve months, and to the unlawful taking of a motor vehicle—six months. He was also disqualified from holding a driving licence for ten years. While the accused was a product of a broken home, he had a good record for nine years in the Army; nevertheless in view of the gravity of the crime, the sentences as such were not excessive. His co-accused, Motherway and Twomey, had meanwhile appeared before O'Keeffe P. in the Central Criminal Court; they pleaded guilty to armed robbery and were each sentenced to six years penal servitude, the sentence to be suspended on entering into a bond of £7,000 with one independent surety to keep the peace for five years. No other sentence was imposed. The money was available to discharge the bonds, and the two accused were released. The Registrar was directed to apply to the County Registrar for the transcript, but the President would not sanction the issue of a transcript, as no appeal from him in those cases was pending. A detective sergeant who had been involved, gave evidence of the circumstances of the robbery. Despite the discrepancy in the sentences, the Court could not find any justification for varying the sentences to a significant degree. However, a sentence of three years from conviction was substituted for four years, nine months instead of twelve months and three months instead of six months. The sentence of disqualification was quashed.

[The People, A.-G. v Poyning; Court of Criminal Appeal (Walsh, Butler and Pringle J.J.); per Walsh J.; unreported; 3rd March 1972.]

Practice: Court has no jurisdiction to order a lis pendens be vacated against the will of the party who registered it until the suit is determined.

Two defendants, Brady and Fitzsimons, are the owners of the Failte Bar in Athboy, Co. Meath. In July 1970 they agreed to sell it to the plaintiff for £11,100. A deposit of £1,880 was paid, but it was not possible to complete until August owing to the bank strike. When the strike ended in November, £378 out of the deposit of £1,880 had not been honoured. In May 1971 the plaintiff wrote rescinding the contract, and on 17th May 1971 he issued a plenary summons, in which he claimed rescision of the contract, the return of the deposit with interest and damages for breach and for fraudulent misrepresentation. This summons was registered in the Central Office on the same day as a *lis pendens* affecting the estate of the second defendant. The defendants duly notified the plaintiff that the proceedings should not have been registered as a *lis pendens,* and requested him to vacate it, as they were unable to complete a sale to another purchaser for £9,000 until the *lis* had been vacated. The rule before the Protection of Purchasers (Ireland) Act, 1844, was that a person who acquired an estate or interest in relation to which a suit had been started when he got his title, took it subject to the rights and liabilities of the suit whether he had notice of it or not. All the case law from *Worsley v The Earl of Scarborough* (1746) to *Bellamy v Sabine* (1857), confirmed the doctrine that, *pendente lite,* neither party to the litigation can alienate the property in dispute so as to affect his opponent. The 1844 Act provides that a purchaser should have due notice of a *lis pendens.* The plaintiff, having paid some of the deposit, if he suceeds in his claim for its recovery, he will have a purchaser's lien on the land for it, which is a right protected by a *lis pendens.* Accordingly the defendant's motion to vacate is dismissed.

[Gibbs v Brady and Fitzsimons; Kenny J.; unreported; 21st February 1972.]

Nuisance: Injunction against offensive smells and dust refused.

The defendants are owners of 696 acres of land near Glenealy, Co. Wicklow, and carry on the business of egg production on an intensive scale under the trade name of Ballyfree.

The plaintiffs are residents of Glenealy who complain

(1) That the keeping in the pits, filling, transport and spraying of slurry releases offensive smells.

(2) That offensive and noxious smells emanate from the brooder houses.

(3) That offensive and noxious dust emanates from the brooder houses.

(4) That the operations of the defendants have caused an infestation of flies and rats.

Butler J. found that slurry undoubtedly caused persistent offensive smells, and that the choice of site for the houses was unfortunate. Furthermore the transport of slurry in tankers on the road and its spreading was a nuisance until the Spring of 1969. Until recently, the complaint in regard to dust and smell at the time the brooder houses were being cleaned out was justified, but not on any other occasion since. The infestation of flies and of rats was not properly proved. Recently the defendants have acted reasonably to remove the objectionable slurry by mixing Alamask with it; these precautions have reduced any objectionable smells from the use of slurry. An injunction is not called for in the circumstances, most plaintiffs were awarded £25 but Byrne was awarded £500. Plaintiffs are entitled to costs of four days hearing.

[O'Gorman and others v Philips; unreported; Butler J.; 27th May 1971.]

Effect of conviction of dangerous driving considered

The accused was charged with manslaughter and dangerous driving between Cork and Kinsale. He was found guilty of careless driving, fined £50, and disqualified for twelve months. The accused was driving a Jaguar on a Whit Monday afternoon on a good-surfaced road. A witness who was driving in the same direction gave evidence that the accused's brother, who was driving a separate car, and then the accused flew past him. A motor cyclist was coming against them, but, owing to the speed at which the accused was driving, he was unable to avoid a collision, and the motor cyclist subsequently died from his injuries.

It was first contended that the evidence did not justify Judge Neylon from leaving the manslaughter charge to the jury. This contention was rejected, as there was evidence that the accused and his brother were racing at sixty miles per hour.

It was further contended that the Judge's charge was wrong because he did not tell the jury that they had to be satisfied beyond reasonable doubt that accused 's driving was the sole cause of the death. It was argued that the jury should be told that, when in a prosecution for dangerous driving, the dead or injured person was guilty of contributory negligence (as was alleged here), they should acquit the accused unless they were satisfied that his driving was the sole cause of the death or injury.

The Court considered the effect of Section 53 of the Road Traffic Act 1916 as amended by Section 51 of the Road Traffic Act 1968. It is clear that the severity of the punishments which may by Section 53 (2) be imposed by the Court should depend up n the result of the dangerous driving and not on its quality. The offence is the dangerous driving itself, not the consequences of it. Therefore this argument is rejected. If the dangerous driving causes death or serious bodily harm, the conditions for the imposition of the heavier penalty are clearly fulfilled. This is not a matter which can be reduced to a formula because questions of causation are always complex.

[The People (A.G.) v Matthew Gallagher; Court of Criminal Appeal (McLoughlin, Kenny and Griffin, J.J.), per Kenny J.; unreported; 1st March 1972.]

County Tipperary Sessional Bar Association

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Solicitors' Benevolent Association

Retirement of Mr. McCarron

Mr. Eunan McCarron having acted as secretary to the Solicitors Benevolent Association for the past sixteen years has recently resigned. During his period in office the income and grant expenditure greatly increased. Mr. McCarron, however, always regretted that despite all his efforts so many solicitors failed to subscribe as annual members to such a deserving charity.

An advertisement for the vacant position appears elsewhere in this issue, at page 116.

EUROPEAN SECTION

Lawyers and European Communities

by PROFESSOR J. B. MITCHELL

Text of a Lecture given in Queen's University, Belfast, on 24th February 1971

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PART II

(Footnotes appear at the end of each part of the lecture)

Community law necessary to all lawyers in the Community

It was then clear from the outset that Community law had to become part of the stock-in-trade of all lawyers within the Community. What has become apparent is that the extent to which it does so is continually increasing. Not merely is the simple quantity of law growing naturally as policies are worked out and put into effect, but also in recent months the range of legislation which does so penetrate a national system has increased. A quick reading of Article 189 might lead to the view that in no circumstances were Decisions or Directives of that type. Two recent opinions of the Court at Luxembourg have shown that this is not so. Both Decisions and Directives even though addressed on the fact of them simply to Member States are capable of conferring rights upon individuals to which national courts are bound to give effect or to protect. There is thus opened up to individuals a right for example, to reclaim or to resist a claim to taxes or duties demanded by a national administration, where such a demand is in conflict with Community law. I will return to an examination of the precise nature of the direct effect as against other such effects, but for the moment merely wish to emphasize that for the lawyer **the key to understanding Community law is to regard Community law as a form of constitutional law**. I am no supporter of much of what is commonly put forward as the federalist theory of Europe, for traditional federalism and its range of ideas does not fit this European scene, yet it is tempting to cite here Chief Justice Marshall in *McCulloch v. Maryland*[12] emphasizing that the interpretation of a constitution differed radically from the interpretation of legislation, that the United States had chosen to be a nation and of that the constitution was a mark, it was the order established for ages to come. In the same spirit M. Lagrange, in his *conclusions* in *Fedéchar*,[13] speaks of the Treaty as the charter of the Community Thus **the first thing that lawyers must learn is to study the nature of this art of constitutional interpretation**.

Travel good for migrant workers

Hence, looked at in this way the decisions in two cases on migrant workers were entirely predictable. In Aff. 75/63 the Court remarked "que l'établissement d'une liberté aussi complète que possible de la circulation des travailleurs, s'inscrivant dès lors dans les 'fondements' de la Communauté, constitute ainsi le but principal de l'article 51 et, de ce fait conditionne l'interprétation des réglements pris en application de cet article."[14] In its sequel, *Hessische Knappschaft c. Maison Singer*,[15] the words "migrant worker" were held by the Court to cover the worker who was only "migrating" in the sense that he was on holiday in a Member State other than his own. That is to say that in the Communities travel was a good in itself, and given a choice between a narrower and a broader interpretation, either of which might have been legitimate, the choice was made for that interpretation which supported that good. In just the same way one could have said that the judgments on the effects of Decisions and Directives were, or should have been, predictable.[10] The whole run of events, the working of the Treaties and their internal logic as it had been illuminated by earlier decisions of the Court combined to lead to the conclusions actually reached, provided that there were no insuperable obstacles in the way. Such a judgment was only possible in the recent past, where certain elements in the practical and political evolution of the Communities was clear. A few years earlier the prediction would have had to be in the opposite sense, simply because in the then the result which today is to some (including our Customs constitution or political situation of fact or knowledge and Excise authorities) startling enough, was inconceiveable. This is an indication of what I mean when I say that an adjustment to constitutional interpretation is essential. I am not arguing for legal uncertainty, or against *sécurité juridique* (an idea which is in the forefront of the thinking of the Court). I am merely stating the obvious that a **constitution, a character, unlike a law or a normal treaty does not consist of so many static words on paper.** The meaning of those words is constantly enlarged or illuminated by changing circumstances and by evolution—or at least it is in the hands of the right sort of court.

Implications of Article 159 for lawyers

Here clearly two of the implications for lawyers are emphasized: first, the penetration of Community legislation upon which I have briefly touched; secondly, the implication of this law for lawyers in quite humble affairs. It is at this point that one comes to the heart of the matter, for the key to Community law, and the

key to the place of lawyers in the system of Article 177 under which both these cases arrived in the Court at Luxembourk. In saying that I do not underestimate the importance of proceeding under Articles 169, 173 or 175, that is to say the direct ways of challenging the misdemeanours or misbehaviour of states, or those of the Council and Commission. These will remain serious and important, especially Article 169, the action against Member States by the Commission, which is important not merely for its immediate and obvious effects when it is invoked or threatened, but for the support which its existence gives, in the terms in which it is drawn, to the position of the Commission. But, as far as the generality of lawyers is concerned, the proceedings, in contrast to their results, are not of such great interest. Under the Protocol of the Court possible representation by the Commission or a Member State is broadly defined in terms which go beyond the definition of the possible representation of a private party.[17] No doubt then representation here will be by a highly specialized group. In distinguishing the results of litigation under this head from the actual conduct of it, for such litigation, by clarifying the Treaty, may have immediate and more remote consequences to which I must turn in due course. For the moment it suffices to emphasize that the fact of proceedings under Article 169 was an important element in the decision of Aff. 33/70, though it was combined with other elements and the precise weight of each element remains to be worked out. Probably, of all three elements, it was the least significant, though in other cases this need not be so.

Articles 173 and 175 of the Treaty

Article 173, and its corollary Article 175, which concerns non-action, I discount for other reasons. Individuals there have to overcome two hurdles, the definition of what concerns them individually, and of what concerns them directly. It would perhaps be more accurate to say that they have to pass through the eyes of two separate needles, and we are told on good authority that few achieve this even with one needle. So far, only the firm of *Toepfer* and another have achieved this distinction,[18] and they only did so in circumstances which were highly particular. Thereafter those who have sought to emulate their success have failed, and perhaps for good reason, at this stage of development. The jurisdiction under the Article just mentioned is that with the highest political content, it involves a direct challenge to what must, in many cases, be regarded as primary discretion of the Commission and there is all the objection in a modern society to opening up a full *actio popularis*[19] and those objections gain added weight in the Community setting from the difficulty of achieving such legislation in the first place. From the outset a warning had been given that challenges of this order, even where there were *mutatis mutandis* acceptable within a national setting, were to be less readily received in a Community setting. In *Fedéchar* the Court rejected the proposal of the Avocat-Général to open the door under Article 33 of the Treaty of Paris to an association of producers,[20] even where the "legislative" quality of the act in question was less than it would be under the Treaty of Rome, and where national law in at least one Member State would have left the door open. The struggle under Article 173 (and even more under Article 175) remains appropriate to the rich and the brave and to their legal advisers (happily some keep trying). This loss is much less than might appear, for the camel can walk easily and more cheaply through that eye labelled Article 177, and that is more than bodkin sized. In *van Gend en Loos* the Court emphasized[21] that the vigilance of individuals was a necessary and suitable supplement to the controls under Articles 169 and 170, just as in *Schwartze*[22] it kept wide open the opportunity to challenge the validity of Community Acts under Article 177 recognizing the narrowness of that possiblity under Article 173.

Article 177 of the Treaty

It is then with Article 177 that the lawyer will be primarily concerned. The procedure under that Article is simplicity itself and fits easily enough into any legal system.[23] It is through this Article that the great lines of Community law have been determined and it is by this means that the lawyer is brought within his own native setting into the ambit of that law, and that his established, or received, pattern of thought is challenged. Outstandingly important were the twin ideas evolved in the early cases of the direct applicability of Community law, and of the new and distinct legal order linking these two, and enhancing the effect of each is the **concept that from the Treaty individuals derive rights.**[24] Once it is remembered that the role of the Court of Justice under Article 177 is simply that of interpretation (or, as the case may be, of passing on the validity of Community acts) and that application of Community law is left to national courts, it becomes clear that not only do those courts become, for this purpose, part of the Community judicial system, but also that national lawers are immediately and closely linked with Community law. The latter ceases to be an esoteric branch of law which is the province of a small band of specialists. The "political" justification for such a system is clear. Instead of the imposition of a totally new and self-contained judicial structure, the endeavour is made to invoke a real and fruitful collaboration between national courts and the Court of Justice. At the same time this system should achieve the interpenetration of the two legal orders and a decentralized administration of a Community one, with all the consequential gains to individuals which that entails. The risks inherent in such a system are equally clear, that national courts and lawyers may for a variety of reasons reject or neglect this new role. In the long run, as experience already demonstrates, that risk was worth taking, for only thus could Community law implant itself in the various legal systems.

What rules of the Community have direct effect

These initial propositions have, of course, been elaborated and each has had an effect upon the others. The idea of what rules have direct effect is an autonomous one appropriate to this legal order and, while connected with the similar concept of international law, it is not derived from or identical with it. It could not be, for, again, there are so many ideas of what is directly applic-

able and what conditions as there are Member States,[25] and thus the dangers of uneven application would have been real. The advantage of this autonomous character is that lawyers are freed from the confines of the monist/dualist argument about international law, and for a dualist country such as the United Kingdom this is important. The hopeful elements in cases such as *Salomon* v. *Commissioners of Customs and Excise*[26] can be built on without the hindrance of former doctrine. Where, as in France, an attempt is made to keep Community law close to international law difficulties arise despite apparently favourable constitutional conditions.[27] This direct internal effect was present from the start—it was, as has been seen, written into the definition of Regulations in Article 189; it was greatly extended, when it had been decided that all provisions of the Treaty of Rome, even if left apparently to States, had this direct effect so that individuals could take advantage of them, provided that the provisions were in themselves clear and required no further action involving substantial discretion. This effect is present whether the obligation imposed upon the Member State is one to do or not to do.[28] In all these cases the fullest internal effect is envisaged; that is to say both an effect as against a Member State, and an effect as between individuals. The volume of law thus directly applicable is continually expanding, as a result of new regulations or because provisions become unconditional by reason of lapse of time, or, it would seem, because they have become clear. To the extent that, for example, the meaning of provisions is illiminated as a result of proceedings under Article 169 there appears to be no logical reason why direct effect should be denied. A really significant extension results from the two Decisions already referred to, giving some direct effect to Decisions and Directives in appropriate cases.[29] In both cases the Court speaks of direct effect in the relations between the Member State, the destinatory of the Decisions or Directives and those engaged in litigation with the Member State. This may then be a more confined version of direct effect, though clearly in many circumstances it may be among the most important. It is that which will force States to hold to their accepted obligation.

Words in a Community legal context

It is in relation to "direct effect", the factual necessity for which I have sketched, that the real problems arise, and it is in this context that the idea of a new and distinct legal order combined with that of the dual character assumed by national courts assume their greatest importance. The meaning of words within a Community legal context is lifted out of any national setting and need not correspond with the connotation of identical words in a national system. Thus in the setting of migrant workers, such a meaning has been insisted on for the simple word "travailleur".[30] So, too, within the field of competition law it is clear that the idea of what amounts to an obstacle to "inter-State" trade, and the way in which particular contracts must be regarded from the point of view of their legality under Article 85, are, and must be Community concepts applied, in among other ways, by national courts. The way in which a group of contracts, each apparently a separate one, is treated need not correspond to the way in which a national court would, by the light of nature and of its own history of the law of contract, conceive the matter. These lines, on which principles are emerging, appear, for example, in cases dealing with what we would call "tied-houses".[31] The conservation of this Community meaning is obviously necessary to keep uniformity, but it has also to be remembered that the Community is and will remain a many-tongued thing, with each language having equal value, and the translation into one language may only be an approximation to the intended meaning. Hence for precision all originals may have to be used. Thus, the **distinctiveness of Community law has to be conserved in what ever setting it is administered.** The trap of thinking that because it is administered in a national setting it is transformed or transposed into national law must be avoided. It must be avoided not merely when dealing with "primary" Community law but also with what may be called "secondary" Community law. Legislation which emerges as a consequence of Directives, although it is national in form, retains its Community substance—for the validity of the substance must be judged against the substance of the Directive which was its cause.

Lawyers should think in terms of Community law and of national law

Clearly then lawyers must be able to think in two dimensions—that should not worry them if they are to retain their positions as true artists and not journeymen. Moreover, these two dimensions help to surmount difficulties that can arise, and they correspond to the necessities of the case. It is only if Community law is regarded as being transformed—de-natured would be another way of putting it—that certain difficulties arise. The Court of Justice speaks in this context either of "des droits que les juridictions nationales doivent sauvegarder" in those cases where it is dealing with the broad meaning of self-executing, or of "d'engendrer pour ceux-ci [scil. les justiciables] le droit de s'en prévaloir en justice" when it speaks of what may be a narrower self-executing effect.[32] Now, at the moment of application, that is of the actual safeguarding of rights, numerous theoretical difficulties can arise and must be surmounted. In *Salgoil* to which I have just referred there was the problem of whether or not this was properly a task for the civil courts (whence the question had come) or whether it did not belong to the administrative courts. In cases such as *Molkerei-Zentrale*[33] the problem facing the German courts was that or what to do when a German law had imposed a compensatory turover tax, which the Court of Justice had clearly indicated was contrary to Article 95. For the German Finance Court the problem was all the greater because of the existence of the German Constitutional Court which alone had the capacity to pass judgment on the validity of a law. One could continue the volage through France and Italy.[34] It is not necessary, for here immediately one is faced with the problem that British lawyers call the sovereignty of Parliament, but which is perhaps miscalled, and it is certainly not simply a British problem. In Italy, for example, in the case just referred to, it emerges as one of the hierarchy of norms; in France it emerges as

one which relates back to one of the constitutional theories of 1780.

General or local, the problem is there, and lawyers must deal with it. May I remind you of what I said at the outset of the relativity of ideas? How then does one deal with it? There are many ways. First, one could attack the validity of the generally received ideas of the sovereignty of Parliament. That way is sound.[35] Secondly, one can attack by emphasizing the evolution of thought which has happened since Dicey wrote. That way is also sound.[36] Yet neither affords a full and proper answer. Each deals with the capacity of the Westminster Parliament to transfer legislative competence to the Communities in terms in which such transfers are conceived within the Community system.[37] Neither deals entirely satisfactorily with our problem, that of courts giving full effect to Community obligations. Again there are two ways of finding an answer. **The first is to argue the relativity of constitutional doctrine.** In itself that way is sound—if you change the constitutional setting then lawyers must change their pattern of constitutional thought and I have already said that the essential approach to these problems is through constitutional law. The change of pattern could achieve the desired results. For, out of arguments based on Article 189 or those built on the economy of the treaties or the necessities of the Communities of **the Court has built in the doctrine of the supremacy of Community law.** Accepting that, it follows therefore that the ranking of statutes within the hierarchy of norms of the British system changes. They are no longer the ultimate source of law and therefore must be differently regarded.

There are two objections to this line of reasoning. First, the **invalidity of a statute is only an operative concept** *quoad* **Community law.** It is perfectly conceivable for example, to work out a situation in which at the national level there is one competition policy which is valid and useful as regards mergers and which does not conflict with Community competition law, whereas other elements of the same national statute do so conflict. Invalidity only applies to the latter provisions.[38] Secondly, this line of argument leads to the confusion of *Costa* v. *E.N.E.L.* It runs the risk of subjecting Community law to local and domestic constitutional law. Yet these provisions or local constitutional law, which may be regarded as in some sense fundamental, are themselves products of particular national histories to which the Communities are in a sense strangers, even though paradoxically they may be a consequence.

Lawyers should accept distinctive Community Law

The solution is for lawyers to be logical, to accept the distinctiveness of the Community legal order with which they become involved. It follows that that **law can only be subjected to its own constitutionalism and constitutional system.** This is the fundamental importance of the last *International Handelsgessellschaft* case.[39] The question was whether the provisions relating to fundamental rights in the Basic Law of the Federal Republic applied to Community law. The answer of the Court of Justice was clear. Community law could not be confined by national constitutional law or structures. On the other hand, and this is why I used the word "constitutionalism", the **Court immediately accepted that the protection of fundamental or human rights formed an integral part of its task** and that Court must therefore safeguard them.[40] The case is worth an article in itself. One may note that although doubtless in speaking of constitutional structures the Court was thinking primarily of the federal nature of Germany, it is a phase which is of peculiar importance in the context of the United Kingdom. This habit of the Court of taking with one hand and of giving back with the other is worth noting. We have already seen it under Articles 177 and 173. It is, however, this logical approach which solves our problem. The mysteries and confusions which we wrap up in the words sovereignty of Parliament, and for which the Italians and French have other phrases, become irrelevant. They, so far as they have substance, apply within their local or national setting alone. They do not apply within the Community setting—a setting in which national courts and lawyers find themselves working without actually having to journey, save in an intellectual sense.

It could be said that all of this is too strong or heady stuff for lawyers and for judges to stomach. It is true that diet does not always appeal to every individual, but over-all the meal has been digested. The German Finance Courts, prompted in their imagination by the European Court of Justice, have found that they can do what they thought they could not, and refuse validity to the excess tax prescribed in German law, and this, be it noted, despite the constitutional arguments which are of deep significance in Germany. The German Constitutional Court has been able to find that the provisions (Articles 101 and 103) of the basic law relating to the right to a lawful judge only apply in the German setting and have no relevance to the refusal to refer under Article 177. Italian courts in other cases have fumbled their way to holding that certain Italian constitutional provisions only apply in a local non-Community setting.[41] Belgian courts had, before the Court of Justice had spoken of the nature of Directives, found a way of controlling administrative decisions of Ministers on the basis of Community law.[42] All of this, it must be noted, is gainst a background of more rigid legal thought than exists perhaps with us, and against a constitutional background which, because of history, was at least as deeply felt as is our own, and in some instances more deeply felt. The essential challenge to lawyers is then that of accepting the obligation of thought at a high and serious level.

Lawyers must be ready to challenge administrative decisions

That sentence puts the matter a little briefly, for beyond thought must also lie imagination. It was for that reason that I mentioned the last Belgian case *Corveylen*. Imagination must run to looking to remedies I started to learn my law in the aftermath of the small and to inventing new ones. There is no basic problem. revolution caused by *Donoghue v. Stevenson*. We have, since, perhaps, the 17th century, stopped thinking in terms of public law. Lawyers will have to resume the habit for it is in that field that remedies must be invented. The **application of Community law is intended**

to be the full application so that individuals reap the full benefit. As *Corveylen* shows there must be a readiness to challenge, in legal forms, administrative decisions which is greater than our present readiness. No harm can come from that. Beyond such matters lawyers will have to use ideas such as that of "*une faute de nature à engager la responsabilité de la puissance publique*" which has little to do with our private law of negligence. If one looks at Article 215, one accepts that in the Community system any act for which reparation is due is quite likely to be an act in which both Community and national administrations have participated. Who then, if the act was faulty, pays? The answer which is reasonable in that **in circumstances where there is shared fault, then the burden is shared.**[43] The answer is logical, but it only achieves its intended results provided that within reasonable tolerances **national systems of law can give roughly comparable redress. In this area of law British legal systems are far behind** and a conscious effort of imagination will be required at the very least.[44] It is in this area that there is, perhaps, both the greatest challenge to lawyers of all ranks and also the greatest potential gain to individuals of whatever order. I have, at this stage, only mentioned remedies—but the philosophy of continental public law produces other important changes. Procedural rules—such as those relating to the burden of proof where *détournement de pouvoir* is alleged are of the utmost practical importance and, incidentally, of assistance to individuals.

Two final points must be briefly made. The shock to lawyers can, in one sense, be greatly exaggerated. I was not in practice when the 1925 property legislation came into force in England, though I did in fact read my *Challis* as one of the early books on property law. The demands which that legislation made on the "bilingualism", imagination and thought of conveyancers was of the same order as the demands of which I have been speaking. **If lawyers are to serve the community they must face these demands,** as did the conveyancers. I have spoken too of all that lawyers must learn. It is certainly not too late to start, for the volume of law is still within comprehensible limits. There is the other side. I have no doubt that there is much that British lawyers can contribute and I say that in all humility. It again follows from the word autonomous that this new legal order must be ecletric. It follows that the fundamental rights which the Court will protect, while not identical with those of any Member States, are those which are derived from the common experience of the partners. So too it is evident from the *conclusions* of any of the *Avocat-Généraux* how the laws draws on the common stock of principle as indeed it is enjoined to do under Article 215. Thus the addition of any new major system will inevitably have its effects. That too must be taken into account so far as the future is concerned. Clearly so far as the past is concerned, what has happened remain. **The broad patterns of interpretation and general attitudes will and must remain.** It would be absurdly agressive to expect otherwise, and would create serious legal uncertainty among existing Member States were anything different to happen. Thus British lawyers must enter into the legal world of the Community as it is, and I have simply tried to sketch a plan of major elements of that world. Structures, let alone evolution, are far from complete and it is in relation to the creative work still to be done that British lawyers can contribute. The more they are ready to enter into sympathy and understanding with what has already been achieved the more they will be able to contribute.

I have chosen to stick with these principles of law and not to enter into these arguments about the meaning, in English, of avocat, rechtsanwalt, etc., and of who may plead before the Court. These are very minor arguments. I can assert that not merely because as a Professor I am not on piece rates, but because this is the sort of issue which can only be decided by the Court and by the professions in the light of full knowledge of the procedure of the Court and taking account of what finally will give the best service to the client. The legal professions are at the moment much open to scrutiny. **They will survive and indeed regain their glory if they will seize with imagination the possibilities which the Common Market opens up by providing a true service for their clients in this new setting.** It is those clients and their gains that are also the primary concern of the Communities. The greater part of the service can, as I indicated, be rendered not in Luxembourg but here in Belfast, or in Edingurgh, or wherever the client is.

J. D. M. MITCHELL*

FOOTNOTES

12. (1819) 2 Wheat 316.
13. Aff. 8/55 II R. at p. 263. Indeed, for their formative role, and for their quality of visionary practicality it is very reasonable to compare the opinions of Chief Justice Marshall and the *conclusions* of Avocat Général Lagrange. In stating that I am aware of the danger of too close and detailed comparison—the Court in *Fedéchar* itself rejecting one part of a constitutional role, though in other cases steadfastly conserving the essence of that role.
14. Aff. 75/63 *Unger c. Bestuur der Bedriifsverniging voor Detailhan del en Ambachten a Utrecht* X R. 357, 362.
15. Aff. 44/65 XI R. 1191.
16. Aff. 9/70 *Grad. c. Finanzamt Traunstein* and Aff. 33/70 *S.p.a.S.A.C.E. de Bergame c. Le Ministè des Finances de la Republique Italienne.* The arguments based on the economy of the Treaty are more convincing than those on the wording of Article 189 as they appear in Aff. 9/70.
17. See the distinction drawn in Art. 17 of the Statute of the Court.
18. Aff. 106 and 107/63 *Alfred Toepfer K.G. c. Commission de la C.E.E.* XI R. 525.
19. Of such problems some parts (but some parts only) of *MacCormick v. Lord Advocate* (1953) S.C. 396 give sufficient warning in a domestic setting.
20. Aff. 8/55 II R. 199 at 227: "Ces considérations contredisent nettement l'illogisme de la reque'rante faisant supposerqu'il faut subordonner l'interpretation du Traité au désir d'ouvrir aux entreprises privées un droit de recours pratiquement identique à celui des Etats et du Conseil. Un tel voeu peut se comprendre, mais le Traité ne contient aucune indication permettant de conclure à l'octroi aux entreprises privées d'un tel droit au contrôle de la 'constitutionnalité' des décisions générales, c'est-à-dire de leur confromité avec le Traité, alors qu'il s'agit d'actes quasi législatifs émanant d'une autorité publique et ayant un effet normatif 'erga omnes'." The heart of the proposal of M. Lagrange is at p. 249. Cf., his remarks under the Treaty of Rome in *Confédération des Producteurs de*

Fruits et Legumes VIII R. 901, 933.

21. Aff. 26/62 IX R. 1, 25.
22. Aff. 16/65 XI R. 1081. See too the Avocat-Général in VIII R. at 933-934.
23. Perhaps the closest similarity exists either with the procedure by which a Lord Ordinary can refer a matter to the Inner House or with the British Law Ascertainment Act 1859.
24. Three quotations from Aff. 26/62 IX R. 1 at 23 and 24 make the point in relation to Article 12. In addition to that already given in footnote 4 one may add—"que, partant, le droit communautaire, independant de la législation des Etats membres, de même qu'il créé des charges dans le chef des particuliers, est aussi destiné à engendrer des droits qui entrent dans leur patrimoine juridique"; "que cette prohibition se prête parfaitement, par sa nature même, à produire des effets directs dans les relations juridiques entre les Etats membres et leurs justiciables." The distinctiveness of the Community legal order is emphasised in Aff. 13/61 VIII R. 89, 101.
25. See Constantinides-Megret, *Le droit de la C.E.E. et l'ordre juridique des états membres*. Cf.,the *conclusions* in Aff. 26/62 IX R. at p. 46. Equally, the differences between Community law and international law made this autonomous concept inevitable, see e.g., Pescatore, *"International Law and Community Law"* (1970) 7 *C.M.L.Rev.* 167.
26. [1966] 3 All E.R. 871, 874.
27. C.E. 1 March 1968 *Syndicat général de fabricants de semoules de France* (1968) D. (J.) 285, a note by M. Lagrange.
28. In particular Aff. 26/62 IX R. 1 and Aff. 57/65 XII R. 293, and see generally Bebr, "Directly Applicable Provisions of Community Law: the development of a Community concept" (1970) 19 *I.C.L.Q.* 257.
29. The decisions are Aff. 9/70 *Grad c. Finanzamt Traunstein* and Aff. 33/70 *S.p.a.S.A.C.E. de Bergame c. Ministère des Finances de la Republique Italienne*. Neither makes all decisions or directives self-executing and in the second case (concerned especially with directives) three elements were present. Articles 9 and 13 of the Treaty, a directive, and a decision of the Court declaring Italy to be in breach of obligations.
30. See Aff. 75/63 *Unger c. Bestuur des Bedrijfsvereniging voor Detailhandel en Ambachten a Utrecht* X R. 347 at 362 insisting on "une portée Communautaire" for the word.
31. Aff. 23/67 *S.A. Brasserie de Haecht c. Janssen* XIII R. 525.
32. See, e.g., Aff. 13/68 *Salgoil* XV R. 661, 677. The German wording is perhaps even stronger and in the latter case, see e.g., Aff. 9/70 *Grad*. In Aff. 33/70 the Court uses the second phrase in relation to the effects of Article 13(2) and the first in relation to the effects of the combination of the Directive in question and Articles 9 and 13(2).
33. Aff. 28/67 XV R. 211.
34. In France the starting point would be the *Fabricants de Semoules* (fn. 27 *supra*), in Italy Aff. 6/64, *Costa c. E.N.E.L.* X R. 1141.
35. Mitchell, *Constitutional Law* (2nd ed. 1968), chapter IV.
36. Consider especially *Ibralebbe v. The Queen* [1964] A.C. 900 at 924 and Mitchell, "L'adhésion du Royaume-Uni aux Communautés" (1970) *Cahiers de Droit Européen* 251.
37. See. e.g., Aff. 17/67 Neumann XIII R. 571, 589.
38. The "model" involves a conflation of the ideas of Aff. 14/68 *Walt Wilhelm c. Bundeskartellamt* XV R. 1, together with those of *Brasserie de Haecht* (fn. 31, *supra*). This does not seem to be an outrageous case of imagination. Other models can be created.
39. Aff. 11/70.
40. The two passages run—

    "qu'en effet, le droit né du traité, issu d'une source autonome, ne pourrait, en raison de sa nature, se voir judiciairement opposer des règles de droit national quelles qu'elles soient, sans perdre son caractère communautaire et sans que soit mise en cause le base juridique de la Communauté elle-même;

    "que, dès lors, l'invocation d'atteintes portées, soit aux droits fondamentaux tels qu'ils sont formulés par la constitution d'un Etat membre, soit aux principes d'une structure constitutionnelle nationale, ne saurait affecter la validité d'un acte de la Communauté ou son effet sur le territoire de cet Etat;"

    "qu'en effet, le respect des droits fondamentaux fait partie intégrante des principes généraux du droit dont la Cour de Justice assure le respect;

    que la sauvegarde de ces droits, tout en s'inspirant des traditions constitutionnelles communes aux Etats membres, doit être assurée dans le cadre de la structure et des objectifs de la Communauté."
41. *Soc. Acciaierie San Michele v. H.A.* T *C.M.L.R.* 450-457 and vol. 4 at 81-84.
42. *Corveleyn* 7 Oct. 1968. Aff. 13/46 (1968) Recueil des Arrets et Civis 710.
43. Affaires Jointes 5, 7 and 13/66 *Kampffmeyer etc. c. Commission de la C.E.E.* XIII R. 317.
44. Some of this is indicated in Mitchell "The Causes and Consequences of the Absence of a System of Public Law."

*LL.B., Ph.D.,, LL.D., Solicitor (England), Salvesen Professor of European Institutions in the University of Edinburgh.

Irish Unity through European Unity

The inaugural address was delivered to the Law Students Debating Society of Ireland by **Mr. Seán Kelleher** on 23rd February 1972 at the King's Inns, Dublin, on the subject of "Irish Unity Through European Unity". Mr. Kelleher said *inter alia* :

The Rome Treaty limits itself to unifying the economics of its members and the tendency to regard it merely as a treaty to establish a free trade area has dominated all discussion on Ireland's application for entry, and ignored the long term and far more important principles which were the bases for the foundation of the Community generally referred to as the Common Market.

The Preamble to the Treaty of Paris in 1951 says of the signatories that they "resolve to substitute for historic rivalries a fusion of their essential interests, to establish, by creating an economic community the foundations of a broader and deeper Community among peoples, long divided by bloody conflict and to lay the bases of institutions capable of guiding their future common destiny." We are seeking to be a partner in this Community.

The architects of the Community, as now established, realised the importance of economic unity in their quest for a United Europe and the Rome Treaty undoubtedly had this as its primary objective. However, the Treaty is not an end in itself, but only a beginning of a union resolved to safeguard peace and liberty by binding its members together so closely that aggression and injustice perpetrated against a minority, whether or not that minority belongs to the same geographical entity will in itself so affect the majority perpetrating it, that violence will as a means to an end become like civil war an exercise in self-destruction.

It was the suffering and destruction of World War II that brought home to the post-war leaders of Europe the dangerous limitations of national sovereigntv and the dire need for a supranational institution capable of controlling the forces that lead nations into a situation

of armed conflict. The expansionist policies of the USSR provided a further need for a power structure in Western Europe capable of escalating the protectionist policy which was fast becoming a world wide political philosophy. The economic disadvantages of a continent fragmented by internal barriers was obvious to all, hence the first step was the creation of the European Coal and Steel Community. Although this document and the Treaty of Rome were economic treaties, undoubtedly the processes of economic and political unity are two sides of the same coin.

Political objectives of EEC

In 1969 at the Hague summit the heads of governments in the Six reaffirmed their belief in the Communities' political objectives. If Ireland becomes a full member we too will have to affirm our belief in a politically united Europe, accepting unreservedly the objectives laid down in the Preamble of the Rome Treaty.

The European Commission, realising as they do that an enlarged Community would tas the already overburdened European institutions to an unworkable extent have recommended changes to meet these needs. One suggestion is that a majority vote should again be the normal practice of the Council in all fields except where the Treaty explicitly requires the contrary. It is at this level that the Irish Government should be diverting its energies with regard to the problems of the minority in the North of Ireland. If we do join the E.E.C. it is in the European Parliament that the destiny of this country will be shaped and that applies to North and South.

The problem of Northern Ireland

The attitude towards Northern Ireland at the present time is unrealistic: there are no grounds for supposing that a United Ireland is imminent. Indeed this supposition is positively dangerous at the present time. The aim of an Ireland united by peaceful means is shared by most Irishmen and this is a long-term aspiration, but the Community is by definition, the most logical place to do it, because it is here that economic policies which are the means by which most injustices are perpetrated, will be controlled. The problems of Northern Ireland are to a large extent economic: the discrimination practised is practised at the one level where it is likely to be effective, namely job opportunities. Nobody will accept the continued practice of such discrimination, but at the same time few would accept a solution brought about by violence, and violence appears to be the only means whereby a united Ireland could be achieved in the near future. In Northern Ireland there can be no military victory for either the British army or the I.R.A., because what might seem to be victory on either side will leave behind a dissatisfied people trained in the use of arms.

There can be no military solution then, but a political solution of whatever kind will have profound effects on the situation in the Republic. Political changes are required here also, but to date we have shown a marked reluctance to effect these changes. How can we pretend to be concerned about discrimination in Northern Ireland if important provisions in our laws and Constitution are also discriminating.

Those resisting change on both sides of the border deploy the same arguments, with only slight variations. "We are in the majority. Let democracy prevail. We don't want these changes and we don't see why others should want them. Changes will destroy the fabric of the nation. It's all the work of the I.R.A., Communists, or the Dublin Liberal establishment." (Which group you use depending on whether you are John Taylor or Desmond Fennell.)

Church-State relations

Irish entry to the E.E.C. will have a significant though subtle effect in the circumstances where the bulk of the population of the Republic is believed to be resolutely opposed to any change of the kind needed. We are entering a Community several of whose members have had to face or are now facing the sort of problems in Church/State relations with which we must grapple sooner or later. The question of divorce in Italy becomes much more relevant than it has hitherto been. Ireland has much more in common with Italy, from the religious and cultural point of view, than it has with the industrial, liberal British welfare-state. The Italian debate is therefore a much more potent influence than was the abortion debate in Britain.

Irish public opinion will inevitably become more aware of the other countries of the Community, especially of those with which Ireland has most in common politically and culturally, as well as in religion. This awareness will undoubtedly render more meaningful the debate about Church and State in Ireland. Membership of the Community will inevitably broaden the perspective in which the problem is viewed.

The prospective European Government

The Government policy has been somewhat misdirected to advocate our right to unity and independence while at the same time seeking membership of a united Europe dedicated to the abolition of State frontiers and the setting up of a close political union within the framework of a single Continent is somewhat of a contradiction in Government policy. President Pompidou on 21st January 1971 said that if the European Confederation becomes a reality there will inevitably have to be a government whose decisions will be binding on all states that will be members. The German Chancellor, Brandt, on 6th July 1971 said that his generation would one day see the taking of binding decisions in all those sectors that would be organised in common. So a European Government may in the not so distant future become a reality. The British White Paper estimated that the Community budget would, by 1977, total some £1,000 million. It would be exceedingly dangerous to allow the Commission or the Council to dispose of this money without some form of parliamentary control. The Dutch have long campaigned for a European Parliament with teeth in it. If and when Ireland does become a member of an enlarged Community, we will be represented in these institutions which are responsible for the shaping of Europe's future. If a European Parliament is established with the power to bind its members to decisions of that Parliament, it is possible that a united Ireland might be achieved in this manner, particularly since the importance of Great Britain within the context of Northern Ireland is the extent to which the North is receiving subsidies from that country, subsidies which the Irish Government cannot, at present, afford in the South, but which can be provided from Brussels if we join the Community.

Ireland will be regarded as one of the less favoured nations and every indication seems to point to the supposition that the whole island will be treated as one economic unit for the purposes of our future development.

Arguments against non-entry

If Ireland should remain outside the Common Market the arguments of the Unionist majority in the North will be further strengthened. The other question is then, whether we can survive alone. Our close economic ties with England cannot be dismissed. Associate membership could, according to some, guarantee us some of the advantages of full membership but it is doubtful whether we would be allowed to avail of the free movement of labour under an association. It is also argued that we would be better off without it, because it would result in a national takeover of our economy by German and French capital. Yet the right of establishment of persons and corporations of one country in another could be more effectively controlled under full membership. We will then get protection for such industries as are vital to our national identity. Further, the free movement of labour is not a one-way traffic. Ireland has exported people to every corner of the globe and the longest single benefactor in modern times has been England. The recent economic crisis has been put down to a falling off in emigration, and if we were to go it alone, what guarantee would we have that our unique position with regard to that country would remain. Some may say that in an associated position we could retain this relationship, but this is doubtful.

The dogmas of the past were indeed noble, the establishment of a sovereign, independent, democratic state was a priority men died for. But this is a time in which the world is changing and international co-operation rather than rivalry has become part of modern political thinking. Should we therefore, at a turning point in European history, as nations which have traditionally been enemies and are now joining together to strengthen the safeguards of peace and liberty by combining resources in a European Economic Community remain rigid in our principles of sovereignty, independence and nationalism that have been the root cause of wars, injustices and atrocities for generations, or rather should we go into Europe and establish ourselves as a nation dedicated to the abolition of the very reasons that have caused those wars. We do not forfeit our identity by doing this, rather do we stand to gain recognition as part of the second-longest trading block in the world. We established ourselves as a nation in the United Nations, we have sent peace-keeping forces to troubled parts of the world and Irish emigrants have reached the highest offices in nearly every country in the world. Let us now therefore establish ourselves in Europe where the talents of Irishmen, which formerly were directed to the building of other nations can now be directed to the building of a Europe in which Ireland can take her place, not in isolation, but in unity.

Mr. Michael O'Kennedy, Parliamentary Secretary to the Minister for Education, pointed out that, after the effects of the war, the small nations of Europe banded together to form an economic union before a political union. In Ireland the areas of common interest are mainly economic on both sides of the Border, but eventual unification was the only practical solution. Our voice alone is ineffective to overcome the objections of the great powers, but, by associating with other small nations, we can make our voice felt.

Mr. Seán MacBride, S.C., said it was essential for us to enter the Common Market in order to excape the economic and financial stranglehold of the Bank of England. We should not hesitate in our choice if economic policies were going to be framed in future by the European Commission instead of the British Treasury. Full membership will undoubtedly help to achieve European unity. We have tried in vain to maintain our individuality against the ravages of Anglo-American culture, and we must in future be European-minded.

Dr. Conor Cruise O'Brien, T.D., said that the Common Market might exercise a benign effect. Before the British initiative is announced, it is necessary for us to undertake the following steps : A declaration subscribed to by the three parties spelling out in detail the desiderata of the majority as well as those of the Ulster Unionists. This should be binding with all sincerity on all. The Republic should not be used as a base of attack upon the authorities of Northern Ireland. We should be willing to see that our laws can no longer be construed as sectarian; and changes in contraception and divorce laws would influence Protestants. It is absolutely essential for us to grant concessions if a genuine dialogue is to take place. To deny a first reading to a Bill facilitating contraception by medical prescription was a grievous error by the Government. It was essential that any constitutional changes should be framed on an all-party basis and particularly that any idea of unification should be preceded by trust and understanding.

The **Chief Justice,** who presided, thanked the Auditor and the speakers for an interesting evening.

Books and Journals relating to the European Community in the Library

(1) **Common Market Law Reports.** From Volume 1 (1962) continuous.
(2) **Common Market Law Review.** From Volume 1 (1963).
(3) Campbell: **Common Market Law.** 2 vols., 1970.
(4) Valentine: **The Court of Justice of the European Communities.** 2 vols., 1965.
(5) Honig, Brown, Gleiss and Hirsch: **The Cartel Law of the European Economic Community.** 1963.
(6) Behr: **Judicial Control of the European Communities.** 1962.
(7) Brinkhorst and Schermers: **Casebook Relating to Judicial Remedies in the European Community.** 1969.
(8) Wall: **The Court of Justice of the European Communities.** 1966.
(9) British Institute of International and Comparative Law: **Legal Problems of an Enlarged European Community.** 1972.

Ownership of Fences —The Conveyancer's Choice

by J. E. ADAMS, LL.B.

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PART I

It is frequently said that far more difficult, and sometimes bitter, disputes arise over the ownership of fences and other boundary structures than over property disputes of much greater substance and it is certainly the writer's experience that more uncertainty surrounds the issue of fence ownership then of any other matters ascertainable in the normal examination of title. Few disputes are litigated with the tenacity that was manifest in *Jones v Price* ([1965] 2 QB 618) but they all cause disquiet to the parties and not a little dissatisfaction with the legal profession's failure to clear up the doubts.

Inspection of boundaries lead to presumptions of fact

With existing properties where, as is regrettably so often the case, the deeds are silent, recourse has to be had to the usual presumptions. In addition to the well-known rule for wooden fences that the supporting posts are normally on the inside, so that *prima facie* the fence belongs to the party on whose side of the fence the posts are placed [a rule denied to exist by Mr. Powell-Smith in his *Law of Boundaries and Fences* (1967), pp. 67-68], it is frequently the case that inspection of the boundaries will lead to presumptions of fact—if a wall separating two urban properties, Whiteacre and Blackacre, is constructed of materials and in a style identical with those of, say, Whiteacre, it is a far conclusion that it was built contemporaneously with and belongs to Whiteacre rather than belonging to Blackacre with which it shares neither common feature. Occasionally, moreover, there may be local legislation (e.g. the notoriously ill-drafted Bristol Improvement Act, 1847) which establish local practices or rules.

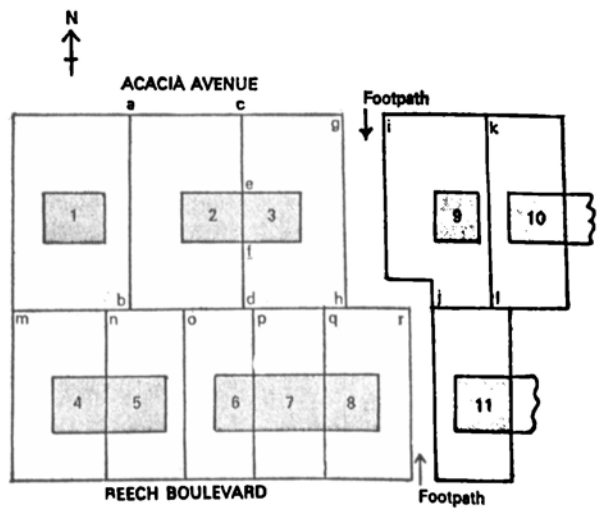
Nevertheless, it is probably the case that in a substantial proportion of cases, perhaps even in a majority, of urban properties, ownership of and responsibility for boundary fences is indeterminate. There is, however, a growing tendency for specific provision to be made for these matters in conveyances of new properties, or in the division of larger units into single entities, and it is with the choice of possible solutions that this article is mainly to concern itself. For rural properties there seems a lesser incidence of uncertainty; quite apart from what citified conveyancers regard as the rather quaint and endearing hedge-and-ditch presumption (which produces a result quite the opposite of that which many of them would instinctively expect—"surely the hedge is to stop your cattle falling into someone else's ditch?"), the need to have a clear understanding of where responsibility for each hedge may fall is obviously of greater intensity and practical significance in the rural economy and has focused attention on the desirability of a clear ascertainment of ownership which has been given effect to by generations of conveyancers.

The basic choice between sole ownership and party structures

If the desirability of a clear definition of ownership wherever the opportunity presents itself is accepted, the choice is simply between sole ownership to be attached to one or other of the adjoining properties and party structure provisions. The writer is unashamedly a party-structure man; this seems to be a minority view on a national basis, and is undoubtedly much influenced by the bulk of his practical experience being in an area where the usual interpretation of the local Improvement Act, 1847, already mentioned has been (possibly on a *communis error facit ius basis*) to treat *all boundary* structures of uncertain ownership as party structures. Even given the predisposition towards the party structure solution thus occasioned, however, the case for it, as against the alternative, seems overwhelming and it is accordingly with something of missionary zeal that it will now be presented.

The fairness test

One reason for preferring the party solution to that of sole ownership is the arbitrariness of the latter. Consider the diagram and the position of the owner of house number 2. The rule of sole ownership will give him ownership of either boundary structure a-b or of c-e and f-d; if ownership of the structures is, on balance, a burden he will prefer the latter solution but if there is, on balance, a benefit (a point further discussed below) he will prefer the first solution and the ownership of a-b.



Consider now the position of house number 3. If number 2 owns c-e and f-d, he will own g-h (the wall

bounding the footpath); if, however, number 2 owns a-b, 3 ends up with c-e, f-d, *and* g-h. Consider house 9. If a "left-hand" rule (i.e. left-hand facing north) is applied he owns only i-j, but if a right-hand rule is followed, he ends up with i-j *and* k-l. Inevitably some uneveness must occur—it seems inescapable that 3 must end up with sole ownership of g-h and 9 with i-j [thus in building-estate assurances the writer invariably provides that "the walls and fences separating the property from other properties on the estate now or formerly vested in the vendor shall (*except where the same abut on any road or footpath*) be party structures . . ."] but these examples will, it is submitted, show that the choice of the party-structure solution reduces the disparity between one owner and his neighbour caused by an allocation of ownership based on a sole ownership rule. Thus under a party regime, number 2 part-owns a-b, c-e and f-d which is slightly more in total than owning c-e and f-d, but slightly less in total than owning a-b solely. 3 ends up with part-ownership of c-e and f-d and sole ownership of g-h; less than the left-hand rule would give him (c-e, f-d and g-h) but more than a right-hand rule would give (merely g-h). Inevitably a left-hand rule which penalises 3 benefits 9 and a right-hand rule reverses the advantage; a party rule irons out the more severe incidence of chances such as these.

The same consequences follow for rear walls. If the land on which houses 1, 2 and 3 were built was in different ownership from that on which 4 to 8 were built, then it follows that the rear boundary will most likely have been constructed at the time of the building of the first block. Accordingly either boundary m-h will belong collectively to houses 1 to 3 or boundary m-r will belong collectively to 4 to 8 (8 seems bound to own h-r in any event). This, incidentally, is one of the instances where walls and not fences are involved where the inferences from visual inspection of materials and style may point to the answer. However, if both 1 to 3 and 4 to 8 are being built on land in common ownership (particularly if they are built consecutively as part of the same development) it seems arbitrary to allocate rear fence ownership by the choice of those to one side or the other and party ownership is fairer. Moreover, with all the assurance of the devotedly amateur sociologist, the writer feels bound to record his experience that relationships with neighbours across the length of back gardens are less close than with those to either side, so that a party fence solution may engender fewer disputes than giving it wholly to one or the other.

The repair test an incident of ownership

As already discussed, ownership of fences may be important in respect of repair obligations. Whilst it is possible to divorce ownership and repair obligations by express provision, this would be rare and possibly inconvenient in practice, and normally repair obligation will be treated as a necessary incident of ownership. Of the vexed problem of whether there is a duty to repair more will be said later but the present argument in favour of party-ownership of dividing structures is founded on consideration of the mechanics of carrying out repair which is sought to be done. Under a system of sole ownership, the owner of house 2, assuming him to own fences a-b and b-d, may need to enter the gardens of houses 1, 5 and 6) to carry out the work. It would not be usual to find express rights of entry (such as would be inserted in most rack-rent leases); there is indeed an implied right of entry where there is a party wall—see *Jones v Pritchard* ([1908] 1 Ch 630 at 636)—and it would not be too difficult to imply a right of entry where there was a duty to repair and even possibly a mere right to repair arising from bare ownership; in most cases it seems unlikely that a neighbour convinced of the need for repair would deny access for this purpose. Even so, this can and does provide practical problems. A, the owner of house 1, may not wish B, the owner of house 2, to enter until he A can plant out his seedlings that are close to fence a-b, whilst B is anxious to do the work at once, during a few days off from work or something of that sort. Indeed, A's gardening may have proceeded in forgetfulness of the eventual need for B to have access for repair of the fence at all, so that B can only repair the fence at the price of irreparable harm to A's treasured raspberry canes, strawberry plants or the like. Of such origins are neighbours' quarrels born! Under a system of party structures each party normally deals with that face of the structure to which he obtains access from his own property. No-one thinks it remarkable that such a procedure should be tacitly and almost unthinkingly adopted for "live" boundaries, that is, for privet, box or other vegetable hedges—although agreement as to the height to which such "variable" structures shall be permitted to grow are not unknown; it seems quite suitable for brick, stone or concrete block walls, where pointing and an occasional colour-wash are required and it is only with some types of fence that the concept of attending to the inside faces of all boundary structures may be somewhat impractical. Even there if one views the question of, say, creosoting a fence as being as much a matter of aesthetics as of economics—viz. of appearance not preservation—the practical result is not insensible. On the issue of access for repair and decoration therefore, it is submitted that the party structure solution is the better course. The arguments just advanced apply, once more, with greater force to rear boundaries even than to side fences.

Boundaries may be burdens as well as benefits

Whilst ownership of boundary structures is usually regarded, by virtue of the repair obligation, as a burden rather than a benefit—few people, it is thought, cherish such ownership for its own sake—there are circumstances where, on balance, it may prove a benefit. This happens when it consists of a wall, or even exceptionally a stout fence, capable of being incorporated into a garage, shed, greenhouse or other. To revert to the example already used, if B, the owner of house 2, wishes to erect a garage his ability to use the wall a-b as part of the structure may be convenient, or may even be essential where it is a right squeeze to fit such a structure into a lay-out pattern not devised with mass car-ownership in mind. Under a system of sole ownership, and if a left-hand rule applied in allocating ownership gives him wall a-b he will be able to use it—and moreover to prevent A, the owner of house 2, using it. A right-hand rule will deny him that right—and give A the right to prevent his so acting. It cannot be too strongly emphasised that a right-hand or left-hand rule has always presented itself to the writer's experience as a matter of sheer chance, not of discernible pattern or policy. A party-wall regime allows either party unrestricted use of his vertically severed half—see Section 38, Law of Property Act—and the prospect of a mutual bargain with the co-owner.

Note—There is no corresponding section in Irish law to Section 38 of the Law of Property Act 1925.

BOOK REVIEWS

Matrimonial Finance and Taxation by Joseph Jackson, M.A., LL.B. (Cantab.), LL.M. (Lond.) of Q.C.; London, Butterworth, 1972; 8vo; 286 pp.; £7.

This is an entirely new and stimulating book by the eminent editor of *Rayden on Divorce*. The intention of the author is to deal with the matrimonial finance and taxation problems that arise when a marriage breaks down and in particular it is concerned with the principles applied by the courts in considering these matters. The book is written as an addition to Rayden.

It deals with the making of orders and agreements and with their effects. The role o fthe accountant in this field is considered in relation to the award of maintenance pending suit, post-decree periodical payments, lump sums, settlements of property, bankruptcy as between husband and wife and financial responsibility for children.

Much of the book refers to the recent Matrimonial Proceedings and Property Act, 1970, which is printed in full as an appendix, and Irish readers must distinguish its provisions from the present Irish law. But the book should be of assistance to those practitioners who have to handle the financial side of matrimonial disputes.

B.P.D.

Sale and Hire-Purchase by J. K. MacLeod; London, Butterworths, 1971; 8vo; LIII+449 pp.

Many books have been written on this intricate subject, but Dr. MacLeod of Nottingham University has apparently adopted a new point of view. The learned author rightly emphasises that a course relating to modern applications, particularly to complex transactions leading to consumer sales, will be of more interest to students. Instead of treating sale of goods and hire-purchase as two separate subjects, Dr. MacLeod has chosen to treat them together, and has thus introduced personal property to students by way of theme; this is an interesting innovation, and, in the various chapters, the learned author has gone to much trouble to explain the case law. Perhaps Dr. MacLeod's approach is too novel to obtain universal approbation, but for instance it is invaluable to have all the case law to a subject heading like "Undertakings as to Description" described clearly and succinctly. An endeavour to find Irish case law in the Table of Cases has unfortunately proved unrewarding. Perhaps when he is preparing another edition, the author might consider some Irish cases, if he wishes to extend his sales in Ireland.

Annual Survey of Commonwealth Law 1970 edited by H. W. K. Wade; London, Butterworth, 1972; 8vo: LXXIV+712 pp.; £10.

We are once more indebted to Professor Wade and his collaborators for producing this Annual Survey under the point auspices of the Faculty of Law of Oxford University and the British Institute of International and Comparative Law. There are as usual twenty-one topies in the Survey—including Constitutional Law, Administrative Law, Criminal Law, Family Law, Company Law, Taxation, International Law, Contract, Tort and Commercial Law. Each chapter is subdivided by subject—the chapter on Torts being subdivided into interests in Land (Nuisance and Trespass), Interests in Personal Security (Assault and False Imprisonment), Interests in Chattels (Conversion and Detinue), Negligence, Occupier's Liability. Master and Servant, Strict Liability as regards Animals and Defamation, Defence, Parties and Damages. Each topic is in charge of a different editor, and all relevant cases from the Commonwealth decided in 1970 are annotated under the relevant topic. The Survey is thus an invaluable vehicle for Comparative Law within the Commonwealth and no important case is omitted. Several Irish cases are briefly described, such as *Chapman v McDonald* 1969—loss of services as a result of accident; *The People v Crosbie* 1969—bail; *Vella v Morelli* 1969—no leave required to appeal on costs; *National Bank v O'Connor* 1969—bank can recover fraudulent payments from innocent third party; and *Santa Maria de la Rosa*—injunction to restrain competitors from diving for wreck of Spanish Armada, amongst others. The fact that Irish cases are placed in a comparative aspect is most valuable, and makes this series unique. Members who wish to compare Irish with Commonwealth decisions should not hesitate to acquire this invaluable volume.

CGD

Legal Problems of an Enlarged European Community edited by M. E. Bathurst, K. R. Simmonds, N. March Hunnings and Jane Walsh; London, Stevens, 1972; 8vo; xix369pp.; £6.75.

The writer was amongst the few members of the Society who were privileged to attend an international conference on the Expansion of the European Communities organised by the British Institute of International and Comparative Law, and held in the Hibernian Hotel, Dublin, in October 1970. The papers read at that conference, attended by leading experts from the applicant and Community countries, have now been assembled together in this volume, and appear as the sixth volume in "British Institute Studies in International and Comparative Law". Those of us who had the advantage of receiving most of the papers published in this volume in advance were already aware of the treat in store for us when this volume would be published.

In dealing with the Irish Constitution, Mr. Temple Lang has produced a substantive paper on the subject. In the light of the proposed Third Constitutional Amendment, Mr. Lang has put forward succinctly the advantages and disadvantages of separate constitutional amendments.

In describing the role of the Courts, Judge Pescatore has enlightened us on the interpretation which the European Court places on Community Law. Madame Questiaux, who has kindly received so many English-speaking lawyers in the Conseil d'Etat, deals with Art. 177, and emphasises the following points: (1) That Community law is to be applied by National Courts, subject to a preliminary ruling if need be of the European Court, and (2) That the European Court has worked out Rules of Procedure to allow an easy and independent dialogue between it and the the member States. Mr. Newman of the Lord Chanelllor's Department deals in detail with the Convention on Juris-

diction and the Enforcement of Judgments in Civil and Commercial Matters signed in September 1968.

In considering Legislatures, Professor Brinkhorst describes the process of implementation of Community legislation, including Directives. Dr. Deringer stresses briefly the part played by the European Parliament in Community decision making. Professor Mitchell gives us the benefit of his expert views on Community legislation which we have been reading in the *Gazette*. Dr. Hunnings considers the part played by public International Law in the development of the European Communities. Dr. Eek of Stockholm considered the problem of neutrality in relation to the Community, particularly a regards Switzerland, Austria, and Sweden. Professor Brinkhorst describes the special relationships of the Netherlands with the Communities as regards the former colonies of the Antilles and Surinam. Dr. Simmonds and Mr. Marshall gave us the benefit of their expert views on how Britain's accession to the Community would affect the dependent territories of Africa, as well as New Zealand, Australia, Canada and India. Dr. Van Damme of the College of Europe in Bruges, has examined the relationship of the Benelux countries to the Common Market, while we are indebted to Dr. Petren of Sweden for describing the relationship of the Nordic countries to the Community.

Dr. Garrett Fitzgerald has given a useful summary of the Anglo-Irish Free Trade Area. In dealing with Companies, Professor Schmitthoff has detailed the role of the multinational enterprise in an enlarged European Community. Professor Shulten of Helsinki has kept us informed in detail of developments in Nordic Company Law. Our own Mr. Brendan McGrath has, as expected, successfully overcome the challenge of the other experts in describing lucidly for us how the British and Irish transport systems would be affected by adhesion to the Community. Dr. Olimb Director of the Norwegian State Railways, has further elaborated these views in a comprehensive paper. Dr. Maes of the Institute has finally dealt with the Regulation of Agricultural Marketing in the United Kingdom, and the changes that will be required upon entering the Common Market, while Mr. McInerney of U.C.D. has dealt specifically with the adaptation of Irish agricultural legislation. Dr. Mortensen of Denmark then describes Agricultural Marketing in Scandinavia. It will be seen that the Dublin Conference was very comprehensive, and was exceptionally well organised by the Institute. It is indeed fortunate that, when the question of entry into Europe is so topical, we should have the benefit of so many papers on this intricate subject by experts. This volume is highly recommended to anyone who wishes to obtain the opinion of experts on the Community.

CGD

Common Market Law Reports

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Consumers' Association of Ireland, Limited

"Can the Consumer survive the 1970's"?—A one day Seminar on Thursday, 25th May, 1972

Venue: THE ROYAL MARINE HOTEL, DUN LAOIRE Time: 10 a.m to 5.30 p.m.
Objectives: To examine the problems facing the consumer. : To improve the information avai'able on the consumer's position. : To decide on the steps needed to help the consumer.

A Specialist range of Speakers will read papers and discussion sessions will be included. Speakers include Miss Eirlys Roberts, Editor of "Which" Magazine, Head of Research, Consumer Association, London and Mr. John Meageher, Managing Director, Irish Marketing Surveys.

Cost excluding lunch: members £2.50; Non-members £5.50 (including morning and afternoon tea/coffee)

SOLICITORS' BENEVOLENT ASSOCIATION

VACANCY FOR SOLICITOR

Applications from Solicitors are sought for the position of Secretary to the above Association. Salary will be not less than £400 per annum.
Letters of application to be sent to The Secretary, Solicitors' Benevolent Association, 9 Upper Mount Street, Dublin, before 31st May, 1972.

Adjournment Dail Debate on High Court Offices, December 15th, 1971

Mr. T. J. Fitzpatrick (Cavan): At Question Time today I tabled the following question: To ask the Minister for Justice if he is aware that due to the interference by his Department in the day to day running of the Taxing Masters' offices in the Four Courts without any consultation with the Taxing Masters, the work of these offices has been completely disrupted and is at a standstill with consequent inconvenience to the legal pofession and general public; if he will take steps to ensure that proper provision is made for the smooth running of these offices; and if he will make a statement on the matter.

I regret to say that I consider the reply of the Minister for Justice to be unsatisfactory. I did feel that the Miniter was apologetically standing over a state of affairs which he did not believe he could justify.

I raise this matter on the adjournment because I believe there is a considerable principle involved. We have here an example of the Executive, the Government in this country, adopting what I consider to be a very high-handed and arrogant attitude to a judicial or quasi-judicial officer or officers, and I think it is clear that unless we have a reasonably harmonious approach from the Executive to the judicial or quasi-judicial officers, indeed to all parts of the administration under the various Departments, we will have nothing but chaos.

One of the oldest offices in the High Court is that of Taxing Master. I believe it has existed for approximately 100 years. There are two Taxing Masters. They perform what, in my opinion, is a judicial, certainly a quasi-judicial, function. They should be independent; they should not be interfered with; the dignity of their office should be upheld.

Although it is not directly related to this question there is the position of Master of the High Court, another office of a judicial nature second only to that of a judge of the High Court, and according to reliable information which I have before me and which I intend to put on the record of the House, and defy the Minister to contradict it—if he does I will ask him to substantiate his contradiction—the present Master of the High Court will have concluded his term of office in a short time I am informed that on 29th October last, officers from the Department of Justice, approached the Master of the High Court and asked him to vacate his court, to hand over the court for use for other purposes. Having considered the matter, the Master of the High Court decided that, having occupied that court and having discharged his duties therefrom for approximately twenty years, he would not vacate the court until his term of office had expired, and he so informed the officers.

He thought that was the end of the matter, but in the space of three or four days he received a letter over the written signature of the Minister for Justice, thanking him for his co-operation and for his agreement to vacate his court in favour of another judge to be appointed. The Master of the High Court was utterly amazed, and, it having been brought to his notice when he was requested to vacate his office that it was proposed to abolish the office of Master of the High Court and to hand over the functions of that office to the Taxing Masters to be discharged by them, he learned from the Taxing Masters that an approach had been made to them to accept the functions of the Master of the High Court, which, of course, was absolutely absurd because there is as great a difference between chalk and cheese as between the functions of the Master of the High Court and the Taxing Masters.

The Taxing Masters informed those officers who approached them that they were not interested in the proposal, that it was flatly in contradiction or contrary to the terms of their appointments and that they had no intention of assuming the duties of the Master of the High Court which they considered themselves entirely unsuited to perform. That was thought to be the end of it, but on 2nd November the Taxing Masters received a letter dealing with the interview which I have just related and which occurred on 1st November. The letter stated that there had been a change of thought about the matter and that it was not now proposed to proceed with the change or with the proposal to abolish the office of Master of the High Court.

Subsequently a letter was received stating that it was proposed to make certain changes, that though it was not proposed to abolish the office of Master of the High Court, the following changes would be made: the Master of the High Court would transfer his office to the Senior Taxing Master's office; the Senior Taxing Master would go to the office of the Junior Taxing Master and the Junior Taxing Master would transfer his office to a conference room 240 yards away. It was stated also that it was proposed to effect these changes as from 22nd November.

On 4th November the Taxing Masters replied stating they did not accept the proposed changes. On 9th November the most senior officer in the Department of Justice consulted the Taxing Masters regarding accommodation and there was a discussion between the most senior officer in the Department and the Taxing Masters, and the Taxing Masters made it clear they did not propose to transfer or to accept the alternative accommodation because it was not suitable. I wish to emphasise that they made that perfectly clear in their letter and made it perfectly clear to the Secretary of the Department on 9th November.

At that discussion, the matter was left in mid-air—there was no decision on it, no arrangement come to—and the Secretary of the Department left on the note that he would think about the matter.

Nothing further was heard by either of the Taxing Masters until they reported for duty on 22nd November which I think was a Monday. The senior Taxing Master found that the lock on the main door of his office had been changed and that his key would not fit it. He went around to another door which leads to his office and found that it was very crudely, as I said earlier, but permanently barricaded, by having a crude piece of wood nailed upon it so that he could not get into it, and it is very significant to note that there were two other doors—artificial or ornamental doors at the Taxing Master's office which were not doors at all but which were there really only for ornamental purposes—and so determined were these officers of the Minister in

ensuring that the senior Taxing Master could not get into his office that they drove six inch nails into these dummy doors—quite an unnecessary exercise, but, I suggest, evidence of their determination to permanently barricade these people out of their offices.

The only intimation this senior Taxing Master got that he was to move to another office was an arrow, in red, I understand, saying "Master de Valera" and pointing that he was to go into Master Bell's office, the junior Taxing Master, who found that his name was obliterated from his door, the only intimation that he got being that he was to go 240 yards away was a message to his clerk. It did not stop at that, because the official papers in the senior Taxing Master's office—his private papers and photographs he had on the wall—were taken in bulk, without by your leave or a word to him, and roughly thrown on the floor of the junior Taxing Master's office. That was the condition these quasi-judicial officers found when they reported for duty on 22nd November.

They very properly reported to the Chief Justice under whose direction they discharge their duties. Generally, I understand that the Chief Justice is in charge of the administration of the Four Courts, or at least of the judicial officers in the Four Courts. Having reported to him, the Chief Justice instructed them to down tools, to cease to carry out their functions, until such time as proper facilities were provided for them and between 22nd November and 9th December, there was something in the nature—in fact, there was a strike. The Taxing Masters refused to discharge their duties because they were not provided with adequate facilities, and, indeed, it is significant to point out that since then the junior Taxing Master has not been requested to travel these 240 yards, or one-eighth of a mile, to the new office. It may be made light of that a journey of 240 yards is an excessive distance for one of these officials to walk but it is very important when it is borne in mind that they are bound under the rules of the Superior Court, if not under statute, to keep in close consultation with each other, to consult daily on various matters and to ensure that they are acting in principle together. Furthermore, there is a common office, a general office, serving both and it means that if a Master 240 yards away wanted a file, he had to send down for it.

The position now is that the two Taxing Masters resumed duty apparently on 9th December and both of them are working in what was formerly the court of the junior Taxing Master and working in shifts because they cannot work together. I want to say that I believe this discloses an entirely unhealthy approach by the Minister and the Minister's Department to the administration of justice in this country.

I will be surprised if, accepting the history of this unfortunate episode as related by me the Minister stands over it or justifies it, or seeks to say that it could be tolerated. I think he would serve his office, himself and the Government much better if he said it was an unfortunate incident which happened without his knowledge and which should not happen and will not happen again.

As I said, if some ordinary citizen of this country acted as the Minister's officers acted in this case, the Minister would feel justified in invoking the Forcible Entry Act to have them thrown out and brought before the courts for a breach of the law.

Minister for Justice (Mr. O'Malley): I want to emphasise at the outset, as I said in the statement I issued some couple of weeks ago in connection with this matter, that what was involved here was a rearrangement of the accommodation of two court officials to provide an additional courtroom for a new Circuit Court judge whose appointment was urgently needed in the public interest. The position at present in the Dublin Circuit Court is that there are arrears of between nine and ten months in the trial of criminal offences. There are approximately similar arrears as a result in the trial of civil actions because criminal trials, naturally enough, so far as possible have to be given precedence.

This creates a social problem which has been a source of serious concern to me as Minister for Justice. Long delays in bringing cases to trial are unfair to accused persons. They also contribute substantially to an increase in crime because persons on bail, who think they are likely to be convicted and sentenced to prison, are liable to commit additional offences while on bail. The Garda Siochana inform me that in the year 1970, to their knowledge, just short of 1,300 indictable crimes were committed by persons while on bail. While there are a variety of reasons for the fact that persons are on bail for long periods the major reason is that the trial of criminal indictments in the Dublin Circuit Court is very much in arrears and has been for some time.

Efforts were made to reduce these arrears by enlisting the assistance of the provincial judges of the Circuit Court, as and when they were available, but, quite obviously, these efforts have been only marginally successful because the judges were only available for comparatively short periods. It, therefore, became necessary to appoint an additional judge in Dublin and to find an additional courtroom in which he could function. The only adequate accommodation available for this purpose was accommodation that had previously been used by a taxing master. This fact was established after a lengthy and detailed examination of all sorts of alternative premises including suggestions for the building of prefabs in or beside the Four Courts, efforts to acquire premises in the immediate vicinity of the Four Courts failed as did an examination of every room that looked in any way possible for use in the Four Courts itself.

This then was the background to the taking over of the accommodation concerned. In fact, even in the rather inaccurate and coloured version of the history of the events which he gave the Deputy admits at least two lengthy consultations by senior officers of my Department. The allegation, therefore, has since been changed to the effect that, while there were some consultations, they were not enough or not adequate. Quite clearly the Deputy is not aware of how much consultation did in fact take place or how much discussion took place at these various meetings and how long they lasted.

I frankly do not feel under any obligation to defend myself in relation to the allocation of accommodation in public buildings. There was so much consultation by such senior officers of my Department, including the secretary, two assistant secretaries and a senior principal officer, that if I were to disclose the full details of all those consultations I could very well see Deputies in this House accusing me of wasting the taxpayers' money.

It is an absurd situation that the transfer of an official from one room to another should be allowed to take up the time of Dail Eireann, both earlier today at Question Time and again now on the adjournment. Deputy Fitzpatrick, in the various statements which he made this evening, laid great emphasis on officials of my

Department and what was done by officials. I want to make it clear that I am responsible for everything that is done by every official of my Department. I have looked into this matter fully. I am fully aware of everything that happened, I approve of everything that happened and I take full responsibility.

The first discussion with the two officials concerned, at which two Assistant Secretaries and a Principal Officer were involved, took place on 1st November 1971. There was a written communication sent from my Department on 2nd November 1971 informing the officials concerned that these changes would have to take place not later than 22nd November, which is, in fact, the date on which they took place. On 12th November 1971 because of the disinclination of the officials to discuss the matter fully with the two Assistant Secretaries and the Principal Officer, the Secretary of the Department, at my specific request, went to see the two officials. He, in fact, spent three hours discussing the matter with them explaining every aspect of the position to them. The change over took place on the date they were told three weeks earlier.

Mr. T. J. Fitzpatrick (Cavan): I should like to ask one question but if the Minister objects I will leave it. Is it not a fact that nothing definite was arranged on, I think, the 9th, that the officers did not agree, that no communiation whatever was received by them until the place was barricaded on the 12th?

Mr. O'Malley: That is not so. The Secretary of my Department, who has made a careful note of the three-hour meeting which took place on the 12th November 1971 pointed out that these changes would have to be made not later than the 22nd and that he was extremely anxious to discuss the mechanics of the change-over and so on, that if the officials concerned refused to discuss the mechanics of the change-over we would be put in the very regrettable position because of the public interest involved and the dire necessity of having a judge started byt he 22nd, that the change-over must take place then. In fact, of course, the judge eventually was not able to be appointed until the 6th December. The reason for that was that the contractor could not get in until 22nd November and he took ten days to do the necessary work.

Computers in Banks "Ease Forgeries"

The use of computers in banks has made it more difficult to detect forgeries, a National Westminster Bank spokesman said yesterday. He was commenting on the remarks by Mr. Neil McElligott, the Old Street magistrate. Mr. McEligott said "any undesirable" could apparently have a banking account these days. He added that "some banks seem to take no precautions".

He sentenced Mrs. Gloria Rosano, of Kenworthy Rd., Homerton, to a total of six months' jail, suspended for three years. She had pleaded guilty to forging and cashing five cheques from a personalised cheque book owned by her lodger.

After examining the cheques, the magistrate said the signatures bore no comparison with that of the account holder. "Do you mean to say the bank paid out on these cheques?" He was told by a police witness there had been other similar cases in other banks.

Studying signatures

The National Westminster spokesman said counter staff now had to familiarise themselves with customers' signatures by looking at the specimen cards. In pre-computer days, staff worked on the ledgers before going on the counter and became familiar with every signature.

With computer accounting, a valuable source of staff training had gone. In some cases, new staff had to go on the counter within a matter of days.

The banks continued to take the same precautions as in the past, comparing signatures on cheques with those on the specimen cards. But with thousands of cheques being handled daily, it was possible for one or two to be overlooked.

With personalised cheques, which have the customer's name printed on them, there was also a temptation just to look at the printed name and say, "He is all right; he has got the money."

Normal precautions

The spokesman stressed that the normal precautions were taken when opening an account. References were required from the prospective customer and the referees themselves were checked "to make sure one crook is not recommending another".

Other banks emphasised that the majority of customers were known to the counter clerks but because of the volume of business a small number of forgeries might slip through.

An added precaution was the issue of bank cards to customers in good standing. Any person presenting a cheque could be asked to produce a card. Losses through forgeries were borne by the banks and not by the customer.

Daily Telegraph (4th January 1972)

Foreigners can become Solicitors in England

The rule that only British subjects can be solicitors in Britain would be abolished under a Private Members' Bill which was given an unopposed second reading in the House of Lords on March 2nd.

The Solicitors (Amendment) Bill, sponsored by Lord Tangley (Independent), a former president of the Law Society, deals with other matters affecting solicitors. It entitles all practising solicitors to administer oaths and take affidavits, and allows a solicitor retained to conduct contentious business to withdraw if the client refuses a request for payment of a reasonable sum on account of costs.

Lord Stow Hall (Labour) said the Bill gave the Law Society extremely drastic powers to deal with the very occasional delinquent solicitor. "These powers seem extremely severe, and I think the public will be grateful to the profession for being ready to take upon itself thee powers to protect members of the public."

Lord Hailsham, the Lord Chancellor, said the measures in the Bill had his active support. "I would like to say that this Bill is very badly needed. A disservice would be done to the administration of law in this country if for any reason it was held up."

MISCELLANEOUS ITEMS

Legal Authors, Law Librarians, Law Publishers and Indexers

I suppose there are many of us who look with admiration upon the authors of textbooks. We are but dimly aware of the gallons of midnight oil burned in their composition; we suspect that they are not too highly remunerated; we have the faintest suspicion that they must do it for knocks—as certain reviewers seem to go out of their way to find something wrong about the finished product. Nevertheless, the book that informs the practitioner and instructs the student is a form of public service, without which the wheels of justice, instead of creaking so slowly, would probably stop altogether.

Then I suppose that there are others among us who look with envy upon the law librarian; there he is, monarch of all he surveys, being able and expected to dip into practically every book on his shelves, to better advise and assist the users of the library.

Those who have been stuck on a point, and started a paper-chase of going from volume to volume, getting conflicting opinions from each but never entirely satisfied with any—and then having to give up because of more pressing problems—must look at the calm and dignified mien of the law librarian with envy. No matter how pressed he may be, he seems always the embodiment of knowing where the answers are to be found, with always yet another volume to come up with if he existing one fails to meet expectations.

Also, there are those who actually sell law books. Somewat restricted as to geographical area, in the triangle bounded by Lincoln's Inn Archway, Bell Yard and Chancery Lane, possibly they are not so much to be envied as to be pitied. For the bookseller ordinary, it should have been said if it hasn't already that they are the luckiest of men—"I wonder often what the Vintners buy/One half so precious as the stuff they sell" But for law booksellers, it must be difficult for them to wax enthusiastic about some of the titles they sell—although, like law librarians, they must know what they are about.

In my catalogue, we then come to the law publishers, who as everyone knows, are virtually the book-makers of the whole business. It is the law publisher who decides it is time for a new book on this, or a new edition on that. Trying to think up subjects for a new thesis is difficult enough, but I would suggest that one of these days, a thesis on what actuates a law publisher to bring out a new edition, might well prove a rather fascinating exercise.

But all these are lost without an indexer. What use is a law book without an index? The index is the key to the whole business. The law librarian will falter in his stride if confronted by a book not properly indexed; the author pales visibly at any suggestion that he might have to learn a highly specialised trade in order to index the book himself; the law bookseller will look rather like the Bateman cartoon—"The law book without an index"—and will swoon (especially if he happens to have bought any copies for resale).

No, look in whatever direction you may, the indexer is the most important person involved in the production of a law book. Without him, law books would be, to some extent, somewhat meaningless exercises: the needle in the haystack would be an appropriate analogy.

Doyen of legal indexers

What has all this got to do with me? Well, the other day I met one.

I would like to call Mr. John Bray Freeman one of the doyens of legal indexers, but he does not look old enough to be doyen of anything.

Now I realise (as I am sure he does, he is such a delightfully modest and charming person) that few outside his own particular circle know and applaud him as probably being one of the most important persons involved with law books. In every day, in countless offices especially in England and Wales, but also throughout the world, there are unspoken tributes to his skill and accuracy: he after all, does not only have to index a work, but he has to read our minds to know where we are going to look to find the item we require. This must involve him in a sort of multi-clairvoyance: every index can be prepared in literally hundreds of ways, but to be intelligible, it must only be prepared in one.

I saw him the other day when he came down to Chichester to discuss a new project—I would like to think it was a little daunting, even for Mr. Bray Freeman. And may I say that every time we pick up either *Laws* or *Statutes*, or *English and Empire Digest*, or *Paterson* or many other standard authorities, and we refer to the index, we may have to pay testimony to his work. The latest count or "score" of current authorities comprises 130 volumes, included among them being Harris's *Criminal Jurisdiction of Magistrates*, a new edition of which is due out soon.

Now he is landed with the task of indexing the 136 annual volumes of the "J.P." from its inception in 1837. Instead of blanching, as I know I would have done at the very thought, Mr. Bray Freeman satisfied himself with a remark of typical understatement: he said he regarded it as an "interesting" task. The first volume is to be for the eleven years 1960-1971, and he has already started work on the project. He tells me that the secret of a successful indexer is to concentrate upon a particular work until it is finished—in this way, the thread of continuity is maintained.

He is a former member of the bar, who disbarred himself some years ago to help out the family firm of solicitors in Yorkshire. These days, he has retired completely from legal practice, although I suppose he is now an unspoken anonymous toast of practically every practitioner who ever opens a law book. From now on, I hope he will be a little less anonymous in their minds.

I wonder how he will index this item? Probably I shall have to wait ten years to find out.

Justice of the Peace (15th Jan. 1972)

Seizure of Documents by Police

by MICHAEL ZANDER

When Special Branch Officers, investigating the Aldershot bombing case, descended on some sixty homes at 6 a.m. on Wednesday morning, their knocks at the door set up considerable reverberations.

Already MPs have taken up the case, and the Home Secretary will have to consider whether to make a statement which no doubt will simply justify the action of officers acting on the authority of search warrants issued under the Explosives Act.

More interesting would be a court action by any of those affected—for damages, for trespass, for papers illegally seized and held and for their return. The extent of police powers of search and seizure is curiously vague.

Where, as here, the police are acting under a search warrant, they have to swear on oath before a magistrate that they have information which supports reasonable suspicion to justify the search. Almost invariably the magistrate grants the request, which is made in private and, therefore, lacks the safeguards of a hearing in open court.

In 1765, the great case of *Entick v Carrington* established that magistrates *cannot* issue general warrants which do not specify the person or property to be searched. The warrant must be reasonably precise and may not be drawn up in a way to allow police to ransack a man's papers and effects, looking for evidence in relation to unspecified offences. But the courts have increasingly exonerated the police for exceeding the terms of specific warrants.

No damages can be claimed for searches

These cases establish that the police are not liable for damages where they seize goods they reasonably think are covered by the terms of the warrant, even if, in the event, it proves they are mistaken. Similarly they may seize goods which identify people mentioned in the warrant, or which are reasonably believed to show the guilt of the person named in the warrant and for the crime specified.

So in 1867, the House of Lords held that police with a warrant searching a house for fuse wire used in an explosion were entitled to seize letters which tended to show that the occupier had been involved in causing the explosion.

What remains obscure is the limit of the power to search and seize property which does not relate directly, or even indirectly to the offence for which the search is being conducted.

In 1970, Lord Denning in *Ghani v Jones* in the Court of Appeal said that if in the course of a search police came upon any other goods which showed the occupier to be implicated in some other crime, they could take them—provided they acted reasonably and detained them no longer than was necessary.

The court said nothing to explain what would constitute reasonable conduct in this context. Would it, for instance, be legitimate for the police to seize letters reasonably believed to show guilt of an offence quite unconnected with the crime for which the warrant was issued. If so, the warrant procedure provides virtually no protection against precisely the kind of police "fishing expedition" traditionally regarded as illegal since *Entick v Carrington*.

Moreover, in the same case Lord Denning said that if the police were acting without a warrant they were entitled to seize goods wanted in the investigation of a serious crime which were reasonably thought to be either the fruit of the crime (stolen goods) or the instrument of the crime (the murderer's axe) or material evidence of the crime. And the property could be seized not only from someone implicated in the crime, but equally from an innocent person, provided that his refusal to hand it over was "quite unreasonable".

Citizens must assist police

At a time of an unprecedented crime wave, honest citizens, the court thought, had to assist the police and, if necessary, be prepared to hand over their own property if it would help a police investigation. If they refused, the police would be entitled simply to seize the property.

It is true that Lord Denning specifically upheld the continuing validity of the principle that the police may not ransack someone's house to see whether he has committed some crime or another. But the effect of the decision could in practice be to undermine the principle simply in order to make effective the sweeping power of seizure granted by the case.

That these fears are realistic is shown by the case last September in which members of the Prescott and Purdie Defence Group failed to get returned property taken during a search under a warrant issued, again, under the Explosives Act. Nothing was found which related to explosives, but Mr. Justice Ackner said that the police had made out their case that posters, leaflets, and Agitprop pamphlets seized were taken on reasonable suspicion of some connection with the bombing at the home of Mr. Robert Carr.

On the facts, the judge said, there were reasonable grounds for suspecting some link between Agitprop and the Angry Brigade which claimed responsibility for the bombing. But he also said that the seizure could be justified on the ground that the material seized might relate to the quite different offences of conspiracy to pervert the course of justice or to commit contempt of court.

In the present case it appears that the officers took away papers, photographs, letters, passports, diaries, notes, address lists, bills, and receipts. It seems improbable that all these seizures could, if challenged, be justified under the existing law. But the present trend in the courts is such that a challenge might well result in even further extension of the already considerable police powers.

The Guardian (17th March 1972)

Accused could lose Major Court Rights

The abolition of major traditional safeguards of the criminal process is recommended in the forthcoming report of the Criminal Law Revision Committee, which may be published next month at the earliest.

The report, which is bound to create a major sensation in Parliament and legal circles, is now being considered by the Home Secretary. It recommends the abolition of the police caution, the general admissibility in evidence of previous convictions, and the compulsory appearance of the accused as a witness.

The abolition of the caution was foreshadowed last year by Lord Parker in an interview on the occasion of his retirement as Lord Chief Justice. His successor, Lord Widgery, also favours the committee's approach on this issue; this is not surprising.

The police caution, warning a suspect that he need not say anything, was developed at the beginning of the eighteenth century. Its origin was the belief that self-incriminatory statements should be free from the taint of unfairness and that once a person becomes a suspect he should be reminded of his right to remain silent lest through ignorance he be trapped into increasing the evidence against him.

The committee has rejected as unworkable the suggestion by the legal journal *Justice,* that interrogation of suspects should be conducted before magistrates. It has also rejected the proposal that the result of police interrogations should only be admissible as evidence if tape-recorded. The only protection for the suspect apart from the general law regarding assault will be the common law doctrine that an admission or confession must be voluntary.

Accused must go into witness box

The committee recommends that when the case comes to court the accused should be required to go into the witness box. At present he has the choice of remaining silent in the dock or of making an unsworn statement (on which he cannot be crossexamined) or of giving evidence.

Under the proposed new system he could refuse to answer questions and would not be punishable for contempt if he did so. But his refusal would be open and public and the jury would draw the appropriate conclusions.

The right to silence in court has been part of our system of criminal trial since the beginning of the eighteenth century. The old ecclesiastical courts and the Star Chamber had the power to summon a defendant and to examine him on oath. The abuse of these powers and in particular their association with the rack and other means of torture led to a deep-seated feeling that the right to silence was a fundamental feature of the English legal system.

In recommending, by a majority, the general admissibility in evidence of previous convictions, the committee went further than the police themselves have suggested. This change, if implemented, would probably have an even more important effect on the outcome of trials than any of the committee's other proposals. Previous convictions are at present normally excluded on the ground that they would have an unduly prejudicial effect on the mind of the jury.

The chief rationale for the committee's hard-line approach has been its belief that the present rules are based too much on outdated theories of fair play inappropriate in the context of the present war on professional crime. In particular, the committee was persuaded that too many guilty defendants now escape conviction.

The Home Secretary told the House of Commons on March 17th that the rate of acquittals by juries in both 1969 and 1970 had been as high as 50 per cent.

The Criminal Law Revision Committee is a particularly weighty one. It is chaired by Lord Justice Edmund Davies, who sentenced the mail train robbers. Its members include six other judges, a barrister who has recently been appointed a judge, the Director of Public Prosecutions, the chief metropolitan magistrate, a senior legal adviser to the Home Office, three academic lawyers, a solicitor, and a justice's clerk.

The report, which has been eight years in preparation, will be published with a draft Bill to give effect to its recommendations. It is thought that the Government will probably introduce the Bill quickly before informed opposition to the report has had time to build up.

The Guardian (7th April 1972)

Lawyers attack Law Revision moves

The Criminal Law Revision Committee, which has proposed fundamental changes in the criminal law system, was accused yesterday by the National Council for Civil Liberties of "giving respectability to police malpractices".

Mr. Tony Smythe, general secretary of the Council, said the police were ignoring normal safeguards for suspected persons more and more.

Yet the committee, in suggesting abolition of the caution during interrogations, had rejected any counterbalancing safeguards such as the right of an accused's solicitor to be present. He promised an unremitting campaign by the Council to prevent the proposals being implemented in their present form.

Justice, the all-party lawyers' organisation, opposes the proposals as they stand. Mr. Tom Sargent, its secretary, said the Judges' Rules might have provided safeguards, but at present they were inadequate and often not applied or adhered to.

Justice had proposed to the committee that if the caution were to be abolished, tape-recordings should be used during interrogations; alternatively, only magistrates should be allowed to carry out questioning of suspects. But the Criminal Law Revision Committee rejected both these proposals as unworkable.

Mr. Sargent said: "We believe that a rota of magistrates could be worked out to do the job. We have also suggested that the decision to prosecute should be taken out of the hands of the police and entrusted to an independent authority."

The committee's proposals—which also include compelling an accused person to enter the witness box and disclosure during a trial of his criminal past—have caused consternation among lawyers and civil liberties groups.

The police welcome the suggestions unreservedly. One police chief has commented: "The criminal trial today is less a test of guilt or innocence than a competition . . . a kind of show-jumping contest in which the rider for the prosecution must clear every obstacle to succeed."

Many lawyers hold that abolition of the caution would not succeed in catching the professional criminal: it would trap only the unwary and those ignorant of police procedures.

Mr. David Napley, chairman of the Law Society's Standing Committee on Criminal Law, said that guilty people were alert to their rights: only those confronting a policeman for the first time were likely to need reminding that they were not obliged to say anything.

The Observer (9th April 1972)

First Woman Judge at Old Bailey

A woman will sit as a judge at the Old Bailey for the first time today. She is Miss Recorder Heilbron, Q.C., who has sat as a Recorder at Burnley since 1956.

As a barrister, Miss Rose Heilbron, Q.C., appeared for the defence in the famous Cameo murder trial in Liverpool in 1950, and at the Old Bailey in 1956, when she successfully defended an accused in a Soho affray case that became known as "the fight that never was".

Miss Heilbron, in private life married to a doctor, will sit as a judge at the Old Bailey under the new judicial system which came into force on January 1st because of the Courts Act of 1971.

Robbery case

The Act abolished the traditional Assize Courts and Quarter Session Courts and replaces them with six Crown Courts throughout England and Wales. Trials at these Crown Courts will now be presided over by circuit judges which will include High Court judges and part-time Recorders.

Miss Recorder Heilbron's first case will be to try a 19-year-old youth sent for trial on bail last April and accused of robbery.

In court, Miss Heilbron, 56, will be addressed as "My Lady."

She is not the first woman barrister to achieve high legal office. That distinction goes to Mrs. Justice Eliza legal office. That distinction goes to Mrs. Justice Elizabeth Lane, who was appointed a judge of the Probate, Divorce and Admiralty Division of the High Court (now the Family Division) in 1965.

Daily Telegraph (4th January 1972)

Curbs sought on sale of land— Policy Statement soon

The Taoiseach, Mr. Lynch, and the Minister for Lands, Mr. Flanagan, are to be asked by a number of County Committees of Agriculture to introduce legislation as soon as possible prohibiting the sale of land to non-nationals or others who have not been permanently resident in the country for a period of ten years.

The request is being made by the committees to avert the possibility of land speculation if Ireland becomes a member of the EEC and to tighten the controls currently in operation under the 1965 Land Act.

Mr. Flanagan is also being pressed to change the structure and powers of the Land Commission to enable it to decide priorities in an EEC context and function as a land bank in the restructuring of agricultural holdings.

It is understood that the Government's land policy is to be reviewed by the Cabinet in the near future and a number of important decisions are likely to be taken on extending the present time limit of eleven months for leasing land for grazing and on the whole question of the Department of Land's farm restructuring programme.

The restructuring of the Land Commission will be made against the background of the Treaty of Rome which aims to give people the right to work or set up business in any EEC country.

Farming is to come under this rule eventually and many people fear that if the Land Commission is not changed within the next year to consolidate the pool of land that will become available as old farmers without heirs pass on, for the national restructuring programme, foreigners may be able to take advantage of the situation.

At the moment most of the EEC countries have better defences against undesirable land purchases than the Land Commission has.

In Germany, for example, the local agricultural council must approve all purchases whether by foreigners or not to make sure that all land will be put to the best use and since it is being predicted that each member State of the EEC will be responsible for implementing its own rural structural reform programme, Ireland, if she joins, will have little difficulty in preventing the purchase of farmland to speculators if the same procedure is followed.

The ten-year residential period being proposed by the County Committees is far in excess of present EEC legislation, which enables foreign farmers to buy land if the land has been totally unused for two years or if the purchaser has worked as a farm hand or tenant for two years in the country where he intends to farm.

At the moment, nobody, not even the Land Commission, knows how much of our 16 million acres of land is in the hands of non-nationals, although the Commission is satisfied that the figure is nothing like one million acres.

The reasons why no precise statistics are available date back to the early days of the State when foreigners were invited over to establish industries here and no records were kept of the transactions.

Since the passing of the 1965 Land Act, however, when control over the purchase of land by non-qualified persons was vested in the Land Commission, more than 19,000 acres have been sold to non-nationals. The amounts of land have ranged between 6 and 1,587 acres and the nationalities involved are British, American, German, Canadian, Australian, Swedish, Dutch, South African, French, Finnish, Swiss, Austrian and Belgian.

Representations have also been made to the Minister for Lands by the Irish Law Society to have all lands acquired by the Commission in future paid for in cash instead of Land Bonds as at present.

In re. a Solicitor

Is a solicitor employed as "agent" to do conveyancing, the employer advertising "cut rates", holding himself out, and seeking instructions?

QBD, Ashworth, James and Bristow JJ; 13th March 1972; Appeal from Dssciplinary Committee of the Law Society.

A solicitor, practised on his own account until 30th September 1970. In October 1970 he informed the secretary of the Professional Purposes Committee of the Law Society that he was now an agent for the National House Owners' Society. An inquiry agent for the Law Society interviewed him when he said that he acted as solicitor for the internal affairs of the NHOS and as agent for NHOS when its members were referred to him with their conveyancing work. He was called before the Disciplinary Committee of the Law Society to answer charges of professional misconduct and/or unbefitting conduct in that he had (a) in breach of Rule 1 of the Solicitors' Practice Rules 1936 sought instructions for professional business; and (b) in breach of Rule 2 held himself out as prepared to do professional business in non-contentious matters at less than the fixed scale fees. The Law Society submitted that the advertisements by which NHOS advertised their conveyancing services to members at rates less than those charged by solicitors, were an indirect instruction seeking by the solicitor for professional business, that by doing conveyancing for NHOS members at "cut rates" he held himself out, although not by name, as being ready to do professional business at "cut rates". Pre-contract enquiries which he conducted for NHOS members were signed by him as "proposed purchaser's solicitor", a draft agreement provided that the sale be completed "at the office of the vendors' solicitor" naming himself as that solicitor. The committee decided that the allegations were substantiated and fined him £750. He appealed, contending that his position was no different from that of a salaried solicitor employed by an insurance company.

Ashworth J said it was argued for the solicitor that there had been no holding out by him, for he was simply a paid agent, that in so far as there had been a holding out by advertisements and brochures, it was done by the NHOS. The judgment of Lord Goddard CJ in re *A Solicitor* [1951] 2 All ER 108, 111, applied in the present case. The solicitor enlisted in the NHOS aware of its objects and allowed his services to be used for "cut rates". Throughout he held a practising certificate, and he carried out the conveyancing work. He ws holding himself out to the NHOS and through the NHOS to its members, and had no answer to the charge of a breach of Rule 2. As for Rule 1, counsel for the Law Society said that on the facts, albeit not directly, the solicitor was seeking instructions because those he called his principals were seeking professional business which he carried out and therefore he was seeking professional work. His Lordship would dismiss the appeal.

James J, agreeing that the appeal should fail, said that there was no warrant for reading into either rule the qualification "being a practising solicitor".

Bristow J agreed. Appeal dismissed with costs.

Solicitors Journal (24th March 1972)

Law Lords Critical, but Captain Broome keeps £40,000 Award

Captain John Broome, commander of the escort vessels in convoy PQ 17, yesterday heard the Lord Chancellor and six Law Lords dismiss an appeal by the publishers Cassell and Company Limited, against an award to him of £25,000 punitive damages for libel. Captain Broome, who was 71 yesterday, lives at Chelsea.

The decision—by four to three— means that Captain Broome will receive the £25,000 in addition to £15,000 compensatory damages also awarded to him. There was no appeal against the £15,000 award.

Yesterdays decision ends a legal battle lasting three and a half years by Captain Broome. The action concerned the book "The Destruction of PQ 17," by Mr. David Irving. Captain Broome complained that the book accused him of cowardice.

The original award against Cassels and Mr. Irving was made by a jury in February, 1970, after a seventeen-day hearing. The Court of Appeal, after a hearing of nine days, dismissed appeals against the awards, in which Cassels disputed only the amount of punitive damages. The Lords hearing took thirteen days.

Costs are estimated at £130,000. Mr. Irving did not appeal to the Lords. Cassells have issued a writ against him claiming £100,000. Costs will not be finally determined until this case against Mr. Irving has been decided.

All the Law Lords decided that the £40,000 total award was more than they would have awarded. But it was not so excessive that they should change it. But three held that the trial judge, Mr. Justice Lawton, had not adequately directed the jury on damages.

Lord Hailsham's judgment

The Lord Chancellor, Lord Hailsham, recalled the fate of the convoy in 1942, when all but 11 out of more than 35 merchant vessels bound for Russia were sunk by German planes and U-boats. The convoy scattered, on Admiralty instructions in the mistaken belief that an attack by a battleship was imminent.

Lord Hailsham said the first publishers selected by Mr. Irving refused to publish the book on the ground that it was "a continuous witch hunt of Captain Broome" and "reeked of defamation."

It was impossible to say how much of that was known to Cassells but the first publishers warned Cassells in unmistakable terms that they rejected the book precisely because it was libellous. The response of Cassells was "either flippant or cynical."

The jury was perfectly entitled to infer that Cassells had "calmly calculated that the risk attendant on publication did not outweigh the chances of profit."

Quite deliberate libels

He agreed with Lord Justice Phillimore who had said in the Appeal Court that the jury must have found that "these grave libels were perpetiated quite deliberately and without regard to their truth by a young man and a group of publishers interested solely in whether they would gain by the publication of this book. They did not care what distress they caused." Lord Hailsham said it was a "heinous offence against public decency".

But Lord Hailsham said it was with very great hesitation that he had decided that the verdict should stand. He would have awarded possibly less than half £25,000. But he could not say that "no 12 reasonable jurors could have come to a different conclusion from myself."

Punitive damages anomalous

Lord Reid said he thought the whole doctrine of punitive damages anomalous and indefensible. "But we must accept it and make the best we can of it." He thought the £25,000 punitive damages much too large" but with considerable regret thought it would be contrary to law if the verdict were not upheld. Costs had already reached a figure which many laymen would call scandalous."

Lord Morris of Borth-y-Gest thought the total of £40,000 "huge" but not beyond the limit to which a reasonable jury could go.

Lord Kilbrandon said that although he would have assessed the damages "at a much smaller sum" he could not say the award should not stand.

Lord Dilhorne said he thought the trial judge had made a most serious omission in addressing the jury on punitive damages. He thought the £40,000 award out of all proportion.

Lord Diplock thought the jury must have been confused as to how punitive damages, if any, were to be assessed. He did not think the jury were adequately directed on that question. Even if he thought the jury were given an adequate direction, he would have set the award aside and substituted a total award of £20,000.

House of Lords decisions to be accepted

There was also criticism of the Appeal Court. It had said, Lord Hailsham observed, that *Rookes v. Barnard* decided by the House in 1964 was wrongly decided, and not binding on the Court of Appeal.

That course had imposed upon the litigants the "inevitable burden of further costs" in arguing broad issues of law unnecessary for the disposal of their dispute. "The fact is, and I hope it will never be necessary to say so again, that in the hierarchical system of courts which exist in this country it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers." Lord Hailsham said *Rookes v. Barnard* was not inconsistent with earlier decisions of the House.

The Guardian, 24 February, 1972.

Undramatic reception for Scarman in North

The Scarman Tribunal Report, published yesterday, has had an uneventful and undramatic reception in the North. As reaction began to settle last night in Belfast, Derry and the other centres which were the subject of the massive investigation into the riots and disturbances from March to August 1969 it emerged clearly that the years since those tragic and traumatic events have blunted the impact of the findings.

As Opposition and Unionist representatives spoke about the report last night, it was clear also that since the report criticises many times the command and behaviour of the R.U.C. and the now defunct B Specials, there is more to satisfy the Catholic population than there is to comfort Protestants.

But politicians on both sides were joined by the new Secretary of State for Northern Ireland, Mr. William Whitelaw, in appealing to all in the community not to engage in recrimination over past events.

Most politicians, it seems, reading the report now after two and a half years seem to agree on one point: that the community should take from the Scarman findings what lessons it can to prevent a recurrence of the 1969 sectarian violence.

The tribunal's report runs to 300 pages and is in two volumes, one being appendices and the index.

Among the major findings of the three-man tribunal, which sat for 171 days and heard 422 witnesses in several centres throughout the North, are: that in 1969, contrary to what was at the time claimed by the Unionist Government of the day, there was no "plot to overthrow the Government or to mount an armed insurrection" in the August rioting in Belfast, Derry and Armagh. Mr. Justice Scarman and his two colleagues, Mr. G. K. G. Lavery and Mr. William Marshall, dismiss claims that the I.R.A. was the organisation behind street violence in Catholic areas. They also reject suggestions that there was organised Protestant violence. Instead they come to the conclusion that the riots were "communal disturbances arising from a complex political, social and economic situation". On the economic point, the tribunal adds in an appendix that the cost to Northern Ireland can be estimated at something in the region of £3m. The report itself cost nearly £500,000 to produce.

R.U.C. faulted

Dealing with the police, Scarman has found that there were six occasions on which the R.U.C. were "seriously at fault". These were: 1, A lack of firm direction in handling the disturbances which followed the Apprentice Boys parade in Derry on August 12th; 2, The decision of a county inspector to put B. Specials on the streets of Dungannon on August 13th without disarming them and ensuring that they were commanded by an experienced police officer; 3, A similar decision in Armagh on August 14th where the tribunal finds B Specials who fired into a crowd killed Mr. John Gallagher and wounded two other men. Of Mr. Gallagher's death. Scarman says: "After making all allowances for the strange, difficult and frightening situation in which they found themselves, there was no justification for firing into the crowd." 4, The use of Browning machine-guns on police vehicles in Belfast on August 14th and 15th. During their use a nine-year-old boy, Patrick Rooney, was killed by police fire and the tribunal have summed up their views on the use of the Brownings as follows: "The weapon was a menace to the innocent as well as the guilty, being heavy and indiscriminate in its fire." 5, The failure of police to prevent Protestants burning down Catholic houses in the Conway Street area and in Brookfield Street, Belfast, between August 14th and 16th; 6, The failure to take any effective action to restrain or disperse the Protestant crowds to protect lives and property in the riot areas on August 15th before the arrival of British troops.

R.U.C. not a partisan force

But while it faults the police on these occasions and on other points by implication, the report says: "The charge that the R.U.C. was a partisan force cooperating with Protestants to attack Catholics is devoid of substance and we reject it utterly." Mr. Justice Scarman and his colleagues say that the great majority of members of the R.U.C. "were concerned to do their duty to maintain order on the streets using no more force than was reasonably necessary to suppress rioting and protect life and limb."

All the familiar household names on the Northern scene are referred to in the report and the politicians are fully cleared of actively promoting violence. Their speeches, however, are criticised and are regarded by the tribunal as contributory factors in the spread of tension. In this respect, the tribunal says that the speeches of the Rev. Ian Paisley were "fundamentally similar to those of political leaders on the other side of the sectarian divide".

And of Miss Bernadette Devlin, M.P. for Mid-Ulster, who served a six-month prison sentence for her part in the Bogside riots, the report says: "Although her participation was limited, her principal activity being associated with the building and manning of the Rossville Street barricades in Derry, she must bear a degree of responsibility once the disturbances had begun for encouraging Bogsiders to resist the police with violence."

Scarman says that one of the fundamental causes for the failures of the police was that R.U.C. strength was not sufficient to maintain public peace. But in August the then Inspector-General Mr. Anthony Peacocke, acted as though it was. "Had he correctly appreciated the situation before the outbreak of the mid-August disturbance, it is likely that the Apprentice Boys' parade would not have taken place and the police would have been sufficiently reinforced to prevent disorder arising in Derry. Had he correctly appreciated the threat to Belfast that emerged on August 13th, he could have saved the city the tragedy of the 15th. We have no doubt that he was well aware of the existence of political pressures against calling in the Army but their existence constituted no excuse as he himself recognised when in evidence he stoutly and honourably asserted that they did not influence his decision."

Insufficient police and soldiers in hot situation

Not only does the report point to lack of numbers among the police but it also makes clear that violence continued in Belfast after the British Army moved in on August 15th because there were not enough soldiers. And in the Clonard area, for example, the report says that the commanding officer did not know the dividing line between Catholic and Protestant ghettos.

Ten people died and over 700 were injured during the period covered by the report. Eight of the dead were Catholics.

The Irish Times (7th April 1972)

11th Report of Committee of Court Practice and Procedure on the Powers of the Supreme Court

Recommendations

The Committee unanimously recommend as follows (subject to reservations annexed to this Report by Mr. E. C. Micks and Mr. J. McMahon as to recommendations numbered (8) to (11) inclusive):

(1) Section 52 of the Courts (Supplemental Provisions) Act, 1961, should be amended so as to allow a party (who has been refused leave to appeal by the High Court from a decision of that Court on a case stated by a Justice of the District Court) to apply to the Supreme Court for leave to appeal. (See paragraph 12.)

(2) There should be expressly conferred on the Supreme Court jurisdiction to try in the first and final instance, on consent of the parties, net constitutional issues initiated in the High Court concerning the validty of Acts of the Oireachtas or issues arising under Article 50, Section 1, of the Constitution for the resolution of which no decision on any disputed question of fact is required, or any other net issue of law of importance initiated in the High Court. (See paragraph 16.)

(3) The Supreme Court should be given jurisdiction to determine on a compulsory consultative case stated to it by the District Court or the Circuit Court any constitutional issue, other than such issues as are reserved for the High Court or the Supreme Court under Article 34.3.2 of the Constitution, which may be raised in the District Court (whether arising during the preliminary examination of an indictable offence or otherwise) or in the Circuit Court. (See paragraph 23.)

(4) If at some future time proposals to amend the Constitution are to be put to a referendum, consideration should be given to including among them one to remove the present "one opinion" rule which applies to decisions of the Supreme Court by virtue of the provisions of Article 26.2.2 and Article 34.4.5. (See paragraph 24.)

(5) All judgments of the Supreme Court which are delivered in written form should be published shortly after delivery at the State's expense and copies made available to the public at a reasonable cost. (See paragraph 33.)

(6) There should be expressly conferred on the Supreme Court power to refer back to the High Court as a special issue the examination of new evidence arising on an appeal in the Supreme Court which the Supreme Court requires to be so examined. Such issue should be tried with or without a jury as the Supreme Court should direct. (See paragraph 40.)

(7) Rules of Court should require that, in an action tried in the High Court with a jury for damages for wrongs, the questions put to the jury should be so framed as to obtain the jury's verdict as to the particular wrongful acts or omissions alleged on each side and as to the relevant ingredients of any damages asessed. (See paragraph 41.)

(8) In addition to all the documents which, by virtue of the existing rules, are required to be lodged in the Supreme Court for the purpose of an appeal, an appellant or cross-appellant should also lodge five copies of an appeal brief containing the following documents in the Office of the Supreme Court and serve a copy of the same upon the respondent not later than thirty days before the appeal is due for hearing:

(a) A concise statement of facts.

(b) A concise statement setting out clearly and particularly in what respects the judgment appealed from is alleged to be erroneous. When the error alleged is in respect of the admission or rejection of evidence, the evidence admitted or rejected shall be stated in full. When the error alleged is with respect to the charge of the judge to the jury, the language of the judge and the objection of counsel shall be set out verbatim. If, however, the references involved are lengthy their citation alone will be sufficient if a transcript of the shorthand writer's note of the matter has been lodged with the books of appeal and the provisions in question are clearly identified by reference to the page of the transcript and by giving the opening and closing words of each such provision as it appears in the transcript.

(c) A brief of the argument of the appellant setting out the points of law or facts to be discussed with particular reference to the page and line of the case of the transcript and the authorities relied upon in support of each point. A precise citation of the authority relied upon should be given in each case together with the number of the opening page of the authority and the number of the page or pages containing any passage or passages relied upon and the opening and closing words of each such passage. When a constitutional provision, statute, statutory order, statutory instrument, rule or regulation or bye-law is cited or relied on, so much thereof as may be necessary to the decision of the case shall be set out verbatim citing the volume and page on which they may be found in the official edition. If the provisions involved are lengthy their citation alone as to volume and page shall be sufficient save in the case of private statutes, bye-laws and other provisions which are not of general public application throughout the State.

(d) A concise statement stating the nature of the order or relief sought including any special order with regard to costs. (See paragraph 47.)

(9) A brief should also be filed, and served on the appellant, by the respondent setting out in similar form his submissions with regard to (a), (b), (c) and (d) above in so far as he does not accept or agree with the appellant's submissions or recital of the same. Where the respondent is cross appealing he shall as relates to the cross appeal follow the mode prescribed for an appellant and the appellant in reply to the cross appeal shall follow the mode prescribed for a respondent. (See paragraph 47.)

(10) A respondent's brief and an appellant's replying brief to a cross appeal (if any) should be filed and served not later than fifteen days from the receipt of the appel-

lant's brief or cross-appellant's brief. An appellant or cross-appellant who does not file his brief within the time stipulated may, on the motion of the other party, have his appeal dismissed by the Court on the grounds of undue delay. (See paragraph 47.)

(11) Not later than thirty days before a case stated is due for hearing by the Supreme Court, the party having carriage should lodge in the office of the Supreme Court five copies of a case stated brief containing the material already mentioned at recommendation (8) (c) in regard to appeals and should serve a copy of the same upon the respondent. A respondent's brief in similar form should be filed and served not later than fifteen days from the receipt of the brief of the party having carriage of the case stated. (See paragraph 48.)

(12) The law should be changed so as to allow the trial judge in a High Court action, who is of opinion that in law certain issues ought not to be left to the jury, to leave questions on these issues to the jury without being bound to accept the findings at which the jury arrive on those questions. (See paragraph 50.)

(13) Each judge of the Supreme Court should be provided with a salaried law clerk or research assistant. (See paragraphs 51 and 52.)

The implementation of the above-mentioned recommendations (1), (2), (3), (6) and (12) would require legislation, while recommendations (7), (8), (9), (10), and (11) could be dealt with by the Superior Courts Rules Committee. Recommendation (4) would involve a referendum to amend the Constitution. Recommendation (5) would seem to involve merely a matter of administration. Recommendation (13) is concerned with the provision of additional court staff.

Note—Although this Report has only been printed now, it was signed by the members of the Committee two years ago, in March 1970.

Proposals for Secrets Act Reform

Proposals for reform of the Official Secrets Act of 1911, and removal of Section 2—"a blot on the Statute Book"—have been made to the Franks Committee reviewing the section, by Prof. H. W. P. Wade, Q.C., Professor of English Law at Oxford University.

The committee was set up after the unsuccessful prosecution of *The Sunday Telegraph*, Mr. Brian Roberts, its Editor, Lt.-Col. Douglas Cairns, and Mr. Jonathan Aitken, over the publication of a report on the Nigerian war which was claimed to be confidential.

In his evidence to the committee, Prof. Wade says that the new statute should define criminal offences more narrowly, facilitate access to information about government, and should be adopted only after adequate public discussion and debate in Parliament.

"Wrong Form of Law"

Section 2 of the 1911 Act was a thoroughly wrong form of law says Prof. Wade. "It hangs over the heads of all concerned with public affairs, especially, of course, the Press who are obliged to commit criminal offences daily but are not normally victimised by prosecution.

"It prevents officials from letting out innocuous and desirable information because they know that they were acting criminally unless they obtain authorisation.

"It lowers the reputation of the public service since it is thought to be used for covering up mistakes, even when this is not true. It has aggravated the secretiveness for which British administration has a bad name with its best-informed critics.

"It has become one of the vested interests of government, a classic example of bad law creating bad practice."

In the recent *Sunday Telegraph* case, Mr. Justice Caulfield virtually told the jury that the Act of 1911 might be regarded as obsolete. "This remarkable direction is a good indication of the standing of Section 2 in responsible legal opinion," says Prof. Wade.

(*Daily Telegraph*, 11 December 1971)

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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EDITORIAL

Community Legislation

Now that five-sixths of the voting electorate in the Irish Republic have sanctioned the constitutional amendment which enables Community legislation to supersede the Constitution in any case where it is necessary to vive effect to the Treaties of Rome and Paris, it becomes more necessary than ever for Irish legal practitioners to gain some knowledge, not merely of the Treaties, but of the more important directives and regulations affecting changes in Irish law. This will be a formidable task, and it would seem that some lawyers in the larger towns will henceforth have to specialise in Community Law as it is a very intricate subject in itself which seemingly can only be combined with ordinary practice in large firms. It is hoped to bring to the notice of practitioners the important decisions of the European Court and the effect of the more important directives and regulations which may affect them.

Legal education — a legal tangle

by MICHAEL ZANDER

A year after publication of the Ormrod Report on legal education there are already signs that the committee's most controversial proposal, that the universities and polytechnics should handle not only the academic but also the vocational stage of institutional training, will be abandoned as unrealistic. And it is still uncertain what practical effect its overall recommendations are likely to have.

The committee thought that both sides of the legal profession would be forced by shortage of funds to ask that the proposed one-year vocational training course be financed out of public money. The report envisaged that the Bar's Council of Legal Education and the Law Society's College of Law would somehow be merged into universities and polytechnics. It thought that at least four such centres in different parts of the country would be needed to cope with the numbers coming into the profession.

The solicitor members of the committee dissented from this major conclusion and, since the publication of the Report, the Bar too has made it clear that it wants, if possible, to continue to run its own show.

The main sticking point is the magic concept of "control." Neither side of the profession is prepared to concede to anyone.

The Department of Education and Science has made it clear, however, that no public funds are likely to be forthcoming by way of direct grant to the professional schools and the only practical alternatives are therefore either self-financing by the profession or a genuine transfer of the courses to universities or polytechnics.

If the profession felt itself obliged to ask for such a transfer, it would, for mainly snobbish reasons, prefer that the courses be provided by the universities. Both the University Grants Committee and the DES would prefer that this development in legal education should be put into the polytechnics.

Since receipts from students will undoubtedly be a major element in the financing of the courses, the profession will fix fees at the highest possible figure without pricing itself out of the market.

Students attending the Bar's vocational training course now pay £221, which is near the true cost. The Law Society has not yet fixed the fees for its vocational course due to be started on a pilot basis for 240 students in 1974. But considering that it would have 40 weeks' teaching, as compared with 21 for the Bar course, the cost would not be less than £500 per student. If public moneys are not available, any difference between fees and the true cost will have to be made up through a levy on the profession.

The Ormrod Committee based its calculations and projections on about 1,120 solicitors and 170 barristers entering practice each year. These figures are already clearly under-estimates.

Projections of members should now be part of the function of the advisory committee set up in January by the Lord Chancellor as suggested in the Ormrod Report. The committee's functions are to advise the profession and the relevant institutions of higher education on all matters affecting education and training of entrants to the legal profession. The Ormrod Report said that the committee should have a part-time secretariat and should collect and disseminate much needed statistics relating to legal education.

It thought the Secretariat should be supplied by the Lord Chancellor's Department and that the expenses of the committee should be shared between the professional bodies and Government sources in the shape of Lord Chancellor's Department and the DES.

This hope has not however, been realised. The Lord Chancellor's Department and the DES both take the view that, the task of the committee being to advise the profession and not a Minister, it is for the profession to provide it with the means to do its work. Not wishing for work without power or responsibility, the Lord Chancellor's Department has declined even to provide a Secretariat which has been made the task of the Law Society instead.

The committee has so far met three times and hopes before the summer to issue its first report on the recognition by the profession of first degree courses. In particular, it will have to decide whether to make any protest at the intention of both sides of the profession to proceed with their own separate courses rather than to implement the Ormrod Committee's concept.

The Guardian (18th April, 1972)

THE SOCIETY

Proceedings of the Council

27th APRIL 1972

The President in the chair, also present: Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, 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, Donal M. King, Francis J. Lanigan, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, John Maher, Gerald J. Moloney, Patrick C. Moore, Senator John J. Nash, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Thomas V. O'Connor, John O'Meara, William A. Osborne, David R. Pigot, Peter D. M. Prentice, Mrs Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

The following was among the business transacted.

Building Society Agencies

A committee considered an application from a building society for permission to establish agencies in solicitors' offices in the main centres and towns throughout the country. The question involved the desirability or otherwise of permitting building societies and other agencies to display prominent signs in close conjunction with solicitors' professional plates and the establishment of agencies for the reception of deposits as part of a solicitor's office organisation. The matter is under organisation by the committee which will in the near future make recommendations to the Council.

Circuit and District Court—scales of costs for increased jurisdiction

All the scales of costs for the increased jurisdiction together with amended scales for the former juristiction incorporating an increase authorised by the Rules Committees have been submitted to the Department of Justice but the Minister has not yet given his concurrence. A deputation from the Council waited on the Minister who agreed to receive representatives of the various rules committees with a view to expediting completion. In the meantime the Council have decided to advise members that where no scale of costs is in operation members should advise their clients either

(a) to defer the institution of proceedings until the new rules and scales of costs have been made;

(b) that they have the option of instituting proceedings now but that the maximum costs which can be recovered will be the costs at the top of the scale under the former jurisdiction and that the client will be liable for the difference between the solicitor and client costs and the costs which are actually recovered in the event of a successful outcome of the proceedings.

Building contract/lease mortgage transaction

The Council considered a report from a special committee which recommended that representations should be made to the Minister for Justice advocating legislation on the same lines as the legislation regarding costs of leases. This should provide that the existing common law should be altered so that the mortgagor and the mortgagee on any transaction should each bear their own costs with a prohibition on contracting out similar to Section 32 of the Landlord and Tenant (Ground Rents) Act, 1965. Attention was drawn to the recommendation of the Council published at page 229 of the Society's *Gazette*, March/April 1971, dealing with a solicitor's costs of the first lease or purchase of a new house. This recommendation is reprinted below in the present issue of the *Gazette*.

Completion of sale and mortgage

The same committee recommended that on the completion of a sale with the aid of a loan granted by a Building Society or other lending institution the mortgagor should not be required to attend at the office of the mortgagee's solicitor for the purpose of executing the mortgage. This is a requirement at the present time of some building societies who are in a position to make their own terms as regards the granting of loans. The matter is under consideration.

Prices (Amendment) Bill, 1971

A deputation which was received by the Minister for Justice reported to the Council. It was decided to make further representations regarding the establishment of a special committee to deal with solicitors' remuneration on the lines of the Central Costs Committee already discussed with the Minister. It was decided that a deputation should also request an interview with the Minister for Industry and Commerce on this matter.

Restrictive Trade Practices Bill, 1971

The Council considered a memorandum on this Bill and decided to send a deputation to the Minister for Industry and Commerce on Section 15 which proposes to authorise officers of the Department to enter premises and inspect documents and records. These provisions are considered objectionable from the point of view of the solicitor and client relationship and a solicitor's obligation of secrecy.

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 nding 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 purchase 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.
Cerificate 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 transaction 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.

LANDLORD AND TENANT AMENDMENT (ACT), 1971

Important Notice

The attention of members is again drawn to the information at page 17 of the Society's *Gazette* for January 1972. Section 11 of the Act gives further opportunity to landlords of less than six controlled dwellings to apply to the District Court to have the basic rent of any or all of these dwellings reviewed. This is a repetition of the provisions of Section 8 (1) (a) of the Rent Restrictions Act 1960 as amended by Section 4 (1) of the 1967 Act. The provision originally had a life of two years but many landlords who would have been entitled to make use of the provision apparently were unaware of their existence and many practitioners may not have fully appreciated the purpose of the extremely complex Section 4 of the 1967 Act. Such landlords have now been given a further year from 7th December 1971 to bring applications for a review to the District Court. This provision was inserted following representations made some time ago by the Council and members should pay particular attention to it as it is extremely unlikely that the statutory period will ever again be extended and members who omit to take account of the extension and who advise their clients accordingly may leave themselves open to proceedings for negligence. At the date of writing the Landlord and Tenant (Amendment) At 1971 is not yet on sale at the Government Publications Sales Office. Members may be able to obtain copies of the Bill as passed by both Houses. Representations have been made to the Department of Justice and to the Stationery Office.

LOCAL AUTHORITY SOLICITORS ASSOCIATION

The annual general meeting of the Association was held on Friday, 10th March 1972, at the Solicitors' Buildings, Four Courts, Dublin. The following officers were elected. *Chairman,* Michael J. Leech; *Hon. Secretary/Treasurer,* Dermot Loftus; *Committee,* Messrs Timothy Murphy, Peter A. Fitzpatrick, Donal M. King, Henry Murray and William Dundon.

Tributes were paid to the former Chairman of the Association, the late Mr. Dermod M. F. Walsh, Law Agen, Dublin Corporation, and the meeting adjourned for an interval as a mark of respect. In proposing a vote of sympathy to the relatives of the late Mr. Walsh and also to the Dublin City and County Manager, Mr. William Dundon said that not alone had the Association lost a loyal colleague, but that the profession as a whole would be much the poorer at Mr. Walsh's death.

Following the annual general meeting a seminar was held, during the course of which papers on the following subjects were given :

(a) "Sales under Section 90 of the Housing Act, 1966, and the Effect of the Housing (Loan Charges Contribution and Management) Regulations, 1967, thereon" by William Dundon, City Solicitor, Limerick.

(b) "The implications of the decision in Listowel U.D.C. v MacDonagh (105 I.L.T.R. 99)" by Timothy Murphy. County Solicitor, Kerry.

(c) "Relator Proceedings" by Michael J. Leech, Law Agent, Dun Laoghaire Corporation.

(d) A talk on "Land Acquisition Problems" was given jointly by Brendan Kiernan, B.L., Legal Adviser, Department of Local Government, and Michael Murphy, B.L. Assistant Legal Adviser, Department of Local Government.

Examination Results

First Law Examination

At the First Law Examination for apprentices to solicitors held from 14th to 19th February 1972 the following candidates passed :

Passed with merit : Marie C. Collins.

Passed : Patrick J. Butler, Anthony O. F. Burke, Dermot G. Byron, Martin D. Cellier, Orlean J. Dyar (B.C.L.), David George Ellis, Nessa Fitzsimons (B.C.L.), Kevin Gaffney, George J. Gill, Stephen C. Hamilton, Peter C. Hayes, Helen Heffernan, Declan Hegarty, Edward F .Hickey, Michael J. Horan, Patrick Hurley, William O. Jolley (B.C.L.), Laurence P. Kirwan, Denis Linehan, John Barry Lysaght, Justin MacCarthy, Stephen P. Maher, Brendan T. Muldowney.

Madeleine McGrath, George C. M. P. McGrath, Orlaith Mary O'Brien, Hugh O'Donnell (B.C.L.), Margaret Mary O'Kane (B.A.), Michael T. Quigley (B.C.L.), Aideen Anne Rooney, Shane Ross (B.A. Mod.), Ambrose J. Steen, James David Sweeney, Joseph Ralph Sweeney, Michael Tracey, Paul Daniel Traynor, Olivia Ward (B.A.).

87 candidates attended; 38 candidates passed.

Second Law Examination

At the Second Law Examination for apprentices to solicitors held from the 14th to 19th February 1972 the following candidates passed :

Passed with merit : Karl Enright Hayes (B.C.L.).

Passed : Barry St. John Bowman, Peter P. Brady (B.C.L.), James F. Cahill, Joseph G. Chambers, Patrick Clarke Carroll (B.C.L., LL.B.), Niall Clancy (LL.B.), John J. Coffey (B.A.), Robert J. P. Coffey (B.C.L.), Brendan O. Comiskey (B.C.L.), Anthony J. Connolly (B.A.), Edward A. Coonan, John A. Coughlan, Finbarr J. M. Crowley, William E. Crowley (B.C.L.), Hugh A. Cunniam, John J. Daly (B.C.L.), Andrew Dillon, Peter M. G. Douglas (B.C.L.), Patrick J. M. Durcan (B.C.L.), Thomas A. Fitzpatrick, Bertrand Guy French, R. Edmund Fry, John Glackin (B.C.L.), Declan J. Gallagher, Bernard L. Gaughran (B.C.L.).

William G. J. Hamill, Rory Harman, Joseph D. Haugh, Geraldine Mary Heffernan (B.C.L.), Brendan E. Hill (B.C.L.), Marie Goretti Hickey (B.C.L.), Barbara Marie Hussey (B.C.L.), Frederick A. C. Jackson (M.A.), John Francis Kearney (B.C.L.), Ciaran Keys (B.A.), Francis D. Lanigan (B.A. Mod.), Cyril Lavelle (B.C.L.), Elizabeth Lawler, Cyril P. J. Lynch (B.A.).

Charles J. Maguire, George D. R. Mills (B.C.L.), Martin D. Moloney (B.C.L.), David A. Molony, Raymond G. Moran (B.C.L.), Paul Morris, John Morrissey (B.C.L.), Declan Moylan (B.C.L.), John L. Mulvey, Roderick McCarthy (B.C.L.), Thomas J. E. McDwyer (B.A.), Colm MacGeehin, John Colum McKeown, Ellen McPhillips (B.C.L., Dip. Eur. Law), Michael F. Nolan (B.C.L.).

Jacinta Noonan (B.C.L.), Eamonn M. O'Beirne, Brian D. O Briain. Eamonn P. O'Brien (B.C.L.), Michael O'Connell (B.C.L.), Declan P. O'Connor (B.C.L.), Patrick J. O'Connor (B.C.L.), Kieran O'Gorman (B.C.L.), Ann P. O'Grady (B.C.L.), Mary H. O'Meara (B.C.L.). Charles F. O'Neill (B.C.L.), Finbar O'Neill (B.C.L.), Felim O'Reilly, Vincent M. O'Reilly, Andrew G. M. O'Rourke (B.C.L.), James R. Osborne (B.A. Mod.).

Michael Collins Powell (B.C.L.), John J. Power (B.C.L.), Kieran A. C. Pyne. R. Grattan d'Esterre Roberts (B.C.L.), Elizabeth Ann Ryan (B.C.L.), John J. Seery, Noel M. Smyth, Roger Sweetman, Philip F. Tormey, Mary C. Tracey (B.A.), Patrick Joseph Twomey, Alan Woods (B.A.), George C. Wright.

121 candidates attended; 84 candidates passed.

Third Law Examination

At the Third Law Examination for apprentices to solicitors held from the 14th to 19th February 1972 the following candidates passed :

Passed with merit : 1. George C. Wright, 2, John Neville Murphy, 3, William F. O'Keeffe, 4, Matthew Hassett.

Passed : Peter P. Brady (B.C.L.), Patrick Clarke Carroll (B.C.L., LL.B.), Joseph G. Chambers, Robert J. P Coffey (B.C.L.), Brendan O. Comiskey (B.C.L.), Anthony Joseph Connolly (B.A.), William E. Crowley (B.C.L.), John W. T. Deane (B.C.L.), Thomas A. Fitzpatrick, Paul M. Hanby (B.C.L., LL.B.), Frederick A C. Jackson (M.A.), Brian O'Brien Kenney (B.C.L.), Fancis D. Lanigan (B.A. Mod.), Noel G. Maher, Brian D. Matthews Dermot H. Morris (B.A.), John Morrissey (B.C.L.), John L. Mulvey.

Roderick McCarthy (B.C.L.), Aidan McNulty (B.C.L.), Eamonn M. O'Beirne, Hugh J. O'Donnell, Patrick John O'Flynn, Thomas D. O'Meara (B.C.L.), James D. Pierse (B.A.), Kieran A. C. Pyne, David A. Tarrant (B.C.L.), David A. Walsh, Francis O. Ward (B.C.L.), John H. V. Wood, Alan Woods (B.A.).

41 candidates attended; 35 candidates passed.

Preliminary Examination

At the Preliminary Examination for intending apprentices to solicitors held from the 21st to the 25th February the following candidates passed :

Michael P. Allen, George Birmingham, Conal Boyce, Richard Brennan, Michele Cahill, Fionnuala M. Casey, Therese M. Clarke, Paul E. Connellan, Michael Conway, Vivienne Crowe, Thomas P. Dennehy, Paul M. J. Gallagher, Timothy G. Hallissey, Stephen W. Haughey, Kevin M. Houlihan, Joseph M. Jordan, Karen Jordan, William J. Kennedy, Gemma Loughnane, Charles J. M. Louth, Patrick B. Maginn, James T. Murphy, Joseph T. G. Murphy, Mary Murphy, Tom Murran, Peter F. X. McDonnell, Patrick J. C. McGovern, John C. McGrath, Ann Mary Nolan, Seamus Noonan, Deirdre A. O'Connor, Kevin D. O'Connor, Niall K. O'Doherty, Patricia O'Donnell, Hugh V. O'Donoghue, Constantine O'Leary, Gwendoline E. Shannon, Joanne Sheehan, Mary Twomey.

99 candidates attended; 39 candidates passed.

First Irish Examination

At the examination held in February under the Solicitor's Act 1954 the following candidates passed :

Michael Edwin Allen, Bernard Armstrong, Anthony Barry, George Birmingham, John M. Bourke, Conal Boyce, John Gerard Brady, Richard Brennan, John Brophy, Cornelius D. M. Brosnan, George Patrick Bruen, John Burns, James Cahill, Michele Cahill, James Campbell. Patricia Mary Carroll, Therese M. Clarke, Jeremiah Collins, Joseph A. Comyn. Paul Connellan, Michael Conway, Ronnie Richard Cosgrave, John Costello, Catherine Craig. Vivienne Crowe, Eugene Plunkett Cush. Eamonn Delahunty, Thomas P. Dennehy, William P. Devine, Anthony J. Doherty, Randal

Doherty, Roderic Dolan, Philip Downey Peter Dooley, James Dudley, Andrew Thomas Dunne, Dermot A. Dunne, Richard Evans.

Josephine Fair, Peter Flanagan, Paul M. J. Gallagher, John Garahy, Michael P. Gilvarry, Margaret M. A. Gleeson, Gerard Francis Griffin, Timothy Gerard Hallissey, Edward J. Hanlon, Michael Hayes, David Vincent Hickey, Michael Higgins, Heather Hodgins, Paul G. Horan, Kevin Michael Houlihan, Eamonn G. Howard, Eileen Marian A. P. Howell, Joseph Jordan, Philip Joyce, Sheila Marie Kearney, Martin James Kearns, Gerard M. Kenny, Michael Edward King, Nathaniel Lacy, Florence Ciaran Lawlor, Michael Anthony Layng, Maurice Joseph Linehan, Gemma Loughnane, Charles J. M. Louth.

Paul Joseph MacArdle, Patrick Brian Maginn, Joseph Francis Maguire, Ciaran Mangan, Mary Honora Martin, Raphael Mathews, Arthur D. S. Moran, Olive Moran, Laurence Joseph Morley, Deirdre Morris, Fiona Muldoon, Sheila Mulloy, Fergal Patrick Murphy, James Terence Murphy, Tom Murran, Rowena McAllister, Peter Francis X. McDonnell, Patrick Joseph McGovern, Raymond Philip McGovern, Elizabeth Martha Nagle, John Naughton, Alan Nagur, Gerard M. Neilan, Jeanne Ni Chuinneagain, Ann Mary Nolan, Seamus Noonan.

John Columba O'Carroll, Deirdre Letitia O'Connell, Margaret V. O'Connell, Sighle Mary O'Connell, Deirdre O'Connor, Kevin O'Connor, William O'Connor, Niall Kevin O'Doherty, Brian O'Donnell, Edward L. O'Grady Eunan James O'Halpin, Constantine O'Leary, John O'Leary, Malachy P. M. O'Neill, R. St. J. O'Neill, Ann O'Reilly, Peter F. O'Reilly, Hugh V. O'Donoghue, Miriam B. O'Riordan, Anthony Patrick O'Rourke, Niall O'Sullivan, Patrick O'Sullivan.

Michael Patwell, Patrick Power, Michael Joseph H. Quinlan, Alexander St. J. D. Ross, Niall Sheridan, Sharon Mary Scally, Joanne Mary Sheehan, William J. E. Simon, James Martin Sweeney, Vincent Owen Toher, Pearse J. Tuite, Valentine Turnbull, Mary Twomey, Catriona Mary Walsh, Gerard Walsh, Barry Wallace, Veronica Ann Watchorn, Brian O. Whelan, Richard R. Whelehan, William Xavier White, Gary Martin Wine.

158 candidates attended; 136 passed.

Second Irish Examination

Denis J. M. Barror, Denis P. W. Boland, Rosemary P. Bolger, John F. Carroll, Patrick Francis Clyne, Edward A. Coonan, Angela Eileen Crowley, Helen J. Cullen, Patrick John Daly, Mary Catherine Dolan, Peter M. G. Douglas (B.C.L.), Gerard A. Doyle, Ciaran Earley (B.C.L.), Michael Enright (B.C.L.), Mary E. Finlay, John W. T. Finn, Raymond P. Finucane, John Flanagan, William Harnett, Louis A. Healy, Harry P. O. Hunt, Michael G. Irvine, Michael J. Keane, Catherine A. Kelly, Edward A. Kelly, Thomas A. King, Noel G. Maher, Brian D. Matthews, Paul Morris, Joseph B. Morton, Declan Moylan, Elizabeth G. Mullan, John N. Murphy, Jacqueline Murray.

Alan Donnelly McCrea, Thomas J. F. McDwyer (B.A.), John C. McKeown, Brian R. McLoughlin, Michael F. Nolan (B.C.L.), Jacinta Noonan, James Peter O'Boyle (B.C.L.), Brian D. O Briain, Kieran E. O'Brien, Daniel J. O'Connell, Michael O'Connell (B.C.L.), Sean M. O Floinn (B.C.L.), Keran O'Gorman, Vincent M. O'Reilly, Mary Ruth O'Sullivan, Thomas F. O'Sullivan, Alvin F. M. Price, John B. Quinn, John J. Seery, Noel M. Smyth, Patrick J. Sweeney, Francis A. Wall (B.C.L.), John L. Mulvey.

61 candidates attended; 57 passed.

COPYING MACHINE NO SUBSTITUTE FOR TYPIST

A photo-copying machine is no substitute for a good typist, in the view of Mr Justice Melford Stevenson, the High Court Judge.

He brandished a sheaf of photo-copied correspondence in court yesterday and said he had never seen "a more revolting collection of papers."

"Without being unduly old-fashioned," continued the 69-year-old Judge, "one does long for the days when poperly prepared bundles of typed sheets were placed before the court, instead of these revolting photo-copied processes.

"No competent clerical worker has ever set eyes on these documents," he commented, recalling the time when typists made legible, well-presented copies of written exhibits.

"I suppose I will be told that no one can be found to do this work nowadays," added the Judge. Mr. Peter Bowsher, counsel, said the current cost of typing documents was between 37½p and 50p a page.

As neither side in the action could be described as "paupers" the Judge said he would consider later whether any allowance for the correspondence should be made in the costs.

"Frankly, these documents might well be in Sanskrit as far as I am concerned."

The comments came during the second day of an action in which Mr. D. McLean and his wife, Margaret, of London, are suing a shipping firm over a £744 cruise from Southampton to Durban in March 1969.

SOCIETY OF YOUNG SOLICITORS

94 Grafton Street, Dublin 2.

Dear Colleague,

This list is for retention. Members can assist by sending remittances for the current amount rather than by asking for an account. Subscriptions are £1.05 per annum. The subscription year expires on September 30th each year. Due to material and postage increases many prices are increased. This list will be published in monthly parts.

Rates shown below are members rates. Non-members pay double these rates.

Part 1

1	Hire Purchase and Credit Sales	24p by post 29p
2	Office Administration	30p by post 35p
3	Building Contracts	21p by post 26p
4	Bankruptcy	24p by post 29p
4d	Bankruptcy Discussion	21p by post 26p
6	Registration of Title	54p by post 59p
7	Wards of Court	24p by post 29p
6d	Registration of Title Discussion	45p by post 50p
7d	Wards of Court Discussion	26p by post 31p
8	Succession Act	69p by post 74p
8d1	Succession Act Discussion (Mullingar)	21p by post 26p
8d2	Succession Act Discussion (Cork)	36p by post 41p
9	Companies and the Finance Acts	45p by post 50p
10	Finance Act 1965	30p by post 35p

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the differences in English and Irish Statute Law

Company

Megarry J. held that the Court has jurisdiction to make a winding-up order in the case of an unregistered company for the purposes of Part IX of the Companies Act, 1948, if there are assets within the jurisdiction to administer and persons concerned or interested in their proper distribution who are subject to the jurisdiction.

[In re Compania Merabello San Nicholas SA; Ch. Div.; 21/3/1972.]

Conflict of Laws

The art world is so international today that it is not oppressive of a world-renowned art dealer living in France to have an action against him tried in England where the main issue is whether a painting of a female allegorical figure called *La Poesie* is or is not the authentic work of Francois Boucher, the eighteenth-century French painter.

[Maharanee of Baroda v Wildenstein; C.A.; 10/3/1972.]

Counsel's Undertaking

Counsel can give undertakings for their clients only when they have received express authority, Watkins J. said when setting aside, on the application of a wife, orders he had made relating to maintenance for her and her two children on the ground that her counsel at the hearing had not been authorised to give certain undertakings on her behalf.

[Marsden v Marsden; Family Div.; 21/3/1972.]

Defamation

Where there is uncertainty whether the defence of absolute privilege attaches to statements made at an investigation of a complaint against a police officer under the Police Act, 1964, and whether the occasion is absolutely privileged, that question shou'd not be tried in advance as a preliminary issue of law but should be decided at the trial of the action itself.

[Constable v Jegger; C.A.; 16/3/1972.]

Crime

A man who spent over 70 days in custody on remand for charges of which he was eventually acquitted must serve a prison sentence under a default warrant issued nine days after he had been taken into custody but not executed until after his acquittal.

[Regina v Leeds Prison Governor ex parte Huntley; QBD; Div. Ct.; 28/3/1972.]

See under *Licensing;* Howker v Robinson; QBD; 21/3/1972.

When the prosecution wish to use tape recordings in evidence against a defendant who objects that they ought to be excluded unless they are shown to be originals in accordance with the best evidence rule, the trial judge has to decide whether the prosecution makes out a prima facie case of originality. He does not have to hear and weigh other evidence which might controvert the prima facie case, and if he were to do so he might be trespassing on the ultimate function of the jury.

[Regina v Robson; Regina v Harris; Central Criminal Court; Shaw J.; (1972) 116 S.J. 313.]

The prosecution must take all reasonable steps to secure the attendance of any of their witnesses who are not the subject of a conditional witness order or whom the defence might reasonably expect to be present. If, however, it proves impossible to have the witnesses present, the court may in its discretion permit the trial to proceed provided that no injustice is done.

[Regna v Shaw; Regina v Cavanagh; C.A.; 9/3/1972.]

No rule of law precludes the amendment of an indictment after arraignment, whether by adding a new count or otherwise, but an amendment during trial is likely to prejudice the accused person and the longer the interval between arraignment and amendment the more likely is it that injustice will be caused. In every case in which amendment is sought the court must consider with great care whether the accused will be prejudiced.

[Regina v Johel; Regina v Rem; C.A.; 3/3/1972.]

The Home Secretary has power under Section 29 (1) of the Criminal Justice Act, 1961, to direct that a person serving a prison sentence who wishes to conduct private litigation shall be taken to and from the court under escort but to require the prisoner to pay in advance or undertake to pay the estimated costs of producing him to the court and bringing him back to prison. Where the prisoner has the means to pay, the costs should not come out of public funds.

[Becker v The Home Office; C.A.; 6/3/1972.]

A real intention to buy furniture cannot be changed into an intention to buy carrots merely by describing the articles sold as carrots and the furniture as free gifts in a device to avoid the Sunday trading provisions of the Shops Act, 1950.

Their Lordships so held when allowing a prosecutor's appeal in a test case from Matlock justices' dismissal of five informations against Herbert Hardy and four other persons for opening a shop known as Direct Furnishing Supplies for the serving of customers on a Sunday last July, contrary to Section 47 of the Act. Section 47 prohibits Sunday opening subject to a proviso which enables articles including vegetables to be sold on Sundays.

[Weller v Hardy; QBD; 14/3/1972.]

A court trying a criminal case has a discretion to allow the prosecution to call fresh evidence after the close of its case and after some defence witnesses have been called. Such fresh evidence is not limited to evidence of a strictly rebutting character.

[Regina v Doran; C.A.; 16/3/1972.]

Discretionary Trust

Their Lordships dismissed an appeal by the executors of Mr. B Baden (the settlor) from the decision of Mr. Justice Brightman (*The Times,* 26 May 1971; [1971] 3 WLR, 475) that a discretionary trust established by the settlor was not void for uncertainty. Clause 9 (a) of the trust deed directed the trustees "to apply the net income of the fund in making at their absolute discretion grants to or for the benefit of any of the officers and employees or ex-officers or ex-employees of Mathew Hall & Co. Ltd. or to any relatives or dependants of any such persons".

[In re Baden's Deed Trusts; C.A.; 27/3/1972.]

Dismissed for Want of Prosecution

See under *Time;* Vaughan v F. Parnham Ltd.; C.A.; 28/3/72.

Evidence

See under *Crime;* Regina v Doran; 16/3/72.

Family

Where a spouse decides not to contest a divorce and then changes his mind after the time for service of an answer has expired, he must file an affidavit of merits showing his sincerity and that he is not seeking leave to defend as a tactical manoeuvre.

[Spill v Spill; C.A.; 24/3/1972.]

See under *Successions;* Millward v Sherton and Another; Ch. Div.; 24/3/1972.

Their Lordships quashed a declaratory judgment as to the maximum discount figure which should be applied to reduce a wife's maintenance because of her past conduct, saying that it was neither permissible nor desirable.

The court allowed an appeal by Mrs. M. Ackerman, Stevenage, from an order made by Sir G. Baker, now President of the Family Division, last July ([1971] 3 WLR 725) for the payment by her former husband, Mr. D. J. Ackerman, Stevenage, of £3 a week maintenance, after the declaratory judgment in which he fixed the maximum discount figure at 25 per cent.

[Ackerman v Ackerman; C.A.; 6/3/1972.]

Insurance

Mistakes made by an insurance company's agent in carrying out his instructions to ask the questions on the proposal form and himself write down the answers were held by the Court, on the special facts of the case, to make the company liable to pay out on a claim by the insured whose wife had signed the form so filled in.

After giving its decision the Court was asked by counsel for the insurance company for leave to appeal to the House of Lords. It was, he said, more or less the standard practice of many insurance companies to instruct their agents to write down the answers in proposal forms for "countless thousands" of small industrial and other policies; and the court's present decision would have the gravest bearing on the whole conduct of such policies. The court refused leave.

[Stone v Reliance Mutual Insurance Society Ltd.; C.A.; 14/3/1972.]

Landlord and Tenant

The Court of Appeal, on an appeal by Accountancy Personnel Ltd., an employment agency, tenants of the first and second floors of 51 Cannon Street, EC, extended by three months the date on which Judge Rogers, in the Mayor's and City of London Court last July, decided that they should vacate the premises on the ground that their landlords, the Worshipful Company of Salters and their partners, Electricity Supply Nominees Ltd., owners of the freehold of those premises and large areas of the surrounding land, had established under Section 30 (1) (f) of the Landlord and Tenant Act, 1954, that they intended on the termination of the current tenancy to demolish the premises.

[Accountancy Personnel Ltd. v Worshipful Company of Salters; C.A; 7/3/1972.]

Licensing

A licensee was held to have "knowingly" sold drinks to an under-age person in the lounge of the public house even though the sale was made by a barman to whom complete control of the lounge had been delegated and the licensee, who was serving in the public bar, had no actual knowledge of what happened.

[Howker v Robinson; QBD; Div. Ct.; 21/3/1972.]

Natural Justice

See under *Tax;* Pearlberg v Varty (Inspector of Taxes); House of Lords; 24/3/1972.

Negligence

A driver who admitted taking no precautions when he realised that a woman pedestrian who was about to cross the road in front of his car had not seen him was held one-third responsible for her injuries when she was knocked down.

[Williams v Needham; QBD; Judge Stebb; 7/3/1972.]

A widow failed to recover damages for the death of her husband who was trapped and fatally injured when his articulated lorry was sandwiched between two other large lorries in a concertina accident on the M1 in January 1968. The injuries which led to his death were held to have been entirely caused by the impact with the lorry in front and not by the subsequent impact of the lorry from behind.

[Smith v Samuel Williams and Son Ltd. and Another; QBD; Bristow J.; 2/3/1972]

Planning

Notice of appeal against an enforcement notice must be given to the Minister within the time specified in Section 16 of the Town and Country Planning Act, 1968, and, since it was a matter that went to the jurisdiction, there was no power to extend the time.

Howard v Secretary of State for the Environment; QBD; Bristow J.; 29/3/1972.]

Procedure

The proper place to apply for an interim injunction is the High Court in London and not the county court, where a claim for an iniunction is only permissible when it is ancillary to a claim for damages.

[Arnbridge (Reading) Ltd. (trading as Manpower (Reading) Ltd.) v Hedges and Others; C.A.; 16/3/1972.]

Rating

A house owned by Bexley Congregational Church which was vacant for 11 months but held available by the church as an official residence for the minister was held not to be liable for rates during the period it was empty.

[Bexley Congregational Church Treasurer v Bexley London Borough; C.A.; 23/3//1972.]

Redundancy.

An employee who is unable to work at the time of his dismissal because of illness may still be entitled to a redundancy payment. Therefore, a shipyard fitter who, because of illness, had been off work for 18 months, during which time he received no wages but might recover, was held to be entitled to a redundancy payment when the shipyard was closed.

[Marshall v Harland and Wolff Ltd.; National Industrial Relations Court; 13/3/1972.]

Solicitors

Mr. R. H. Douglas, of Bournemouth, lost an appeal against the finding of the Disciplinary Committee of the Law Society, constituted under the Solicitors' Acts, 1957-1965, on 13 Jan. 1972, that he was guilty of professional misconduct and/or conduct unbefitting a solicitor in that he had breached Rules 1 and 2 of the Solicitors' Practice Rules, 1936, when he said that he had taken employment with the National House Owners Society as an agent in relation to their members' conveyancing work, and as a solicitor for the internal purposes of the society. The committee had fined him £750.

Rule 1 provides: "A solicitor shall not directly or indirectly apply for or seek instructions for professional business ..." Rule 2 provides: "A solicitor shall not hold himself out or allow himself to be held out directly or indirectly ... as being prepared to do professional business ... in non-contentious matters at less than the scale fixed ..."

[In re a Solicitor; QBD; Div. Ct.; 13/3/1972.]

A solicitor may justifiably be found guilty of professional misconduct if he keeps his books of account in such a way that it is not possible to ascertain readily at any one time the balance held on account of each individual client even though he has been completely honest throughout.

Their Lordships so held on an appeal by a solicitor from the dismissal by the Queen's Bench Divisional Court on 14 February of his appeal from the findings and order of the Disciplinary Committee of the Law Society that he should be suspended from practice for six months for failure to comply with the Solicitors' Accounts Rules and for professional misconduct as stated above. But the court lifted the suspension order on being satisfied that the solicitor's books were now in order and up to date. He was ordered to pay all the Law Society's costs of all the proceedings.

[In re a Solicitor; C.A.; 29/3/1972.]

Succession

The will of an 82-year-old woman by which she left her whole estate of £3,144 to a cancer research charity was held to be a disposition under the Family Provision Act, 1966, which did not make reasonable provision for an incapacitated son living on State assistance. The court ordered that the son should have 11/12ths and the charity 1/12th of the balance of the etate. They also ordered the charity to pay the costs of the appeal.

[Millward v Shenton and Another; C.A.; 24/3/1972.]

Tax

Natural justice does not require that a taxpayer who has not made returns of income for many years shall be present and be heard when his inspector of taxes applies for leave under Section 6 of the Income Tax Management Act. 1964, to raise late assessments. The commissioner when deciding whether or not to grant leave is performing an administrative and not a judicial function, and the taxpayer will have an opportnity of being heard if and when he appeals against any assessments made.

[Pearlberg v Varty (Inspector of Taxes); House of Lords; 24/3/1972.]

A bonus of £1,000 and money prizes given to Bobby Moore, captain of the victorious English team in the World Cup in 1966 were held to be payments having the *quality of testimonials,* marking his participation in an exceptional event, and *not payments made in reward or remuneration for his services.* Accordingly they were not assessable to income tax under Schedule F of the Income Tax Act. 1952.

[Moore v Griffiths; Ch. Div.; Brightman J.; 24/3/1972.]

Representations of sportsmen on columns or plinths were not "trophy cups, bowls and similar articles of a kind awarded as prizes" within Group 4 (c) of Schedule 1 to the Purchase Tax Act, 1963, but were "figures, busts, reliefs and similar articles of a kind produced in quantity for general sale" (Group 25), and so were chargeable at 55 per cent tax. Mr. Justice MacKenna so decided when rejecting a claim by Arbiter Championship Trophies Ltd., of Gerrard Street, W, for a declaration that the articles were chargeable at the lower rate under Group 4 (c) and for recovery of £10,000 tax allegedly overpaid.

[Arbiter Championship Trophies Ltd. v Customs and Excise Commissioners; QBD; 7/2/1972.]

Long-term compensation payments made by a local authority to a redundant employee are chargeable to income tax under Case III of Schedule D as annual payments and not under Schedule E as a pension, his Lordship held in allowing an appeal by the Crown from a decision of the general commissioners discharging assessments under Schedule D for 1968-1969 and 1969-1970 made upon the taxpayer, Mr. T. Shaw.

[McMann (Inspector of Taxes) v Shaw; Ch. Div.; Ungoed-Thomas J.; 16/3/1972.]

Time

Defendants whose solicitors merely acknowledged the receipt of documents while the plaintiff's new solicitors for a year took steps to proceed with his case for negligence after 3½ years' inactivity by his previous solicitors, were held not to have waived their right to make an application to dismiss the action for want of prosecution.

[Vaughan v F. Parnham Ltd.; C.A.; 28/3/1972.]

Bringing Justice to places where it is badly needed

by MARCEL BERLINS

The "greatest reform in the administration of justice this century and possibly in legal history" was how Lord Gardiner the former Lord Chancellor described proposals for the reorganization and streamlining of the English court system contained in the Courts Act, 1971, the main provisions of which come into operation on New Year's day, 1972.

Basically the existing system failed to stand up to the enormous increase in both criminal and civil cases. Arrears had been building up in the courts for many years. The delays were leading to increasing injustice, sometimes of a very serious nature, and the situation was worsening.

The courts structure above magistrates' court level had remained almost untouched by the changed circumstances of the 20th century. Assize towns established many centuries ago had for long borne no relation to the amount of work to be dealt with. Many towns with far larger populations and more work were not on the circuit at all. Yet judges were obliged to follow rigidly the ancient and inefficient itineraries, visiting until recently such towns as Presteigne (Radnorshire), Beaumaris (Anglesey) and Appleby (Westmorland), all with fewer than two thousand inhabitants.

Courts of quarter sessions were controlled on a borough or county level as were their judges and staff. Within these inflexible territorial boundaries there was almost autonomy, and standards and policies often differed widely. Courts in some areas might be heavily overloaded with cases but there was no way in which assistance could be given to these courts by less busy judges.

The Beeching Commission, whose main recommendation formed the basis of the Act, was of the opinion that rigidity and inflexibility were the main reasons for the inability of the system to cope with increasing work, and hence were responsible for the injustices which followed.

Above all the new system is designed to ensure flexibility. Under the Courts Act, the Lord Chancellor assumes control over a nationally unified courts structure and is giving wide-ranging powers to make administrative decisions, for instance for the location and manning of courts in the interest of efficiency and justice. Officers and staffs of the courts become part of a national courts service, also the responsibility of the Lord Chancellor.

The Act abolishes Courts of Assize and Quarter Sessions and replaces them with a single Crown Court with power to sit anywhere in England and Wales, thus enabling justice to be available readily where it is needed. This new Court will hear all criminal cases above magistrates' court level and take over the limited civil and appellate jurisdiction vested in Quarter Sessions.

Civil cases formerly heard by High Court judges on Assize will continue to be heard by those judges who, however, will sit where the volume of work, and not the assize itinerary, dictates. Crown courts will be manned by High Court judges who will hear the more serious criminal cases, and a newly-created bench of Circuit Judges, the first appointments to which will be made mainly from existing county court judges and full-time judges with criminal jurisdiction.

These professional judges will be assisted by Recorders, part-time judges of the Crown Court, who will be expected to sit for at least 20 days a year. The particular significance of this office is that it is open to solicitors and thus gives them the opportunity of becoming Circuit Judges, as Recorders holding office for five years are eligible for the higher appointments.

The Beeching Report had made a majority recommendation that solicitors be eligible to become Circuit Judges directly, but the original Courts Bill gave them no part in the judiciary. It was only after a sometimes angry and undignified disagreement between the two branches of the legal profession that a compromise solution was reached by way of an amendment moved by the Lord Chancellor.

One Beeching recommendation not adopted was the proposal that Justices of the Peace should sit as assessors in some cases before the Crown Court. The Act provides that they shall sit at full members of the bench in certain classes of criminal trials to be determined by the Lord Chancellor.

The country has been divided into six circuits, each having three tiers of Crown courts. First-tier centres, of which there will be 24, will deal with civil and criminal cases and will be served by High Court and Circuit Court Judges. The 19 second-tier centres will be manned similarly but will hear criminal cases only. Third-tier centres (46 of them) will be served only by Circuit Judges and will deal with less important criminal cases.

Criminal offences have been divided into four classes

and the trials of the different classes have been allocated according to the degree of seriousness and complexity to High Court Judges, Circuit Judges, Recorders and courts comprising lay justices. But coupled with the expectation of having a more efficient system of justice there will be for many, and not only lawyers, a feeling of sadness at the disappearance of so many of the centuries-old legal institutions and traditions.

The assize system dates from the reign of Henry II and the pageantry which has always accompaned the holding of the Assizes will be missed by many who have participated in or seen it. The history of Courts of Quarter Sessions, while less spectacular in pomp and panoply, is almost as ancient, the courts having been created by an ordnance of 1388 which required justices for each county to meet four times a year.

Also abolished are all the courts of "venerable antiquity", those often resplendantly named accidents of local history which somehow survived for centuries as independent institutions — courts such as the Bristol Tolzey and Pie Poudre courts, the Liverpool Court of Passage, founded in 1207, and the Court of Record of the Hundred of Salford, going back to before the Norman conquest. On a larger scale the Courts of Chancery of the County Palatinates of Lancaster and Durham now become merged with the High Court. The Durham Palatinate Court, too, has its origin in pre-Norman conquest times and the Lancaster court dates from 1351.

The Old Bailey is the one court which provides the perhaps inevitable departure from the neat logicality of the new system. Although strictly a Crown Court it will continue to be known as the Central Criminal Court and the Lord Mayor and Alderman of the City of London will retain their ancient privileges to sit as judges.

The full benefits of the reforms will probably not be felt for several years and in the words of Lord Hailsham, the present Lord Chancellor, "an outsider might see precious little difference in the actual conduct of criminal and civil cases in the provinces". But the more flexible administrative arangements should at least have some imediate beneficial effect on delays, at present the biggest blot on the system of justice in this country.

The Times (29th December, 1971)

Revenue Commissioners—Temporary Importation of Books

(1) Authority has been granted for the temporary importation of the following kinds of articles free of customs duty and turnover and wholesale taxes :

Books, booklets, periodicals, research papers, conference documentation, university theses and the like which are being imported temporarily on loan for research or study purposes and in respect of which loan no charge is made by the lending authority other than the cost of transmission and insurance.

(2) This concession is granted subject to :

(1) The books or other material being stamped with the stamp of the lending authority, and

(2) A declaration being made that the articles come within the concession.

Where the articles are sent by post the declaration is to be given on the parcel by the sender. In other cases the importer should make the declaration on the relative customs entry form. Senders should be advised accordingly

(3) Importers are reminded that there is an overall statutory provision waiving duty and tax, without qualification, on articles contained in one consignment or parcel where the duty or tax amounts to less than £0.13.

(4) Any further information required may be obtained on application to the Secretary, Revenue Commissioners, Dublin Castle, Dublin 2, or to the Collector of Customs and Excise at any custom house or to any officer of customs and excise.

Note—It is understood that if publishers send review copies for purposes of reviews, the Revenue Commissioners will ultimately allow a refund of the tax paid, provided the publishers make it clear on the cover that it is a review copy they are sending.

Dublin Castle (December 1971)

Prize Bonds in Estates of Deceased

The attention of members is drawn to the terms of a prospectus for subscriptions to prize bonds issued on 15th March 1971. Paragraph 12 of the prospectus states that on the death of one of joint holders of a bond every repayment or payment in respect thereof will be made to the survivor. On the death of the sole holder of a bond repayment will be made to his personal representative on application. Pending repayment, the bond will be eligible for inclusion in draws as if the holder were alive, for a period not exceeding 24 calendar months following the month in which the death occurred. Members are advised to bring this statement, which represents a change in practice, to the attention of personal representatives where the assets include prize bonds.

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Munkman (J.): Employers Liability at Common Law, 7th edition, 1971.
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Budget Statement, April 1972

In the course of his Budget Statement on 19th April, 1972, Mr. Colley, Minister for Finance, referred to the following matters:—

Implementation of EEC Directives on agricultural reform

The EEC Council of Ministers recently adopted a directive on measures to assist agricultural reform by providing incentives for developing farms and financial assistance to those who wish to retire from farming.

Although a significant proportion of the cost of implementing these directives will be recouped from the European Agricultural Fund a large part will have to be met from the Exchequer. We can meet a considerable part of this cost by adapting many of our present aid schemes for agriculture. As the EEC directives provide for a wider range of aids than generally exist here at present, such as pensions for retiring farmers and reduced interest rates on a wide range of investment, I expect that additional funds will be required.

Public service pensions

It has not been possible up to now because of the substantial cost involved, to implement fully the principle of parity for public service pensioners which was accepted by the Government in 1969. Nevertheless, since then three pensions increases have been granted to public service pensioners at an annual cost of £3.9 million bringing their pensions up to a level based on June, 1969, pay rates.

This year, it gives me particular pleasure to announce that I am granting parity to public service pensioners by bringing their pensions up to levels related to pay as on 1st January, 1972, the date of the most recent general revision of public sector pay. The increased pensions will be payable from 1st October next. The cost of the increase will be £1.9 million in the current year and £4.2 million in the following year. It will benefit retired civil servants, gardai, teachers, members of the Defence Forces, local authority staffs and the widows of these groups. There will be a corresponding increase in military service pensions and other army pensions including special allowances. The percentage increase in individual groups will, of course, vary but the overall average will be around 28 per cent.

Imposition of income tax and sur-tax as permanent taxes

When income tax was introduced in this country more than a century ago, it was described as a temporary tax. This polite fiction has been observed ever since, and each Finance Act provides for the renewal of the tax for a further year, with or without a change in the rate of tax. I think that it is now time to give statutory recognition to the accepted fact that income tax and the comparative newcomer, sur-tax, which was introduced some 60 years ago, are as much permanent features of our taxation system as are the other taxes and duties administered by the Revenue Commissioners. As in the case of the other permanent taxes, the change will not in any way preclude modifications of the income tax and sur-tax to meet changing conditions.

Corporation profits tax

A permanent statutory exemption from corporation profits tax applies to two classes of bodies one being companies established for the advancement of religion or education which are specially registered under the Companies Acts and are precluded from distributing profits to members, and the other being bodies corporate precluded by their constitution from distributing profits. The relief for the latter class was intended to cover certain bodies set up under statute and, as well, companies registered under the Companies Acts which were established for charitable, social and philanthropic purposes and not for the enrichment of private individuals.

Recently, a group of trading companies have sought to take advantage of this exemption by inserting a provision in their articles of association prohibiting the distribution of profits to members and claiming that they were no longer chargeable to corporation profits tax. If this claim were to succeed, the effect would be that the charge to corporation tax on the profits of the companies concerned would be avoided so long as the prohibition on distribution of profits was maintained. I propose to tighten the exempting provisions so that they will apply only in the circumstances for which they were intended. The proposal will be effective as from today.

A separate exemption from corporation profits tax which is provided on a temporary basis for certain public utility companies and other cencerns, including building societies, expired on 31st December, 1971. Pending completion and consideration of the report of the inter-departmental working group which is examining the position of building societies. I propose to continue the exemption for a further year.

Amendments of death duties legislation

There is an anomaly in the existing death duties legislation which I propose to remove. The estate duty code provides for appeals to the Circuit Court from decisions of the Revenue Commissioners on the value of property, other than land or houses, if the value of the property in dispute does not exceed £50,000. If, however, the value in dispute relates to land or house property, the appeal must be taken, in the first instance, to the property arbitrator appointed under the Property Values (Arbitrations and Appeals) Act, 1960 . There is a right to appeal to the Circuit Court from a decision of the property arbitrator provided the value of the property in dispute does not exceed £500. Otherwise, the appeal has to go before the High Court. I propose that this limit of £500 be raised to £50,000 to bring such appeals into line with appeals to the Circuit Court on the value of other types of property.

Also, I have had under consideration the hardships which arise under the death duties code when illegitimate children, who have not been legitimised, inherit property from their mother, and when children adopted under the adoption laws of foreign countries inherit property from their adoptive parents who are domiciled in this country. Such children bear legacy and succession duties at the maximum rate of 10 per cent and the abatements of estate duty provided in respect of legitimate children do not apply. I propose to remedy this situation by providing that, for death duty purposes, illegitimate children will be treated as if they were, in fact, legitimate, and that, where foreign adoption orders have substantially the same effect as orders made under our Adoption Act, the adopted children will be treated

as children adopted under our laws.

Representations have been made to me that there should be a body, like the Income Tax Appeals Commissioners, to determine death duty appeals in relation to the valuation of non-quoted company shares so that the cost and delays involved in taking appeals to the courts might be avoided. There is already such an appeal body in existence for the valuation of real and leasehold property. I have decided to extend the jurisdiction of the Income Tax Appeal Commissioners to cover appeals in the field of valuation of non-quoted company shares. The appropriate provisions will be included in the Finance Bill.

System of company taxation

The final item in this field to which I shall refer is the comprehensive examination of our system of company taxation which is nearing completion. In my financial statement last year, I indicated that I expected to publish, before the end of the year, the results of some aspects of this examination together with my views on the conclusions to be drawn from these results. This work involved a full statistical survey of companies including their capital structure, profits and dividends. This survey has now been completed. I expect to receive the report of the Revenue Commissioners within the next month or so and I hope to issue a White Paper on the subject in the summer. While the need to increase domestic economic growth and savings will be of paramount importance in determining the most appropriate system for the taxation of companies and dividends, I must also bear in mind likely developments in this field within the European Economic Community.

Income tax allowances

The Government have, for some time past, been concerned about the increasing burden of income tax, in particular on lower incomes. The incidence of income tax is relatively heavy in this country and in recent years the proportion of the total tax being paid by salary and wage earners has been increasing significantly. Relief for income tax payers, has, therefore, figured high on the list of the Government's priorities in the taxation field and they have decided that this year a substantial alleviation of the burden should be provided.

Personal allowances

The main income tax personal allowances were last increased in 1969. As is generally known, a major obstacle in the way of giving significant increases in these allowances is the cost involved, which is very substantial. However, I feel that the time has now come when further relief from the burden of personal taxation must be provided. I, therefore, propose to increase the personal allowances for single persons by £50 to £299, for widowed persons by £50 to £324 and for married person by £70 to £494. In addition, each of the existing child allowance will be increased by £20. This means that single and widowed persons with earnings below £449 and £474, respectively, will not be liable to tax. A married man will be exempt on earnings below £744. A married man with four children of whom two are under 11 years and two are between 11 and 16 years will be exempt if his earnings do not exceed £1,444.

These increases which, it is estimated, will cost £11 million in the current year and £13 million in a full year will remove about 50,000 taxpayers from the income tax net. As a result of the new allowances a single man will pay £17.50 less in income tax, a married man without children will pay £24.50 less and a married man with four children will pay £52.50 or £1 a week less.

Age relief

The existing minimum allowances for the purposes of age relief for persons aged 65 years are £150 for single and widowed person and £250 for married persons. As a further measure of relief in such cases, I propose to increase the minimum allowances to £175 and £300, respectively. The effect of this, together with the increases in the personal allowances which I have already announced, will be that the exemption limits for persons entitled to claim age relief will be raised from £399 to £474 in the case of single persons and from £424 to £499 for widowed persons. The exemption limit for married persons will be increase from £674 to £794. The cost of the increased age relief is estimated to be £120,000 in the current year and £140,000 in a full year.

Incapacitated children

I have had under consideration the question of relief for parents of children who are permanently incapacitated by mental or physical infirmity. While it is true that under the Health Services generous assistance is afforded in respect of such children, I have no doubt that in many such cases the parents are faced with substantial additional costs. In recognition of this I propose to increase the child allowance in these cases by £50. This is in addition to the general increase of £20 which I have just mentioned, so that the total increase in these cases is £70.

Health expenses

At present relief for income tax purposes is provided in respect of medical expenses exceeding £50 but not exceeding £500 a year per qualified person. I am satisfied that genuine hardship occurs where heavy medical expenses are incurred in excess of the upper limit, particularly by the aged who may not be able to obtain medical insurance. The number of cases involved is small. I propose, therefore, to abolish entirely the upper limit of £500.

Credit Unions

Because of the important social role of the credit union movement, which is still in the early stages of development, I have, as Deputies are aware, been examining the present position, under tax law, of credit unions. I propose to recognise their unique position by providing, in the Finance Bill, that operating surpluses of credit unions will be exempt from income tax and corporation profits tax. The exemption will apply to existing unions from the date of their registration as credit unions.

The cost of these three reliefs—for incapacitated children, health expenses and credit unions—will be £150,000 this year and £170,000 in a full year.

Rate of Company Taxation

I announced in my statement to the House on the economic situation on 27th October last that the increase in company taxation which was imposed in October, 1970, would be removed in two stages, one-half in 1972-73 and the balance in 1973-74. In view of the urgent need to stimulate economic activity and to assist industry in preparing for EEC membership, I have de-

cided that the restoration of the pre-October 1970 rate of company taxation should be advanced from 1973-74 to this year. The cost of this concession, which reduces the rate of taxation of company profits to 50 per cent. will be £2.7 million this year in addition to the sum of £2.7 million already taken into account in the pre-budget estimate of tax revenue. When the provision for free depreciation is taken into account, the over-all tax position of companies is now, in fact, more favourable than it was before the October, 1970, increase.

Free depreciation

Last year, as a special measure to encourage a concentration of capital investment in the two-pear period ending 31st March, 1973. I extended free depreciation to the whole country for that limited period. Representations have been made to me that the concession cannot be claimed in cases where, although expenditure has been incurred, the asset will not be brought into use before the limiting date. I propose to remedy this in the Finance Bill.

Death duties relief

I have had under consideration the threshold at which estate duty becomes payable. The present exemption limit is £5,000, introduced in 1960. I have decided to increase it by 50 per cent to £7,500. Furthermore, a new scale of rates from 1 per cent upwards will operate for estates between £7,500 and £11,000 so that these estates will also have their liability to duty reduced. The exemption limit for legacy and succession duties will also be raised from £5,000 to £7,500.

When comparing the rates of estate duty chargeable in this country with those chargeable elsewhere, it is important that the abatements of estate duty provided here be taken into account. These abatements provide considerable relief from duty where that relief is most needed, that is, in estates which pass to a widow or to a widow with dependent children. I increased these abatements last year from £1,000 to £1,500 in the case of the widow and from £500 to £750 in the case of each dependent child.

This is an expensive form of relief. In the last financial year, it cost more than £650,000 in estate duty. Nevertheless, I have come to the conclusion that further relief is called for and have decided to increase the widow's abatement from £1,500 to £2,000 and the dependent child's abatement from £750 to £1,000. In the case of a widow without dependants, the effect is to raise the exemption limit from £15,300 to £17.750; where there are three dependent children, the new exemption limit will be £30,200 as compared with £25,250 previously.

These concessions will cost £130,000 in the present year and £500,000 in a full year.

Financing the deficit

The tax reliefs which I have announced will cost in all £14.1 million this year. When added to the social welfare and other concessions and taking account of the opening gap of £8.6 million, they bring the overall deficit in the budget to £34.8 million. To finance part of this deficit I propose to bring into the Exchequer an exceptional non-recurring receipt of £7 million from the Central Bank.

The balance of the deficit—£27.8 million—will be financed by borrowing. To the extent that the budgetary measures give rise to increased economic activity, there will be a consequential increase in revenue which will reduce correspondingly the borrowing requirement.

Equal Pay

Before coming to my concluding remarks, there are two important matters to which I wish to refer.

The first of these is equal pay for women, which the Government accept in principle and which they now affirm as a national aim. The second relates to efficiency in the public service.

The Government have been considering the interim report on equal pay submitted by the Commission on the Status of Women. The Employer-Labour Conference have arranged that the working party established to negotiate on pay, with a view to reaching a new National Agreement, will take the recommendations of the commission into account in these negotiations. The Government welcome this decision and hope that agreement will result which will be acceptable to all. Progress on this front depends on the will of the entire community. whatever general arrangements are accepted by the conference will be applied to the public service. The commission also recommended the enactment of legislation to give effect to their proposals. They suggested that legislation should take into account any phasing arrangements agreed by the conference. The Government will, accordingly, consider what specific action is required in this area in the light of the conference's finding. It is also intended to consider the question of ending of restrictions on the employment of women which, by excluding them from equal work with men, are an automatic barrier to equal pay. It is hoped that the final report of the commission will be available when the legislation is peing prepared.

In the meantime, the various restrictions under statute or regulation which comprise the "marriage-bar" in the public service are being examined. It is hoped that all non-statutory restrictions on the employment of married women will be ended as soon as possible and that the necessary legislation for the repeal of any statutory restrictions and for the prohibition of restrictions on the employment of married women generally will be enacted within the period of two years recommended in the interim report.

Efficiency in the public service

Acceptance of the principal of equal pay will increase substantially the cost of pay in the public sector.

Foremost among measures to promote efficiency in the public service I must place the administrative steps, which are continuing, for the reorganisation of the public service. As well as the legislation for the setting up of the Department of the Public Service, which will, I expect, be enacted during the current parliamentary sessions, two other main developments should be mentioned.

First, the Report of the Public Services Organisation Review Group emphasised the great responsibility of the Government to select the right men for the top posts in the new Department. The Government have recognised this by the exceptional arrangement whereby two of the three posts of Deputy Secretary in the new Department were filled by a competition open to all comers. I am satisfied that, in this way, we have got the best available talent to carry the heavy burden of leading and directing the reform and reorganisation of our public service instiutions.

Secondly, the Government have decided to accept, on an experimental basis, the major administrative reform recommended by the review group by initiating, in a number of selected Departments, the separation of policy and execution and by reshaping them into an

Aireacht and a number of executive agencies. I hope to deal with this subject in greater detail when introducing the legislation to establish the new Department.

The efforts to achieve greater efficiency and to reduce costs in all branches and at all levels of the public sector are being intensified. Plans are well advanced for the introduction of more computers. Operations research is being developed and strengthened. A special unit in my Department has been set up to promote the application of management by objectives in civil service administration. Useful results continue to be achieved in other fields, for example, those of work survey and organisation and methods. The growth in recent years in training to promote efficiency will be accelerated.

As I informed Deputies last year, programme budgeting is being introduced on a phased basis in Government Departments. There are now eight Departments engaged actively in developing the system and it is the intention that it will be operational in all Departments by 1976.

BOOK REVIEW

The Judiciary—A Report of a Sub-Committee of "Justice"; London, Stevens, 1972; 8vo; vii plus 82 pp.; £0.90.

It will be recalled that in the November 1971 *Gazette* at page 162 an article was extracted from the *Sunday Times* entitled "Let Judges be Judged". It was already then stated that the proposed report on the Judiciary would be likely to produce controversy; this has been solved by Justice merely publishing the report of its sub-committee on the subject, and not claiming responsibility for the contents. Insofar as the views of the sub-committee under the chairmanship of Mr. Peter Webster, Q.C., have already been stated in the previous article, it is not proposed to repeat them.

The following additional conclusions were reached:

(1) The Judge administers the law and is in general held in high esteem by the public and the lawyers.

(2) It seems that normally in England there are not more than 25 Chancery and 145 Common Law Queen's Counsel from whom to choose High Judges. The sub-committee accepts that solicitors should be appointed Judges. The arguments in favour are (a) that the Bar is numerically inadequate, (b) that, in England out of 24,000 solicitors, 15,000 would have more than ten years experience, and thus the choice would be wide; and (c) that eligibility would enhance the dignity of the profession. The arguments against are (a) that solicitors have no experience in advocacy (which is doubted); (b) that appointment of solicitors would tend towards fusion (which is rejected), and (c) that the Bar would be less attractive (which is rejected for lawyers of independent means).

(3) The sub-committee recommends that academic lawyers should be eligible for appointment to the Court of Appeal (Supreme Court).

(4) It is recommended that the Lord Chancellor himself should retain control of judicial appointments, but that he should be assisted by an advisory Appointments Committee representing the Law Society, the Bar, the Judiciary, academic lawyers and trained lay members.

(5) Judging is undoubtedly an exacting task, requiring intelligence, detachment and freedom from unnecessary pressures. It would therefore be wise to reduce robes and ritual to a minimum. To counteract the remoteness and isolation of the Judge in his lodgings, it is suggested that time spent away from home should be substantially reduced. Furthermore different types of varied work should be allotted to Judges from time to time.

(6) It is recommended that, after appointment, a Judge should receive training for a minimum period of three months, during which he could visit any Courts or penal institutions and consult any experts he wished. Furthermore a Judicial Staff College on the lines of the New York University Institute of Judicial Administration should be established. It is also said that a complaints machinery would be useful inasmuch as it might lead to improvements in standards of judicial behaviour, and might provide a remedy in specific cases of injustice; this should consist of a representative tribunal presided over by a Judge.

(7) It is proposed that a Judge of the Superior Courts may be removed from office only for physical or mental incapacity to perform the functions of his office or for misconduct. If necessary the Lord Chancellor will appoint a Judicial Commission of not less than three Judges to investigate the matter. The Judicial Commission, having considered the matter, may refer it to the Privy Council, who shall advise whether a Judge should be removed. A Judge may be suspended from his functions while the case is being considered by the Privy Council. A Judge of any other Court who is removed by the Lord Chancellor should be entitled to appeal to the Privy Council.

(8) It is recommended that the retiring age for trial Judges in all Courts should be 70 years, while that for the Court of Appeal and the House of Lords should be 75 years.

It will be seen that the report of the sub-committee contains somewhat controversial matter, but good reasons are given for the conclusions reached. Altogether a most interesting and readable document.

C.G.D.

UNREPORTED IRISH CASES

Resolution assigning State grants to defendants and subsequent assignment on foot of debts due valid.

An order had been made by the Supreme Court on 16th March 1962 declaring that the defendants, builders providers in Athlone, were creditors of the plaintiff Society in the sum of £8,615 under an oral agreement of December 1951 and that the plaintiffs did validly assign to the defendants the Society's right to specified housing grants by the Department of Local Government, but Lavery J. and Kingsmill-Moore J. only gave reasons for this decision, nearly three years later, on 19th February 1965.

The plaintiffs were in voluntary liquidation, and Mr. Haughey, and subsequently Mr. Boland (accountant) were appointed liquidators. The liquidator issued a summons for the determination of certain questions, and Budd J. directed an issue by order of 14th January 1957. Lysters accordingly claimed a declaration that they were creditors of the Society in the sum of £8,615, and that the Society had validly assigned their rights to payment of housing grants due on the Arcadia Housing Scheme in Athlone. The plaintiff Society arranged to build many houses in Athlone, and made contracts with two contractors, Murrays and Waldrons. The defendants supplied large quantities of goods to the contractors for the building works and continued to do so after the contractors had defaulted in payment.

The Court found, that in consideration of Lysters continuing to supply the materials, there was an undertaking by the plaintiff to pay for the materials supplied, and to assign the requisite housing grants in part payment.

The defence of the plaintiffs was that the Society was an incorporated association and cannot consequently be made liable for engagements undertaken by their officers which were not formally authorised by the Court. Budd J. had rejected Lysters' claim, but the Supreme Court allowed the appeal on this point.

At the end of 1951, the two contractors were in financial difficulties and unable to pay for further materials. Waldrons owed Lysters £2,235, and Murrays owed £189. In November 1951 the Society had agreed to assign the housing grants to the defendants. In May 1953 the Department of Local Government required formal authority for payment of these grants to the defendants. The Secretary of the Society sent a letter to the Department of Local Government stating that the Committee had passed a resolution authorising these payments, but Budd J. had found that no such resolution was passed; all outward factors tend to show that the resolution had been passed. In fact the Department acknowledged this letter on May 19th. The defendants, in a letter to the plaintiffs in January 1952 wrote that the contractors owed them £9,000 and requesting an initial payment of £5,000. In June 1952 the plaintiffs paid a first instalment of £1,600. The Court finds that there was an agreement plainly stated in the documents and confirmed by the course of conduct between the parties. Whether it was an express or an implied agreement, the parties were *ad idem,* and each performed their part until the liquidation proceedings.

The liquidator submitted that, because there was no resolution passed at a meeting of directors authorising the contract, it was unenforceable. A representation, however, had been made that such a resolution had passed. The principle of the Rule in Turquands Case has been well stated in Gower's *Company Law.* Duplock J.'s judgment in *Freeman and Lockyer v Buckhurst Park (Mangal) Ltd.* (1964) 1 A.E.R. 630, was approved. It folows that the representations and undertakings made by the secretary established that such a contract was binding upon the Society and that there had been a valid equitable assignment of the grants. It followed that the plaintiffs had agreed to pay for the materials supplied. Appeal allowed.

[The State Officials Housing Society v P. Lyster & Sons Ltd.; unreported; Supreme Court (Lavery, Kingsmill-Moore and Haugh J.J.); 19th February 1965.]

Declaration made that plaintiff is entitled to join the union of his choice.

The National Union of Vehicle Builders (N.U.V.B.) a British-based trade union, is the holder of a negotiation licence under the Trade Union Act, and became affiliated to the Irish Congress of Trade Unions (I.C.T.U.).

Plaintiff became a member of the N.U.V.B. in 1956; and worked for Motor Manufacturers Ltd. Plaintiff became dissatisfied with N.U.V.B. in 1970, although this union represented practically all workmen in the motor assembly. However, the plaintiff and 111 other workers applied to the Marine Port and General Workers Union (M.P.G.W.U.) for membership. This union wrote to N.U.V.B. in April 1970 asking whether they objected to the transfer, and the answer was affirmative. In May 1970 the plaintiff and 145 others applied for a transfer to the Irish Transport and General Workers Union (I.T.G.W.U.), and N.U.V.B. still objected. There was a lengthy correspondence, but the plaintiff and the others alleged they wished to join an Irish-based union. Finally N.U.V.B. asked I.C.T.U. to intervene in June 1970, which referred the matter to its Disputes Committee, which duly declared that it was contrary to good trade union practice for the I.T.G.W.U. to enrol workers against an objection by N.U.V.B. In November 1970 the I.T.G.W.U. wrote to N.U.V.B. requesting that they should take back the transferred members and N.U.V.B. replied that no member employed by Motor Manufacturers will be released to join any other union. The plaintiff was still anxious to transfer to I.T.G.W.U. but N.U.V.B. officials objected to it in present circumstances. The plaintiff contended that the N.U.V.B. were wrongfully preventing him from joining I.T.G.W.U. The defendants contended that the plaintiff undertook to abide by the rules and that he had surrendered his constitutional right to join another union. It was held that a person over age may agree to surrender or to waive all or part of his constitutional right under Article 40 (6) (3) of the Constitution, but the plaintiff would require to be acquainted with the Constitution of I.C.T.U. which he was not. It is the objection by N.U.V.B. which activates and supports all that has followed upon it, and which now prevents the plaintiff from joining I.T.G.W.U. It was held that the plaintiff did not at any time either expressly or impliedly agree with the N.U.V.B. that in the circumstances giving rise

to the proceedings, the N.U.V.B. could by withholding consent deprive him of the right of joining another union of his choice. Accordingly the plaintiff is entitled to a declaration that the defendants are infringing the plaintiff's constitutional right of joining the union of his choice.

[Murphy v National Union of Vehicle Builders; unreported; Murnaghan J.; 11th January 1972.]

Note—This decision has been much criticised by the Irish Congress of Trade Unions.

Petition of P.M.P.A. that they were entitled to Green Cards as they had performed their part of the contract granted.

The Governments of some States in Western Europe have encouraged the notion that third party motor insurance taken out in one country should be valid in all others and that it should comply with the compulsory insurance requirements in each State. The scheme adopted in the United Kingdom and in Ireland was that the Insurance Companies of each country were to establish a Bureau which would issue an international motor insurance card to the companies who were members of it. This card was called a "Green Card" and would show the countries to which the cover had been extended; in the event of an accident in another country, the holder of the Green Card could apply to the Bureau of that country for compensation. In 1952, the Minister for Local Government (hereafter called the Minister) began negotiations with the then Irish existing motor insurance companies—and the British companies operating in Ireland were not consulted. A draft agreement was prepared establishing the Irish Visiting Motorists Bureau Ltd. (hereafter called the Irish Bureau). This company was duly incorporated in December 1957. The draft was similar in terms to an agreement of January 1953 made between the Minister and the Irish Bureau. This agreement was stated to be supplemental to an agreement of 2nd January 1952 between the Irish Bureau and the five motor insurance companies incorporated in Ireland (The Hibernian, The Irish National, The Insurance Corporation of Ireland, The Equitable and the Shield). In this it was stated that the Irish Bureau was making the agreement as the duly authorised agent of the five insurance companies. In the agreement of 29th January 1953 it was agreed that the Irish Bureau should supply to each of the Irish companies such Green Cards as they might require. Meanwhile the British Motor Insurance Companies could obtain any Green Cards they required from the Motor Insurance Bureau in London. As the Shield Insurance Company were not authorised, like other Irish companies, to carry on motor insurance business in Britain and Northern Ireland, they took the biggest proportion of Green Cards issued by the Irish Bureau at this time.

In 1963 the Equitable Insurance Company was ordered to be wound up because it was insolvent; the amount of the claims paid on foot of this winding up now exceeds £100,000. The introduction of car ferries between Ireland and Britain, and Ireland and the Continent as well as the growing popularity of the caravan holiday led to a big increase in Ireland against motorists holding Green Cards issued by Bureaux in other States, which gave much extra work to the four Irish insurance companies involved. These companies finally gave notice of the termination of the agreement to the Minister.

Negotations then took place between the Minister and the British companies with a view to their sharing the responsibility of issuing Green Cards with the Irish companies, and this they agreed to do in 1967. Meanwhile the Irish insurance companies were considering the question whether the old Irish Bureau should be wound up, and a new one set up in its place, and asked the representative of one of the Irish companies, Mr. X, to look into this.

The Private Motorists Protection Association (P.M.P.A.) were incorporated in April 1964 and claimed that lower premiums for safe drivers could be charged. This did not endear them to tarriff companies, and when the P.M.P.A. representatives approached Mr. X in July 1967 he told these representatives that the Irish Bureau would be prepared to issue Green Cards to their Association provided they complied with the conditions imposed by the British Motor Insurance Bureau in respect of new members by procuring a Banker's guarantee for £10,000 in respect of each thousand Green Cards issued by the Bureau, supplemented by the deposit of suitable securities. The Bank of the P.M.P.A. stated that they were precluded by the terms of the Insurance Act 1936 from giving such a guarantee. The P.M.P.A. then informed Mr. X in October 1967 that, as a new Irish Bureau was being formed, there was no point in joining the old one. As P.M.P.A. needed Green Cards for their policy holders, they first purchased some from brokers associated with a Belgian insurance company.

In 1969 the Insurance Corporation of Ireland supplied Green Cards to them, and tried to transfer some of the shares held by them in the Irish Bureau, and made an application to this effect to the Board, which was duly refused on June 25th.

Under the new arrangement finally agreed upon, all the motor insurance companies incorporated in Ireland and all the British companies and syndicates transacting motor insurance business in Ireland were to become members of the Irish Bureau and the articles of association of the original Bureau were to be amended to provide for this. The draft was agreed and incorporated in an agreement signed on 10th July 1970.

The Irish Bureau then sent a circular letter to all motor insurers to inform them that the necessary resolutions to alter the articles had been passed, and that the wording of the agreement had been agreed. New members could apply for two shares each which could be made available by existing shareholders, and requested each company to send Mr. X a formal application for two shares. On 11th October 1969 P.M.P.A. applied for two shares in the Irish Bureau, and sent a cheque for £2. In reply, it was stated that it would be some time before the reconstituted Bureau came into existence. On 30th January 1970 P.M.P.A. received their share certificate for the two shares, and duly asked for 20 cards. At a meeting of the Board on 9th March 1970 the nine directors realised, that, in view of the liquidation of several British Motor Insurance Companies, the issue of Green Cards could involve the Irish Bureau in heavy liabilities, and regarded P.M.P.A. with suspicion. A resolution was accordingly drafted that henceforth Green Cards would be issued to all members other than founder members on the basis of a cash deposit of £10,000, or a deposit of securities of £10,000 lodged in a Bank in respect of each one thousand cards. The conditions of the British Bureau that the cash deposit or the lodgment of securities was to be made for five years only from date of issue was overlooked.

It was known at this meeting that the British companies did not intend to apply to the Irish Bureau for Green Cards, and thus P.M.P.A. were the only company which would have to give security for cards. In March P.M.P.A. confirmed that they would be a party to the fundamental agreement, which was eventually dated 10th July 1970. The P.M.P.A. then petitioned the Court to have the resolution of 9th March 1970 cancelled. It was contended firstly that the agreement was invalid on the ground that it attempts to regulate Green Cards in a manner contrary to the fundamental agreement. This fundamental agreement was not in force in March 1970 and cannot thus be invoked. On the other hand P.M.P.A. cannot successfully invoke the agreement of 1953 as they were not parties to it. In the first place, the resolution of 9th March 1970 was not *ultra vires* the company. However, the fact that the fundamental agreement was only executed in July did not excuse the Bureau from its obligation to give to each of the parties to the agreement any Green Cards which they requested without any condition as to security as long as they were members. The requirement of a security of £10,000 for each 1,000 Green Cards is clearly inconsistent with the main purpose of the fundamental agreement that it should be regarded as rescinded. It was clear that P.M.P.A. had not accepted the resolution of March 9th, or precluded themselves from objecting to it subsequently by signing the fundamental agreement.

It was also contended by P.M.P.A. that the resolution of March 9th was an oppressive exercise by the directors of their powers and that the Court should accordingly cancel it under Section 205 of the Companies Act, 1963.

The conduct or exercise of the powers complained of under Section 205 must affect the person making the complaint in his character as a member and not as a creditor. A member of the Irish Bureau does not by membership acquire the right to be supplied with Green Cards because the articles of association do not confer this. Therefore the claim under Section 205 fails. Oppression can, however, be defined as harsh conduct or depriving a person of rights to which he is entitled. Green Cards are only valid for one year until the insurance policy is renewed. As P.M.P.A. have 100,000 policy holders, the resolution of 9th March 1970 would require them to deposit £100,000 per year, for an indefinite period. The relation of the securities in respect of possible liabilities arising under cards issued up to ten years before is so unreasonable and involves such a large sum for security that it is oppressive. Nevertheless, given all the circumstances of the case the directors acted honestly when they passed the resolution in March and also acted in what they believed to be the interests of the Irish Bureau.

The petition was accordingly granted, and a declaration was made that the resolution passed on 9th March 1970 in relation to the issue of green cards ceased to be valid on 10th July 1970.

[Re Irish Visiting Motorists Bureau Ltd.; unreported; Kenny J.; 27th January 1972.]

Contract: Building contractors entitled to be paid on a quantum meruit basis when no price is agreed upon.

Plaintiffs. building contractors, claim £5,103 being balance due by defendants for materials supplied and work done to a house in Gorey from June to September 1969. Defendants (husband and wife) allege that the £7,500 which they have paid plaintiffs fully discharges their liability; but admit that a sum of £900 is due for the installation of central heating. The defendants, however, make a counterclaim in respect of:

(1) £3,600 damages for delay.

(2) £715 for alleged defects in workmanship and materials.

The main dispute is as to the terms and construction of the verbal contract.

The plaintiffs contend that it was a contract to supply certain materials and do certain work, and that no fixed price or time for completion had been agreed upon. The defendants contend that the contract was to do the work and supply the materials at a definite price, and that the work was to be definitely completed by a certain date. The lady defendant, Mrs. Roche, approached the architect, Smith, who was acting for plaintiffs, in connection with a two bedroomed extension to her house late in 1968. A draft survey was made. In May 1969 it was suggested that twenty-six Germans would be visiting Gorey for ten weeks from July 10th and that if accommodation could be extended to include six new bedrooms, she could get a booking. On May 23rd Mr. Smith was instructed to prepare drawings, and on May 26th a discussion took place between Mr. Smith and a director of the plaintiff company, Mr. Campion, who took away the drawing. The date for completion was mentioned as July 8th. The plaintiff who had been aware of this, wrote to Mr. Smith on June 10th stating that the extension would not be completed in time, and suggested that the plaintiff should make alternative arrangements about the accommodation. Mr. Kilbride, the quantity surveyor, having been asked by the plaintiff for an approximate price for the extension, mentioned, after calculations the figure of £9,800, to Mr. Smith; Mr. Smith tried to suggest that the figure mentioned was £8,900, and that he could name a target figure of £7,500 to the defendant. On May 28th Mr. Smith rang Mr. Kilbride, and told him to go ahead, provided he kept as close to the target figure of £7,500 as possible. The work then proceeded. The term "target figure" according to the defendant meant that it could not be scaled upwards, but only downwards The plaintiffs contend that "target figure" simply meant an approximate price which could be varied either way. The Judge held that it did not mean that the final cost was not to exceed this figure. Finally this work, on a time and material basis, greatly exceeded the target and came to £11,000. If no price is agreed upon, it is clear that the contractor should be paid a reasonable sum on a *quantum meruit* basis for materials supplied, work done, and services rendered. As the construction of the extension on a rates basis would have been about £8,500 as against £11,000 on a time and material basis Pringle J. felt bound to reduce the amount clamed by a substantial amount. A reasonable figure for the plaintiff was £11,200, and as £7,500 had already been paid, they were entitled to judgment for £3,700 balance.

As regards damages for delay in completion, the plaintiffs contended that, despite the tight schedule, the defendant would not allow them to work on Sundays. Furthermore a German representative visited the site on June 14th and was so dissatisfied with what he saw that he subsequently cancelled the visit of the German tourists After this, defendant decided to instal central heating, and a contract was entered into with a sub-contractor to have this done for £900; this meant that the urgency for completion disappeared. In fact

the contract was not completed until the end of September 1969. The defendants have completely failed to substantiate any damages for delay. The only damages to which defendants are entitled on their counterclaim is the sum of £213 for alleged defects in workmanship and materials.

[Hugh O'Neill & Co. v Roche; Pringle J.; unreported; 19th January 1972.]

Contract: Claim for fundamental breach of contract rejected.

The plaintiff, a bank official who retired in 1965, wished to go into business in 1967, and establish a dry cleaning business in Loughrea. Before doing so, one of the managers of the defendants came to see the plaintiff at his request, and discussed payments: he mentioned a dry cleaning machine called a Monarch Princess. The plaintiff, who had no previous experience of this business, went to Dublin to inspect the machines. He finally signed an order form in May 1967 which related to four Frigidaise washers, two dryers and dry cleaning with one roller and one pump, therein called "the equipment". The price of the equipment was £4,213, and he paid a deposit of £857.60. The plaintiff signed the order subject to the company's general conditions, including one as to a guarantee by the company. In the guarantee, the company undertook during the period of 90 days from handing over the keys to the customer to repair or replace free of charge, provided three days notice of defects was given, and no repairs were made without the consent of the company. Consequently the company was not to be liable to the customer for any consequential loss or damage resulting from faulty equipment. The machines were duly delivered in Loughrea on 8th September 1967. Their installation was supervised by company officials, and business commenced on September 15th. The plaintiff signed a hire purchase agreement with a hire purchase company, by which a sum of £3,870 was to be repayable in 36 monthly instalments of £107.50. The dry cleaning machine developed an electrical fault on September 25th which was duly repaired by the company. On September 28th a fault developed in the valve of the machine which was duly repaired; this defect was again remedied on October 16th and 30th. By this time the plaintiff was convinced the machine was unsatisfactory. The plaintiff's solicitor wrote to the company on November 1st pointing out that the machine was defective, and asking him to remove the machine, refund him the entire purchase price, and reimburse him for losses.

Undoubtedly the clothes put through the dry cleaning machine had a very strong smell which made them unwearable, but this is not mentioned in the solicitor's letter.

In January 1968 a mechanical engineer examined the machine, and found various defects. He thought that the corrosion would be progressive, but did not mention the smell which apparently became noticeable in mid-November, and was only communicated to the company in January; this undoubtedly damaged the plaintiff's business reputation. In endeavouring to secure maximum profit he did not use sufficient washing materials. The smell was thus not caused by any fundamental defect in the machine.

On 12th March 1968 the company decided that plaintiff's dry cleaning machine was unsatisfactory, and they delivered a new machine to him on April 25th. Nevertheless the plaintiff sued for damages for breach of contract for failure to repair on foot of the guarantee. The Judge would not consider the point that a fundamental breach of contract had been committed becuase it was not pleaded. As the door of the dry cleaning machine leaked for a while, damages were assessed at £25.

[Counihan v Automations International (U.K.) Ltd.; Kenny J.; unreported; 5th December 1970.]

Guardianship of two boys awarded to Father.

The husband, a member of the Plymouth Brethren, went to Canada in 1957 and worked in television with the Canadian Broadcasting Corporation. He married the wife in 1958, and they continued to live in Canada, mostly in Toronto, until 1971.

Although the first son was born in 1960, and the second son in 1963, the marriage was not a happy one. There were constant arguments about money, as he was easy-going and she was very competent. The wife gradually felt lonely and neglected, and her affection gradually turned into irritation and contempt. In a word—he was inconsiderate and she was impatient. The wife finally left him in 1971 and went to stay in separate lodgings. All attempts at reconciliation failed, and the boys stayed with the father. In July 1971 the husband and the boys returned to Dublin, and since then the husband has been working as a freelance editor of films for television, earning £200 per month. The husband is now forty years and the wife forty-six years of age.

The husband tried to induce his wife in vain to join him in Ireland which she had visited several times. The husband had now bought a home in Ballinteer, and is repaying a mortgage with money advanced by his rich parents, who live near him; he also has a resident housekeeper, and the boys are attending St. Andrew's College in Dublin. The wife meanwhile had brought divorce proceedings in the Supreme Court of Ontario, and was awarded interim alimony of $175 per month.

The wife, in applying to this Court for custody of the children alleges her husband is not a suitable person to have them. The wife hopes to return to England and train as a teacher; she had previously been a telephone operator. A Canadian psychiatrist, Dr. Davidson, was consulted by the wife, and came to Dublin at his expense to give evidence. Although Dr. Davidson had never had an interview with the husband, he alleged in Court that, from the particulars supplied to him by the wife, he considered the husband to be a psychopath and to have paranoid tendencies. The husband consulted a well-known Dublin psychiatrist who could find no evidence of personality disorder.

Furthermore the Judge thought that, in tendering evidence, the husband gave no indication of abnormal outlook or behaviour.

It was alleged that the letters written by the husband's parents to him in Canada proved that he was an unsuitable person. The Judge found, however, that these letters were based entirely on what the wife had written to them, and did not prove any such thing.

In considering the matter of welfare, the Judge thought that the intellectual, physical and social welfare of the two boys of 12 and 9 would be best served if they were to remain with their father in Ireland. The wife's application for custody of the children was consequently rejected.

[Waters v Waters; Kenny J.; unreported; 27th April 1972.]

BOOK REVIEWS

A Guide to the Industrial Relations Act 1971 by C. G. Heath; London, Sweet and Maxwell, 1971; 8vo; xx plus 256 pp.; £3 (paperback).

An Introduction to Individual Employment Law by B. A. Hepple and Paul O'Higgins; London, Sweet and Maxwell, 1971; 8vo; xxiii plus 203 pp.; £2.25 (paperback).

Industrial Relations by R. J. Harvey; London, Butterworth, 1971; 8vo; xvi plus 448 pp. (bound).

As has been shown recently by the fine of £55,000 imposed upon the Transport and General Workers' Union by the Industrial Court for not preventing dockers in Liverpool Docks from refusing to handle container traffic, there is undoubtedly some element of sanctions in the new British Industrial Relations Act 1971. The trade unions have endeavoured to suggest that voluntary agreements between employer and worker were at all times satisfactory. Yet there have been far too many frivolous strikes which have seriously affected the British economy, and this induced the Tory Government to pass this legislation, which is more in accord with continental practice. It is difficult to see why the Act produced such a hullaboloo amongst some unions who refused to register and why some of the larger unions have endeavoured quite unsuccessfully not to recognise the Industrial Court. Another useful function which the Court performed was to enforce a fourteen day cooling off period in the recent railway strike in England.

It will be useful to summarise the English Industrial Relations Act 1971 which is complex, and contains 170 sections, and 9 schedules. The four guiding principles of the Act which will receive general approval are: (1) that collective bargaining ought in general to be freely conducted; (2) that there should be orderly procedures for settlements of disputes; (3) that workers and employers should be able to associate freely in organisations effective to regulate relations between them; and (4) that workers should be secure, and protected from unfair treatment at the hands of employers or anyone else. These principles will be elaborated in an industrial code, which will be admissible in evidence. Workers may or may not belong to a trade union and must pay contributions, if not to a union, then to a charity. No one can be refused employment on the ground that he is not a member of the union. In an agency shop situation, every member must be a member of the union, or pay a contribution in default. The Commission on Industrial Relations may arrange for a ballot to be taken to establish an agency shop, which will be set up if two-thirds vote in favour. Later on, in a second ballot, the agency shop agreement can be revoked, if two-thirds subsequently vote againt it.

A worker may now challenge what he considers to be an unfair dismissal before an Industrial Tribunal who must give an equitable award. Lack of capability or qualification, misconduct or incompatibility would be the main grounds justifying dismissal but only after a minimum employment of two years. An aggrieved party may also complain to the Industrial Court of an alleged unfair industrial practice like a strike or a lock-out. At present most collective agreements are binding in honour only, but not in law. Henceforth *all* collective agreements made in writing after the Act are binding as a legal contract unless the contrary is expressed. There is an obligation on the parties to see that the terms are carried out, otherwise it will be for the Industrial Court to remedy any unfair industrial practice. Where a procedure agreement is for any reason ineffective, the Minister of Employment, or the employer or the trade union can make *one* or other of the following applications to the Court: (1) to have the procedure agreement imposed upon the parties, or (2) to set up a trade union—or a panel of trade unions—as a "bargaining agent" having sole negotiating rights with a specified employer. The Minister must first consult the parties and, if need be, refer the matter to the Court. The emphasis throughout is on conciliation, and the parties are encouraged to make effective voluntary arrangements. If conciliation fails, the Industrial Court can impose a legally enforceable procedure agreement, or name a union to have exclusive bargaining rights. Once an organisation is on the Register, it has to undergo the scrutiny of the Registrar. To be registered the rules of Natural Justice must apply to the disciplinary procedures of the unions and members should be entitled to take part in its affairs. No one should be penalised for not taking part in an unfair industrial action; specified details as to the rules are set out. Proper accounting systems must be employed, and the accounts must be audited annually. If these regulations are not complied with, the Registrar has power to ask the Court to remove the union from the Register. All organisations who register—employer and trade union—must be completely independent of outside control.

The range of unfair industrial practices is considerably widened. One of these would be to induce a person to break a contract to which he is a party—or threaten him to do so. Another would be to take industrial action in support of an unfair industrial practice. Another would be to induce a third party not in a dispute to break a contract with someone who is in dispute.

The Industrial Court can sit in divisions in any place it chooses. Each division will consist of a Lord Justice, and not more than four other independent persons experts in industrial law. As a superior Court of Record, it can commit for contempt. It will be an informal Court governed by rules of procedure but not by rules of evidence. In cases of discretion, the Court will make such orders as seem just and equitable. The remedies it can give are (1) a declaration of the parties' rights, (2) an award of compensation, and (3) an injunction. Appeals on points of law will come before the Court of Appeal. The maximum amoung that can be awarded for compensation is £100,000, provided the union has a membership of more than 100,000 members. The Commission on Industrial Relations is an advisory body of from six to fifteen experts on industrial law who will advise the Minister and the Court if requested. It is asserted that no one can be made to go to work or to take part in industrial action if he does not want to do so. The Industrial Court has exclusive jurisdiction over collective agreements. Any actions

which, in furtherance of an industrial dispute induces a breach of contract must henceforth be brought before this Court.

If the Minister is of opinion that a threatened strike may bring great damage to the economy, or imperil national security, or risk public disorder, he may consider that a breathing space would be conducive to the settlement of a dispute and can then apply to the Court for a cooling-off period. If the Court has sufficient grounds for believing that any of these conditions exist, it may make an order in effect requiring the cessation of industrial action, and this order can be effective for a maximum period of sixty days. If the Minister thinks that industrial action is seriously injurious to the livelihood of many workers in the industry concerned, he can order a ballot, and suggest that industrial action shall cease meanwhile, but it is for the Court to decide whether the circumstances warrant it.

Mr. Harvey, having analysed the Act first in summary form, then takes up the points he mentions, and devotes in Part I some 130 pages covering chapters relating to such matters as the Agency Shop, Remedial matters, Judicial and Advisory Bodies like the Industrial Court and the subordinate Industrial Tribunals.

The Industrial Relations Act 1971 is printed in full in Part II, covering some 260 pages. Readers are referred back in respect of each section to the relevant commentary in Part I, and there are references back to other sections for various definitions appearing in the section. Anyone who wishes to try to construe the intricacies of the Act will have his burdens greatly eased by Mr. Harvey's commentaries and notes. This is undoubtedly the volume which contains most information and Mr. Harvey is to be congratulated on the tremendous amount of labour he must have expanded in clarifying for us what must have been an exceptionally difficult task.

Mr. Christopher Heath's guide contains an introduction of 80 pages, then the full text without comment of the Industrial Relations Act 1971. Mr. Heath prints the Code of Industrial Relations Practice in full which relates to usch matters as responsibilities, employment policies, communications and consultation, collective bargaining and shop stewards; Mr. Harvey is content to summarise it. On the other hand, Mr. Harvey has inserted an invaluable list of official publications and parliamentary debates. This reviewer does not consider that Mr. Heath has achieved his purpose. The introductory chapters of his guide are not easy to read and appear to require some deep previous knowledge of industrial relations. Mr. Heath does not appear to have the happy knack of explaining things simply, though some definitions like "to procure", "to finance", "to threaten" and "to induce" are carefully distinguished.

The aim of Mr. Hepple and of Dr. O'Higgins is to provide an introduction to the law affecting the individual employment relationship. They rightly stress that the old-fashioned law of master and servant has now given way to labour law, in which statutory protection of the rights of individual workers has come to occupy a central position. The purpose of the book is to give a systematic and integrated view of common law and statutory duties. As might be expected from two eminent law lecturers in Cambridge, this purpose has been admirably achieved.

The wide scope of the volume is shown by the fact that such problems as co-operation between employer and employee, the duty of an employer to take reasonable care for the safety of his employees, and that of the employee to serve faithfully and honestly are fully considered. Abundant case law is given in support of the various points. We must defer to Dr. O'Higgins, who is an expert on Irish industrial law, but who has chosen not to cite Irish cases. Problems of remuneration going back to the historical Truck Acts, and of participation in a strike are dealt with in their customary masterful way, and the Industrial Relations Act 1971 is only mentioned where necessary. Any Irish practitioner who wishes to get to know the intricacies of the English Industrial Relations Act 1971 would do well to read Mr. Hepple's and Dr. O'Higgins's *Introduction to Individual Employment* before embarking upon Mr. Harvey's more elaborate and specialised tome. It is unfortunate that Irish practitioners in labour law have as yet no reliable text-book, though it is understood that Mr. McCartney of Queen's University is preparing one.

The Modern Law of Animals by P. M. North; London, Butterworth, 1972; 8vo; xxix plus 229 pp.

Professor Glanville Williams published his scholarly monograph on *Liability for Animals* in 1939 and no book has been published on this abstruse subject since then. We had already been indebted to Mr. North, a Fellow of Keble College, Oxford, for his learned work on *Occupier's Liability* in 1971. As might be expected, the learned author has incorporated all decisions relating to this subject, not merely from England, but also from Australia, Canada and New Zealand. With the extended jurisdiction conferred upon the Circuit Court by the Courts Act 1971 it is unlikely that many decisions relating to animals in the future will be reported in Ireland, as a claim for more than £2,500 damages in such a case would probably be exceptional. Nevertheless the subject is of vital importance for rural practitioners, and cases of cattle straying or sheep worrying by dogs are not uncommon. The law on the subject in England has been brought up to date by the Animals Act 1971 which provides *inter alia* that in all circumstances in which a dog causes damage by killing or injuring livestock, the keeper of the dog is normally liable, and that if livestock belonging to anyone strays on to land in the ownership or occupation of another, the owner of the livestock is normally liable. The well-known common law rule, which excludes the duty which a person reasonably owes to others to see that damage is not caused by animals straying on the highway, is abolished; henceforth the owner of the straying animal will be liable. If a dog is worrying livestock, the owner of the livestock shall no longer be liable for killing the dog, if he acted for the protection of the livestock, and gave notice to the police of such killing within 48 hours. These reforms, which are explained in detail by Mr. North, will probably exceed the perpetuity period before they are enacted in Ireland but Mr. North is also admirably concise in explaining the old law which still applies here. This book can be recommended specially to rural practitioners who have to grasp legal problems connected with the law relating to animals.

EUROPEAN SECTION

E. E. C. Legislation

by J. G. FINNEGAN

In the great debate on accession to the E.E.C. with its emphasis on the political and economic consequences of joining, solicitors may not have considered how accession will affect them in their work. Over the next few months a series of articles of which this is the first will explain some of the implications for the solicitor. This first article will describe briefly the institutions of the E.E.C. And the form of the legislation which emanates from them.

The four institutions

From July 1967 the institutions of the European Coal and Steel Community, Euratom and the European Economic Community merged and so all the powers arising under the Treaties which set up the Communities are now exercised by four institutions: the European Parliament, the Council of Ministers, the Commssion and the Court of Justice.

The European Parliament

This consists of delegates appointed by the Parliaments of the member states from among their own members. These delegates sit not in national sections but in European-level political groups. While the powers of Parliament are limited, it exercises control over the Commission and the more important of the Commission's proposals go before it before they go to the Council. It exercises its control by the following means:

(a) the written question—in 196-70 477 written questions were put to the Commission;

(b) the oral question put in plenary session;

(c) by vote of censure by a two-thirds majority whereby the Commission is dismissed.

The Parliament meets six times a year for one week at a time and between sessions its work is continued by committees.

There are proposals to give the Parliament wider budgetary powers and also whereby members will be elected by direct universal suffrage.

The Council of Ministers

The Council consists of the representatives of the Governments of member states, each Government sending one of its Ministers. The principal representative is usually the Foreign Minister but meetings are frequently attended by Finance, Transport, Agriculture or other Ministers when topics within their province are to be considered Under the Rome Treaties any measure of general application or of a certain level of importance must be enacted by the Council of Ministers but with a few exceptions the Council can only proceed upon proposals by the Commission. It is thus the Commission which initiates action: the matter then goes to the Council and the Ministers will then examine it to see how it will affect their national interest. The Council is limited in that it can only deliberate on the proposal before it and it can only act by a unanimous vote where an amendment to that proposal is involved. If its members propose to accept the proposal in toto a majority is sufficient. In certain matters a simple majority is sufficient but generally a "qualified majority" is required. For the purpose of a qualified majority France, Germany and Italy have four votes each; Belgium and Netherlands two votes each and Luxembourg one vote. Even where a qualified majority would suffice decisions tend to be unanimous especially where a member considers its essential interests at stake. In the enlarged Community voting will be as follows: Germany, Italy, France, U.K. ten votes; Belgium and Netherlands five votes; Ireland, Denmark and Norway three votes; and Luxembourg two votes.

The Commission

If the Council can be likened to our domestic cabinet then the Commission corresponds to the Civil Service: it is the executive arm of the Communities. It has nine members at the moment (this will increase to fourteen with the accession of the new members) and there is at least one Commissioner from each member state. The functions of the Commission are as follows.

(1) To prepare proposals for decisions by the Council of Ministers—it is the initiator of Community policy and the exponent of Community interest. The Common Market Treaty is an "outline treaty" sketching out in general terms the policy lines to be pursued but leaving the actual arrangements to be worked out and this working out commences with a proposal from the Commission.

(2) The exercise of rule making powers conferred by the Treaty or the Council in connection with the common policies—mostly the common agricultural policy.

(3) The application of the Treaties' rules to particular cases, especially with regard to competition and the common policies on agriculture and transport.

(4) The administration of Community funds.

(5) The administration of safeguard clauses in the Treaties. In exceptional circumstances the Treaties' requirements may be waived. The Commission only may grant such waivers or "derogations" at the request of a member state. The Commission has similar powers under the enactments relating to the common policies.

(6) Most important of all the Commission has its "watchdog" function—to see that the provisions of the Treaties and the decisions of the institutions are properly implemented. Where it concludes that there has been an infringement either as a result of its own investigations or following complaints from a Government or individual it will issue an opinion which must be complied with; otherwise the matter is referred to the Court of Justice whose judgment is binding.

Economic and Social Committee

The Council and Commission are assisted by a consultative committee, the Economic and Social Committee, which is composed of representatives of various sections of economic and social life. It must be consulted

before decisions are taken on certain important matters.

The Court of Justice

The Court of Justice will be the subject for the next article in this series and it will not now be dealt with in detail. The Court deals with cases brought by the Commission for infringements of the Treaties and also appeals by Governments and individuals against decisions of the Commission. It is the final interpreter of the provisions of the Treaties and deals with interlocutory appeals from national courts asking it to rule as to the interpretation or applicability of particular provisions of Community law.

Community Legislation

The Treaty of Rome provides for the following legislative and quasi-legislative instruments.

(a) *Regulations*: Regulations are binding in their entirety and take direct effect in each member state without reference to national legislatures. This form of legislation may be used only where expressly provided for in the Treaty. They are used mainly as instruments of the common policies such as agricultural policy or transport policy. It is in the form of a regulation that the statute on European Company Law is expected to be passed and this will then exist over and above national company law.

(b) *Directives*: This is the most common form of legislation. A directive under Article 189 of the Treaty of Rome is binding as to the result to be achieved but leaves to national authorities the choice of form and methods. As a rule the directive will state the period within which the national authorities must amend their law or practice to comply with the direction.

(c) *Decisions*: Formal decisions of the Council and Commission are binding in their entirety upon those to whom they are directed—not just member states. Art. 192 of the Treaty provides that decisions involving a pecuniary obligation on persons other than states shall have the enforceability of a court judgment, enforcement being governed by the rules of civil procedure in the state to whose territory it is directed.

Recommendations and opinions

Recommendations and opinions of the Council and Commission have no binding effect.

"Journal Officiel"

All the legislation and quasi-legislation by the E.E.C. Council and Commission is published in the official journal of the E.E.C. (the *Journal Officiel*, or "J.O." as it is usually known). Copies of the J.O., which is issued weekly, are obtainable from Government Publications Sales Office. Proposed legislation is also published in the J.O. The J.O. now has two series: one has the letter L as a suffix, which signifies Legislation and contains only the regulations and other instruments which have received E.E.C. Council approval and are therefore enacted. The other series has the suffix C which indicates that the E.E.C. Commission has communicated a draft to the E.E.C. Council for enactment; in addition to the equivalents of Bills, the C series also contains memoranda to the Council by the E.E.C. Commission, which are policy proposals corresponding, very approximately, to White Papers.

The J.O. will be available in English from January 1973 and copies will be available in the Solicitors Library. Unofficial translations of all important documents which have appeared in the J.O. up to that date will shortly be available in the library also.

There is a vast amount of E.E.C. legislation—there are well over two thousand legislative instruments to be applied to Ireland next January. The form in which it will be applied is not yet clear but it may be necessary for the practitioner to consult the original E.E.C. documents. It is hoped that this series of introductory articles may help practitioners to decide to what extent it will be necessary to have regard to E.E.C. legislation when advising clients.

EUROPEAN LAW REPORTS—DYESTUFFS CASE

Following complaints by various industrial consumers of dye stuffs the Commission of the E.E.C. found that during the period January 1964 to October 1967 three geneal and uniform increases in the price of dye stuffs occurred throughout the Common Market. The Commission instituted action against the firms which made price increases in proceedings provided for by Council regulation no. 17/62 in the case of suspected violation of Article 85 of the Rome Treaty which prohibits restrictive practices by concerted action. The Commission considered that the price increases which had occurred resulted from conserted action prohibited by the first paragraph of Article 85 and imposed fines ranging from $40,000 and $50,000. An appeal was brought to the European Court. The advocate general submitted that there were four questions.

(1) Whether the linear increase which occurred in equal proportions resulted from prohibited concerted action.

(2) If the answer was in the affirmative whether companies with headquarters outside the Common Market could be subjected to financial penalties for their participation.

(3) Whether the administrative proceedings instituted by the Commission were not vitiated by irregularities of procedure or violations of basic rights.

(4) Whether failing a rule of prescription, which so far had not been introduced into the body of Community law the time which had elapsed between the alleged concerted action and the institution of judicial proceedings by the Commission had not taken away the possibility that the alleged practices might be properly sanctioned.

The case is under deliberation and judgment will be delivered in the near future.

Free Legal Advice Centres

Address made to Society of Young Solicitors Seminar in Galway on Saturday, 25th March 1972, by **John Glackin,** Chairman, F.L.A.C.

F.L.A.C. was started in April 1969 by a group of law students. It opened with one centre in Mountjoy Square and other centres were later added. In the past year, three new centres were opened in Rialto, Ballymun and the Dun Laoire area. Each centre is staffed by a group of law students who attend each week on the night the centre is open. There is a panel of solicitors for each centre and a solicitor attends the centre each week. The panels are operated on a rota basis so that a solicitor may be called on anything from once in six weeks to once in twelve weeks. The solicitor deals with any problems that are posed by visitors to the centre and which the student interviewer cannot answer himself. Some problems presented require further legal action possibly a court case and in such instances, the solicitor has the case referred back to his office. At the end of July 1971 the total number of cases dealt with by F.L.A.C. was 1,054—at the end of February 1972 the total number of cases was approximately 1,800. These figures speak for themselves. F.L.A.C. has established itself as an important social service in which the solicitors play a fundamental and very essential role. However, more solicitors are now required for the centres in Ballymun and Dun Laoire and volunteers may give their names to me.

There are similar centres in operation in Cork and Galway, staffed by law students from UCC and UCG respectively. But there are many other provincial areas where the need exists for a similar service. Obviously there will not be students to do the interviewing but it should be possible for solicitors in provincial towns to provide a free legal advice service for those who would not or could not go to a solicitor's office for financial reasons. This could be organised by the local Bar Associations in conjunction with existing social and community service councils.

The third matter I want to deal with is related to discussion on solicitors' fees and possible future control by non-lawyers. If fees are further controlled and limited solicitors will be less able to deal with charitable cases and the question of a comprehensive legal aid scheme will become more immediate as its necessity becomes greater. We should therefore now begin to examine optional systems of legal aid and advice which could be introduced here and the way to start is by looking at systems in other countries.

The English Legal Aid Scheme

The English Legal Aid Scheme in criminal cases is basically the same as ours, due of course to the fact that our Act of 1962 was a copy of earlier English legislation. But English legislation governing criminal legal aid was revised in 1967 after the report of the Widgery Committee in 1966.

The main differences now between the English and Irish system, apart from the difference in the amount of money allocated for legal aid, are :

(a) In England, lawyers are paid fees that are broadly based on the work done in each individual case—a narrative bill is prepared showing the work done and the disbursements and this is scrutinised by the Area Committee of the Legal Aid system or by the Clerk of the Court.

(b) In England, a person getting legal aid may have to make a contribution towards the costs—this depends on his income after allowing for various deductions in respect of dependants, etc.

(c) In England, the principle is that the court should positively see that Legal Aid is proferred where it may be needed—in Ireland, the Court has no such duty although some Judges do inform defendants of their right to apply for Legal aid.

Criteria of the Widgery Committee

The Widgery Committee set out the criteria other than financial to assess whether a person should be granted legl aid. These are :

(i) If charge is a grave one in the sense that accused is in real practical jeopardy of losing his liberty or livelihood or suffering serious damage to his reputation.

(ii) If the charge raises a substantial question of law.

(iii) If the accused is unable to follow the proceedings and state his own case either because of his inadequate knowledge of English or because of mental illness or other mental or physical disability.

(iv) If the nature of the defence involves tracing and interviewing of witnesses or expert cross-examination of a prosecution witness.

Even with these improvements on the old system, the English legal profession are not satisfied that the system is working correctly, particularly in the Magistrates' Courts where in 1969 only 3.5 per cent of defendants were granted legal aid. Late last year a Justice report, "The Unrepresented Defendant in Magistrates' Courts", suggested that a different system of legal aid might be more efficient in giving representation in those Courts. The report suggested a "Duty Solicitor" scheme where there are solicitors attached to the courts who will represent defendants who cannot afford legal representation otherwise—these "Duty Solicitors" would be paid out of public money.

At least two local law societies in England are actively considering the "Duty Solicitor" scheme and will probably implement it for a month's experimental period.

Civil Legal Aid

Civil Legal Aid—there is no statutory system in Ireland but in England there is a fairly elaborate scheme of Legal Aid and Advice.

(a) Legal Advice Scheme—any person with income of less than £9.50 per week after allowing deductions for dependants, can obtain for 12½p up to 1½ hours of advice from a participating solicitor on any legal problem. The solicitor can then claim £2 per ½ hour of advice, up to a maximum of 1½ hours, which is paid out of the Supplementary Benefits Fund of the Department of Social Security. This scheme is administered by the Law Society.

(b) Legal Aid Scheme—a person of limited means may have his lawyer's fees either paid in full or in part for bringing or defending almost any type of civil claim, but in practice about 85 per cent of legally-aided cases are for divorce or other matrimonial matters.

Again there is dissatisfaction in England with this system for varied reasons.

(i) The gap between legal advice and legal aid in a court case is too wide and is not plugged, e.g. there is no aid for non-litigious negotiations or for social welfare tribunal work.

(ii) Much legally-aided work is not remunerative for solicitors so that many of them are reluctant to accept many of the type of legally-aided cases which promise to be excessively time-consuming.

(iii) Greatest defect is that there are many people who would benefit by going to a solicitor but who do not do so because :

(a) of insufficient publicity for both the Legal Advice and Legal Aid Scheme;

(b) there are not enough solicitors in the required areas—in many areas there are no solicitors' offices and working people find difficulty in visiting solicitors' offices which are open only during working hours;

(c) reluctance to consult a solicitor because of their attitude to lawyers and the law generally as something to keep well clear of. The law merely conjures up visions for them of policemen and trouble;

(d) failure to recognise that legal remedies may be available e.g. a man gets a notice to quit, brings it to a housing authority or the man who gets notice from a hire purchase company to pay off arrears of payments on goods that may have been defective goes to a moneylender rather than a solicitor.

Conscious of these defects, the Law Society issued a Memorandum which was followed by Reports of the Society of Labour Lawyers and the Society of Conservative Lawyers, a second memorandum from the Law Society and then in 1970 a report of the Advisory Committee on the Better Provision of Legal Aid and Assistance which more or less agreed with the proposals of the Law Society's second memorandum.

Proposals for better provision of legal aid

These proposals were :

(1) £25 scheme which is now going through the machinery of legislation and is expected to be enacted shortly. Anyone whose means allow will be able to go to a solicitor on the panel and get legal advice and assistance by filling in a simple form regarding his means and where the means are above a certain level paying by instalments or otherwise a contribution towards the costs. Investigation regarding resources is done by the solicitor himself or his clerk. Short of actual litigation which would be dealt with under the Legal Aid Scheme and drawing of documents which would require prior approval the solicitor would do anything that was necessary costing up to £25. Prior approval would be necessary if the solicitor's costs would be over £25. This scheme would enable legal advice to be given more readily and with less red tape.

(2) Second proposal, which is intended to overcome the problems of inaccessibility of solicitors' offices and the failure to associate lawyers with poor peoples' problems, is the establishment of local legal centres with full-time salaried solicitors and secretarial staff. The Law Society would run these centres in conjunction with relevant local organisations and services.

In England in the 1940s, the Committee Report prior to the establishment of the present legal advice and aid scheme undrr 1949 legislation, recommended the establishment of a number of centres where legal advice would be given by solicitors employed whole or part-time for that purpose. This was never implemented and instead a legal advice scheme was introduced so that no alteration was made to the existing organisation and framework of the legal profession.

Establishment of local legal centres proposed

It is interesting that now nearly twenty-five years later, it is recommended in the recent reports referred to, to revert to the original proposals because of the problems and ineffectiveness of the present scheme.

The establishment of these local legal centres with salaried solicitors might be more economical and more effective in providing legal help for the less well-off sections of the community than the existing English scheme. If we are prepared and have done our homework and research properly we could bypass the faults of the English scheme when a civil legal aid scheme is initiated in Ireland. As a matter of interest I worked out that the cost of such a local legal centre which could continue to use voluntary help in preliminary interviewing would, if levied on the Local Authorities result in an increase of about 3p in the £ on the rates, based on the rate recently struck by Dun Laoire Corporation.

In 1970 Irish Jurist, Desmond Green, suggested that controlled experiments of such centres should be initiated to test the validity of the hypotheses as regards economy and efficiency in relation to Ireland. Nothing has since been done, in this regard.

I suggest the establishment of a sub-committee or working party of the Society of Young Solicitors to study the optional schemes of legal aid and advice which could be set up here and in particular the feasibility of local legal centres with salaried solicitors.

The Free Legal Aid Centres are in the process of expanding — a new Centre is being opened on Thursday, 9th December in Ballymun and we have been asked to open Centres in three other areas. However more Solicitors are needed for these new Centres and some more are required for the existing Centres.

At present the Centres and the night on which they open are:—

Ballyfermot: Wednesday night;
Rialto: Wednesday night;
Mountjoy Square: Wednesday night;
Molesworth Street: Tuesday night;
Crumlin: Friday night;
Ballymun: Thursday night.

If any Solicitors are interested in assisting the Organisation he should write stating his name, address and what Centre he would prefer, if possible, to be asked to attend.

Please write to: John Glackin, Chairman F.L.A.C., Ozanam House, Mountjoy Square, Dublin 1, or 10 Seafield Avenue, Clontarf, Dublin 3.

SOLICITORS' GOLFING SOCIETY

94, Merrion Square,
Dublin, 2.

OUTINGS 1972:

PRESIDENT'S PRIZE (James W. O'Donovan) Friday, 23rd June, 1972, at DELGANY GOLF CLUB.

CAPTAIN'S PRIZE (Thomas D. Shaw) Saturday, 30th September, 1972, at MULLINGAR.

H. N. ROBINSON, *Hon. Secretary.*

Ownership of Fences —The Conveyancer's Choice

by J. E. ADAMS, LL.B.

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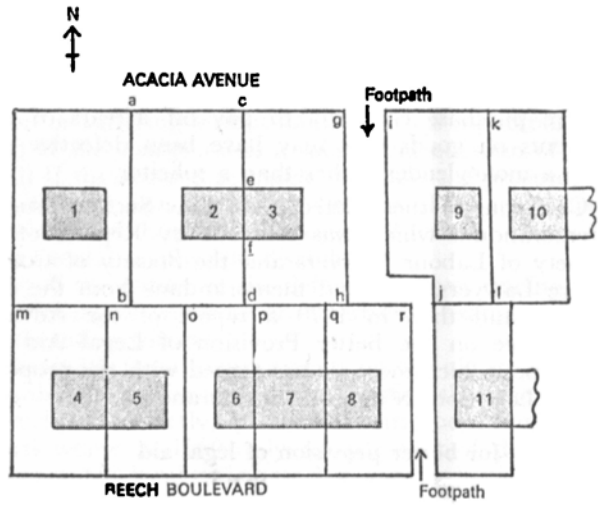
PART II

Minor objections to party-wall structure

Consistent with his conclusive preference for the party structure solution, the writer has always adopted it in the drafting of conveyances and transfers of new dwellings in many parts of the country. He has met mild opposition in some instances, largely based on the fact that it represented a departure from the more usual sole ownership usage in the area, and certain objections have been voiced to it. One such which is worthy of consideration is that such a regime may inhibit a purchaser's choice of fencing to his personal taste. Suppose, for example, that a 2 or 3 foot high post and wire fence is provided and expressly made a party structure, and a purchaser desires to replace all or part of it with a 7 foot 6 inches high interwoven fence. Now, say the critics, he is prevented from doing so by the party wall provision. In fact this is not so. If, for example, boundary a-b in the diagram is stated to be a party structure, and consists of the low fence just described, A and B, owners of houses 1 and 2, can agree to replace it with the high woven fence just described so that that becomes the party structure in shared ownership and subject to such repairing obligations and rights as affected the original structure. If, say, 1 objects (as with an increased maintenance burden he might well choose to do) then B just has to erect the structure within the confines of his own garden, setingt it far enough back to gain access to both sides for maintenance. However, that is no worse a position than will face him if, for example, he wishes to have such a high fence along boundary a-b and by "the luck of the draw" boundary a-b, under a sole ownership regime, belongs to house 1, not to his house. If A solely owns boundary a-b, moreover, he may be less willing to have it replaced by the higher structure than if a-b is party, so that B must bear his share of responsibility for the new fencing he is keen to erect.

Secondy, there are undoubtedly instances where one party has a much greater interest to be served by a boundary structure than another. For example, to revert once more to the diagram, if A the owner of the detached dwelling house 1 decides to sell off part of his large garden and it is on that land that houses 2 and 3 are to be built then he will possibly insist with some particularity on the nature, size and construction of a wall on the boundary a-b so as to protect and perpetuate his privacy. He may well insist on the purchaser building such a wall, ownership to vest in him (1) once it is built. This is undoubtedly a case where the wole ownership of a-b is determined other than by chance. Even so, in so far as a structure of such dimensions and construction as to provide privacy for A must *ipso facto* provide privacy for B the owner of house 2, the party-wall solution, given its proper framing to impose repairing obligations on both parties, in fact provides no less



satisfactory a solution to the privacy problem and retains the other advantages discussed above.

Thirdly, there are specific cases where the burden of ownership, with concomitant liability for collapse or of repair to prevent collapse, dictates a particular choice of sole ownership. This can be both a marked and a tricky problem where a wall is in any way a retaining wall. It is not suggested that a party structure solution would be ideal in these circumstances; indeed, what is urged is that it is a better device that the sole ownership on a random choice basis in the generality of cases where no special circumstances point to a considered and specific choice of sole ownership.

Drafting of party-wall clauses

Fencing covenants are positive covenants, of course, and hence not normally binding on successors in title of the original parties (for which unstartling proposition *Austerberry v Oldham Corporation* [(1885) 29 ChD 750] is an authority if one be really needed). Not the least advantage of the party structure provision is that repairing obligations in respect of such structures may be rendered enforceable against successors by reliance on the mutuality principle exemplified by *Halsall v Brizzell* ([1957] Ch 169) because each co-owner of the party structure enjoys rights against his co-owner so he must perform his obligations to that other. For a long time party structure clauses based upon the Encyclopaedia of Forms and Precedents model, that seemingly most often followed by solicitors [understandably, in view of the common editorship, the same wording is found in Kelly's *Draftsman*], provided that such and such a structure should be "a party structure and maintained and repaired accordingly". This attempt to

provide for mutually shared repairing obligations seems ineffective. Examination of Section 38, Law of Property Act, 1925 (on which reliance was placed by the editor of the Encyclopaedia) shows that the section creates mutual cross-easements of support; interference with an easement is a tort, of course, so the withdrawal by one co-owner of support of the other's half is actionable. Withdrawal, however, connotes a positive act, and allowing one half of a party structure to fall down is not such an act—see *Sacks v Jones* ([1925] Ch 235); the tort remedy punishes malfeasance not non-feasance. It follows that to maintain and repair a party wall "accordingly" is to measure a duty by reference to a standard which involves no repairing obligation. Mr. Powell-Smith in his *Law of Boundaries and Fences* asserts (at p. 120) that a clause for a party wall to be "repaired and maintained as such" implies mutual covenants to repair, again relying on Section 38 but again, it is submitted, erroneously. The writer has always preferred the formula that such-and-such structures shall be "party structures repaired and maintained at the equally shared expense of the respective party owners". This, it is suggested, imposes a positive obligation to repair which the earlier formula does not. "Respective" party-owners caters for the situation whereby, in respect of house 2 in the example used in this article, the owners of houses 1 and 2 share responsibility for wall a-b, those of 2 and 3 for c-e and f-d, those of 5 and 2 for b-o and those of 2 and 6 for o-d. Each owner can recover half of his costs of repair from the relevant co-owner, and has an obligation to contribute half appropriately; either can thus take the initiative in securing repair, another positive advantage over the sole ownership approach. Insurance companies meeting claims for repair of damaged boundary structures also seem to welcome a party structure basis—and indeed no-one would seemingly question that the internal wall e-f between houses 2 and 3 was in all respects truly a party structure as are the dividing walls between houses 6 and 7 and between 7 and 8. The clause suggested in this article was used, for the reasons given, in *Modern Conveyancing Precedents* (ed. by Parker) and variants to the same effect appeared much earlier in Key and Elphinstone and then in Hallet. Hallet does not accept the *Halsall v Brizzell* argument already cited in respect of party walls, suggesting that the "burden of the obligation to repair cannot be made in any simple way to run with the land" (p. 212) although he remarks elsewhere that "the extent and validity of this doctrine (i.e. *Halsall v Brizzell*) is not yet clear" (p. 360).

There should be added one note of caution and disclaimer. The writer has not dared herein to wrestle with the London Building Acts and all he says herein should be read subject to that legislation where it applies. Perhaps if there is a swing to the party-wall solution, the time will come to consider that code as at least a basis for a national code, but that possibility still seems somewhat distant.

Property damage between contract and completion

The following special condition is tentatively suggested: "The property is from the date hereof at the risk of the purchaser as regards all risks comprised in a normal householder's comprehensive policy." The weakness in this, especially now that the use of standard policy conditions have gone with the abolition of the tariff, is what is meant by "normal" and by "comprehensive". The discovery of some less uncertain but not too cumbersome phrase would be most welcome.

Landlord and Tenant (Amendment) Act 1971

This Act which contains important provisions relating to the law of landlord and tenant and affects the solicitors' profession particularly is not yet on sale. The Society were informed by letter from the Department of Justice dated May 3rd that the Act in bilingual form would be on sale through the usual channels within the following two months. This is obviously an unsatisfactory position and enquiries are being made from the Department as to the reason for the delay. Enquiries are also being made as to whether the text of the Bill as passed by both Houses can be obtained from the Government Publications Sales Office.

International Paper Sizes now available to Irish Solicitors

It is true to say that the legal procession is more involved with paper in many of its forms than most others, and yet is confronted with the most complex array of paper shapes and sizes. A solicitor will have in his office anything up to ten different paper sizes and will be forced to have supplies of not less than eight individual envelope sizes.

This requires a large part of his valuable office space for storage, and the tying up of a fair amount of capital in stationery stock. Even still he may find himself unable to find an suitable envelope in his stock to accommodate documents sent to him by another office.

This state of affairs is the result of many years of usage of unplanned and unrelated basic paper sizes, which have grown more numerous and confusing as the years went by. While the "imperial" sizes are founded in ancient and honourable practice, they were devised in a more leisurely and less time-conscious age, and must now give way to modern thinking.

Rationalisation

It is proposed to apply the new *International Paper Sizes* to the papers used in the legal profession. Rationalisation is the key word behind "I.P.S." This means simply, the use of a new range of paper sizes, from small to large, each based on a metric size, and related in logical proportion to the rest of the range. This means in practical terms that each size is exactly half the next larger size, and double the next smaller size.

In effect the change in the size of a large letterhead will be so little as to be hardly noticeable, and the most popular size of deed paper now known as quarto will remain almost unchanged. The old sizes of quarto, foolscap, demy, small brief and brief will disappear from use. What will be noticeable however will be that as all deeds, wills, letters, and court forms will be the same size, or can be folded to the same size, the unwieldy bundles of documents which now cause such accommodation problems in many offices will be capable of being placed in a normal filing system, and so enable storage and retrieval to be carried out in the shortest time, Eventually, in years to come, the title to a holding will be in a file bookwise in chronological order instead of a bundle tied with green or red tape. The only problem area is that of maps or plans attached to deeds but normally there should be no difficulty in keeping them within the required dimensions by appropriate instructions to the architect or surveyor.

Internationally used

If and when we join the rest of Europe, we will receive a great deal of paper work from the Continent, and of course send a great deal in return, and as I.P.S. is already in general use there, we must be ready to work in the size. The following countries now use I.P.S.: Germany, Belgium, Holland, Finland, Spain, Switzerland, Italy, Norway, Sweden, Austria, Denmark and Portugal. Documents in ill-assorted sizes, going to countries where I.P.S. is the accepted standard, would not be very welcome, and indeed would stand the greatest risk of being ignored or mislaid.

The Sizes

Do you look at an invoice which you have received from your stationery and wonder what on earth a ream of "Large Post 8v." really means? Probably. I.P.S. are simple to understand because they are standard and follow a logical sequence. It is therefore possible to order exactly what you want, and be sure you are going to get it.

The basic size in the system as it applies to the legal profession is called 'A4". This sheet measures 210 mm. by 297 mm. (8¼ ins. by 11¾ ins.), and is the size used for large letter headings, deed paper, and judicature. All court forms will eventually be printed in A4 size, and carbon paper, copy paper, etc., will also be this size.

To obtain a smaller size the sheet of A4 is simply halved (the two short edges being brought together), thus forming A5, measuring 210 mm. by 148 mm. (4⅛ ins by 5¾ ins.).

Envelopes

To match the A4 or A5 paper size there is a choice of five envelope sizes, *any one of which will take A4 or A5 paper.*

The envelopes are as follows:

Size C4—229 mm. by 324 mm. to take A4 unfolded;
Size C5—162 mm. by 229 mm. to take A4 folded once or A5.
Size C6—114 mm. by 162 mm. to take A4 folded in four or A5 folded once;
Size C5/6 (known as DL), to take A4 folded in three or A5 folded once.

Gradual Introduction

The introduction of I.P.S. will of course be a gradual process. Forms for example will be printed on the A4 size when they come up for reprinting. Deed paper and judicature are available right now from law stationers. The traditional sizes will remain available for some time, for those who wish to use them but will be withdrawn as time goes on.

New Format for Deep Paper

In conjunction with the new sizes a new style of deed paper has been devised. Instead of the traditional double inner sheet there is now available single sheet inners, ruled on both sides, which fit into the double outside sheets and are stitched in the usual way. The new deed in A4 only is available in standard goatskin quality, as well as a light weight for copies. the light weight quality is also very suitable for putting through photocopy machines.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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Contents

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EDITORIAL

Ending Commission Scale Fees

Solicitors' fees for conveying properties of less than £30,000 value have hitherto been set by a statutory body in England according to scales proportionate to the value of the property. This, it is alleged, has meant that in some cases at least solicitors have received for the work more than they would have received by any other reasonble method of computation. The profession has been able to claim that solicitors have been able to perform other services at less than cost, whether conveyances of low-value properties or legal work of another kind. The scale fees also have the advantage of being calculable in advance so that clients know where they are at least in that respect.

The Lord Chancellor has decided to do away with scale charges altogether, rather than keep them as maxima for properties of under £10,000 value as he first proposed. The English Law Society, though still disapproving of the change, prefers the way now chosen to any other way of setting about it. The preservation of maxima at the lower end of the scale would have been some reassurance for the person of small means buying a cheap house (if such a thing still exists). He may in future find himself paying more than he would have done under present scales; for it has long been the contention of the profession that scale fees did not cover costs in the case of low-value properties.

The Lord Chancellor is cautious about the effect of the change on the general expense of conveyancing. One is entitled to expect some relief at the top end of the scale, though it is worth noting that a vestigial reference to the amount at stake and the importance of the matter to the client survives among the things to which regard may be had in determining a "fair and reasonable" charge. The full effects of this reform are likely to take time to show, as the way is opened for competition in the profession and further specialisation.

It seems rather odd in the present climate of egalitarian philosophy that conveyancing should be made cheaper for clients involved in the luxury type of conveyancing and dearer for purchasers of small houses, as well as clients who at present rely on the profession for low cost advisory services. The introduction of similar proposals here would penalise the small client even more because of the lack of anything corresponding to the English Legal Aid and Service scheme.

THE SOCIETY

Proceedings of the Council

May 18th.

The President in the chair, also present Messrs. W. B. Allen, Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony E. Collins, Laurence Culle, Gerard M. Doyle, Gerald Hickey, Christopher Hogan, Nicholas S. Hughes, Thomas Jackson, John B. Jermyn, Francis Lanigan, Eunan McCarron, Patrick McEntee, B. A. McGrath, Patrick C. Moore, Senator J. J. Walsh, George A. Nolan, Patrick Noonan, Peter E. O'Connell, Rory O'Connor, Thomas V. O'Connor, William A. Osborne, Peter D. M. Prentice, Mrs Moya Quinlan Ralph J. Walker.

The following was among the business transacted.

Medical witnesses' expenses in the High Court

The Council received a report from a deputation which was received by the Taxing Masters on the subject of witnesses' expenses in the High Court. The deputation express the view that the Taxing Masters should allow the fee of 10 gns. claimed by medical practitioners who request it where this is genuinely necessary to obtain a report. Otherwise the client is penalised because he may be unable to start his action. The Taxing Masters undertook to consider the Society's representations but were naturally unable to commit themselves to any general practice in the matter. It was pointed out that cases in which a plaintiff is a minor the practice of allowing a reduced sum for medical expenses may cause particular hardship. It was pointed out by the Taxing Masters that in all such cases of minors, the Council should be instructed to apply immediately at the termination of a trial for extras such as medical reports and other items which may not be allowed between party and party and that a special direction should be given in regard to these matters in the order made up at the conclusion of the trial. The judges are likely to accede to such applications, where reasonable, if made before determination of the case but there is little chance of having extra items allowed on special applications after the main order has been made.

Accountants' certificates

A report from the Registrars Committee on the present position of accountants' certificates in arrear was considered and it was decided that a circular should be sent by the President to all members of the Society. The report also recommended for consideration the engagement by the Society on a wholetime basis of suitable persons to run an audit service for members who are unable to obtain accountants' certificates in time due to the fact that many accountants are already

under heavy pressure of work and the fact that accountancy services are not available in some parts of the country. It was decided that this matter should also be raised in the President's circular as a preliminary to discussing the matter with the Institute of Chartered Accountants.

Legal remuneration — applications for increases

It was reported that the Minister for Justice is willing to accede to an application for an increase in solicitors' remuneration under schedule 2 and on the costs in court proceedings and land registration costs less than the figure of 40% already recommended by the various committees. It was decided that the Society's representatives on the rule-making bodies be authorised to meet and negotiate with the officials of the Department of Justice and to agree upon an increase subject to approval by the various statutory bodies.

Costs of increased jurisdiction — Courts Act 1972

The Society's representatives on the statutory bodies were authorised to deal with this matter and to reach agreement on the costs of proceedings falling within the increased jurisdictions of the Circuit and District Courts.

Establishment of foreign consultancy office by Irish solicitor

The Council considered a proposal by a member who wished to form an unlimited company for the provision of an advisory legal service in a specialised field in co-operation with other experts in that field. The company would be formed in Ireland but would not carry on activities in the Republic although some of the persons advised might reside in the Republic. Its main function would be to give specialised advice in the particular sphere of law and practice to foreigners. It would not engage in any promotional or advertising activity. The Council took the view that the establishment of such an agency might result in the unfair attraction of business and accordingly decided to withhold approval.

Establishment of Building Society agencies in solicitors' offices

The Society received an application on behalf of a particular building society for the approval of a scheme for the appointment of solicitors in various towns to act as agents for the reception of deposits and other business for the building society concerned. It was decided that this matter should not be pursued until the matter had been discussed with the Building Societies Association.

Group purchase on behalf of tenants' association

Members were asked by a tenant purchasing association to act in the purchase of several hundred houses from a local authority at a reduced scale of costs. The Society drew attention to the reduced fee of 1½% applicable to such cases published at opinion C.18 page 207 of the Members' Handbook 1968 edition. The conveyance in this matter is carried out by way of vesting order and there is a common title. They submitted that a fee of 1½% would not be justified and would be open to serious criticism. They suggest that a fee of 3 gns. to 5 gns. which would be adequate when multiplied by the number of transactions involved. The Council on a report from a committee took the view that in the particular circumstances the fee of 1½% would not be justified and having regard to the nature of the work done as specified in the application a fee of 5 gns. to any solicitor acting in connection with this particular purchase should be authorised. The Council stated that the tenants' association should be so informed and advised that members of the association would be at liberty to consult solicitors of their own choice who would have the same freedom in fixing the amount of the fees — in other words the tenants would not be restricted in their choice of solicitor.

Income Tax Act 1967 Section 94

The Section provides that for the purpose of obtaining particulars of profits and gains the Inspector may by notice require . . .

(d) any person who as agent manages premises or is in receipt of rent or other payments arising from premises to furnish the Inspector with such particulars relating to payments arising therefrom as may be specified in the notice. Form 8/3 which is issued by the Revenue Commissioners under this section is a general notice requiring solicitors to furnish information regarding all premises in respect of which they collect rents. The Council on a report from a committee took the view that the requirements of form 8/3 are not authorised by Section 94(d) of the Act. This sub-section in the opinion of the Council authorises only a specific notice regarding a particular premises or owner. The Council however were of the opinion that if a notice complying with Section 94(d) is served reparding a particular premises a solicitor is obliged to comply with it. He should notify the client of the position.

Costs of compulsory purchase

Members acted for a client whose property was acquired for the sum of £39,000 by a County Council. Members submitted a bill for the commission scale fee but the County Council contended that the costs should be charged under schedule 2 Solicitors' Remuneration General Order 1884 as amended. It was pointed out that Rule 11 of the Solicitors' Remuneration General Order 1884 provided as follows:

> In the case of sales under the Land Clauses Consolidation Act or any other private or public Act under which the vendor's charges are paid by the purchaser the scales shall not apply.

This rules was rescinded by Rule 3 of the Solicitors' Remuneration General Order 1951 and this lends support to the argument that sales and purchasers under the Land Clauses Acts were no longer excluded from the commission scale fee. The Council on a report from a committee decided to advise member that the vendor is entitled to charge the commission scale fee.

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 mortagor where the negotiation for the mortgagee goes off through default of the latter. He must look to the purchaser 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, 8th Edition, page 518. The Council on a report from a committee expressed the view that the mortagees solicitor is not entitled to make any charge against the mortgagor and is not entitled to retain the documents.

Ordinary General Meeting –President's Speech

An Ordinary General Meeting was held in the Library, Solicitors Buildings, Four Courts, Dublin, on Thursday, the 18th May, 1972. The President took the chair at 2.30 p.m.

The notice convening the meeting was by permission taken as read. The Secretary read the minutes of the Annual Meeting held on the 24th November, 1971 which were confirmed and signed by the President.

The following members of the Society were unanimously appointed as the scrutineers of the ballot for the election of the Council for the year 1972-73—Messrs. A. J. McDonald, B. P. McCormack, T. Jackson, R. J. Tierney, L. and F. Brannigan.

The President then addressed the meeting as follows:

Ladies and Gentlemen,

European Community Law

Since our annual meeting last November, Ireland has taken the vital step of deciding to join the European Economic Community and whatever our priorities as a Nation are or ought to be, there can be no doubt but that the priority of our Society is to establish without delay the effect that membership of the Community will have on our domestic laws. Every Practitioner in this country in a few short months from now should be in a position to be able to advise his clients to what extent the laws and regulations already extant in the Community affect the problems on which he is consulted. The Society has already purchased or has on order the Common Market Law Reports 1963/71, the Common Market Law Review covering the same period, the Annual Reports from 1967 to date and other E.E.C. publications all of which will be of assistance to our members, and with these in our possession any Practitioner faced with a problem involving Community laws or regulations will, at least, have readily at his disposal in our own Library the means of acquiring the answer to his problem. Starting with this month's issue of the Society's Gazette we are running a series of articles dealing with various aspects of the E.E.C. with particular emphasis on the effect that membership will have on the practice of the ordinary Practitioner. In addition, the sub-committee dealing with this matter has suggested that it would be helpful if the Society were to provide a series of lectures—by persons competent to speak on the subject—on the problems we are likely to meet in our daily practice and the knowledge we should acquire to enable us to deal with them. Such a series of lectures might be given in the Autumn here in Dublin or in some other centre more convenient to our colleagues practising outside the capital. But we cannot afford to be complacent about this subject. At the moment, when a client consults us on a particular problem we either already know the answer or at least we know where to look for it, but few, if any, of us would be bold enough to claim that we know even where to start looking for the information needed to cope with some question involving Community laws or regulations. We are hoping that the special committee which the Government has set up will, before the end of the year, publish a list of the Statutes of our Oireachtas which will be affected by these Community laws and regulations. This, indeed, is essential, if we are not to be left groping blindly in a muddle of conflicting laws and regulations.

Meeting of Union Internationale des Avocats

While I am on the subject of the E.E.C., it may be well if I referred to a very interesting series of debates which under the auspices of the Union Internationale des Avocats took place recently in Portugal. The theme of these debates was the basis upon, the extent to, and the conditions under which a lawyer, properly qualified to practice law in one country, should be allowed to practice or establish a law office in another. In the great majority of cases, the right to engage in legal practice is not controlled by Law Societise or Bar Associations themselves but by National, State or even Provincial legislative bodies. It is thought that in the majority of cases the professional bodies concerned would be willing to secure an amendment of the Law in this respect on the grounds that such an amendment would be in the public interest. We, as members of the legal profession exist for the sole purpose of providing a legal service to the public. For centuries this service has been provided only within National boundaries or, indeed, in some cases, only within the Provincial area of a State or the jurisdictional boundaries of a particular Court. Tomorrow we are likely to be faced with an undoubted public demand for a wider legal service for which the contributory factors are ease of travel and communication, the redistribution of wealth, and the rapid and expanding development of transnational and inter-state business.

On-the-spot legal advice

We cannot ignore the fact that members of the public to-day are increasingly in need of on-the-spot legal advice and representation in a variety of matters, not only in commercial undertakings but also in the buying and selling of property and personal injury cases. In fact, our clients nowadays require legal services abroad as well as at home for all kinds of civil and criminal matters. It is natural for a member of the public to prefer to get these legal services from his own personal lawyer or at least from a fellow National who speaks his own language and who is accustomed to giving legal advice to his own Nationals, and the Conference in Portugal set itself the very interesting question: Is there not a case in the interest of the public for removing the total ban in most countries upon the right of the lawyer to practice law in another country or, at least, in liberalising the present restrictions?

The Portugal Conference

It is interesting to note that by a majority of 37 votes to 1 the Conference recommended that, subject to proper controls, a lawyer should be free to be consulted in a foreign country but, preferably, that he should advise only on his own native law and should, when necessary, obtain the assistance of a foreign lawyer to advise on any point of foreign law. The right to establish an office abroad either alone or in partnership with a local

lawyer—again subject to proper control—was passed by 24 votes to 14, and the right of the foreign lawyer to engage in contentious business and even to appear in Court—but only if the rules of the local Law Society so permitted—was passed by 34 votes to 3. But the conference was most insistent that bearing the public interest in mind, a foreign lawyer must be qualified to give the services he offers and conforms to the generally accepted standards of legal ethics and professional conduct operating in that other country.

These and other recommendations of the U.I.A. will be circulated by the International Bar Association to all Law Societies, and by us to our own Bar Associations. It would be a useful service for all of us to take a good hard look at these proposals and to examine them not in any self-interested way, but from the point of view of the public whose interest we are here to serve. Indeed, looking at these proposals from a purely selfish point of view, it occurs to me that it might be wiser for us to liberalise our existing rules and regulations while we still have time and before foreign lawyers establish themselves here under the protective facade of an office ostensibly run by one of our own members.

Duty of Lawyers to the Law

Speaking on the Duty of the Lawyer to the Law, Lord Goodman recently referred to the extraordinary picture we lawyers have of ourselves—as men of some learning, of tremendous integrity, of above-average intelligence rather like the Pharisees in the Gospels—and he contrasted this with the very unfavourable picture the public appears to have of us, most of it, in his opinion, largely due to our own fault. Are people slow to bring their troubles to us? Do they bring them just that little bit too late because of the fear we may unwittingly inspire in them? Do we talk down to our clients making them feel just that little bit inferior to the elite that they now have the honour to consult, or do we treat them as friends whose troubles we are glad to share? Do we talk to them in language they can understand or do we try to impress them with our knowledge that may be real or only imaginary? If the Rule of Law under which our Society operates is worthy of our allegiance and support; if no blue-print for an alternative system has so far been placed before us, and if we feel that the legal systems operating elsewhere is not to our liking, then it is up to us to ensure that what we treasure shall be brought up to date in every respect so as to meet the demands of our Community and that we who operate that system earn the Community's respect.

Keeping pace with modern conditions

A lawyer dying in the year 1872 and miraculously restored to life in 1972 could, without undue strain on his revived constitution, sit at the same desk as he sat at 100 years aga and cary on his legal practice more or less where he left off. Telephone, type-writer, dictaphones and other impedimenta of the twentieth century might cause him a certain amount of confusion for a time, but on the whole, he would experience little difficulty in recognizing the same pattern of conveyancing, probate and Court practice that he was used to carrying out a century ago. We are as essential to our clients to-day as he was in his day, but one is entitled to ask: Have we kept pace with the 20th century, or are we adhering to a mode of administering the law more suitable to a more leisurely age? What have we done in our time to speed-up the administration of justice or get rid of anachronistic formulae? Are we bringing the process of the law within the reach of every individual, or is the righting of wrongs still the privilege of the man of property?

Legal Aid

In this respect it is depressing to find the Minister for Justice saying in Dail Eireann recently that while free Civil Legal Aid is a worthy Social Service Scheme, there is little hope for its establishment in this country until the demands of more worthy welfare schemes have first been met out of the limited resources at the disposal of the Government. Ready access to legal advice is the right of every citizen if the Community's respect for the law is to be maintained. Traditionally, lawyers in this country have rarely failed to give of their services free to those who could not afford to take the necessary steps to have their wrongs put right, and the Free Legal Aid Centres established some years ago in Dublin and run by our senior students is a happy extension of that tradition. I was very glad to see a tribute paid to them recently by the Minister for Justice, but I am completely at a loss to understand what the Minister implied when he expressed the hope that the Incorporated Law Society would help in a more active and more official way than by just having a few individual solicitors helping out. These young students of ours in the period between April 1969 and July 1971 dealt with over 1,000 cases in the five centres they have established in Dublin, and when problems arose that necessitated expert legal advice—or where Court proceeding wree necessary—they were immediately able to call upon the services of those members of our Society who are on the panel to give them this expert advice or institute and carry-out the necessary Court proceedings entirely free of charge. In commending them for this work, the Minister went on to say that the Incorporated Law Society should officially give its blessing to this Organisation, and try to arrange—with our younger qualified members at least—that this type of service would be available throughout the whole country. Let there be no misunderstanding about the Society's attitude to this important matter. These young students and those members of our Society who so willlingly give their services free of charge to the poorer sections of the Community have been praised and thanked by my predecessors in office over the years for this exercise of theirs in the practice of Christian charity, and I most happily join with my predecessors in again thanking them for attempting to carry on, under severe handicaps, a service which is primarily the duty of the State to provide. A free civil legal aid service carried out on a Nation-wide basis and staffed by our newly-qualified Solicitors and our senior students is a first-class idea, but where is the vast amount of money that is needed for such a scheme to come from? The Minister has placed one room at the disposal of the existing organization in this very building, but cannot promise even an annual subvention for it until it is extended throughout the country. I trust that the Law Society is not being asked, through the generosity of its members and senior students, to provide a Nation-wide service for the State free of charge? In the latter half of this century there has been an extraordinary awakening of the social conscience of our people and what was heretofore given as a sop to the poor, has come to be regarded as one of their inherent rights. As lawyers, we should be quick to read the signs and urge for the implementation of what we regard as the just and proper demands of the Society we live in. Who can now deny that the poorer sections of our growing urban communities need free

civil legal aid, and because we recognise the justice of that demand, we must continue to press the State to provide it.

Costs of loans on new houses

All too frequently, our Profession attracts adverse criticism because of the costs involved in buying a new house and securing a loan thereon—particularly when young people are setting-up home for the first time. The most recent article in one of our Sunday newspapers suggested that those costs—so far as the newly-weds are concerned—constitute for them the last-straw. To us it is both just and reasonable that anybody buying a new house and securing a loan for its purchase-price, should not have to pay any other solicitor's costs but his own. What people, however, do not realize is that as the law stands at present, the builder as owner of the ground on which the house is built is entitled to have his solicitor's costs for furnishing title paid by the man who buys the house. In addition, the lending body that grants the loan is entitled to have its costs paid out by the same man. The Law Society has recommended that both these impositions should be removed, that the Lessor or Builder should pay his own solicitor for the cost of furnishing title and that the lending body should pay its own solicitor for the work involved in the mortgage. Neither those who grant leases nor those who lend money may be pleased with these recommendations of ours, but until legislation is introduced giving effect to these recommendations, the Society's hands are tied, and the public and the press should appreciate this. We are pleased to note that the Minister for Justice has intimated his intention of introducing legislation making it obligatory on Building Societies to bear their own solicitors' costs. Our recommendations go still wider and if we can persuade the Minister to adopt our suggestions, the cause of all this adverse criticism should disappear.

Prices (Amendment) Bill

Despite all the pressure which we brought to bear upon the Government in relation to the Prices (Amendment) Act, it now seems certain that the Bill will go through unaltered in so far as Executive control over solicitors' remuneration is concerned. The fact that all other professions will be similarly controlled is of little consolation to us if we are right in our contention that Executive control over our costs constitutes a significant curtailment of the independence of our profession resulting in a vital safeguard of the independence of the ordinary citizen being curtailed with it. It is assumed that the Minister for Industry and Commerce will exercise the right conferred on him under Sec. 6 (i) of the Act to delegate his powers to the Minister for Justice. In an interview which we had recently with the Minister, he expressed the view that the present system of legal remuneration favours the solicitor dealing with substantial transactions in conveyancing and administration matters or in High Court actions, leaving those practising in the lowers Courts relatively underpaid. In a profession such as ours there will always be the need for cross-subsidisation until the State agrees to subsidise what was always the unremunerative side of our work, but that day, I fear, is still very far away. If however, the fees of doctors, dentists, engineers, architects and surveyors, auditors and accountants will be subjected to similar investigation and control under this Act, it will be interesting to see how the remuneration fixed for us compares with that fixed for these other professions, particularly when it is now generally conceded that the average annual income of a solicitors falls far below most, if not all, of these other professions.

The Central Costs Committee

The Advisory Body or Committee that will make its recommendations under this Act on our remuneration to the Minister will not, we are assured, be the existing National Prices Advisory Committee, but a Central Costs Committee to be specially appointed by him. In previous discussions, we got the impression that the Minister had in mind a Committee consisting of Members of the Judiciary, the legal profession, one or two chartered accountants and one or two responsible members of the public, but at our most recent interview, he appeared to think it reasonable that it should also embrace a member of his own Department. For the Minister to have the last word on the findings of this Committee and at the same time to have a member of his own Department sitting in on its deliberations seems grossly unfair, and we had no hesitation in telling him so as diplomatically as we could.

One further aspect of this Bill is still causing us concern. As drafted, there is no provision for making any application for an increase in our costs, once the Minister fixes them, because no Statutory Body or Committee can now function without his consent. We pointed out to the Minister that it would be most unjust if, on being turned down by him for an increase in costs in future years, we were to have no opportunity of having the position examined even by his own Central Costs Committee, but the Minister said that, as the Bill was not his, the matter was one that might be taken up by us wih the Minister for Industry and Commerce. As a result, we now find ourselves seeking a further interview and can only hope that we shall eventually succeed in rectifying this very important matter.

Increase of 20% in costs

I am glad to have one small piece of good news for you, viz., that the Minister has indicated his willingness to grant us an increase of 20% on our Schedule 2 costs. instead of the 42% we asked for, with a similar increase in High Court, Circuit and District Courts costs, subject to certain adjustments in the latter two, having regard to the increased jurisdiction. These adjustments will be carried out after agreement on figures has been reached between the Department's and the Society's representatives. And that, I hope, will be within the next few weeks.

I am sorry to have wasted so much of your time on such a pedestrian matter as solicitors' remuneration, but until our anxieties in this connection are resolved, thoughts on the higher things with which the Society should be concerning itsef will, I fear, have to be left over to another day.

Messrs. T. O. McLoughlin and John Buckley spoke on matters arising on the President's statement. The proceedings then terminated.

Admission Ceremony –President's Speech

The President of the Society, **Mr. O'Donovan,** in presenting parchments to newly-admitted solicitors on 1st June 1972 in the Library of Solicitors Buildings, said :

This is a very great occasion for all concerned both for those who have been recently qualified and for their parents and friends and on behalf of the Council of the Law Society and on my own behalf as President I bid you a very warm welcome to this ceremony. There are no less than forty-one students to be admitted to practice this afternoon and I would like to congratulate each one of you on your entry into this honourable profession. Despite adverse criticism that may sometimes be levelled against it this profession ranks high in public esteem because it is now recognised that our profession has been and will continue to be the only bulwark between the ordinary citizen and the encroachment on that citizen's rights and liberties by both an acquisitive State and still more acquisitive public authorities.

In my address to the Law Society a fortnight ago I said that the first priority of our Society as a result of our recent decision to enter the European Economic Community was to establish without delay the effect that membership of that Community would have on our own domestic laws and that we had a duty to ensure that on January 1st next we were equipped to deal with any problem that might be posed to us by a client involving community laws or regulations. The Society has already acquired the Common Market Law Reports 1963-71, the Common Market Law Review covering the same period and other E.E.C. publications and I suggest that in the coming months you might devote some few hours of your time to browsing among these volumes and to getting to know something about these community laws and regulations. Don't have any doubt about it : these community laws and regulations can and will penetrate into our national system and it is abundantly clear to me that Community law will have to become part and parcel of the stock and trade of all lawyers practising within the Community. I foresee the day in the not too distant future when many of you here will be found practising in France, Germany and Italy while your counterparts in those countries will be practising here. For that reason may I suggest that if you already have not got fluent French, German and Italian at your command then you take steps at once to make yourself fluent in one of these languages before your ability to learn easily becomes atrophied by age.

Presentation of Parchments

Parchments were then delivered to :

Geraldine Bonner, B.C.L., N.U.I., Moville, Co. Donegal; Thomas J. Brooks, Baldwin St., Mitchelstown, Co. Cork; Margaret Burke-Staunton, Ballinrobe, Co. Mayo; John P. Carty, B.C.L., N.U.I., 59 Whitworth Road, Dublin 9; Joseph G. M. Chambers, Ennistymon, Co. Clare; Michael Collier, B.C.L., LL.B., N.U.I., 3 St. Catherine's Terrace, Sutton, Co. Dublin; Brendan Comiskey, B.C.L., 3 The Terrace, Tubbercurry, Co. Sligo; Anthony J. Connolly, B.A., N.U.I., 38 Glen Abbey Rd., Mount Merrion, Co. Dublin; Carolyn M. Cruise, B.C.L., N.U.I., Dalgan, Howth Road, Sutton, Co. Dublin; Helen J. Cullen, 5 Castlepark Road, Glastule, Co. Dublin; Desmond G. Deeney, Sharon, North Circular Road, Limerick; Austin Dunne, B.A., 203 Woodfarm Acres, Palmerstown, Co. Dublin; Frederick A. C. Jackson, M.A., Rockville House, Glenamuck Rd., Kilternan, Co. Dublin; Brian O'Brien Kenney, B.C.L., 126 Landscape Park, Churchtown, Dublin 14.

Robert M. D. Lee, "Ardrivale", Kilmallock, Co. Limerick; Liam T. Lysaght, B.C.L., "Cherryville", Monasterevin, Co. Kildare; Noel G. Maher, Milltown House, Goolds Cross, Tipperary; Patrick T. Moran, Curradrish, Castlebar, Co. Mayo; Dermot H. Morris, B.A., 3 Carrickbrack Lawn, Sutton, Co. Dublin; John Morrissey, B.C.L., 94 Stillorgan Grove, Blackrock, Co. Dublin; John N. Murphy, B.C.L., N.U.I., 77 Merrion Square, Dublin 2; Jacqueline Murray, 191 Woodview Park, Limerick; Roderick F. McCarthy, 11 St. Thomas' Mead, Mount Merrion, Co. Dublin; Paul T. P. McCormack, 3 Bushy Park Road, Rathgar, Dublin 6; Sean E. McDonnell, 47 Upper Cross Road, Rialto, Dublin 8; Aidan McNulty, B.C.L., N.U.I., Ballery Road, Longford; Thomas D. O'Meara, B.C.L., N.U.I., Patrick St., Cork; Michael Owens, B.C.L., N.U.I., Dunlavin, Co. Wicklow.

James D. Pierse, B.A., 33 Villiers Road, Rathgar, Dublin 6; Stanhope P. Polden, 2 Ferrard Road, Terenure, Dublin 6; Kieran A. C. Pyne, 2 Cuala Grove, Bray, Co. Wicklow; Justin Sadleir, B.C.L., LL.B., N.U.I., 15 Beechmount Drive, Clonskea, Dublin 14; **Laurence K. Shields, B.C.L., 9 Woodbine Road, Blackrock, Co. Dublin (Special Certificate);** Leonard F. Silke, B.A., B.Comm., N.U.I., William Street West, Galway; David A. Tarrant, B.C.L., St. Mary's Terrace, Arklow, Co. Wicklow; Reginald I. V. Timon, B.C.L., N.U.I., Dun Riada, Athlone, Co. Westmeath; Brian Wallace, B.C.L., N.U.I., 123 Tyrconnel Road, Inchicore, Dublin 8; David A. Walsh, "Imaal", St. Thomas Road, Mount Merrion, Co. Dublin; Francis O. Ward, B.C.L., N.U.I., 144 Stillorgan Road, Co. Dublin; Alan Woods, B.A., 84 Malahide Road, Dublin 3; George C. Wright, 17 Market Street, Monaghan.

Officials of Local Authorities and Land Registry Work

Members have raised the question of the lodgment of vesting orders by local authority officials in the Land Registry under Section 90 of the Housing Act, 1966. Section 58 of the Solicitors Act, 1954, applies to the drawing or preparation of a document relating to real or personal estate or any legal proceedings and the making of an application or the lodgment of the document for registration under the Registration of Title Act. An unqualified person who does such an act is liable to a penalty. An act done by a public officer in the course of his duty is exempted from the provisions of the section. It has been held in England (*Beeston and Stapleford Urban District Council v Smith*) that the term "public officer" in the corresponding Section 43 (3) (a) of the English Solicitors Act, 1932, was limited to an officer paid out of central funds and did not extend to an officer of a local authority. In *Pacey v Atkinson* (1950 1 KB 539) it was held that a rent and debt collector not legally qualified who was employed on a commission basis by landlords and creditors to collect money due to them and who brought proceedings in the County Court without any specific fee other than his general commission was in breach of the statute.

In *Plunkett v O'Dwyer* reported in the Society's *Gazette*, July 1951, page 22, a decision of Circuit Judge Barra O Briain at Limerick, it was held that an auctioneer who drew a tenancy agreement, receiving no specific fee other than his general commission for making the letting acted contrary to Section 3 of the Conveyancers (Ireland) Act, 1864, as acting for or in expectation of fee, gain or reward.

On the basis of these decisions it would appear that where an official of a local authority paid by salary does work which is prohibited by Section 58 he acts for or in expectation of fee, gain or reward if the preparation of the document is part of the duties assigned to him.

The Council decided that in any case which is brought to their attention or where the lodgment of such documents in the Land Registry is carried out without a solicitor letters should be written to the local authorities concerned. Secretaries of Bar Associations and members of the Society are asked to bring to the attention of the Society any instances of the kind of which they are aware.

Home-Made Wills

The Justice Report on Home-Made Wills (published by Charles Knight and Co., and obtainable from Justice, 12 Crane Court, Fleet Street, EC4, price 20p), contains an interesting discussion of the problems which arise where wills are made without legal advice.

About a quarter of all wills admitted to probate are home-made. The number which are wholly invalid for want of due execution seems very small. The Report estimates the failure rate of home-made wills at about one in 500. The problems, therefore, lie more in defective or incomplete drafting than in total invalidity. It is difficult to know what proportion of home-made wills are seriously defective, but the general impression is that they quite often cause difficulty. The Report mentions most of the commoner defects, such as alterations made after execution, gifts to witnesses, failure to dispose of residue and various other ineffective dispositions, whether caused by inherent inaccuracy or ambiguity or by falling foul of rules of construction. Another matter which the Report mentions is undue influence, and it alleges that this is a fairly serious problem, particularly among elderly people, and is commoner in the case of home made wills than where the will is drafted by a solicitor.

The Report suggests that the only comprehensive solution to the problem of home-made wills is to forbid them. It seems odd to call this a solution, but, however that may be, the Report rightly rejects it, both because it is politically unaceptable and on the principle that a man should be free to draft his own will just as he can do his own conveyancing or argue his own case in Court. However, the Report then toys with the almost equally restrictive idea of requiring all wills to be witnessed by the English equivalent of a notary. The suggestion is that the notarial witnessing of wills could be carried out by Commissioners for Oaths and special 'Wills Officers' attached to registries of births, deaths and marriages, who would not advise about the will but would, by witnessing it, 'certify that it was in order and capable of execution'. After discussing some obvious objections to this proposal, such as the difficulty of executing wills in emergencies and the confusion it would cause in the public mind, the Report shrinks from recommending its immediate introduction on a compulsory basis and suggests instead that it should be introduced as an optional alternative method of executings wills for a trial period, with a view to its eventual introduction on a compulsory basis if the experiment proves successful. The avowed object of the proposal is indirectly to lead testators to take legal advice before executing their wills, with the subsidiary objects of avoiding problems of formal invalidity and providing a more effective barrier against undue influence.

We have considerable doubts about this proposal. In the first place, even if compulsory notarial attentation would achieve all these objects (which we greatly doubt —the immediate result of it would surely be a large increase in the number of totally invalid wills), little purpose would be served by its introduction as an optional alternative. This would not be comparable at all with a compulsory requirement and if it were introduced for a trial period it is not clear what exactly

would be on trial. How in practice could the working of an optional scheme prove or disprove the case for making it compulsory? All that it could possibly achieve would be to familiarise the public to some extent with the practice of notarial attestation of wills, but in all likelihood this would only be true of those who consult solicitors about their wills in any case.

Whether the scheme is optional or compulsory, it also seems unsatisfactory in principle to seek to steer testators towards solicitors in this way. Direct encouragement of testators to take legal advice about their wills is all to the good, but is it right to do so by exerting this sort of indirect presure? We would also foresee that it could raise awkward questions about the solicitor/commissioner asked to witness a home-made will. It seems plain that, if he were asked to exercise a purely notarial function, he should not strictly be concerned with the contents of the will apart from matters affecting its due execution. But the Report seems to suggest that he would in some way certify that it was in order, and it seems to be an unspoken assumption that as a result of the proposal not only might the testator decide to ask the commissioner to advise on a solicitor and client basis but also, possibly, that the commissioner might feel obliged, without being asked, to point out any glaring defects in the draftsmanship of a will he is asked to witness, and clearly in some cases he might well find it hard not to do so. We seriously doubt whether it would be right to put a solicitor in this invidious position and the Report does not really dispose of this problem adequately.

The Report does not recommend any other change in the rules on attestation but suggests that the rule invalidating gifts to a witness is unreasonably rigid. It proposes that small gifts up to a certain limit should be exempted from this altogether and that above the limit there should be a rebuttable presumption of undue influence, with a procedure for decision as to validity to be obtained on a summons before the registrar. There is perhaps something to be said for exempting small gifts from the rule altogether but otherwise this proposal seems calculated to encourage litigation.

We are inclined to think that solutions to the problem of home-made wills are more likely to lie in other directions, such as (i) greater direct publicity for the advantages of having a will drawn up by a solicitor (a service which even the most prejudiced must admit is good value for money), (iii) possible reforms of the law on interpretation of wills which, as the Report mentions, is being considered by the Lord Chancellor's Law Reform Committee, who will no doubt be making recommendations on the matter shortly, and (iii) various other reforms of the general law where it unreasonably defeats a testator's intentions, for example by imposing a strict settlement under the Settled Land Act 1925.

(Gazette of the Law Society, England).

Theological Association Report on the Constitution

It might be thought that a Report submitted to the Theological Association about proposed changes in the Irish Constitution would be ultra conservative. This is however far from being the case. On the contrary, in order apparently to please the non-Christian Community who form less than 1% of the population of the Republic, this Report suggested that the wording of the preamble should be secularised, and all mention of the Holy Trinity eliminated. While the views of important Christian denominations should be taken into account in framing a Constitution, ultimately suitable for all Ireland, it is very difficult to see why a tiny minority should be placated.

Once some facilities for divorce had been granted in Italy, it was easy to forecast similar demands would be made here. But there is little doubt that if the demand for full divorce were submitted to a popular referendum, it would more than likely be rejected. It has already been pointed out that, if there were a demand for easier facilities to optain contraceptive pills, this could be met by amending legislation.

An all-party Committee of politicians (including a few Lawyers) has been formed to allegedly reform the Constitution with a view to its being acceptable to a majority of the people of Ireland. There is a grave danger that these politicians may well produce the text of a brand new Constitution, which would not have been submitted to the prior scrutiny of Constitutional Lawyers rather than going to the trouble of submitting many amendments to the present Constitution which would have to be voted upon separately in a Referendum. We lawyers must not allow politicians to hoodwink us into believing that our fundamental rights will be protected in a future Constitution as much as they are in the present Constitution. In particular we must ceaselessly safeguard the notion that the Courts are the guardians of the Constitution who will be the bulwark for the protection of the individual against the ever growing power of the State.

Corporation Undertakings

It must have been something of a surprise to the Liverpool corporation and no doubt will come as a similar surprise to other city councils, to find that the Court of Appeal has taken the view that undertakings by the council which are not legally binding may, nevertheless, be regarded by the court as having some legal effect. (*R.* v. *Liverpool Corporation* (1972) *The Times*, February 15, 1972.)

The circumstances in which this point arose were in relation to the corporation's statutory function to licence taxicabs. Since 1948, the corporation had limited the number of cabs to 300. After proposals to increase the number had been considered, the full city council on August 4, 1971, heard an undertaking delivered by the chairman of the relevant committee to the effect that no addition to the figure of 300 would be made until legislation designed to control private hire cars was passed. It was contemplated that it would be done in time to take effect early in 1973. The undertaking was confirmed in writing by the town clerk.

However, the corporation then decided to issue further licences prior to the council affirming on December 22, 1971, the committee's decision. The consequence of this was, of course, that the undertaking had not been complied with.

The corporation had not, it seemed, forgotten about the undertaking but had assumed that it was not binding upon them. In that assumption, they were correct since it is not possible for a local authority to make a legal binding arrangement which has the effect of fettering its statutory discretion in a way inconsistent with the objects of the Act.

It might seem, therefore, that if the undertaking was not binding on the corporation, they could ignore it if they so chose. The Court of Appeal did not think so. Having regard to the earlier practice of the corporation in having consultations with the Liverpool Taxi Operators' Association and the Liverpool Taxi Owners' Association, the Master of the Rolls, Lord Denning, said that the corporation should not depart from the undertaking they had given unless they gave the associations an opportunity to put their point of view. Accordingly orders of prohibition were issued to prevent the corporation from acting under the resolution to increase the number of taxi licences.

This case has far reaching implications. It comes close to establishing in England what the Americans call "due process", *i.e.*, that procedures can be challenged merely because they are not sufficiently fair. Lord Denning himself used the phrase "as a matter of fair dealing" as a reason for refusing to allow the corporation to proceed with their intentions.

The Courts have recently adopted an approach to administrative matters such as the issuing of licences which suggest that where action might result in a loss or reduction of the means of livelihood, the person affected could claim to have a right of hearing. The Court of Appeal held that the owners were so affected, and were therefore entitled to the court's protection.

Justice of the Peace, March 25, 1971.

UNREPORTED IRISH CASES

Firm loses claim for damages

An action by Irish Paper Sacks Ltd., Ballymount Road, Dublin, against John Sisk and Son (Dublin) Ltd, Wilton Works, Naas Road, Dublin, for £1,183 damages arising from the closure of a paper sack factory because of a break in an underground cable supplying power to the factory was dismissed by the President of the High Court, Mr. Justice O'Keeffe.

It had been alleged by the plaintiffs that Messrs. Sisk damaged the cable when laying a concrete access road to the industrial site at Ballymount Road. The factory was left without power for 40 hours from about 3.10 p.m. on November 23, 1970, to 7.25 a.m. on November 25, and it had to close down. They listed their loss as £270 for labour, £650 for overheads and £263 profit.

The **President,** in his reserved judgment, said that the principle to be derived from the authorties put forward by the defence was that the plantiff, suing for damages, suffered as a result of an act of omission of the defendant, could not recover as the act of omission did not directly injure the plaintiff's person or property, but merely caused consequential loss. The plaintiff had failed to establish that the injury to the cable had been caused by any act of the defendant and on this ground the defendant was entitled to succeed.

Jouralist and editor fined for contempt of court
Words likely to prejudice trial

A fine of £100 was imposed in the High Court in Dublin on Proinsias MacAonghusa, journalist and broadcaster, and fines of £50 each were imposed on Hibernia National Review Ltd and John Mulcahy, editor of *Hibernia*, for contempt of court.

They had been brought before the court on a conditional order for attachment applied for by the Attorney General in relation to an article published in *Hibernia* and written by Mr. MacAonghusa in the issue dated April 2nd-16th, 1971, concerning the custody of Patrick Francis Keane in Mountjoy Prison.

Mr. Justice Pringle discharged conditional orders of attachment against all three in relation to another article by Mr. MacAonghusa in *Hibernia* in the issue of March 5th-18th, 1971, regarding the theft of guns from Drogheda Garda Station.

In his article in the magazine on April 2nd-16th, Mr. MacAonghusa wrote: "Frank Keane is a political prisoner. But even if he were a criminal prisoner it would be outrageous that he should be tortured. So far, not one T.D. has queried the Minister for Justice in the Dail about this."

Mr. Justice Pringle, in his reserved judgment, said: "After the most careful consideration, I have come to the conclusion that the statement that Keane was a political prisoner not only tended but was likely, in fact, to prejudice a juror or the public as to the nature of the proceedings."

Conditions of detention already widely publicised

He said that in regard to the penalty to be imposed he considered the nature of the periodical in which the article appeared and the fact that the purpose of the article was to call attention to and protest against the conditions under which Keane was being detained pending trial. This had already been widely publicised in the daily papers and protested against publicly by a number of prominent citizens without any effect.

Mr. Justice Pringle added: "I also take into account the fact that neither Mr. Mulcahy nor Mr. MacAonghus had any intention of interfering with the trial, and, in regard to Mr. Mulcahy, that he had stated that he would greatly regret if any action on his part were to have any such effect, and that his counsel had stated that, if he were held to have been in contempt, he apologised to the court."

He said the order of the court would be that the cause shown would be disallowed and the conditional order made absolute. And he imposed the fines in lieu of orders for attachment. In default of payment of the fines within one month, orders for attachment would be issued.

Earlier in his judgment, Mr. Justice Pringle said in regard to the contempt of court issue, he must ask himself whether the article would tend or be calculated to affect the mind of a juryman who had read this article and who was then empanelled to try Francis Keane.

Statement declaring accused a political prisoner deemed contempt

In regard to the allegations of torture, he thought he must take into account that such a juror might well have already read the statements in the daily papers on the allegations made by Mr. Seamus Sorohan, S.C., in the District Court, and that the juror might, therefore, have some sympathy for the accused man.

"I am inclined to think that any extra sympathy which might be engendered by reading the references in this article to torture would not be sufficient to constitute such an interference with the course of justice as to amount to contempt of court.

"In regard, however, to the statement that Keane was a political prisoner, I am satisfied that this statement made by a responsible and well-known journalist who held himself out as knowing the facts would not only tend to prejudice a potential juror either in favour of the accused or against him, according to the political views of the juror, but would also tend to mislead him as to the nature of the trial."

In his opinion this statement tended or was calculated to interfere with the course of justice and was a contempt of court.

In a second judgment, Mr. Justice Pringle dealt with the application to make absolute orders of attachment relating to the article dealing with the theft of guns from Drogheda Garda Station.

Accused states he was beaten up at instigation of Special Branch

In the course of the article complained of by the Attorney General, Mr. MacAonghusa wrote: "Donnchadh Mac Raghnaill the Drogheda school teacher, was beaten up at the instigation of Special Branch detectives. The detectives hoped that Mr. Mac Raghnaill would be terrified into telling his assailants the location

of the guns recently stolen from a Drogheda police station. South Louth policemen are desperate to recover these weapons in order to show their efficiency and satisfy their superiors who are more than somewhat upset at their carelessness. They believe the I.R.A. stole the guns which, incidentally, include a magnificent Israeli-made machine gun. They are wrong. An ordinary thief came upon them by chance and stole them. He approached the I.R.A. and made a financial deal with them.

"Following the theft, Mr. Mac Raghnaill was taken into custody and held for about 12 hours. He knew nothing and was let go. Since this, Special Branch men have gone to extreme and very strange lengths to get the guns. In places as far apart as Cork and Monaghan they approached relatives of known volunteers and made a curious offer; give the stolen guns back and we will give you other guns in exchange, plus £200 for your trouble and no questions will be asked.

"This offer brought no results. It was then that the arrangement was made with a certain gang, members of which already have a working understanding with certain policemen on both sides of the Border. This is gangsterism of the 1920s Chicago variety. It must not be allowed to continue."

Mr. Justice Pringle said there were two distinct questions for decision: (1) was there any contempt? and (2) if there was, was it such contempt as would require or justify the court in making an order against the respondent?

On the first question, the judge said he must look at the article in the light of the circumstances which existed at the time of its publication. The trials of three men, Maguire, Fleming and Flynn, were pending. It was not known whether or not they, or any of them, were to be tried by Justice or by a jury. What would be the likely effects of having read the article on a juror empannelled to try any of these three men, asked Mr. Justice Pringle.

Contempt to implicate untried thief

The judge said he thought the main impression left in the mind of a reader would be that the article was directed against the Special Branch detectives who were stated, among other things, to have instigated the beating up of Mr. Mac Raghnaill and to have offered other guns and money for the stolen guns.

But such a juror would also read the categorical statement that the person who stole the guns was an ordinary thief who came upon them by chance and then approached the I.R.A. and made a financial deal with them.

"I consider that these statements by a writer who held himself out as knowing the facts in regard to the stealing of the guns, would tend or be calculated to prejudice the fair trial of Maguire and they thus, in my opinion, constituted a contempt of court.'

Article deemed contempt because it would influence jurors

He said that similarly the statements in the article that the beating of Mr. Mac Raghnaill was carried out at the instigation of Special Branch detectives by members of a gang which had a working understanding with certain policemen on both sides of the Border, and that this was gangsterism of the 1920s Chicago variety, would tend to be calculated to influence a juror who had read the article and who was called upon to try Fleming and Flynn and to prejudice the trial in their favour.

In his opinion the article did constitute a contempt of court and he then had to consider whether this contempt was of such a nature as would require or justify the court in making an order against the company, the editor, or the writer.

Contempt not deemed serious

"I have come to the conclusion that the publication was not likely as a matter of fact to have created any prejudice to the trials and that therefore, the contempt in this case was not of such a serious nature as to call for the intervention of the court. I will, therefore, allow the cause shown and discharge the conditional order."

In the case in which he found for the Attorney General, Pringle J. allowed him one-third of the total costs against all three respondents. In the second case he made no order as to costs, where the respondents abide their own costs.

He allowed the respondents a stay of execution of one month in the event of an appeal.

Minister loses action about landing fees.

Te Minister for Transport and Power has failed in his action against Trans World Airlines Inc. in which he had claimed £19,974 in landing fees.

The President of the High Court (Mr. Justice O'Keeffe) in a reserved judgment delivered yesterday, dismissed the action and awarded costs to T.W.A. On the application of Mr. V. Landy, S.C. (for the Minister), he granted a stay of execution.

The Minister had claimed that the amount sought was due in respect of increases in landing fees of 27½ per cent since April 1969. The company, in its defence, admitted having agreed to a 7½ per cent increase, but it contested the authority of the Minister to impose the other 20 per cent increase.

When the case was opened last month it was stated that it was a test case against T.W.A. and that other major airlines were defendants in similar proceedings which were pending.

Rights to recover fees not proved

In his judgment yesterday, the President reviewed the arguments put forward, but said he did not feel it necessary to review the evidence. He said he considered that the Minister had not shown that he had any rights to recover the landing fees claimed in this action and that the action should be dismissed.

In his judgment, Mr. Justice O'Keeffe stated that counsel for the Minister had submitted that as the Minister was entitled by virtue of Section 37 of the Air Navigation and Transport Act, 1936, to establish and maintain aerodromes, he must necessarily be entitled to impose a charge on those who used them in respect of the use of the aerodromes. It was for the Minister to determine the amount of the charge he would make, with the possible restriction that the charge must be reasonable in relation to the expenses incurred by the Minister.

If Section 37 of the Act authorised the Minister to make charges in respect of the use of the aerodromes, he could find nothing in it to limit the amount of such charges to what was reasonable. The plaintiff's contention was in effect that the section authorised the Minister for Transport and Power to carry on the business of aerodrome proprietors. It must be understood that the plaintiff was a corporation sole head of

a Department of State, to which was assigned the administration and business of the public service of the State in relation to specific matters. He was not essentially a trading corporation.

The section did not specifically give any right to engage in the business of aerodrome operator but merely a rignt to establish and maintain aerodromes.

Thorough search of similar legislation

The President continued: "I made a fairly thorough search through other legislation in an attempt to find a similar provision which has been read as conferring on a Minister of State an implied power to charge for the services provided by him and I have failed to find any."

During the course of his search it occurred to him that Ministers of State did carry on certain activities of a public nature and made charges in respect of them. For example, the Minister for Posts and Telegraphs carried on the business of the Post Office and also telegraphic and telephonic communication. It appeared that the Minister had a statutory monopoly in these businesses and that the charges were fixed by virtue of statutory provisions. The same Minister was authorised to carry on broadcasting stations under Section 17 of the Wireless Telegraphy Act, 1926, and Section 18 of the same Act authorised him to charge fees for the distribution from a broadcasting station of any class or classes of broadcasting matter and provide for the fixing of the amount of the fees to be charged.

The Minister for Justice, who provided a service in the form of a registry of titles in the Land Registry, was authorised, under Section 14 of the Registration of Title Act, 1964, to charge fees. The Minister for Lands was given by Section 9 of the Forestry Act, 1946, what amounted to a power to engage in business as if we were a private person.

The Minister for Transport and Power was given the express authority to charge for certain services rendered to aircraft under Section 12 of the Air Navigation (Euro Control) Act, 1963.

No implied power to charge for other services

Departing from the domain of Departments of State to look at other public services, the President said that he found that County Councils had imposed on them, by Section 24 of the Local Authority Act, 1925, the duty of maintaining and constructing county roads. "But I think it would hardly be argued that this gave an implied power to charge tolls for the right of passage over such roads." Under the Health Act, 1970, Health Boards were authorised to provide and maintain hospitals, but provision was made under Section 53, 54 and 55 for charges for hospital services.

The President said that he had come to the conclusion that Section 37 of the Air Navigation and Transport Act, 1936, did not authorise the plaintiff to charge for the services which he provided at aerodromes. "He may have power to fix charges for landings at aerodromes, but in my view it is not to be found in the section relied on. No other authority was suggested during the course of the argument. Accordingly, I consider that the plaintiff has not shown that he had any right to recover the landing fees claimed in this action and that his action should be dismissed."

The Irish Times (1st June 1972)

Court order to prevent picketing by drivers.

Eighteen lorry drivers employed by John A. Wood Ltd., Victoria Cross, Cork, have been restrained by an order of the Dublin High Court from picketing the company's premises at Carrigtwohill, Classes, Garryhesta, Inchigaggin and Carrigrohane, in Co. Cork. It was stated that picketing has already cost the company £20,000.

Anthony D. Barry, general manager and director of the company, in an affidavit, stated that the company employed 365 union members, 327 of whom, including the defendants, were members of the I.T.G.W.U. On March 14th an agreement was registered between that union and the company over rates of pay and overtime. It was the practice of the company to offer the employees overtime work and no assumption of such work was made by the employees without the express offer of the company.

On May 22nd the supervisor in charge of transport at the company's weighbridge at Classes, Mr. T. Lucey, told him that one of the defendants, J. P. Burns, had worked the previous Saturday without the offer of such work. Mr. Lucey stated that when questioned, Mr. Burns admitted that this was the case, but said it was his right to such work when the Readymix plant at Inchigaggin was in operation, and that if the company attempted to interfere with this right the plant would be picketed by the defendants.

Mr. Barry said that he instructed Mr. Lucey to deduct the hours worked by Mr. Burns from his pay sheet. On May 26th the defendants stopped work on the instigation of Mr. Burns. A union representative informed him that the union could not support the defendants in their unofficial action and could not pursue the defendants' grievances until they returned to work.

Mr. Barry added that on May 30th it was reported to him by one of the company's drivers, who was not a defendant, that he was assaulted and quite severely battered while transporting a load of burned limestone from Carrigtwohill to Cork. He did not recognise who his assailants were.

The President of the High Court, Mr. Justice O'Keeffe. granted the injunction to the company and it is effective until June 12th.

The Irish Times (1st June 1972)

Estimates for Department of Justice

MINISTER'S SPEECH IN DÁIL ÉIREANN 1972

Mr. O'Malley: My Department, among its other activities, is engaged in an extensive programme of law reform. In the ten years since the programme was launched, substantial progress has been made as is evidenced by the law reform measures which have already reached the Statute Book. Of its nature, law reform is a long-term project involving the giving of priority to certain items. Various practical considerations affect the rate of progress—in particular, the limited number of skilled staff available for this work.

The house dealt last year with two Law Reform measures, namely, the Courts Act, 1971, and the Landlord and Tenant (Amendment) Act, 1971. The first of these provides for increases in the civil jurisdiction of the Circuit and District Courts and deals with a number of other important matters relating to the functions and operation of the courts. The other Act deals with a number of urgent matters in the field of landlord and tenant law including a grant of a new type of lease to sports organisations in certain circumstances. Incidentally, this latter Act is an interim measure which will be absorbed into a comprehensive Landlord and Tenant Bill now being prepared.

Among the law reform measures in various stages of preparation are (1) a Charities Bill to make new provision for the incorporation of charity trustees, to make special provision in relation to charities that are governed by Private Acts of Parliament or by Charters and to amend the Charities Act, 1961, in certain respect; (2) a Criminal Injuries Bill which will consolidate, amend and reform the law relating to malicious or criminal injuries to property or to the person; (3) the comprehensive Landlord and Tenant Bill which I have already referred to; (4) a Court and Court Officers Bill which will contain provisions to implement recommendations made in the sixteenth interim report of the Committee on Court Practice and Procedure in relation to the jurisdiction of the Master of the High Court and will include a number of other important provisions relating to the Courts and Court Officers; and (5) a Registry of Deeds Bill. Other legislative proposals which are being prepared include (6) Bills to provide for the enforcement of foreign judgments and maintenance orders and recommendations and (7) a Bll to deal with the jury system, a subject on which recommendations have been received from the Committee on Court Practice and Procedure.

The Committee on Court Practice and Procedure. They have submitted 17 interim reports up to the present.

The first of these reports dealt with the procedure for the preliminary investigation of indictable offences and legislation based on the report has been enacted, namely, the Criminal Procedure Act, 1967. Another of the reports dealt with the question of increased jurisdiction for the Circuit and District Courts and this, as I mentioned a moment ago, is a matter that has been provided for in the Courts Act, 1971.

The jury system forms the subject-matter of three interim reports of the committee and, arising out of the recommendations contained in these three reports, legislative proposals relating to the jury system are at present under consideration. One of the committee's reports deals with the criminal jurisdiction of the High Court and another with appeals from conviction on indictment. I am having the committee's recommendations in these reports examined and I hope to introduce amending legislation in due course.

Further reports of the committee deal with (1) the service of court documents by post, (2) the fees of professional witnesses, (3) proof of previous convictions, (4) the interest rate on judgment debts, (5) the jurisdiction and practice of the Supreme Court, (6) the organisation of the courts, (7) the rights of audience of solicitors in the courts, (8) the liability of barristers for professional negligence and (9) the extension of the "on-the-spot" system to offences other than parking offences. Provision has been made in the Courts Act, 1971, for an extension of the registered post mode of service of documents of the superior courts and for a right of audience for solicitors in all our courts.

The Government authorised me to arrange for the implementation of the committee's recommendations in regard to fees of profesional witnesses, and new rules of court in this regard, in which I have concurred, were made by the Superior Courts Rules Committee. The remaining matters dealt with in the reports of the Committee on Court Practice and Procedure are being examined.

The Landlord and Tenant Commission

The Landlord and Tenant Commission have so far presented two reports dealing with specific issues. Their first report deals with the renewal of occupational tenancies under the 1931 Landlord and Tenant Act. The second report deals with extensions of the rights of renewal and of outright purchase given by the Landlord and Tenant Acts from 1931 to 1967 and enjoyed by what may be called ground tenants. It covers, *inter alia*, the renewal of the tenancies of sports clubs in certain circumstances. I have already mentioned the Landlord and Tenant (Amendment) Act, 1971. This is the first instalment of legislation which arises from the recommendations of the commission. All the recommendations made by the commission have been accepted by the Government subject only to relatively minor amendments. The acceptance involves the promotion of legislation to make considerable changes in the Landlord and Tenant Acts of 1931, 1958 and 1967. These changes will be embodied in a comprehensive Bill which has already been introduced as the Landlord and Tenant Bill, 1970. This will be a complicated piece of legislation involving the amendment of the Acts of 1931, 1958 and 1967 and their consolidation with the Act of 1971. It will be recalled that owing to the complexity of the Bill, I decided that it was necessary to abstract from it the more urgently-needed provisions and to introduce them as a separate Bill. That separate Bill was since enacted as the Landlord and Tenant (Amendment) Act, 1971. The text of the comprehensive Bill is now being settled and it will be circulated as soon as possible—I hope before the summer recess. After presenting their first two reports, the commission commenced their main work, that is, a review of the whole law of landlord and tenant, apart from questions bearing on the scope and policy of rent control. This review involves an examination of the Landlord and Tenant Act of 1860, commonly known as Deasy's Act.

The Court Rules Committees

The rules committees of the various courts have done quite an amount of work during the past two years. The District Court Rules Committee continue their major task in connection with a general revision of the existing District Court Rules. The Committee have made—and I have concurred in—the following rules: the District Court (Extradition Act, 1965) Amending Rules, 1971, which provides for forms prescribed in the District Court (Charge Sheet) Rules, 1970, which will extend to the whole country the system at present in operation in the Dublin Metropolitan District whereby the offence charged against an arrested person is entered on a charge sheet instead of in the Minute Book and the District Court (Courts Act, 1971) Rules, 1972 which deal with procedural matters arising from the Courts Act, 1971. The committee have submitted the District Court (Summonses and Warrants) Rules, which are designed to secure a more expeditious discharge of business in the District Court by making changes in the procedures relating to the preparation of records and warrants in the court. These rules are at present being considered in my Department.

The Circuit Court Rules Committee are making progress with their work of revising and consolidating the Circuit Court Rules. I have concurred in rules made by by them entitled the Circuit Court Rules (No. 1) 1970, dealing with certain procedures under the Local Government (Planning and Development) Act, 1963, and the Landlord and Tenant (Ground Rents) Act, 1967. In addition, the committee have for some time been examining draft rules, and suggested amendments to those rules, to deal with procedure under the Succession Act, 1965.

Five sets of rules, in which I have concurred, were made by the Superior Courts Rules Committee.

Firstly, there were the Rules of the Superior Courts (No. 1) 1970 which prescribed the procedure for appeals, on a point of law, to the Supreme Court from decisions of the Circuit Court under the Electoral Act, 1963. These rules also deal with the lodgment of money in court with the defence and with orders for delivery of possession.

Secondly, there were the Rules of the Superior Courts (No. 2) 1970, which replace, by a new rule, the existing rules covering fees and expenses of witnesses. The new rules is in the main designed to implement the recommendations of the Committee on Court Practice and Procedure in Part (2) of their eighth interim report. The principal change is that the fee for a professional witness allowable on taxation of party and party costs is no longer prescribed by the Rules of the Superior Courts but will be determined by the Taxing Masters after consultation from time to time with the professional associations. The third set of rules in which I have concurred are the Rules of the Superior Courts (No. 1), 1971, which provide for the recovery of certain court fees increased under the Supreme Court and High Court (Fees) Order, 1970.

Fourthly, there were the Rules of the Superior Courts (No. 2), 1971, which relate to bankruptcy forms, the grant of free transcripts to appellants in legal aid cases in the Court of Criminal Appeal, procedure under the Redundancy Payments Act, 1967, and the reckoning of certain execution costs by reference to Part III of Appendix W to the Rules of the Superior Courts, 1962.

The fifth and last set of rules made by the Superior Courts Committee were the Rules of the Superior Courts (No. 3), 1971, which provide for an increase in the costs in respect of shorthand writers and transcripts of evidence, as prescribed in the Rules of the Superior Courts, 1962.

The three Courts Rules Committees made new costs rules which came into operation on Decimal Day, the 15th February, 1971. The effect of the new rules was to substitute the new decimal currency equivalents for amounts of costs previously prescribed in pounds. shillings and pence.

E.E.C. Legislation

A division has been established in my Department to continue the work of examining the implications for the Department of entry to the EEC and to take the necessary consequential action. The Department is considering in conjunction with the Attorney General's Legal Committee what legal provisions will be required, in so far as the Department is concerned, to implement the Treaties, Community secondary legislation and the Rules of the European Court of Justice. The provisions required are likely to include amendments to existing legislation, certain new legislative measures and new rules of court. The Department is also considering the EEC convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments, with a view to accession by Ireland to the Convention. The Convention has been ratified by three of the existing six member states and it will come into force when all the member states have ratified it The Accession Treaty provides that the new member states shall enter into negotiations with the Six in order to make any necessary adjustments to it These negotiations have already begun, but they are still at an exploratory stage in the field of "technical adaptations". We have received and are examining a preliminary draft of an EEC Convention on Bankruptcy, Composition and Related Proceedings. This draft is still being considered by the Six and I understand that negotiations on the terms of the convention will not take place with the applicant States until a new draft has been prepared in the light of the views of the existing members.

The Adoption Board

The Adoption Board made 1,305 orders in 1971, 109 less than in 1970. The proportion of children placed by Adoption Societies was 85 per cent as compared with 83 per cent in 1970. I should like to place on record my appreciation of the excellent work that is being done both by the board itself and by the Adoption Societies, of whom there are 21. Six hundred and fifty-six of the orders made in 1971 were in respect of boys and 649 were in respect of girls. The board continues to hold sittings outside Dublin so as to facilitate prospective adopters. Forty-eight of the total of 92 meetings held during the year were held in various centres outside Dublin.

Aliens and Naturalisation

There has been some increase in recent years in the number of aliens registered as being resident here for three months or more. The number so registered on 3st December, 1971, was 6,088 as against 5,126 in 31st December, 1970. The influx of visitors subject to immigration controls continues to increase at a rapid rate. Over 222,000 visitors came here in 1971 from places other than the North of Ireland and Great Britain as compared with 190,000 such visitors in 1970. Those figures do not include British subjects, who are exempt from control on a reciprocal basis. The increasing number of foreign visitors coming here creates various administrative problems for the immigation service, and

the service has to be kept under constant review in consultation with the other Government Departments concerned.

In the year ended 31st December, 1971, 71 persons were naturalised as compared with 95 the previous year. This brings to 2,928 the total number of all persons naturalised since 1935, when provision for naturalisation was made.

Film Censorship and Censorship of Publications

In 1970, the latest year for which figures are available, the Film Censor examined 789 films with a total footage of 3,034,288. The number of films examined by the Censor in 1969 wac 843 and the footage examined in that year was 2,767,232. Of the total of 789 films which the Censor examined in 1970, 646 were passed without cuts, 70 were passed with cuts and 73 were rejected. The Censor issued 119 limited certificates. The Censorship of Films Appeal Board considered appeals in respect of 74 films. Sixteen of the appeals were rejected. Four films were allowed for general viewing without cuts, 13 for limited viewing without cuts and 41 for limited viewing with cuts.

The Censorship of Publications Board examined 367 books and 13 periodicals in 1971. Five books were examined as a result of formal complaints from members of the public and 362 books were referred to the board by Officers of Customs and Excise. The board made 291 prohibition orders in respect of books and five in respect of periodicals.

Appeals for revocation of prohibition orders were lodged with the Censorship of Publications Appeal Board in respect of five books. and five appeals were made for variation orders in respect of particular editions of books prohibited and a further five were brought forward from 1970. The Appeal Board made two variation orders.

Under section 2 of the Censorship of Publications Act, 1967, a prohibition order imposed on the ground that a book was indecent or obscene ceases to have effect after 12 years. By virtue of this provision, 279 prohibition orders in respect of books ceased to have effect on 31st December, 1971.

In the Public Record Office the amount of material being transferred continued to grow.

The District Court

I am not responsible for industrial schools, reformatory schools, St. Laurence's Centre for Delinquent Boys in Finglas, the remand home at Marlborough House in Glasnevin or the projected replacement of St. Conleth's School in Oberstown. I mention these places because Deputies may have been led to believe from references in the news media that they are controlled by my Department.

Deputies may recall that an order made by my predecesor which came into operation on 1st April, 1969, provided for a general closedown of sittings of the District Court during the month of August and for short periods at Easter and Christmas and for the holding of special sittings as required to handle urgent business. In general, this system operated smoothly and successfully, met the convenience of the general public and contributed to the efficiency of the District Court. However, on the basis of practical experience of its working, I felt that a further improvement could be made by providing that, instead of special sittings as required, weekly vacation sittings would be held at a central venue in each District Court during the month of August, with additional sittings in Cork and Dublin. The new arrangements came into operation with effect from 1st August, 1970.

The Dublin Circuit Court

A particular problem arises from delays that have been building up in the Dublin Circuit Court in the trial of offenders and in the hearing of criminal appeals. To meet this situation, the President, on the recommendation of the Government, appointed an additional Circuit Court judge for the Dublin circuit for a period of two years from 6th December, 1971. This means that there are now four Circuit judges assigned to Dublin In addition the spare time of the provincial judges continues to be utilised in the Dublin circuit. Since the appointment of the additional Circuit Court judge for Dublin, the delays in the hearing of cases have been reduced. At present, the average delay in the trial of an offence is six months as compared with eight months formerly. In the case of a criminal appeal, delay has been reduced from seven months to three months. I hope and expect that the position will continue to improve. It will be generally accepted that persons should be brought to trial or, as the case may be, have their appeals determined as speedily as possible.

The rapidly-increasing volume of court business in Dublin in recent years has imposed a growing strain on available accommodation for the courts and court offices, particularly in the Four Court complex. It is now clear that the existing accommodation is no longer adequate and that the time has come for a complete reassessment of the present and future accommodation requirements of all the courts in Dublin. I am, therefore, setting up a small committee representative of the Departments immediately concerned to look into the matter. The President of the High Court has kindly consented to act as chairman of that committee which, I expect, will begin work immediately.

The Dublin Children's Court

The accommodation available to the Children's Court in Dublin leaves much to be desired. I have, accordingly, had the accommodation examined with a view to seeing whether it can be improved pending the outcome of the deliberations of the committee I have mentioned. Certain proposals, designed to improve existing accommodation in the short team are at present under discussion between my Department and the Office of Public Works.

Wide publicity has been given to statements that 16,000 children pass through the children's court annually. The figure of 16,000 refers, in fact, to the number of charges listed and not to the number of children. The number of children involved would be approximately one third of the number of charges.

Staffing and Legal Aid

The staffing requirements of the Circuit Court and the District Court are at present being re-assessed in the light of the increasing volume of work in these courts in recent years. The staffing situation will be reviewed in the light of experience of the increases in the jurisdiction of these courts under the Courts Act, 1971.

A review of the free legal aid scheme was completed in 1970. After discussions with the General Council of the Bar in Ireland and the Incorporated Law Society. An order was made on 7th October, 1970, increasing substantially the fees payable to solicitors and counsel under the scheme and providing for the payment of additionat fees and expenses in certain circumstances.

Increased Court Fees

Following a full and detailed examination of the fees chargeable in court offices, I made orders which came into effect on 19th October, 1970, increasing certain fees chargeable in the offices of the Supreme Court and the High Court and increasing generally the fees chargeable in the offices of the Circuit and District Courts.

The fees chargeable in the Office of the Official Assignee in Bankruptcy were substantially reduced and rationalised. Apart from some minor adjustments necessary because of the advent of decimalisation, no increases were made in the fees chargeable in the Probate Office and in the district probate registries. Moreover, the additional revenue fee of 1/- hitherto charged on an official copy of a will was abolished by the Finance Act, 1970, so that the existing Probate fee of 25p for an official copy of a will is now the total fee payable.

All court fees may now be paid either by impressed stamps of by adhesive stamps. Previously, impressed stamps were mandatory in certain cases. This caused inconvenience to solicitors who had to keep stocks of those documents that required impressed stamps. Country solicitors, in particular, were inconvenienced as there were no facilities outside Dublin for impressing stamps on documents.

I should like to draw attention to the fact that, under the Courts Act, 1971, fees now payable by litigants generally will be substantially less by reason of the fact that a significant number of proceedings that have to be taken in either the Hight Court or the Circuit Court will, under the new legislation, fall within the jurisdiction if either the Circuit Court or the District Court as the case may be.

The Land Registry

With regard to the Land Reglstry, there has been a continuing upward trend in recent years in the intake of work. For example, the number of applications for changes in registration increased from 38,000 in 1970 to 46,200 in 1971 and, since the end of 1971, the rate of increase has accelerated sharply. On the basis of the current intake, it is estimated that the number of dealings lodged in the calendar year 1972 will be in the region of 58,000. This represents an increase of 53 per cent as compared with 1970, and creates serious difficuties as regards the provision of an efficient service to the public.

On 1st January, 1970, the compulsory registration provisions of the Registration of Title Act, 1964, were brought into operation in respect of the Counties Carlow, Laois and Meath. What this means, in effect, is that whenever unregistered property is sold in these counties the new ownership must be registered. The bulk of agricultural land in this country is already registered and, accordingly, the impact of the new provisions is mainly on urban properties. The question of extending the area of compulsory registration is one which I shall consider in due course of the light of experience.

Arrears in the Land Registry

Deputies will be aware that for some years now there have been problems in the Land Registry in connection with arrears of work. These arrears have been due to a number of factors, including increases in the volume of work, shortage of accommodation, staffing and organisational difficulties. I am glad to say that the accommodation problems have been solved for the present. Reorganisation proposals which are in the process of of being implemented will, I hope, solve the other problems. The reorganisation, which was recommended by a study group set up to review the organisation and procedures in the Land Registry, involves a change from the traditional structure of the Registry, which was based on a division of the work into various sub-functions, each of which was dealt with by a group of staff.

The system now being implemented calls for a division of the work by reference to geographical areas. Each area is given its own group of staff and an application to register a change of ownership made by a person in a particular area is processed from start to finish by a group dealing with that area. At the time of the debate on my Department's Estimates for 1969-70, two such groups had been set up on a pilot basis. We now have 11 groups operating. The possibility of increasing the number of groups is being examined having regard to the steep increase in the volume of work now being experienced. Already there are indications that the new procedures have in fact led to an improvement in efficiency.

However, I am still extremely concerned about the arrears in the Land Registry and, in particular, about the Mapping Branch. The introduction of an incentive bonus scheme helped to reduce the mapping arrears considerably during 1970, but a marked increase in the intake of work, combined with staffing difficulties, led to worsening of the position during 1971. Delays in the Mapping Branch can and do lead to considerable difficulties in effecting registration. The Study Group have made recommendations for the reorganisation of the Mapping Branch and every effort is being made to have the necessary improvements effected at an early date so that an efficient service to the public will be provided.

Another matter which the study group examined is the system of paying for the services which the Land Registry renders. It is not always realised that even in money terms the Registry is quite a substantial business —one with an annual turnover of more than £400,000. The group have made recommendations for the introduction of a system of payment by cash rather than by Revenue stamps. This would be more convenient for most solicitors. The recommendations are at present under examination and I hope to be able to have a detailed system worked out in the near future and brought into operation as soon as possible. The study group are continuing their work.

The Registry of Deeds and Charitable Donations

There has also been a general increase in the volume of work arising in the Registry of Deeds. The number of deeds registered has gone up from just over 34,000 in 1969 to almost 36,500 last year—a trend which shows every sign of continuing in the present year.

Finally I wish to refer briefly to the Office of Charitable Donations and Bequests. The last report which the commissioners made to me is in respect of the year 1970. Cash totalling £40,744 and stocks to the nominal value of £861 were transferred to the commissioners during that year and at the end of the year the nominal value of investments standing in their name was some £2,253,000. The Commissioners of Charitable Donations and Bequests give their services voluntarily and their extremely valuable work is quite onerous. We should be grateful to them.

It is one of the most encouraging things in public life that so many people are prepared to devote their valuable time and expertise as well as their leisure hours to work of national importance.

Decision on Special Courts poses problems

The decision of the Government to set up Special Criminal Courts under the Offences Against the State Act, 1939, raises a number of important questions. The first of these relates to the composition of the Courts.

Under the Act, such a Court is to consist of an uneven number of members, not fewer than three. Each member shall be appointed and be removable at will by the Government. The people who may be appointed are Judges of any of the Courts other than the Supreme Court; a barrister or solicitor of not fewer than seven years' standing, or an officer of the Defence Forces not below the rank of Commandant.

On the two previous occasions when such Courts were established, only members of the Defence Forces were appointed. On this occasion, the Government has announced that it proposes to appoint existing Judges from the Courts and does not propose to appoint Army officers. While this is a welcome decision in that it shows a recognition on the part of the Government that persons of legal experience and training should man the Courts, it is certain to create a problem of a different kind. All the Courts are at present very severely taxed n their efforts to cope with the volume of work with which they have to deal.

With the setting up of the Special Criminal Courts, the ordinary Courts are likely to find themselves in greater difficulty than ever before in their efforts to cope with the administration of justice. It remains to be seen whether the Government will be willing to meet this situation by the appointment of additional Judges on a temporary or permanent basis, but to date no such intention has been manifested.

Some doubt has also been expressed as to the exact offences which can be tried before the Special Criminal Courts. When Part 5 of the 1939 Act is in force, the Government may, by order, draw up a schedule of offences suitable for trial before these Courts. Apart from this schedule of offences, however, the Attorney-General can intervene in relation to the trial of any person on any charge whatever and ask to have it dealt with by the Special Criminal Court instead of by the ordinary Courts. Thus, the Act gives unlimited scope as to the criminal offences which may be tried before the Special Court.

Powers for Garda

Another important feature of the Government's decision is one not relating to the Special Criminal Courts themselves, but to the additional powers given to the police as long as Part 5 of the Act remains in operation. Not much attention has been focussed on this aspect of the Government's decision.

As long as the Government proclamation remains in force any person detained by the Garda Siochana on suspicion of having committed any offence contrary to the Offences Against the State Act, may be asked to give an account of his movements and actions during any specified period, and all information in his possession relating to the commission, or intended commission, by another person of any offence under the Act, or any scheduled offence. Failure to give such information, or the giving of false or misleading information, renders the person concerned guilty of an offence under Section 52 of the 1939 Act, for which he may be sentenced to a term not exceeding six months' imprisonment.

Unlike the Prisons Act, which has just come into force, there is no specific time limit to the operation of Part 5 of the 1939 Act. It remains in effect until the Government, or Dail Eireann, decides that it should cease to have effect. Apart from the other powers given to the Special Criminal Court, they have jurisdiction when sentencing any person to order his detention in military custody. Consequently, this power could continue in operation beyond the two-year period during which the Prisons Act is to remain in force.

Previous criticism

One final word about the composition of the Special Criminal Court: a good deal of criticism was directed against the Government on two former occasions when these Courts were used because only Army officers were appointed. It was suggested that the Government experienced difficulty in finding Judges or lawyers willing to serve possibly because of the element of danger involved. A question must arise whether the same difficulty might not again confront the Government.

The other point relates to the Government's declaration of intention to appoint Judges and not Army officers on this occasion. This is in no way legally binding on the Government. Once Part 5 of the Act has been brought into operation the Government is free to appoint whomsoever it pleases within the permitted categories by the Act and could fall back at any time on a military court should it think fit to do so.

Note

It has since been announced that the Special Criminal Court is to consist of Mr. Justice Griffin of the High Court, Judge Conroy of the Circuit Court, and District Justice O'Flynn, President of the District Court. A majority judgment is the judgment of the Court and no minority judgment may be disclosed. The scheduled offences include those under the Malicious Damage Act, 1961, the Explosive Substances Act, 1883, the Firearms Acts, 1925 to 1971, as well as the Offences Against the State Act, 1939.

Under Article 38, Section 3, of the Constitution, "Special Courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary Courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order."

Irish Independent (27th May 1971)

Criminal Law Revision Report

By MICHAEL ZANDER, Legal Correspondent.

The controversial report of the Criminal Law Revision Committee on evidence in criminal cases and the rights of the accused is now expected to be published next month.

The report will recommend the abolition of the time honoured requirement that suspects must be cautioned by the police. It will also propose that the accused should lose his liberty to stay out of the witness box.

Under the committee's proposal the defendant would not actually commit contempt of court if he refused to answer questions, but he would be told by the judge that he must give evidence. If he refused to do so, he would be warned that the court and the jury would be entitled to draw adverse inferences from his silence.

He would be required to give evidence on oath subject to cross-examination. His right to make an unsworn statement from the dock would be abolished and unless the court ordered otherwise his evidence would have to be given immediately after the conclusion of the prosecution's case.

The present rule that a divorced husband or wife cannot be made to give evidence for the prosecution against a former spouse would be abolished.

The report will also recommend that the court should be able to draw adverse inferences if a person being questioned by the police did not mention a fact which he subsequently wished to use in support of his own defence, and which he could have been expected to have mentioned at that time. The court will, however, retain its general discretion to exclude any evidence it thought unfairly prejudicial.

The committee will suggest changes relating to the admissibility of confessions, to help the prosecution. Under the present law a confession is inadmissible if the defence can show that it followed some threat or inducement made by a person in authority. The courts have, for instance, held that the suggestion, "You had better tell the truth," or an offer of bail or cigarettes in return for a statement were inducements vitiating the confession. Under the committee's proposals, an inducement would no longer vitiate the confession if the prosecution was able to prove that it was not of a kind to make the confession unreliable.

The court will not propose any other change in the rules governing questioning of suspects. Nor will it, as predicted, recommend that previous convictions should be generally admissible in evidence. The Home Secretary, Mr Maudling, made this clear in a written answer in the Commons last month.

But the report will propose important changes in the admissibility of hearsay evidence and in the rules regarding corroboration. The present requirement that unsworn evidence of children must be corroborated would be abolished except where the offence was a sex crime against a child under 14 and the evidence was only that of the victim. Also, the judge would no longer be required to warn the jury of the danger of relying on the uncorroborated evidence of accomplices.

On the other hand, a new rule would require that when the case against the accused was wholly or mainly based on disputed identification evidence, the court would be required to give a warning of the danger of acting on such evidence without corroboration.

The report, which has been eight years in preparation, will be accompanied by a draft Bill. The committee was set up in 1959 as a standing committee to advise the Home Secretary. All its 10 previous reports have been implemented. Legislation on this one is likely next session.

(Guardian, 11th May, 1972).

EUROPEAN SECTION

THE COURT OF THE EUROPEAN COMMUNITY

by The Editor

Part 1.

The Treaty which established the European Community was signed at Rome by the present six member States—Belgium, France, the German Federal Republic, Italy, Luxembourg and the Netherlands in December 1957, and made provision for the main institutions of the Community—the Commission of Experts occasionally assisted by a Council of the Ministers of the member States sitting in Brussels, as well as the European Assembly of parliamentary representatives occasionally sitting in Strasbourg.

The Court of Justice of the European Community is the successor to the Court of the European Coal and Steel Community which had already been established in 1954; in fact some of the Judges of the Court of the Community were at first members of the former Court. Although the Court of the Community was only established in October 1958, the broad principles of procedure had already been established by its predecessor. The Court consists at present of 7 Judges (including 2 Italians and 2 Germans); it is assisted by two Advocates-General (1 German and 1 French) whose main function is an impartial and independent summing-up of the case and presentation of reasonable conclusions, before the Court reaches its verdict; this is an important element in French judicial procedure. According to Article 167 of the Treaty, the Judges and the Advocate-General shall be chosen from persons of indisputable independence who either fulfil the condition required for the holding of the highest judicial office in their own state or who are jurists of recognised competence; they are appointed for a term of *six years* by the Governments of the member States acting in common agreement. A partial renewal of the Court, which shall affect three and four judges alternatively, (revised to five and six judges respectively after 1973), takes place every 3 years; the retiring judges are eligible for re-appointment. The judges appoint their *President* for a term of 3 years, which term shall be renewable. The first renewal of the Court took place in October 1961, and subsequently in 1964. 1967 and 1970. Upon the accession of Ireland, Britain, Denmark and Norway, it is proposed as from 1973 to extend the Court to 11 Judges and three Advocates-General (one British). Judges and Advocates-General receive £590 per month, plus £54 entertainment allowance.

The scope of this Court is not as wide as that of the International Court of Justice of the Hague, which has power to give an advisory opinion on any question of public international law submitted to it by any State or recognized international authority; on the other hand the main function of the Court of the Community is summarily stated in Article 164 of the Treaty of Rome as "to ensure the observance of law and justice in the interpretation and application of this Treaty"; while the scope of the Court is limited to the interpretation of the Treaty and its numerous protocols and Directives and Decisions, it is to be noted that any decisions of this Court are absolutely binding on the member States, and cannot be questioned by them. The Court of the Community also has power under their respective provisions to determine questions arising out of the Treaties establishing the European Coal and Steel Community and Euratom, which are equally binding. It is important at this stage to distinguish broadly between the functions of the Commission in Brussels, which is to supervise the observance of the Treaties by the member States, and the function of the Court in Luxembourg, which as we have seen, is to observe the principles of law and justice in the interpretation of the Treaty.

The Court of the Community can exercise comprehensive jurisdiction over the following:—

(a) All organs of the Community — Commission, European Parliament, Council of Ministers,

(b) Member States in relation to any provision of the Treaty.

(c) Individual enterprises infringing the Treaty.

(2) The status of officials and employees of the Community. In this case, as the cases of *von Fiddelaar*, *Humblet*, and *von Lachmuller* prove, the Court has full authority to impose penalties on either the Commission or the Member States if they impose undue restrictions whether by dismissal or taxation, on the status of employees of the Community.

What are the main grounds upon which the Court's jurisdiction can be invoked from a constitutional viewpoint? These are mainly five in number, as follows:—

(1) **Article 169:** A complaint by the Commission that a Member State has not fulfilled its obligations. As the main function of the Commission is supervisory in applying the text of the Treaty in full as regards the Member States, it is obvious that, if a Member State does not heed a complaint made to it by the Commission, it must be compelled to do so by the Court, if the Court finds that this is warranted. 10 cases were brought to the end of 1967, of which 7 were decided in favour of the Commission and 3 were withdrawn.

(2) **Article 170:** Any Member State may make a complaint against another Member State to the Commission that the terms of the Treaty are not being observed by the latter State; the Commission will investigate the matter and must give an opinion stating in what respect the terms of the Treaty have been infringed. No such proceedings have so far been brought. If the Commission has not given an exhaustive opinion within three months of the original complaint, the complaining State may refer the matter to the Court for its decision; such decision shall, in any event be binding on the parties.

(3) **Article 173:** Jurisdiction of the Court of the Community to review Directives, Decisions and Regulations issued by the Commission. The application to the Court may be made by any of the aggrieved parties—whether it be the Commission, the Council of Ministers, any Member State, or any individual or industrial enterprise affected. The Court may only intervene in reviewing such a Directive, Regulation or Decision on the following four grounds: (1) That the body that issued

such a Regulation had no jurisdiction under the Treaty to do so. An administrative act can be revoked for the future if it was based on an erroneous interpretation of the Treaty.

(2) That, in issuing such a Regulation, the body concerned did not observe strictly the provisions of the Treaty. It has already been pointed out that in any of these transactions, the provisions of the Treaty are absolutely paramount.

(3) That in issuing any Regulation, the body concerned failed to observe the principles of natural justice. *(Violation de formes substantielles).* These principles of Natural Justice are briefly:—

(a) That the authority issuing the regulation must not have any bias against the party to whom it is issued.

(b) That, in an effective dispute between two parties, each side must effectively be heard. This is called the "Audi alteram partem" or—hear the other side—rule—in other words, a man must not be judge in his own cause. There is however no right to be present or to cross-examine when evidence is given, but all relevant evidence must be considered. On the other hand, the *Constan and Grundig case* (1966) decided that, as all the facts necessary to establish the complaints which were upheld were communicated to the parties concerned, it did not matter that there were other materials submitted to and taken into consideration by the Commission, which were not communicated. Consequently the decision concerned was only partly annulled. If the Court finds any of these factors as regards any regulation issued, it will have no alternative but to annul it.

(4) Abuse of power *(Détournement de pouvoir).* This in effect means that the Regulation is correct on the face of it, but that it was issued for some improper motive—such as bribery, etc. It need hardly be said that such an imputation will have to be proved by the plaintiff to the hilt before the Court wil grant any relief and annul the regulation which on its face appears valid. The prescribed definition is—"use made by a public authority of its power for an object other than that for which it was conferred on it." Examples of abuse of power are:—

(1) Adopting a basis for estimating data for the purpose of calculating a levy, because that basis will yield the highest rather than the most accurate figure.

(2) Using powers to profit the economy of a single member State rather than in pursuit of an objective for which the powers were confered in the Treaty.

(End of Part I).

PROFESSOR de SMITH'S LECTURE

Warning that E.E.C. laws were sometimes obscure and lacking in harmony

Obscurity, perplexity and a certain lack of harmony in the application of the Communities' laws in member States were foreshadowed by Professor S. A. de Smith of the University of Cambridge in Trinity College, Dublin. His subject was " Accession to the European Communities: Some Constitutional Problems ".

Professor de Smith, who was introduced by Professor R. F. V. Heuston of T.C.D., as one of the first authorities in the world on constitutional and administrative law, said that if he were given the choice of writing a book on Communities law or presiding over the destinies of Northern Ireland for the next two years, he would unhesitatingly opt for the latter.

It had been suggested, he said, that entry to the Communities would mean a diminution of national or parliamentary sovereignty; these were distinct concepts as a soveregn State need not have a sovereign or omnicompetent parliament. In England, however, the reasons for asserting that national sovereignty would be reduced were very much the same as for asserting that Parliament woul lose legislative sovereignty.

He pointed out that no sovereign State had unfeterred freedom of action. Since 1945 accession to NATO and GATT had confined sovereignty.

Limitations of E.E.C. Law

Accession to the Communities would imply a pooling of sovereignty in making Community decisions. In one sense therefore sovereignty would be enlarged and in others possibly abridged. The Communities were not a federal super-state, and member States had retained their identity and sovereign status in international law. They were obliged to accept the supremacy of Communities law in economic and social affairs, and there were supra-national organs like the Commission and the Courts for the assertion of that supremacy.

The Council of Ministers was an international body and the bulk of its decisions were made by a simple majority, or a specially weighted majority, but in practice no vital decisions were likely to be made against the implacable opposition of any of the major member States.

He doubted, accordingly, these alleged derogations from State sovereignty, and in any case the amorphous concept of national sovereignty was insufficiently precise to have a proper meaning.

The Communities Bill a masterpiece of calculated ambiguity

On parliamentary sovereignty, Professor de Smith said that the British Parliament could pass any law whatever on any subject whatever, and under the British Constitution no institution could question the validity of an Act of Parliament or set itself up as a rival to Parliament. The wording of the European Communities Bill posed questions about the future powers of Parliament. This he described as a short Bill which was a masterpiece of calculated ambiguity and of legislation by reference.

Professor de Smith said it was with horror mingled with relief that he noted the assurance of the Solicitor-General—one of the two principal British Government spokesmen—that the Government were determined to preserve the colour of the British kipper under the new Communities regime. Profesor de Smith confessed that he had not known it was in danger. Other threats to the British way of life could lurk furtively in the Communities' volumes and a degree of ignorance might be conducive to bliss.

Binding force of regulations and directives

Regulations of the Commission or Council of Ministers would be binding and directly applicable in each member State and the British Bill had to provide for the direct applicability of regulations, either already in existence or to be made in the future, for the purposes of United Kingdom law. There were also decisions which were binding, though they had not directly

applicable force, and directives binding States. In joining the Communities he did not think it was strictly necessary to give effect to all decisions and directives.

Professor de Smith said that Communities regulations to be made in future would be directly applicable in the courts of the United Kingdom and Ireland and would prevail in Communities law over subsequent national legislation as well as existing national legislation. In the case of a law relating to, say, restrictive trade practices, no national legislations could be passed on that subject except by way of implementing Communities law. " Parliament's future freedom of action will be bound and bound for ever, or will it? " he asked.

Continual alterations to Community Law

He advised a look at what happened in member States. In France the ordinary courts gave effect to Communities laws but the *Conseil d'Etat* declined to enforce them. In Italy the attitude was equivocal. In West Germany, where the courts were more Communities-minded, even now the courts did not point unabiguously to Communities law primacy. " It is not crystal clear that a new member State must order its affairs so as to give immediate supremacy and primacy to Commnities law over national law." r

The British Bill appeared to accept a fundamental dactrine of Communities law supremacy, but the Government spokesmen had admitted that it was not feasible having regard to the traditional attitude of United Kingdom courts to the sovereignty of Parliament. " In my opinion the Government has probably gone further than necessary to make obeisances to the fundamentalist view, and the United Kingdom will enter the Communities on two horses, one galloping towards Communities law supremacy, the other pulling in the other direction."

Judges to consider primacy of Community Law

They had offered an inducement to judges to acknowledge the primacy of Communities law where possible, but there were no means by which the British Government or Parliament could effectively direct the judges to abandon or modify judicial obedience to the last Act of Parliament. If the Communities developed the characteristics of a political federation, possibly a revolution in legal thinking would occur, and the judiciary would spontaneously shift its position on the relation of Communities law and legislation. It was for the judges themselves to make this fundamental readjustment in attitude. The doctrine of parliamentary sovereignty germinated in the courts, and only the courts could eradicate it.

Lawyers will require flexibility and great capacity for work

" The new members of the Communities are embarking on a mysterious adventure, the destination of which is veiled in uncertainty. The immediate prospect for lawyers. administrators and students is a severe challenge. They will need flexibility, a willingness to master new techniques and rules, and a capacity to sustain formidable new workloads. Many of us have underestimated the extent of readjustment that will be needed in order to play an effective part in our own walk of life in organisations already shaped in outlook and modes of procedure by years of experience in modes of thinking more familiar to Europeans than to insular peoples," Professor de Smith said.

Senator Professor Mary Robinson moved a vote of thanks. The attendance included the Chief Justice.

(Irish Times, 12th May, 1972).

Rank of Q.C. under attack

Calling for the abolition of the rank of Queen's Counsel and attacking the cost of " obtaining justice under the present legal system,' Mr Arthur Lewis (Lab., West Ham N.), asked: " How is it that the Government never refers to these lawyers in the Industrial Court and never talks to them about inflation, when they are getting thousands of pounds. Yet the poor old railwaymen get referred to the Industrial Court."

The Attorney-General, Sir Peter Rawlinson, rejected a suggestion by Mr Lewis that he should recommend the abolition of Queen's Counsel.

He also denied suggestions by Mr Lewis that legal costs had risen disproportionately in the past ten years. Mr Lewis had referred to a report by the Young Solicitors Group of the Law Society, which had proposed abolition of QC.

" Even some QCs in this House have expressed the view that this might be a progressive move," he declared.

Sir Peter said: " The practice of having leading practitioners with the rank of QC has worked satisfactorily, and is a system many other countries woud like to follow."

The rise in the cost of litigation in the past 10 years or so was "commensurate with the rise in the cost of living."

In 1960 a counsel's fees in specified litigation were 27 guneas. In 1971, they were 35 guineas: " If you examine that you will see it compares with the increase in the cost of living and, indeed, with the increase in Parlimentary salaries."

(The Guardian, 2 May, 1972))

Ruling on Courthouses

The Incorporated Law Society is to give careful study to the Hight Court ruling which directed the Minister for Justice, Mr. O'Malley, to have Drogheda Courthouse put into a proper state of repair.

A spokesman for the society said today that the full text of Mr. Justice O'Keeffe's order would be considered by a council meeting of the society in an effort to ascertain whether it would now be possible to proceed along similar lines in respect of several courthouses throughout the country.

Said the spokesman: "It is generally recognised that many court premises, particularly the district court ones, are in an appalling state of repair—so much so that people find it very difficult to work in them.

"Our view is that proper premises should be available in all cases so that the administration of justice can be carried out effectively.

"We will study Mr. Justice O'Keeffe's ruling with great interest so as to ascertain whether if it is possible for us to have similar orders made in respect of other premises which, like the Drogheda Courthouse are in a poor state of repair."

The order, by the President of the High Court, was granted to the Drogheda Solicitors' Association. It directed the Minister for Justice, under the Courthouse (Provision and Maintenance) Act, 1935, to execute such repairs and do such other work as might be necessary to put the Drogheda court accommodation into proper repair and condition.

(Evening Press, 18 April, 1971)

A Money-saver for Solicitors

The basic costs of Secretarial services have risen so dramatically over the past few years, that management has begun to take a hard analytical look at the financial considerations of putting words onto paper.

Between 1960 and 1971 the average cost of a business letter rose by 74% from 42p to 70p, a situation that has hit the legal profession more than most, especially in view of the fact that much of its work is repetitive.

It was with this in mind. the the Law Society decided to acquire an IBM MT72 Typewriter, with its facility for storing text for automatic reproduction, and introduced its Precedent Bank and Engrossment Service. The Service was introduced to save solicitors both time and money, although the reasons for justifying this supposition take some explaining.

In order to understand how the IBM MT72 works it is necessary to take a close look at the typing process. On average a typist makes an error every 75 to 125 words. When an error is made in the initial paragraphs, rather than erase, the typist usually decides it is quicker to start a new page.

Often as the typist nears the end of a page she is more likely to make errors, simply because she fears having to re-type the whole page. Making carbon copies also adds to the typing pressure due to the time and difficulty involved in making corrections.

However, it is very often the author originating the paperwork who finds that a change is necessary even though the original text is free from typing errors. Changes occur for many reasons — new information, unclear wording, grammatical mistakes, etc. These can occur many times in the case of legal documentation and so single quite minor additions or deletions could necessitate the re-typing of the entire document.

It is this that makes typing very expensive and IBM found a way round the problem when it introduced the concept of magnetic word storage to the typing process. Every stroke typed is simultaneously recorded on a magnetic medium so that when errors or alterations occur, they alone have to be changed. All the unchanged copy can be used again since it is recorded.

The unchanged copy can be re-produced as many times as necessary entirely automatically at speeds up to 180 words per minute. A good average typing speed is 40 w.p.m., though very few typists in fact achieve it because of error correction.

However, once the text is accurately recorded on the magnetic medium the automatic typing process is error-free. At the same time, because error correction is so simple, the typist can work at her maximum draft speed.

The overall effect of this is to considerably reduce turnaround time and indeed make the typist a considerably happier person. Complex layouts and tabular work become simple, while repetitive text can be automated. The text of the basic document is stored on the magnetic medium used.

In the case of the MT72, it uses magnetic tape, which has enabled the Law Society to store Precedents for the folowing documents:

1. Power of attorney
2. General purpose partnership
3. Deed of discretionary trust
4. Deed of seven-year covenant for tax purposes.

It works very simply. The Society holds copies of the required precedent, the basic text of which is stored on magnetic tape. When you require an engrossment ready for execution you make amendments and send it in to the Society, who will return it with a top copy and one carbon copy engrossed, ready for execution by the parties.

The rates work out at about *£0.09p per folio* for the whole job (precedent, engrossment and carbon copy) and is extraordinarily good value.

Details of the service can be obtained from the Law Society, who will also advise on other types of work which can also be handled by the MT72. Order Forms are included with the current issue of this Gazette.

BOOK REVIEWS

Tax Planning by Phillip Lawton; fifth edition; London, Oyez Publications, 1971; 8vo; £1.75.

This is the fifth edition of a work whose aim is to provide a short readable booklet on tax planning. This work falls easily into the framework of the Oyez series which is familiar to so many lawyers and students. In 141 pages the author travails the whole list of areas of tax planning from catering for "film star companies" (a chapter entitled "companies formed for special purposes", which includes a review of the value of "service companies" to large firms of solicitors), to catering for "the family unit". The style of the writing is at once engaging and adapted to the probable reader, namely, the student and the accountant. On page 74 one finds the process whereby an unlimited company switches to limited liability sardonically compared to a change of sex. On page 101 one finds a reference to a changeable gain being "rolled over". The reference to decided cases is kept to a bare minimum. Taken overall, this work may be recommended as a comprehensive survey of a complicated area of law. To a thorough treatment of the revenue law is wedded a readable and practical summary of the workings of the arrangements in the many areas in which they are desirable.

B. P. Dempsey

The Law of Patents by Thomas Terrell; twelfth edition by Douglas Falconer, William Aldous and David Young; London, Sweet & Maxwell, 1971; 8vo; pp. xlviii plus 706; £12.00.

Terrell has been the leading textbook on the law of patents since its first publication in 1884, and, in view of the developments taking place, it is not surprising that there have been no less than three editions in ten years. The tenth edition containing 660 pages had been published in 1961 by the late Mr. Shelley. He had already emphasised the importance of extensive quotations from older cases to endeavour to solve some of the difficulties. The editors of the eleventh edition, which contained 698 pages in 1965, rightly stressed that the aim of this *magnum opus* has always been to set out reliably and accurately what is the current English law of patents. The present editors have admirably succeeded in this aim, and have wisely decided to ignore the Banks Committee Report 1971 until legislation ensues. In the modern edition, this book has been divided into fifteen chapters, and each chapter contains useful paragraph numbers with appropriate title in respect of each new title; each paragraph is duly listed in the Index for easy reference. It is a moot point whether it is necessary to reprint in a new edition in detail all the cases mentioned in a former edition. It would seem that, unless the previous edition were out of print, much material could have been saved by bringing out a supplement containing the new matter only at a reasonable cost. It seems amazing that no consideration appears to have been given to Mr. Justice Budd's famous judgment in *Solon v Bord na Mona* about a patent relating to a device in a turf winning machine, and fully reported in pages 5 to 40 of vol. 90 (1956) of the Irish Law Times Reports; it will be recalled that this case had been at hearing for eighteen days in June and July 1952. Otherwise the present edition is well up to the standard of its predecessors.

Employers' Liability at Common Law by John Munkman; seventh edition; London, Butterworth, 1971; 8vo; pp. lxxi plus 636; £4.80.

This volume has undergone seven editions since its first publication in 1949 which proves how useful it has been to practitioners. Broadly speaking, if the present edition is compared to the second edition (1952), which contained 478 pages, the chapter headings have not changed vitally. There is first an account of the liability at common law, followed by a statement of the employer's general duty to take care for the safety of his servants in the course of their employment. The intriguing question of breach of statutory duty together with the possible defence of contributory negligence is fully explored. The learned author points out that. as things stand, the law of negligence controls most of the field of activity for personal injury; and capricious and vague though it is, we have to make the best of it. Its recent prominence was essentially due to nineteenth century ethical writers who supposed that the law of tort was a code of conduct with damages as a sanction for doing something blameworthy. In fact the law of tort is about the duty to compensate. Blameworthy conduct consists in refusing to pay for damage sustained. We agree with the author in considering some arguments as to foreseeability as unrealistic, and in eschewing to discuss purely political concepts like "social justice" or "social engineering". The author also rightly emphasises how important it is not to use the law of negligence to expand liability for indirect consequences beyond all reason. In many American States, the rule of strict liability applies to the manufacturer of a defective article. Mr. Munkman has considered all the important English and Scottish case law upon various topics —factory law, fencing, building contracts, etc. This volume has well maintained the standard of previous editions, and is essential for the practitioner who is faced with any intricate problems of employer's liability.

Manual of the Law of Evidence by S. L. Phipson; tenth edition by D. W. Elliott; London, Sweet & Maxwell, 1972; 8vo; pp. xxxvi plus 338; hardback £3.50, paperback £2.75.

Professor Elliott succeeded the author and Sir Roland Burrows as editor of this well-known manual since the eighth edition (1959). Due to up to date case law and the English Civil Evidence Act, 1968, the learned editor has unavoidably extended his text (less Index) from 260 pages in the eighth edition to 329 pages in the current edition. The chapter on similar facts and character now contains thirty pages (formerly seventeen); and estoppel and burden of proof have been expanded. There is a new chapter as to statement admissible under the 1968 Act. Students who have used previous editions are already aware of the clarity and precision which mark this work, which is strongly recommended to practitioners who wish to consult a preliminary point on the law of evidence, and be led to Phipson's and

Cross's more weighty tomes.

Judicial Dictionary of Words and Phrases by F. Stroud; fourth edition; volume 2: D—H; London, Sweet & Maxwell, 1972; 8vo; pp. xvi plus 1273; £10.50.

Mr. James has more than well maintained the high standard set by the previous edition of Stroud, and the most useful definitions between the words "Daily" and "Hyth" are contained in this volume. While mention of pre-Treaty Irish cases is made, a quick check appears to show that definitions contained in the more important modern Irish cases are omitted; this is unfortunate, as several of these definitions are valuable. The printing and presentation are as usual excellent, and the practitioner who requires a legal definition in a hurry could not do better than to peruse those contained in this and other successive volumes of the fourth edition of Stroud which Mr. James has put together with great clarity in a masterly way.

Land Law by P. J. Dalton; London, Oyez Publications, 1972; 8vo; pp. xxxix plus 316; £2.40.

It may be surprising that yet another volume has been published on land law, but the author emphasises that he wishes to explain its principles by reference to reason rather than to history. Many learned tomes contain some irrelevant historical matter which is of more interest to the scholar than the practitioner. English lawyers are indeed fortunate to be in a position to dispense with the Statute of Uses, fines and recoveries, the old law about future interests, and former disabilities of married women. The idea of the author is to explain some elementary principles of general application, such as the notions of "Tenure" and "Estates", then the interests of land which entitle a person to exclusive possession of land, such as fee simple, settlement, powers of appointment, and rule against perpetuities. In so far as the modern English land law does not diverge completely from Irish law of property, the principles are very clearly explained, but the book requires to be used with care by the expert. The Sheridan Committee on the reform of land law in Northern Ireland has drafted an Act which could be adopted here with minor modifications. If that were done quickly, without the customary minimum ten years delay, then this book would become invaluable to the Irish practitioner, due to the clarity and precision with which the principles have been stated.

Butterworth's Commonwealth and International Law List—1972; London; 8vo; pp. 1482; £4.75.

This is such a well-established reference book that there is no need to describe it in detail. It will be recalled that entries are made in alphabetical order of place of firms of solicitors first in England, Scotland, Northern Ireland and the Republic of Ireland, then in Africa, Asia, the Far East, Australia, Canada, Europe, and finally in the U.S.A. and in South Africa. Only firms who pay for an insertion appear in this volume. There is an invaluable list of Bar Associations and Law Societies, and the customary 200 page supplement dealing with the law relating to powers of attorney in all parts of the Commonwealth is included. Very useful for quick reference.

SOCIETY OF YOUNG SOLICITORS

c/o 94, Grafton Street.
Dublin 2.
June 1972.

Publications

Members can assist by sending remittances for the current amount rather than by sending for an account. Subscriptions are £1.05 per annum. The subscription year expires on the 30th September in each year. Due to material and postage increases many prices are increased. The list will be published in monthly parts.

Rates shown below are members rates, non-Members pay double these rates.

PART 2.

11.	Out of print.		
12.	Out of print.		
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20.	Out of print.		
21.	Rent Restrictions Act Lecture	111p	„ „ 116p
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New Conveyancing proposals in England

Scale charges and minimum charges in house conveyancing will be abolished under an order which, it is hoped, will be laid " in the near future," the Attorney-General, Sir Peter Rawlinson, announced.

" It would mean that all conveyancing charges would be governed by the principle of what is fair and reasonable in the circumstances of the particular case," he said. "If the client is dissatisfied with the proposed charge he would be able to obtain a certificate from the Law Society as to what a fair and reasonable charge would be."

Sir Peter said the client could obtain this certificate " without prejudice to his right to have his solicitor's bill taxed by the court."

Mr. Gerald Kaufman (Lab., Manchester, Ardwick), said: " That statement, so far as it goes, is very welcome to those MPs on our side who have been pressing the Government to take action on this important ingredient in the cost of buying a house."

But, he said, those Members would not be satisfied until the Government, having gone thus far, fully implemented the report of the Prices and Incomes Board.

Sir Peter told him that the abolition announced was " an important matter, and, I should have thought, would be generally welcome by MPs on both sides."

" We hope that these proposals will have the effect all of us want, that the fees and costs involved in the purchase of a house will be proper, fair and reasonable," he added.

Complaints of misconduct against solicitors

Later, Sir Peter refused to take control of the way in which the Law Society considers complaints of miscoducts against solicitors.

He told Mr. Ivor Stanbrook (C., Orpington), a barrister: " I have no reason to suppose that the Law Society does not consider complaints in the right way."

Mr. Stanbrook said that a complaint made privately to the Law Society alleging misconduct by a firm of solicitors had recently been rejected with a threat of defamation proceedings if the allegation was not unconditionally withdrawn.

Mr. Stanbrook said this seemed to be a standing practice. " How can the public be protected against dishonest solicitors if the Law Society joins in threats? he asked. " Does it not discourage the pursuit of such complaints?"

Sir Peter said he did not agree that the Law Society had made a threat in the case concerned. The firm of solicitors had given their explanation, had said they resented the allegation made against them, and it had been they who had made reference to defamation proceedings.

The Law Society had repeated what the Solicitors had said in its correspondence, Sir Peter said. Mr. Stanley Orme (Lab., Salford W., said that many people feared that solicitors were judge and jury in their own case. This was not fair to the vast number of solicitors who behaved absolutely impeccably. He called for a fresh look at the matters since many MPs could give instances of dissatisfaction.

Sir Peter concluded: " I cannot agree that the Law Society does not do its duties, as imposed on it, meticulously." He said that when there was a complaint, a committee, rightly, discovered what the solicitors answer was. If there was uncertainty they sent it to the professional purposes committee. The society was considering whether lay membership should be included in that commtttee.

Conveyancing order operative in autumn

The Lord Chancellor, Lord Hailsham, said later that the conveyancing order would probably become operative " some time in the autumn."

Asked if it would bring down the cost of conveyancing or merely hold it steady, he said: " One hopes it will bring it down marginally."

He added: " The profession, on the whole, fixes its own charges and this has over a period of years, led to a certain amount of friction between my Department and the Law Society."

The Law Society accepted with reservations the plan for conveyancing fees.

The society would not have chosen to alter the system of scale fees for conveyancing, a spokesman said. It had the advantage of financial certainty, an important matter for people buying their home.

" Nevertheless, of the various alternative schemes acceptable to the Lord Chancellor, the society prefers the one he has proposed." Solicitors had never sought more than a fair remuneration for their services, and this would be assured by the new scheme.

(The Guardian, 2 May, 1972).

DISPOSAL OF DOCUMENTS

If you are likely to be disposing of documents please write to the Public Record Office of Ireland or ring 01-778092 extension 113 before doing so. We shall arrange for one of our archivists to call to your office and examine the material intended for disposal. The archivist willl select those documents which appear to be of historiacl interest and will ask your consent to remove them to the Public Record Office which will defray the removal charges.

It is not intended that this will involve you or your staff in any additional work; the archivist will be prepared to examine the material in whatever condition or place it is now kept. A list of the documents transferred will be sent to you and you wil have the right of permanent or temporary recall of any item on the list.

With the help of solicitors over the past 50 years and with the approval of the Incorporated Law Society of Ireland thousands of legal, estate, business and family papers have been saved and made available for research.

The office shall be grateful for your co-operation in this matter.

B. MacGIOLLA CHORDA,
Deputy Keeper of Public Records.

SOLICITORS UNDERTAKINGS

The attention of members is drawn to the risks attending personal undertakings given by solicitors. A solicitor who gives an unqualified personal undertaking is personally responsible financially irrespective of his ability to obtain indemnity or reimbursement from the client or any other person. It is suggested that before giving an undertaking either to pay money, deposit title deeds, or in respect of any other matter attention should be directed to the following points.

1. There should be an irrevocable undertaking in writing by the client to the solicitor authorising him to give the undertaking.

2. There should be an irrevocable written retainer by the client to the solicitor continuing until the undertaking is carried out. This will prevent the client from changing his solicitor in order to avoid compliance with the undertaking, an event which unfortunately, although rarely, has occurred in the past.

3. There should be in existence at the time of the undertaking which involves dealing with property an enforceable contract in writing to which the client is a party.

4. The undertaking should be qualified by a condition that it applies only in the event of the deeds or funds the subject of the undertaking coming to the solicitor's hands.

5. An undertaking dependent upon the completion of a contract by the client should be qualified by a condition that it binds the solicitor only on completion of the contract and that if the contract is rescinded by the vendor or if he otherfise fails to complete the solicitor will be absolved from the undertaking.

6. Solicitors for business reasons or because of the status or standing of their clients may be prepared to accept the risk attendant on undertakings which are not covered by the above conditions. It is important however that members of the Society should be aware of the risk involved in giving personal undertakings and for this reason the Council think it advisable to bring them particularly to the notice of the profession.

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 30th day of June, 1972.

D. L. McALLISTER
Registrar of Titles.

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

Schedule

(1) Registered owner: John Sullivan and Mary Ellen Sullivan; Folio 11056; Lands: Knocks, County Cork; Area: 59a. 2r. 5p.

(2) Registered owner: New Ireland Assurance Company Ltd.; Folio 4599. Lands: Part of the lands of Snug in the Barony of Coolock, County Dublin; Area: 0a. 1r. 18p.

(3) Registered owner: Michael Byrne; Folio 451R; Lands: Newtown, County Wexford; Area: 27a. 2r. 3p.

(4) Registered owner: Joseph Finnegan; Folio 1638; Lands: Fulmort, County Westmeath; Area: 14a. 3r. 3p.

(5) Registered owner: John Gardiner; Folio No.: 34 50; Lands: Coolaghmore; Area: 407a. 2r. 8p; County Kilkenny.

(6) Registered owner: Henry Farrell.

Folio No.	Lands	Aretas
1557	Ballynaboley	68a. 2r. 15p.
2142	Mainham	30a. 2r. 0p.

County Kildare.

OBITUARY

Dr. Richard G. H. Carter died at his residence, The Lodge, Mountrath, Co. Laois on the 6th June, 1972.

Dr. Carter was admitted as a solicitor in Michaelmas Term 1903; he had obtained a Doctorate of Law from Trinity College, Dublin. He practised under the style of Messrs. Fetherstonhaugh & Carter in Mountrath, and of Carter, Smyth & Co. in Kildare Street, Dublin.

Mr. James A. Binchy, B.A., LL.B., died at his residence, Bruce Villa Clonmel, Co. Tipperary, on the 20th June, 1972. Mr. Binchy was admitted solicitor in Trinity Term, 1918, and practised under the style of Messrs O'Brien and Binchy, Solicitors, New Quay, Clonmel and Carrick-on-Suir.

LOST WILL

Miss May Forde, The Square, Castlerea, County Roscommon, Retired Teacher, deceased.

Any Solicitor or person having knowledge of a Will made by the deceased, who died on 20th April, 1972, please communicate with Branigan & Matthews, Solicitors for next of kin, Drogheda.

LOST WILL

If anyone knows of any last Will and Testament made by Maurice Cummins, late of 116 Lower Kimmage Road, Dublin 6 who died on the 31st March, 1972, would they please communicate with Messrs. McCracken & Son, Solicitors, 94 Grafton Street, Dublin, 2.

A Will was apparently made sometime after May 1965.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

JULY-AUGUST 1972
Vol 66 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 fact be included in any particular issue, since this must depend on the space available.

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EDITORIAL

Younger Report

In view of the unwarranted intrusions of the State into the affairs of private citizens, it is not surprising that the Younger Report has issued a strong condemnation of some of the prevalent practices which are so often used unlawfully and without justification against innocent persons. It is obvious that the average citizen requires protection against no less than 20 named spying devices involving bugging and snooping as well as against information illegally acquired. Banks are too prone to disclose their customers' financial standing to snoopers who have no right to this information. It should be a grievous offence punishable by a high fine for any credit rating agency to inquire of any outside agencies as to the financial standing of their proposed customers. Bad as the position may be in England, it is likely to be much worse here, as the average citizen is not aware of his constitutional rights.

Solicitors' Remuneration

During the past twelve months the Society has been actively concerned with the question of solicitors' remuneration having regard to the steep and progressive rise in the cost of living. An application was made to the various committees for an increase of 42% in solicitors' charges which corresponded with the increase and the date of the application. An order was made by the Statutory Body under the Solicitors' Remuneration Act 1881 granting the increase and this order was laid before the Oireachtas. It was however annulled in Seanad Eireann on a motion brought by the Minister for Justice on the ground that an increase of 42% could not be justified under present social and economic conditions. This viewpoint while no doubt politically correct failed to take account of the fact that no increase had been sought or obtained by the profession since 1964 whereas employees, public servants and officials in the employment of local authorities and semi-State bodies had all received substantial increases during that period. Furthermore many of the increases obtained in the public service and elsewhere are retrospective while solicitors' costs when increased take effect only from the date of operation of the revelant order.

New Rules

Following the rejection of the Solicitors' Remuneration General Order 1971 the Statutory Body at the request of the Council made a new order providing for an increase of approximately 20% on the present item charges. This order has now been before the Oireachtas for the statutory period and takes effect from 17th May 1972. Copies are, or shortly will be, on sale at the Government Publications Sales Office.

The Land Registration Rules Committee with the approval of the Minister has made or is about to make new rules increasing the scale charges of voluntary transfers in part 4 of the schedule of costs to the Land Registration Rules 1966 by 30%. New scales of costs have also been agreed for the Circuit Court and the District Court including the scales of costs for the increased jurisdiction. The District Court (Costs) Rules 1972 have been submitted to the Minister for his concurrence and are expected to come into operation on 1st September 1972. Agreement has also been reached between the Minister and the Rules Committee on the solicitors' scales of costs in the Circuit Court including the costs of the increased jurisdiction. The question of Counsels' fees however has not been agreed between the Minister and publication of the rules has been held up. The Council has made urgent representations to the Minister that the scale of solicitors' costs should be brought into operation not later than 1st September 1972 and that any outstanding questions regarding Counsels' fees should be dealt with by separate regulations.

Limit of Legal Remedies

It is a cause of dissatisfaction and inconvenience to the public and the profession that publication of these scales should be delayed. In many cases proceedings have been held up because there is no proper scale of costs. There will be general agreement that this is a denial of justice for litigants. The long period of gestation of the new scales of costs is an added argument for the establishment of a Central Costs Committee dealing with the whole range of solicitors' remuneration to which the Society should have immediate access to cope with changing conditions. The Council have strongly pressed for this both with the Minister for Industry and Commerce and the Minister for Justice in connection with the Prices (Amendment) Bill 1971 which has passed all stages in Dail Eireann and is expected to come into operation in the near future. A Central Costs Committee manned by experts with representation would deal far more expeditiously and efficiently with questions concerning solicitors' remuneration than the half a dozen committees which have to consider such questions at the present time. It has however been the view of the Council that the Society should have direct access to the Committee not merely to the Minister. It seems only elementary justice that the professions like the civil service and employees in the local Government service and semi-State bodies should have a forum to which legitimate applications dealing with remuneration could be submitted directly from time to time and without the interminable delays which attend at the present procedure. It is on record that it took from four to seven years within recent times to have applications for increases in remuneration dealt with by the Department of Justice.

THE SOCIETY

Proceedings of the Council

June 22nd.

The President in the chair, also present Messrs. W. B. Allen, Anthony Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon, Thomas J. Fitzpatrick, James R. C. Green, Christopher Hogan, Thomas Jackson, John B. Jermyn, Francis J. Lanigan, Euan McCarron, Patrick McEntee, Brendan A. McGrath, John Maher, Patrick C. Moore, Senator J. J. Walsh, George A. Nolan, Peter E. O'Connell, Rory O'Connor, T. V. O'Connor, William A. Osborne, David R. Pigot, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor, Ralph J. Walker.

Affidavits of foreign law

It was decided to make representations to the Superior Courts Rules Committee that a new rule of Court should be made providing that affidavits of law in the United Kingdom, Scotland and Northern Ireland made by solicitors should be accepted. Under the present practice of the Court affidavits of Counsel are required. This is in direct contrast to the position in England and Northern Ireland where affidavits as to the local law made by solicitors practising in the Republic will be accepted.

Accountant's enquiries

Representations have been received from members of the Society as to the form of inquiries received by solicitors acting for limited companies from auditors engaged in the preparation of company accounts. In many cases these inquiries are of a far reaching character and impose a serious obligation on the solicitor both from the aspect of legal liability and the extent of the investigation required. The matter has already been discussed between representatives of the Institute of Chartered Accountants and of the Soociety and a further discussion has been arranged.

Legal remuneration

The Secretary reported that an Order of the Statutory Body under the Solicitors' Remuneration Act authorising an increase of 20% on schedule 2 item charges had been laid before the Oireachtas. The statutory period of one month in each House had not yet expired. Mr. Walker reported that the Superior Court Rules Committee had been informed that the Minister for Justice would authorise an increase of 20% in the item charges under appendix W other than discretionary items. He also reported that he had been informed that the Minister had authorised increases in the item scales of costs for proceedings in the Circuit and District Court. Mr. Lanigan reported that the Minister was prepared to authorise an increase of 30% in the scale of costs of vountary transfers of registered land.

The Society's representatives on these committees were authorised to take the necesssary action on their committees and to negotiate with the Department of Justice to bring these matters to a finality.

Commission scale fees on probate and administration of estates

The Council on a report from a committee has revised this scale and a circular will be issued to members in due course.

Transfar of mortgages

A report from a committee stated that where a house, the subject of a local authority mortgage was sold the usual practice is to obtain a transfer of the mortgage to the account of the purchaser and in these circumstances it is not necessary to have the first mortgage released and to negotiate a second mortgage. There is a substantial saving in costs and inconvenience. It was decided to approach the Building Society Associations to ascertain whether they would adopt a similar practice.

PRACTICE NOTE

The attention of members is drawn to the necessity of making special application for solicitor and client items, which would not be allowed as part of the party and party costs, before the final order in actions in which minors or perso nsunder disability are involved. These matters include additional witnesses' expenses, fees for special medical reports and other items which would not be normally allowed by the Taxing Masters under the scales of costs in the appropriate Courts. The Taxing Master will automatically allow such additional items if they are included in the Order of the Court. It is pointed out that the chances of getting additional solicitor and client items by special applications after the final order is made up are poor and accordingly counsel should be instructed fully on all such special matters to be included in the Order so that application may be made for their allowance immediately after the verdict or judgment.

DEDUCTION OF TAX PAID IN IRELAND

Members who on the instructions of clients decline to supply to the Revenue Commissioners particulars of client's identity where deposit interest or other taxable income is received by the solicitor should remember when accounting for the interest to the client to deduct tax and where applicable surtax. The client should be advised as to his right to apply for a refund if he is not liable to tax and of the appropriate procedure and time for making the application. Solicitors who fail to deduct the tax at time of payment may find themselves in the position of being subjected to personal assessment by the Revenue Commissioners at a later date and it may then be difficult or impossible to recover from the client the amount of the tax so paid. This matter is still under consideration by the Council.

Solicitor's Conveyancing remuneration in England

THE Council of the English Law Society has received from the Statutory Body under the Solicitors Remuneration Act 1881 the draft of a new Solicitors Remuneration Order 1972. The main provisions of this draft order, which will not become effective until it has been considered by the Council of the Law Society in England and ultimately made, with or without amendement, by the Statutory Body are as follows.

2 (1) A solicitor's remuneration for non-contentious business (including business under the Land Registratioon Act 1925 shall be such sum as may be fair and reasonable having regard to all the circumstances of the case and in particular to
(i) the complexity of the matter or the difficulty or novelty of the questions raised.
(ii) The skill, labour, specialised knowledge and responsibility involved.
(iii) The time spent on the business.
(iv) The number and importance of the documents prepared or perused without regard to length.
(v) The place where and the circumstances in which the business or any part thereof is transacted.
(vi) Where money or property is involved its amount or value and
(vii) the importance of the matter to thec lient.

It is further provided that in any conveyancing transaction there shall be included among the circumstances to which regard is to be had in accordance with the provisions of the order
(i) the fact that any land to which the business relates is registered land within the meaning of the Land Registration Act 1925
(ii) the fact that the solicitor is acting or has acted
(a) in the same transaction for another party or
(b) or other transactions relating to land having the same or substantially the same title.

Reference to the Law Society
A client may require the solicitor to obtain a certificate from the Law Society as to whether the sum charged is fair or reasonable and if the Law Society decide that the charge is excessive the sum fixed by the Law Society will be the sum payable by the client This is without prejudice to the provisions of the Solicitors Act 1957 in relation to taxation of costs. Presumably either the solicitor or the client will have the right to have the costs taxed after a Law Society's certificate has been issued.

Notification to the client
Before bringing proceedings to recover costs on a bill the solicitor will be obliged to notify the client of his right to obtain a certificate from the Law Society and also the provisions of the Solicitors Acts in relation to taxation of costs. On the taxation of any bill under the order the onus to satisfy the taxing officer as to the fairness of the charge will rest on the solicitor. The client will not be entitled to require the solicitor to obtain a certificate of the Law Society after the bill has been either taxed or paid. If the taxing officer allows less than half the sum charged he is to bring the facts to the attention of the Law Society.
It seems the commission scale fee system which was introduced in England in 1883 at the request of the public and against the wishes of the profession is nearing its end there and that the new system will take its place. The difference between the position in England and Ireland is that Schedule 2 in the two countries is based on entirely different conceptions. The English schedule 2 is a single charge based on the seven enumerated factors and means that charges will be regulated on much the same system as those of chartered accountants and other professions which, however, unlike solicitors charges, are not subject to taxation by the Cnurt. The English system avoids the necessity of long and detailed bills, counting folios and other tedious work. The taxing master on an appeal from the Society exercises a real discretion. In Ireland we are still tied to the outmoded system of piece work charges for drawing and perusing documents.

One of the chief advantages of the commission scale fee is its certainty and economy in the preparation of bills. Even the new Schedule 2 adopted here would still involve considerable detailed work in preparing conveyancing bills of costs with their consequent addition to solicitors' overhead expenses. No doubt the Prices Commission or Central Costs Committee which will in due course have to consider the entire system of solicitors' remuneration will have regard to what is happening in England. Many other professions and occupations such as stockbrokers, architects, chartered surveyors, auctioneers, advertising agents, literary and commercial agents generally charge on a commission basis. Solicitors' commission fees have recently been under attack and it will be interesting to see whether the Prices Commission will apply the same principles in dealing with other professions and occupations as those now suggested for solicitors.

EUROPEAN SECTION

THE COURT OF THE EUROPEAN COMMUNITY

Part II

by THE EDITOR

Let us now distinguish between Regulations, Directives and Decisions.

Regulations are of universal application, and directly binding on Member States (i.e. Language Rules, Matters pertaining to the European Development Fund and the Social Fund).

Directives only apply to the Member States to whom they are issued, and these States must take whatever action is required, whether by introducing new legislation in Parliament, or by issuing administrative statutory instruments, in order to implement them.

Decisions have the effect of establishing Rules which are capable of being performed, and may be addressed either to Member States or business enterprises or individuals, and shall be binding upon them; Member States or firms will normally be in a position to apply them by administrative action.

Recommendations and Opinions, if made at all, have no binding force whatsoever.

(5) **Article 177:** Let us now consider the case, where under Article 177 of the Treaty there is a reference by one of the National Courts of the Member States to the Court of the European Commission for a ruling on one of these three subjects:

(a) The interpretation of an Article of the Treaty or of a clause in a protocol attached to the Treaty.

(b) The validity of any act issued by any of the organs of the Community: the Commission, the Council of Ministers or the Community Parliament. The Court of the Commission will analyse whether in given circumstances such an act was validly made.

(c) The interpretation of the Statutes of any of the bodies set up by the Council of Ministers. The decision of the European Court under Art. 177 can only deal with matters expressly or impliedly raised in the reference. The reference is discretionary, unless it is made by the Supreme Court. The Court of the Community applies *le droit*—general principles of law. Unlike our Courts which are essentially accusatorial, this Court is essentially inquisitorial according to Continental procedure and the Court decides what evidence is to be taken, and can freely evaluate it; it is indeed fortunate for litigants appearing before this Court that its procedure as regards evidence is much more informal than the formal English accusatorial one which may lead to conflicting and questionable decisions. The reference to the Court under Art. 177 is compulsory in the case of the Supreme appellate municipal Court, and is optional in the case of any other municipal Court (i.e. the High Court). If the National Court considers the interpretation clear, it may decide not to refer the question of interpretation to the European Court.

(6) **Article 175:** Article 175 of the Treaty provides that a complaint by a Member State may be made if, in violation of the Treaty either the Council of Ministers or the Commission has failed to act—or, as the French official text states: *dan le cas où le Conseil ou la Commission s'abstient de statuer.* This appears to mean that in given circumstances the Council of Ministers or the Commission have failed to issue the required regulations or directives or decisions.

Points under Article 175 (Failure to Act):

(a) The appeal should clearly state the grounds upon which it is suggested the Commission or Council did not act.

(b) If the institution (Commission or Council) states its position clearly within the two month period, even if that position is that it will not take action, no complaint of failure to act can be made to the Court (*Lütticke,* 1966).

(c) There is no failure to act by reason of the fact that these matters are settled in a manner different from that sought by the applicant. Apart from the five specific grounds in which the Court may exercise its jurisdiction on constitutional grounds, there are other circumstances in which the Court may intervent in exercising its purely administrative functions.

Additional Jurisdiction conferred upon the Courts

(1) Article 179 gives the Court jurisdiction to decide any dispute between the Community and its employees witin the limits and under the condition laid down in the relevant Statute of Service of 1961 on conditions of employment.

(2) Under Article 182 decisions may be rendered in any dispute between Member States in connection with the subject of the Treaty where the States in dispute submit it to the Court under a special agreement between them.

(3) Under the Protocol of Privileges of the EEC, authorisation of administrative or legal measures of constraint against the property or assets of the Community may be made by the Court.

(4) Express powers as to the interpretation and implementation of Regulation 3 as to the social security of migrant workers are conferred upon the Court.

(5) Article 184 protects persons against the enforcement of regulations without thereby in any way raising the question of their continued existence, or of their annulment under Act 173. Note that under this Article the Court can only consider regulations.

Dr. Bebr has succinctly stated the position as follows: "The Court operates in the role of an administrative tribunal examining the legality of administration. But, as a guardian of the Community Treaties, the Court displays strong elements of a Constitutional Court. By formulating the principles which are to be observed by the Member States and by the Community, the Court exercises great latitude in its expression of Community policy, and a rudimentary political control in favour of the fundamental principles of the Treaty.

"As regards damages, Article 215 provides that the Community shall make reparation in accordance with common general principles, for any damage caused by institutions or by its employees in the performance of their duties; this means any wrongful act or default on the part of the Community—i.e. *faute de service*. The damage caused to the plaintiff must usually be abnormal, special and direct" (see *Kampfmayer*, 1967).

The Court may thus control:

(1) The detrimental economic effects of Community legislation in a Member State.

(2) Violation by a member State of any provision of the Treaty; in this case the Court may impose sanctions if need be.

(3) The Treaty making power of the European Community, by determining the validity of Treaties with Associate States.

Points of Practice and Procedure

English will be added as an official language from 1973. The procedural language is determined by the rules of procedure. An agent will represent the State or the institution of the Community. The Court will determine whether a legal practitioner in a Member State can practise before it; university teachers who can plead in domestic Courts may appear before the Court. A request setting out the grounds upon which the assistance of the Court is sought must be delivered to the Registrar, who circulates it.

Within one month of receipt, the defendant is entitled to deliver a defence. There may then be a reply by the plaintiff as well as a rejoinder by the defendant; time limits for service of these documents shall be fixed by the President of the Court. If no defence is lodged, the plaintiff can apply for judgment by default. A report by experts may be commissioned by the Court at any time. Applications can be made for rulings on a preliminary point by lodging separate documents. Third parties can intervene by permission of the Court. When all the documents are served, they are handed to one of the Judges who prepares a preliminary report. If the Court requires further information, it may institute further inquiries, including evidence by witnesses, expert opinion and a visit to the scene.

Judgments are delivered in respect of substantive questions. Procedural matters are dealt with by Orders. In case of difficulty, the Court may be requested to interpret a judgment. Parties may apply for free legal aid if it is substantiated. The Court will follow its own precedents where requested, and will consider Travaux Preparatoires or legal doctrines of Member States.

The Court delivers only one corporate judgment, and no dissenting judgment or appeal against its decision is allowed.

In 1971 the Court gave sixty judgments of which thirty-two related to direct actions, and the other twenty-eight were preliminary rulings on references by National Courts. Ninety-six new cases were registered last year—forty-six by officials of the Community, and thirty-seven references for preliminary rulings.

The Rules of Procedure require that two Chambers each of three judges shall undertake the inquiry procedure in cases assigned to them; another chamber will deal with cases instituted by civil servants of the community against the Community itself.

The Registrar to the Court receives, sends, preserves, and effects service of all relevant documents, and is responsible for the publication of the cause lists of the Court.

A record of every Court sitting drawn up by the Registrar must be signed by the President and the Registrar as an *Acte Authentique*. Copies may be obtained on payment of prescribed charges (25p per page). The Registrar is also in charge of the publication of the official Court Reports (*Receuil de Jurisprudence*). The benefits to be derived from a uniform interpretation of the Treaty of Rome by the Court of the Community appear to be overwhelming.

What Rights have aliens?

What rights have aliens in the Republic arising out of the European Convention on Establishment (1956)

The Government recently replied to a questionnaire by the Council of Europe. The following are extracts from the replies to the questionnaire. They show the position regarding aliens' rights in the Republic under various heads and the restrictions in respect of certain articles made by our Government. The replies given by all the countries which replied to the questionnaire on the rights of foreign lawyers are also printed below. The aritcles from the Council of Europe's Convention on Establishement (1956) (which is not part of the E.E.C. law) are printed below. The text is a ready reference to the legal position in the Republic regulating the rights of aliens and the rights of foreign lawyers in various European countries.

Chapter 1: Question No. 1, Articles 1 and 2 of the Convention

(a) *Question*

What are the measures which have been taken by your government, either unilaterally or under a bilateral or multilateral convention, and which are such as to facilitate, in accordance with Articles 1 and 2, the entry into and residence within your country's territory of nationals of the other Contracting Parties?

Article 1

Each Contracting Party shall facilitate the entry into its territory by nationals of the other Parties for the purpose of temporary visits and shall permit them to travel freely within its territory except when this would be contrary to *ordre public*, national security, public health or morality.

Article 2

Subject to the conditions set out in Article 1 of this Convention, each Contracting Party shall, to the extent permitted by its economic and social conditions, facilitate the prolonged or permanent residence in its territory of nationals of the other Parties.

(b) *Replies*

IRELAND

(a) ARTICLE ONE OF THE CONVENTION

In general an alien landing in Ireland must possess a valid passport or some other documents establishing identity and nationality. No restrictions of movement within the State is imposed on other Contracting Parties' nationals who are allowed into the country. Regis-

tration is not required of such persons who are not resident in the State for more than three months.

(b) ARTICLE TWO OF THE CONVENTION

A residence permit is needed by aliens intending to visit Ireland for more than three months or to live there permanently, and in general aliens (aged sixteen or more) who are resident in the State for more than three months are required to register with the police. Regulations governing the grant of residence permits are administered liberally in regard to nationals of other Contracting Parties.

Chapter 2: Question No. 2, Article 3, paragraph 2 of the Convention

(a) *Question*

What provisions have been made by your government to give effect to paragraph 2 of Article 3?

Article 3, paragraph 2

Except where imperative considerations of national security otherwise require, a national of any Contracting Party who has been so lawfully residing for more than two years in the territory of any other Party shall not be expelled without first being allowed to submit reasons against his expulsion and to appeal to, and be represented for the purpose before a competent authority or a person or persons specially designated by the competent authority.

(b) *Replies*

IRELAND

In accordance with the Aliens Act and orders made thereunder, nationals of any other Contracting Party who have been lawfully residing for more than two years in Ireland may not be expelled without first submitting reasons against their expulsion to the Minister of Justice, who is the competent authority in this regard in Ireland. Such persons may also appeal against the decision of the Minister of Justice and be represented before the President of the Irish High Court, whose decision in the matter is final.

Chapter 3: Question No. 3, Article 9 of the Convention

(a) *Question*

What provisions have been made by your government for the application of Article 9?

Article 9

(1) No security or deposit of any kind may be required, by reason of their status as aliens or of lack of domicile or residence in the country, from nationals of any Contracting Party, having their domicile or normal residence in the territory of a Party, who may be plaintiffs or third parties before the Courts of any other Party.

(2) The same rule shall apply to the payment which may be required of plaintiffs or third parties to guarantee legal costs.

(3) Orders to pay the costs and expenses of a trial imposed upon a plaintiff or third party who is exempted from such security, deposit or payment in pursuance either of the preceding paragraphs of this article or of the law of the country in which the proceedings are taken, shall without charge, upon a request made through the diplomatic channel, be rendered enforceable by the competent authority in the territory of any other Contracting Party.

(b) *Replies*

IRELAND

When the Convention was ratified, the Government of Ireland entered a reservation in respect of Article 9. The Government intends to consider in due course the possibility of modifying the existing law so as to enable the reservation to be withdrawn.

Chapter 4: Question No. 4, Article 10 of the Convention

(a) *Question*

What are the criteria applied by your government for the implementation of Article 10?

Article 10

Each Contracting Party shall authorise nationals of the other Parties to engage in its territory in any gainful occupation on an equal footing with its own nationals, unless the said Contracting Party has cogent economic or social reasons for withholding the authorisation. This provision shall apply, but not be limited, to industrial, commercial, financial and agricultural occupations, skilled crafts and the professions, whether the person concerned is self-employed or is in the service of an employer.

(b) *Replies*

IRELAND

(a) EMPLOYED ALIENS

Employment permits are required for aliens wishing to take up employment in Ireland. Owing to the high level of unemployment in Ireland, employment permits are not granted to aliens for the jobs for which there are suitably-qualified out-of-work Irish nationals. Otherwise, employment permits are freely granted to properly-qualified nationals of Contracting Parties.

(b) SELF-EMPLOYED ALIENS

Aliens must apply for permission before setting up in business or industry. Permission is seldom refused to nationals of a Contracting Party.

When applications are being examined, such matters as the character and general fitness of the applicant, his knowledge of the branch of activity concerned, the viability of the enterprise and the employment prospects are taken into account. Permission is refused only where it is concluded from this examination that to grant it would be undesirable for economic or social reasons.

Chapter 5: Question No. 5, Article 15 of the Convention

(a) *Question*

In what conditions may members of the legal and medical professions who are nationals of the other Contracting Parties lend assistance in the territory of your country, within the meaning of the second paragraph of Article 15?

For the purpoes of this report, the term *avocat* in the French version shall include barristers and solicitors and the term lawyer in the English version shall include *avocat*.

Article 15

The exercise by nationals of one Contracting Party in the territory of another Party of an occupation in respect of which nationals of the latter Party are required to possess professional or technical qualifications or to furnish guarantees shall be made subject to the production of the same guarantees or to the possession of the same qualifications or of others recognised as their equivalent by the competent

national Authority.

Provided that nationals of the Contracting Parties engaged in the lawful pursuit of their profession in the territory of any Party may be called into the territory of any other Party by one of their colleagues for the purpose of lending assistance n a particular case.

(b) *Replies*

BELGIUM

(a) LEGAL PROFESSION

The occasional professional activity by foreign lawyers is authorised under constant practice.

There is as a rule no restriction on the giving of legal advice provided that the title of *avocat* at a Belgian Bar is not used and that the advice is given in a proper manner.

With regard to representation in Court, custom has established the following rules:

(1) A foreign lawyer must be introduced by his professional authorities and present himself to the President of the Bar at the Court which is to hear the case for which he is counsel;

(2) Accompanied by the President or his deputy, he is presented to the presiding judge of the chamber before which he wishes to appear;

(3) Only lawyers from countries in which the right to plead is granted on conditions similar to those governing Belgian lawyers enjoy the same right, on a reciprocal basis, in Belgium;

(b) MEDICAL PROFESSION

Belgian administrative practice allows foreign doctors to exercise their profession temporarily, without prior authorisation, provided that they have been called in for consultation by a Belgian doctor.

DENMARK

(a) LEGAL PROFESSION

Danish law does not prevent a foreign lawyer from assisting a Danish lawyer in a particular case, at the latter's request, in both civil and criminal proceedings. Only Danish lawyers may appear in Court as counsel for the parties (Section 260 (1) of the Administration of Justice Act); a foreign lawyer may, however, assist a Danish counsel in a civil case.

FEDERAL REPUBLIC OF GERMANY

(a) LEGAL PROFESSION

Under German law, foreign lawyers may practise their profession to a limited extent.

Foreign lawyers may give legal advice, in the cases provided for under paragraph 2, Article 15, of the European Convention on Establishment.

In civil cases, where the party must be represented by a lawyer admitted to the Court dealing with the case (requirement to take counsel as prescribed in paragraph 78 of the Code of Civil Procedure), a foreign lawyer is allowed to speak in the presence of a German lawyer during the oral proceedings.

In criminal cases, a foreign lawyer may assist a German lawyer or a professor of law with the Court's permission (paragraph 138 (2) of the Code of Criminal Procedure).

IRELAND

(a) LEGAL PROFESSION

There is nothing to prevent a national of a Contracting Party who is a member of the legal profession from giving assistance in a particular case to an Irish colleague.

The Convention is not interpreted as requiring that a lawyer from another Contracting Party should be free to represent a client before the Irish Courts, or to take instructions for the drawing up of, or to draw up, documents relating to legal or personal estate, to the taking of proceedings, or to apply for or oppose a grant of probate or letters of administration. These functions are exclusively reserved to barristers and solicitors who have been admitted to the respective branches of their professions in Ireland.

(b) MEDICAL PROFESSION

A member of the medical profession who is a national of a Contracting Party may practise medicine in Ireland, but if he is not fully registered in the Register of the Medical Registration Council of Ireland he may practise only subject to certain limitations. He may, therefore, lend assistance to a colleague in Ireland in a particular case, and the limitations arising from non-registration are not such as to impose a substantial disadvantage where the colleague is fully registered.

ITALY

(a) LEGAL PROFESSION

Nationals of the Contracting Parties, engaged in the lawful pursuit of their profession in the territory of any Party, may be invited to Italy by Italian lawyers to act as consultants.

(b) MEDICAL PROFESSION

The same rule applies to members of the medical profession.

The assistance which aliens who are members of the above professions may give to their Italian colleagues should be limited to the latter.

LUXEMBOURG

(a) LEGAL PROFESSION

Foreign lawyers may, by way of an exception, be authorised by the President of the Court to plead before a Luxembourg Court where the client's interests or other cogent reasons are considered to warrant such a step. Foreign lawyers must apply for and obtain the authorisation of the Bar Association Council and be assisted by a Luxembourg barrister.

(b) MEDICAL PROFESSION

In practice, foreign professors of medicine may give assistance in Luxembourg under the responsibility of a Luxembourg doctor.

NETHERLANDS

(a) LEGAL PROFESSION

There are no statutory provisions governing the circumstances in which foreign lawyers may assist a Dutch lawyer in the Netherlands; the question is therefore left to the discretion of the Courts.

(b) MEDICAL PROFESSION

It is admitted that a foreign doctor may be invited for consultation by a Dutch colleague, under the responsibility of the latter.

NORWAY

(a) LEGAL PROFESSION

Norwegian law does not place any restrictions on the right of Norwegian lawyers to seek the assistance of a foreign lawyer in particular cases.

With the Court's permission, a foreign lawyer may himself plead in Court, alongside a Norwegian lawyer, in both civil and criminal cases.

(b) MEDICAL PROFESSION

There are no regulations preventing foreign doctors

from lending assistance to a Norwegian doctor in a particular case, provided the responsibility and decision-making remains with the doctor having requested the assistance.

UNITED KINGDOM

(a) LEGAL PROFESSION

There is generally no objection to a foreign lawyer going to the United Kingdom for a short visit to consult and advise a colleague on a particular case. In such circumstances he is given the same treatment as a business visitor (i.e. admitted for a period of three months, and free to transact business during his visit). Where, however, his participation amounts to the actual practice of his profession, rather than mere consultation or advice, permission is dependent on the advice received from the body controlling the profession in the United Kingdom.

(b) MEDICAL PROFESSION

Same rules as for the legal profession.

Chapter 6: Question No. 6, Article 16 of the Convention

(a) *Question*

What provisions have been made by your government to give effect to Article 16?

Article 16

Commercial travellers who are nationals of a Contracting Party and are employed by an undertaking whose principal place of business is situated in the territory of a Contracting Party shall not need any authorisation in order to exercise their occupation in the territory of any other Party, provided that they do not reside therein for more than two months during any half-year.

(b) *Replies*

IRELAND

A commercial traveller who is a national of a Contracting Party may, without obtaining an employment permit or permission, carry on business in Ireland on behalf of an undertaking having its principal place of business in the territory of a Contracting Party.

With regard to importation of samples by a commercial traveller, the provisions of the Geneva Convention (1952) to Facilitate the Importation of Commercial Samples and Advertising Material are applied. As permitted by that Convention, certain import prohibitions or restrictions necessary to protect human, animal or plant life or health are imposed.

As Ireland has acceded to the Customs Co-operation Council conventions on the use of ECS and ATA carnets, these carnets may be availed of to cover the temporary importation of commercial samples.

Chapter 7: Question No. 7, Article 19 of the Convention

(a) *Question*

What is the state of your law on the right to act as arbitrator?

Article 19

Nationals of any Contracting Party in the territory of any other Party shall be permitted, without any restrictions other than those applicable to nationals of the latter Party, to act as arbitrators in arbitral proceedings in which the choice of arbitrators is left entirely to the parties concerned.

(b) *Replies*

IRELAND

There are no restrictions in respect of aliens on the right to act as arbitrator.

Chapter 8: Question No. 8, Section V (b) of the Protocol

(a) *Question*

To what extent are the husband or wife and dependent children of nationals of any Contracting Party lawfully residing in your country's territory, who have been authorised to accompany or rejoin such nationals, allowed to take up employment in that territory in accordance with the conditions laid down in Section V (b) of the Protocol?

Please state what measures, if any, have been taken (by way of legislation, regulations or administrative action) by your government to this end.

Section V (b) of the Protocol

The husband or wife and dependent children of nationals of any Contracting Party lawfully residing in the territory of another Party who have been authorised to accompany or rejoin them shall as far as possible be allowed to take up employment in that territory in accordance with the conditions laid down in this Convention.

(b) *Replies*

IRELAND

The granting to spouses and dependent children of work permits or authorisation to set up in business or industry is not subject to any restriction other than that allowed by Article 10 of the Convention ("... unless the said Contracting Party has cogent economic or social reasons for withholding the authorisation"). (See also the reply to Question No. 4.)

APPENDIX 4

List of restrictions in respect of certain articles of the European Convention on Establishment by Ireland.

Lists of restrictions in respect of Article 6

Property, the acquisition, possession or use of which is subject to restrictions

Item—Aircraft; *Relevant legislation*—Air Navigation (Nationality and Registration of Aircraft) Order, 1963 (Article 7).

Nature of restriction and exceptions—An aircraft' shall not be registered or continue to be registered in the State unless it is wholly owned by: (a) a citizen of Ireland, or (b) a company registered and having its place of business in the State, whereof the chairman and not less than two-thirds of the directors are citizens of Ireland, or by such citizen and company in combination. However, if an alien who resides in the State or a company which has a place of business in the State is an owner of an aircraft, such alien or company may be registered in the State subject to conditions which the Minister for Transport and Power may impose.

Item—Shipping; *Relevant legislation*—Mercantile Marine Act, 1955 (Sections 16, 19 and 47).

Nature of restriction and exceptions—Foreign persons or companies other than those of a State declared by Government Order to be a reciprocating State are not qualified to register a ship in Ireland or to own a share in an Irish registered ship. Under Section 47 of the

Mercantile Marine Act, 1955, this position also obtains in respect of property in an Irish registered ship or a share therein, transmitted on death, bankruptcy or otherwise to a person who is not a qualiled person. In such a case the High Court may, on application by that person, order a sale of the property on his behalf; otherwise the ship or share is subject to forfeiture under the Ac.

Item—Land; *Relevant legislation*—Land Act, 1965 (Section 45).

Nature of restriction and exceptions—No interest in agricultural land may, without the written consent of the Land Commission, be transferred to any person other than an Irish citizen. Exceptions include, *inter alia*, transfers

(a) with the written consent of the Land Commission;

(b) to a person who has been ordinarily resident in Ireland for a previous continuous period of seven years;

(c) to a person certified by the Minister for Industry and Commerce as having shown that the land in question will be used for an industry other than agriculture;

(d) to a person who is certified by the Land Commission as having shown to their satsifaction that he is acquiring the land for private residential purposes where the land involved does not exceed five acres;

(e) to a person who succeeds to an interest in the property of a deceased, and is within a certain degree of relationship to him.

Lists of restrictions in respect of Article 14

Restrictions in respect of the exercise of certain occupations

Item—Sea-fishing; *Relevant legislation*—Fisheries (Amendment) Act, 1962 (Section 19), Agricultural Products (Regulation of Import) Act, 1938 (Section 2), Fish (Regulation of Import) Order, 1966.

Nature of restriction and exceptions—Landing of certain fish in the State is confined to Irish sea-fishing boats unless imported in accordance with licences issued by the Minister for Agriculture.

Item—Tea Trading; *Relevant legislation*—Tea (Purchase and Importation) Act, 1958.

Nature of restriction and exceptions—Only Irish citizens or companies which are wholly Irish-owned or controlled may be registered as tea traders.

Common Market Law Reports

Contents of April 1972 issue

CURRENT LAW DIGEST SELECTED

In reading these cases note should be taken of the differences in English and Irish Statute Law.

Court Evidence

In an appeal stated by the Lord Chief Justice to involve a point of considerable constitutional importance, the Queen's Bench Divisional Court laid down rules for justices in a criminal case when police apply for an order for inspection of a defendant's bank account under Section 7 of the Bankers' Books Evidence Act, 1897.

[Williams and Others v Summerfield; Q.B.D.; 18/5/1972.]

Charity

The Court of Appeal (Lord Justice Buckley and Mr. Justice Plowman, Lord Justice Russell dissenting) dismissed an appeal by the Attorney General from the order of Sir John Pennycuick, the Vice-Chancellor (*The Times*, 22 May 1971), that the Construction Industry Training Board was entitled to be registered as a charity under Section 4 of the Charities Act, 1960. As a registered charity the board will not be liable to Selective Employment Tax.

It was conceded that the board had been established for exclusively charitable purposes and the question was whether it came within the second part of the definition of "charity" in Section 45 of the Act: "and is subject to the control of the High Court in the exercise of the Court's jurisdiction with respect to charities".

[Construction Industry Training Board v Attorney-General; 22/4/1972.]

Conflict of Laws

The premises of an embassy or consulate in England are on English soil and cannot be regarded as forming part of the foreign state, His Lordship held when giving reasons for deciding yesterday that the English courts could not recognise a talaq divorce obtained at the consulate general of the United Arab Republic in London by an Egyptian national domiciled in England.

The Court was deciding a preliminary point in a divorce suit brought by Mrs. M. I. Radwan of Finchley, who petitioned on the ground of her husband's cruelty and claimed that he had obtained a decree of divorce by talaq at the consulate general of the United Arab Republic on 1 April 1970.

[Radwan v Radwan; Family Division; 11/5/1972.]

A proposed action against Mr. R. L. Bradshaw, Premier of St. Christopher, Nevis and Anguilla, in respect of an alleged libel in a pamphlet published by him in London should be tried in England rather than in St. Kitts because not only was the primary publication here but it was better that the trial should be held in the more remote and detached atmosphere of England.

[Boon v Bradshaw; C.A.; 18/4/1972.]

Crime

The Court of Appeal (Lord Justice Cairns, Mr. Justice Nield and Mr. Justice Croom-Johnson), dismissing appeals by J. P. Bentham and K. N. A. Baillie against conviction for possessing firearms with intent to endanger life contrary to Section 16 of the Firearms Act, 1968, certified that a point of law of general public importance was involved in the decision.

The point was "whether the words in Section 16, as amended by Section II of the Criminal Damage Act, 1971, 'It is an offence for any person to have in his possession any firearm or ammunition with intent by means thereof to endanger life' should be so construed as to require proof by the prosecution of a present and unconditional intent to endanger life".

[Regina v Bentham; C.A.; 22/4/1972.]

Where a motorist has two previous convictions for driving offences endorsed on his licence and is convicted of a third within three years, the magistrates in considering whether he should be disqualified from driving, under the "totting-up" provisions of Section 5 (3) of the Road Traffic Act, 1962, are entitled in law to admit evidence by him about the circumstances attending the previous convictions as circumstances to which the Court may have regard as mitigating the normal consequences of the third conviction.

The House of Lords so held in allowing an appeal by Robert Lambie from the Queen's Bench Divisional Court (the Lord Chief Justice and Mr. Justice Lawson, Mr. Justice O'Connor dissenting) (*The Times*, 22 July 1971, [1972] RTR 36), which had held on an appeal by the prosecution from Reading justices that in considering whether or not to impose a driving disqualification on Mr. Lambie for a third speeding offence within three years, to which he pleaded guilty in January 1971, the justices had wrongly allowed him to adduce evidence showing that two previous speeding offences of which he had been convicted in 1968 were trivial.

[Lambie v Woodage; House of Lords (1972) 1 A.E.R. 462]

Riparian factory owners whose pumping system became obstructed by autumn leaves and bracken, as a result of which polluting matter got into the River Irwell, lost their appeal when the House of Lords decided that the offence of causing polluting mattert o enter a stream, contrary to Section 2 (1) (a) of the Rivers (Prevention of Pollution) Act, 1951, could be committed by a person who had no knowledge of the fact that such matter was entering the stream and had not been negligent in any relevant respect.

[Alphacell Ltd. v Woodward: House of Lords (1972) 2. A.E.R.]

Money accepted by a travel agent from customers towards payment for air trips to America was held not to put him under an obligation to deal with the money in a particular way within the meaning of Section 5 (3) of the Theft Act, 1968, even though no holiday was provided and no money refunded.

The Court allowed an appeal by G. Hall, Manchester, against his conviction at Manchester Crown Court (Mr. Commissioner D. Bailey) last September on seven counts of theft of money received as deposits or payment for the trips and quashed his two-year sentence.

[Regina v Hall; C.A.; 5/5/1972.]

A driver who would only agree to a doctor taking a specimen of blood from his finger was held to have been properly convicted of failing without reasonable excuse to provide a specimen for a laboratory test in pursuance of a requirement under Section 3 of the Road Safety Act, 1967.

[Rushton v Higgins; Q.B.D.; 10/5/1972.]

Their Lordships laid down the test to be applied by a Court when considering whether allegations of an offence charged in an indictment expressly included an allegation of "another offence" within Section 6 (3) of the Criminal Law Act, 1967. The Court is to apply the "red pencil test"—striking out of the indictment all the averments which had not been proved. If the striking out left particulars of another offence within the jurisdiction of the Court of trial when the accused can then and there defend, the judge can and should ask the jury to consider whether the other offence has been proved.

[Regina v Lillis; C.A.; 16/5/1972.]

The Court of Appeal (Lord Justice Stephenson, Mr. Justice Cusack and Mr. Justice Forbes) gave leave to appeal to the House of Lords on the question "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 is a conspiracy which can be tried in England'.

[Regina v Doot; Court of Appeal; 10/5/1972)]

When the defence to a charge of murder is that the person charged was provoked so that the offence is to be reduced to manslaughter, the jury should be instructed to consider the relationship of his acts to the provocation on asking themselves whether it was enough to make a reasonable man do as he did.

[Regina v Brown; C.A.; 16/5/1972.]

The House of Lords reviewed Pinner v Everett—(1969) 3 A.E.R. 276 and some of its members raised doubts as to the validity of dicta in that case when they held that where a suspicion arose that a person driving a vehicle had alcohol in his body, that person, if immediately pursued by a suspecting constable in uniform, might be required to provide a breath specimen for a test, although at the end of the pursuit he

was no longer a person "driving or attempting to drive" a motor vehicle on a road or other public place. The Lord Chancellor and Viscount Dilhorne gave a new interpretation to the relevant section—Section 2 (1) (a) of the Road Safety Act, 1967.

[Sakhuja v Allen; House of Lords (1972) 2 A.E.R. 311]

Conveyancing

In deciding under Section 222 (f) of the Companies Act, 1948, whether it is "just and equitable" that a company should be wound up it is permissible to take into account, among other factors, the fact that the company has been formed or continued on the basis of a personal relationship involving mutual confidence, though it may be confusing to talk of its being a "quasi-partnership".

[Ebrahimi v Westbourne Galleries Ltd. and Others; House of Lords (1972) e A.E.R. 492]

On the law as it stood, a charge in favour of the landlord imposed by a scheme under Section 19 of the Leasehold Reform Act, 1967, on enfranchised property would make it impossible for a building society to advance money on the property to the enfranchised owner unless it provided that the charge in favour of the landlord be postponed to any possible future mortgage that might be made to a building society.

[In re Abbots Park Estate (No.2); ch. D. (Pennycuick V.C.)—(1972) 2 A.E.R. 177]

Contract

The word "condition" used in one subclause of a distributorship agreement between a German firm and an English company, by which the English company was to send a representative to visit the six biggest United Kingdom motor manufacturers every week over four years to solicit orders for large panel presses was held by a majority of the Court of Appeal not to be a term a single breach of which would entitle the erman firm to repudiate the whole contract.

[Wickman Machine Tools Sales Ltd. v L. Schuler AG; C.A.; 27/4/1972.]

Their Lordships dismissed an appeal by buyers of Nigerian cocoa in a dispute which arose from the devaluation of sterling in 1967. In the Court of Appeal it was said that the cotton as well as the coloa trade was interested in the decision, and that £6m was involved.

Their Lordships held that where the sellers of the cocoa, Nigerian Produce Marketing Co. Ltd., under fourteen contracts in which the purchase price was expressed to be in Nigerian pounds stated in a letter to the buyers' agents that "payment can be made in sterling", that did not amount to a variation of the purchase price or give rise to a promissory estoppel preventing the sellers from disavowing such a variation.

[Woodhouse AC Israel Cocoa and Another v Nigerian Produce Marketing Co. Ltd.; House of Lords; (1972) 2 A.E.R. 271]

The National Industrial Relations Court imposed a fine of £50,000 on the Transport and General Workers Union, already fined £5,000 for its continuing contempt of the Court in defying the order of the Court to allow access to lorries belonging to Heaton's Transport (St. Helen's) Ltd. and Craddock Brothers to the Liverpool docks.

If the fine is not paid by May 4 leave was granted to issue writs of sequestration against the union. And the Court gave a warning that if there are further complaints of contempt it would consider ordering the seizure and retention by the commissioners executing the writs of all the union's assets and property until the contempt had been purged.

Court of Appeal reversed this decision on the ground that the shop stewards were not the servants of the union and the union was not vicariously liable for their acts.

[Heaton's Transport (St. Helen's) Ltd. v Transport and General Workers Union; Craddock Brothers v Same; (1972) 3 W.L.R. 73]

A builder who agreed to buy a house from a woman and in consideration therefor to erect for her a new house on land belonging to her was refused an order for specific performance of the agreement.

[Doyle v East; Chancery Division; 21/4/1972.]

The position of a guarantor who had guaranteed that another person would perform his obligations under a contract to pay off a debt by instalments was considered by their Lordships. They decided that where a creditor accepted the wongful repudiation by the debtor of a contract which included the guarantee, the guarantor was thereby also in breach of his contract of guarantee and the creditor could sue the guarantor, not for the unpaid instalments but for damages, since historically the liability of a surety at common law sounds in damages rather than in debt.

The House dismissed an appeal—by a different process of reasoning—by Mr. G. Moschi, formerly managing director of Rolloswin Investments Ltd. (now in liquidation) from the Court of Appeal (Lord Justice Davies, Lord Justice Karminski and Lord Justice Megaw) ([1971] 1 WLR 934), which had held that he was liable for the net outstanding instalments of the company's debt under the repudiated contract to Lep Air Services Ltd., of Shulton Street, WC, the creditors.

[Moschi v Lep Air Services Ltd. and Others; House of Lords; 27/4/1972.]

When a commission agent's agency is terminated, he is, in the absence of express and reasonable restriction, free to canvass the customers of the old firm on his own behalf, or on behalf of any new principal for whom he becomes agent. In most cases his right remedy is compensation in a money sum and not a declaration that he is entitled to commission in the future on orders received by his former principal from customers introduced by him.

[Roberts v Elwells Engineers Ltd.; C.A.; 12/5/1972.]

Costs

The Court of Appeal (the Lord Chief Justice, Lord Justice Roskill and Mr. Justice Talbot) decided that payment of costs out of central funds cannot be ordered in favour of a successful respondent to a criminal appeal. They were giving judgment refusing an application for costs order by the British Transport Docks and Harbour Board, respondents to an unsuccessful appeal by Patrisk Rimmer against his conviction on the board's prosecution, for stealing from t Dutch ship (*The Times*, November 26).

[Regina v Rimmer; C.A.; 1/5/1972.]

The House of Lords made an order without precedent in reported cases when they varied a resolution as to costs which the House made on February 23 ([1972] 2 WLR 645). Their Lordships allowed a petition by Cassel & Co. Ltd., publishers of *The Destruction of Convoy PQ 17* by Mr. David Irving, to amend the order that Cassells should pay all the costs of Captain John Broome, RN (retrd), the plaintiff in a libel action arising out of the book.

[Cassell & Co. Ltd. v Broome and Another; House of Lords; 1/5 1972.]

Family

Section 1 (2) of the Matrimonial Homes Act, 1967, which provides that the Court may make "an order . . . regulating the exercise by either spouse of the right to occupy the dwelling house", does not empower the Court to make an order wholly prohibiting a spouse from exercising his or her right to occupy it.

[Tarr v Tarr; House of Lords; (1972) — A.E.R. 295]

His Lordship dismissed with reluctance an undefended petition by the English wife of an American ex-serviceman for a decree of nullity of marriage on the ground of lack of jurisdiction as she has lived in England for less than three years after leaving her husband and returning from the United States.

[Kern v Kern; Family Division; 11/3/1972.]

A voluntary mental patient can validly consent to the grant of a decree of divorce under Section 2 (1) (d) of the Divorce Reform Act, 1969. The test for validity of consent for dissolution of marriage is the same as the test for contracting a marriage.—Mason v Mason—Sir George Baker

[Family Division; 19/5/1972.]

Insurance

A company whose car was insured under a "named drivers" policy were held not to be entitled to recover from the insurers when the car was damaged while it was being driven by a person having no authority to drive it. His Lordship dismissed a claim by Greenleaf Associated Ltd., of London, for £923 against a Lloyd's syndicate, Barbican Motor Policies, for whom the defendant was the representative underwriter.

[Greenleaf Associates Ltd. v Monksfield; Q.B.D.; 14/4/72.]

Landlord and Tenant

A tenant may be granted a new tenancy of business premises although substantial work which has to be done to make the

building safe may necessitate vacating it completely for several months.

[Heath v Down; House of Lords; (1972) 2 A.E.R. 561]

Negligence

In the present state of our law the owner of a car is not vicariously liable for the negligence of another person who drives it unless the driver is using it for the owner's purposes under delegation of a task or duty. And even the House of Lords in its judicial capacity cannot change the traditional concept of vicarious liability, inadequate though it may be in the modern world of millions of motor cars, by introducing the concept of making the owner of a "matrimonial" or "family" car liable for negligent driving by the other spouse or any member of the family using the car. Any such innovation must be made by Parliament.

?Morgans v Launchbury; House of Lords; (1972) 2 A.E.R. 605]

Contractors whose workmen lit a bonfire to burn up the rubbish on a demolition site next to a public park but failed to keep a look-out for children coming on to the site to see the fire were held to be in breach of their duty to a trespassing five-year-old boy who came to see the fire and was severely burned. The Court held that the fact that the same boy had been repeatedly warned off the site was not sufficient fulfilment of the occupier's duty to the trespassing child.

[Pannett v P. McGuinness and Co. Ltd.; C.A.; 17/4/72.]

Procedure

The departmental committee now considering the practice and procedure in adoption proceedings and the County Court Rules Committee should give urgent attention to the divergences between the High Court and County Court Rules. Meanwhile, where practicable, County Courts should follow High Court practice in such matters.

[In re M. (an infant); C.A.; 2/5/1972.]

A writ served on a partner in a firm of chartered accountants arising from a dispute following the dissolution of the partnership in 1957 was struck out on the ground that the delay on the part of the plaintiff, one of the other two partners, was inordinate and inexcusable.

[Beatton v Neil and Another; Ch. Div.; 19/4/1972.]

The Court has power under the Rules of the Supreme Court to allow a pleading in a representative action to be amended by substituting for the named plaintiff the name of one of the other persons represented; for each person represented in such an action is a "party" and should be allowed to pursue the claim if the named plaintiff discontinues or drops out.

[Moon (on behalf of herself and others) v Artherton; C.A.; 18/4/1972.]

Redundancy

Where in August 1965 employers manufacturing large diesel engines sold a factory to new employers who took over almost all the labour force, completed the work on four or five engines and then carried on other engineering work in the factory, there was no transfer of the "trade or business" within the meaning of the Contracts of Employment Act, 19 3, and the Redundancy Payments Act, 1965. Accordingly two employees who had worked in the factory for over twenty years could claim, on their dismissal for redundancy in 1971, only six years' service for the purposes of redundancy payments.

The Court so held in allowing the first appeal from the decision of the National Industrial Relations Court (Sir John Donldson, President, Mr. J. H. Arkell and Mr. H. Briggs) ([1972] WLR 401), which allowed the appeal of Mr. A. Woodhouse, Nottingham, and another employee, from the decision of an industrial tribunal sitting at Nottingham that they could claim only six years' service for the purpose of their redundancy payments from the new employers, Peter Brotherhood Ltd., engineers, of Peterborough.

[Woodhouse and Another v Peter Brotherhood Ltd.; C.A.; 8/5/1972.]

An electric arc welder exposed to welding fumes containing oxides of nitrogen and oxides of iron failed in a claim against his employers that the lung illness from which he suffered was caused by their negligence or breach of statutory duty.

[Cartwright v GKN Sankey Ltd.; Q.B.D.; 8/5/1972.]

Sovereign Immunity

The Banco Provincial de Salta failed in an application to set aside a writ served on them by the Swiss-Israel Trade Bank over bills of exchange for £279,365 said to have been dishonoured on presentation. A similar application by another defendant to the action, named as the Government of Salta, was granted on the grounds that it was either the Government of the Argentine Republic or at least a department of that Government and entitled to immunity.

[Swiss-Israel Trade Bank v Government of Salta and Another; Q.B.D.; 13/4-/1972.]

Tax

The trade of newspaper publishers and printers is the provision of newspapers and news and not of hospitality. Accordingly expenses incurred in providing meals, drink and entertainment to people likely to be able to provide news or other items for publication in their papers are not deductible for income tax purposes under Section 15 (9) of the Finance Act, 1965, as "expenses incurred in ... the provision ... of anything" which it is their trade to provide. Their Lordships so held in dismissing an appeal by Associated Newspapers Group Ltd.

[Associated Newspapers Group Ltd. v Fleming (Inspector of Taxes); House of Lords; (1972) 2 A.E.R. 574]

Estate Duty Office Assessments

A deputation from the Council was received by the Assistant Secretary of Revenue and officials of the Estate Duty Office to consider difficulties which arise from the delay in making assessments of death duties leading to grants of representation. The Society had obtained the opinion of Counsel who took the view that the Revenue Commissioners were bound to bring in an assessment without delay on presentation of a sworn Inland Revenue Affidavit containing a realistic valuation of the assets. This is particularly important in the case of valuations of shares of private limited companies. The Revenue officials were not prepared to concede that the position was as stated by the Society's Counsel. They laid particular stress on the chaotic situation which they state would arise in the Estate Duty Office if provisional assessments were made on estimated values. They stated that in some cases undertakings to bring in corrective affidavits have not been carried out and that this is becoming an increasing problem for the Revenue. They also pointed out that in a number of cases where Government stocks are offered in payment of death duties the executors are required to transfer the stocks immediately on the issue of the grant of probate or representation and that in some cases these undertakings have not been implemented.

After a lengthy discussion in which all aspects of the matter were explored it was arranged that a form of undertaking might be submitted by the Society whereby solicitors with the authority of their clients would agree to furnish to the Revenue all information, accounts and documents which the Revenue might require to assess final value of shares in private limited companies and that on the signing of this undertaking the Revenue might then issue immediate assessments provided that the shares concerned were returned at what on first sight appeared to be a reasonable valuation. If a suitable undertaking could be agreed upon, the Assistant Secretary of the Estate Duty Branch stated that the matter would be brought before the Board of the Revenue Commissioners for a decision.

It was pointed out that assuming that arrangement can be made it would be applied for a trial period and would be continued only if experience shows that undertakings are promptly honoured by solicitors.

The matter is still under discussion with the Revenue. It is realised that only a minority fail to honour undertakings but the injury to the profession and their clients is disproportionate to the number of cases involved. A further statement on the matter will be published in the Gazette in due course.

UNREPORTED IRISH CASES

THE COURT MUST DECIDE WHETHER MINISTERIAL DOCUMENTS ARE PRIVILEGED

The facts have already been stated in the Gazette. It will be recalled that in June, 1970, the Assistant Secretary of the Department swore an affidavit that he had in his possession the inspector's report, and refused to produce it on the alleged ground that production would be contrary to public policy and detrimental to the public interest; The Minister himself directed privilege of the document on the same ground. Kenny J. accepted the Minister's view, and disallowed the claim of privilege. It is claimed that in a civil action the Executive may by its own judgment withhold relevant evidence from the Judiciary.

Walsh, J. emphasised that the administration of justice is committed solely to the Judiciary by the Constitution. Following Conway v. Rimmer—(1968) A.C., if there is a conflict between the Executive and the Judiciary which arises during the exercise of the judicial power, then it is for the judicial power to decide which public interest shall prevail. As between the State and the litigant, it is for the Court to decide which is the superior interest in the circumstances of each case. If the security of the State were involved, it is clear that the Courts would refuse the order for production, but it is impossible for for the judicial power in the proper exercise of its functions to permit any other body to decide for it whether or not the document will be disclosed. In a last resort, the decision lies with the Courts as long as they have seisin of the case. As the documents concerned may range from the trivial to the vitally important, some authority must decide which course is least calculated to injure the public interest. It is self evident that this is a matter which falls into the sphere of the Judicial power. The Court may be able to determine the matter without production of the document, but the Court may order inspection of the document to determine its nature if required. No documents may be withheld from inspection of the Court on the ground that they belong to a particular class of documents. Kenny J.'s acceptance of the Minister's view without question cannot prevail. In this case the Minister has not properly disclosed the grounds for his objection. The decision in **Duncan v. Cammell Laird** (1942) A.C., is inconsistent with the supremacy of the judicial power under the Constitution and was first formulated when such a constitutional supremacy did not exist.

Under the Housing Act 1966, the function of the inspector is to convey to the Minister a fair and accurate account of what transpired, but it is no part of his functions to arrive at any conclusion. The Minister must act judicially and consider the report within the bounds of Constitutional justice. If the Minister is influenced by the opinion of the inspector, the Minister's decision will be open to review, and may be quashed. The appeal was accordingly allowed unanimously.

Murphy v. Dublin Corporation and Minister for Local Government—Full Supreme Court per Walsh J.—unreported—14th July, 1972.

ORDER FOR SPECIFIC PERFORMANCE GRANTED TO PURCHASER ON SALE OF PREMISES

The case relates to the sale of Cedar Grove, Stillorgan, for £8,400 and auctioneers fees. O'Keeffe P. had granted on order for specific performance to the purchaser to be performed by the defendant vendor. The whole correspondence between the vendor defendant, the plaintiff's purchaser, the vendor's auctioneer (Mr. X), the vendor's solicitor ("Mr. Y") and the purchaser's solicitor ("Mr. Z") was put into evidence. From this it emerged:—

(1) The defendant approached Mr. X in 1968, and ultimately Mr. Y wrote to Mr. X in November 1968 confirming that the reserved price would be £8,300 and fes.

(2) In December the plaintiff purchaser called to Mr. X's office and, having paid a deposit of £2,100 and £480 auctioneer's fees, agreed to purchase the premises for £8,400. This purchase was confirmed to Mr. Y on 10th December.

(3) In replying on the 23rd December, Mr. Y made it clear that the vendor was not liable for advertising expenses, and Mr. X agreed to this on 31st December.

(4) Mr. Y wrote to defendant's solicitor (Mr. Z) at end of January 1969 complaining about the delay in completing the matter. Mr. Z then sent the Requisition on Title and draft assignment for aproval. The requisitions were duly returned by Mr. Y.

(5) On the 4th March 1969, Mr. Z pointed out to Mr. Y that Mr. X had negotiated the sale as the agent of the vendor, and had signed a contract in that capacity.

(6) Mr. Y replied on the 10th March that he had received instructions from the vendor that the sale was off, as the vendor had not authorised Mr. X to sign a contract on his behalf, and Mr. X had no authority to do so. The vendor also alleged that the purchaser's offer of £8,400 was a cash offer to be completed within 3 or 4 weeks.

(7) Mr. Z stated that there was a binding contract between the parties and that he would issue proceedings for specific performance.

(8) The Vendor had purported to write to his auctioneer, Mr. X. on the 28th January 1969 that he had received on offer of £8,750 plus fees from another company. This was correct, but it was a falsehood to state that he had accepted it. Mr. X replied on the 31st January that he had sold the property on vendor's instructions.

(9) In a latter of the 6th March, 1969, from the Vendor to his solicitor Mr. Y, he stated that he had at no time given a power of attorney to anyone to sign on his behalf, and that Mr. Y should have got in touch with him. In reply Mr. Y stated that the purchaser might sue for specific performance.

(10) The Vendor was living in London in the winer of 1968, and first learnt of the offer of the purchaser, when Mr. Y phoned him on the 10th December. He stated he was willing to sell provided the transaction would be completed quickly, as he was negotiating for the purchase of a house in London and needed the money He was unable to complete the London transaction, and opted out in mid-January, 1969.

(11) The vendor tried to contend that the offer of £8,400 did not constitute a sale as he had not received the contract.

(12) O'Keeffe P. held that the contract that Mr. X entered into on behalf of the vendor on the 9th January, 1969 was one which Mr. X had no authority at the time to enter into. However this contract had eventually been communicated to the vendor, who had adopted this agreement, subject to his being responsible for advertising fees. Mr. Y clearly recognised this when he sent the documents of title to Mr. Z, and when Mr. Z had duly furnished requisitions. This clearly showed that the original contract signed by Mr. X had been approved and ratified by the vendor. The Supreme Court held that this was undoubtedly the case.

(13) The vendor tried to allege that, in his conversation with his solicitor, Mr. Y, on the 11th December 1968, time was to be made the essence of the contract, because he was entering into negotiations in London to purchase a house. However the vendor's subsequent conduct does not bear this out; there is overwhelming evidence of subsequent ratification.

(14) The Supreme Court approved of O'Keeffe P's finding that there was independently in the several documents emanating from Mr. Y a sufficient memorandum in writing to satisfy he Statute of Frauds. The President's decree of specific performance of 31st July 1969 was thus affirmed.

(15) The vendor tried to claim damages on the ground that the purchaser was to pay interest when the delay in completion had been due to the wilful default of the vendor. If however the vendor refuses to complete, there can be no question of any interest being payable to him under those circumstances. However the question of other damages should be remittel to the High Court for determination.

(Sheridan v. Higgins—Supreme Court (O'Dalaigh C. J., Budd and Fitzgerald JJ)) per The Chief Justice—unreported—1st April, 1971..)

AUCTIONEER'S CLAIM FOR COMMISSION FAILS

The plaintiff, an auctioneer in Kilcock, was approached by the defendant to sell 490 acres and a dwelling house in County Meath. The defendant hoped to obtain £20,000. The plaintiff duly advertised the property and eventually secured an offer of £17,000 from a Mr. Smit, who subsequently increased it to £18,000; Smit also agreed to pay 5% auctioneers fees. The auctioneer also affirmed to defendant's solicitor that Smit would pay his fees. Smit had arranged with State and Farm Advisory Services Ltd to split the commission payable by him. One must decide whether this original agreement stood unaltered, or whether it had been varied. The auctioneer at this stage could

only submit an offer of £18,000 to the vendor on the basis that vendor would receive £16,000 clear of commission. If the auctioneer, having absolved the vendor from leability, wished to have his agreement with Smit secured by the insertion of a term in the contract for sale, he should have obtained the agreement of the vendor to it, and this he did not do. Later on, after the auctioneer had accepted the offer of £18,000 there seems to have been an offer to pay £450 to the auctioneer by way of gratuity, but as this arose after the event upon which the commission was to be paid, this claim fails on the ground that past consideration is no consideration. Although the original agreement was altered, the partise did not have the same understanding of the intent and effect of the alteration. It was contended by the defendant that there was a further obligation to include in the contract for sale a clause which would secure for the plaintiff the amount of his commission. The evidence does not support this conclusion. There was no conversation with either the plaintiff or his solicitor before the signing of the contract, therefore there could have been no agreement as to what could be in the contract as far as the auctioneer was concerned. There was nothing to indicate that it was either an express or an implied term of the contract that the contract of sale would take that form. Accordingly Davitt P. had wrongly found that the original agreement had never been altered but the the arrangement arrived at between the auctioneer and the purchaser was that the purchaser would pay a sum equal to the commission in addition to the purchase price to the vendor, who had allegedly remained at all times liable to the auctioneer for the full amount of the commission payable. There was in fact no such clause in the contract, and accordingly Mr. Smit had only paid a total sum of £18,000. The auctioneer's claim for commission fails, and the appeal is allowed.

(Daly v. Carson (Full Supreme Court p Wals and Fitzgerald J. J.—unreported—20th February, 1967.)

First plaintiff awarded damages, being the difference between the purchase price—and the subsequent sale price, as well as return of deposit, in respect of abortive sale.

The plaintiffs claimed specific performance and damages for breach of contract arising out of the sale of premises, Upper Rathmines Road, Dublin, in December 1963 for £5,050. The purchaser duly paid auctioneer's fees and 25% of the purchase money; eventually they refused to complete on the ground of breach of contract, and sold it to a third party for £7,000. Kenny J. found that the defendants, Ardmayle Estates, had been in breach of contract in refusing to complete, and awarded £1,950 to the plaintiff Holohan, as this was the difference between the purchase price and the subsequent sale price. The payment of £1,262.50 by way of deposit was not pleaded, as there was a misunderstanding about this, and was thus not allowed. The claim of the second plaintiff was dismissed with costs. Undoubtedly the Judge erred in principle in the award of damages. If the facts of the case were such that the trial Judge is of opinion that he could make an order for specific performance, but in his discretion awards damages in lieu thereof, he must take into account the plaintiff's loss of bargain and out of pocket expenses. It was not necessary to expressly claim it in the pleadings before it could be included.

As regard the second plaintiff, however unmeritorious his conduct may have been in the course of the negotiations, his claim cannot be dismissed, once Kenny J. had heard that the defendants were in breach of contract. The order should have given judgments to the plaintiffs, but directel that no order as to damages be made in respect of the second plaintiff. The judge was correct in assessing the damages in part on the basis of the difference between the purcase price and the new sale price.

The defendans tried unsuccessfully to contend that the plaintiffs were not willing at all material times to perform their side of the contract, as the delays were waived by the defendants. The defendants by letter of January 1964 tried to make time the essence of the contract, but the Judge had rightly held that they had no power to do so, as they themselves were not in a position at the time to show a title free from incumbrances.

The appeal is accordingly allowed, and Kenny J's order is varied by increasing he damages by £1,262.50 to a total of £3,212.50 to be awarded to the first plaintiff. Judgment should also be entered without damages in favour of the second plaintiff.

(Holohan and O'Rourke v. Ardmayle Estates—Supreme Court (Walsh Buld and Fitzgerald J. J.) per Walsh J.—unreported—1st May, 1967.

Guard suspecting felony does not violate inviolability of dwelling in accused's absence

Accused found guilty of breaking and entering with intent to commit a felony at Cork Circuit Court, and sentenced to four years penal servitude. The only evidence against him had been that an electric torch, found outside the premises, had been in the caravan in which accused resided. Guard Murphy who was making inquiries into other offences in which accused was allegedly involved, entered the caravan when empty and made marks on the torch which enabled him to say that it was the one found outside the premises. Despite objections, Judge Neylon ruled that the guard's statement was admissible; the detailed effect of the statement is set out in the judgment. It was submitted that the marking of the torch should not have been admitted, because it allegedly involved a breach of the accused's right of inviolability of his dwellings under Article 40, Section 5, of the Constitution. It was held that the dwelling of every citizen under the Constitution is inviolabe except to the extent that entry be permitted by law which may permit forcible entry—Guard Murphy had authority to arrest the accused without warrant if he had reasonable grounds for suspecting that the accused had committed a felony, namely breaking and entering, and would have arrested him if he had been there. The entry was therefore authorised. Held that in his discretion Judge Neylon had rightly admitted the evidence about the torch. The conclusion to be drawn from the finding of the torch was a matter of inference for the jury. In view of the accused's eight previous convictions, and his record as a professional criminal, the sentence, though severe, was not excessive. Appeal dismissed. Leave given to appeal to the Supreme Court on the question whether Guard Murphy's evidence as to the marking of the torch was properly admissible.

People v. Michael Hogan—Court of Criminal Appeal (McLoughlin, Kenny and Griffin J. J. per Kenny J.—30th June, 1972.

Sale of premises includes right of way to back of premises

Proceedings relate to a right of way in premises in Ranelagh, Dublin. The terraced house belonged to the Ward Estate and were sold for £3,300. The plaintiff is the executor of Ward. The defendant, a doctor interested in property development, alleges that the only means of access to the premises for the purposes of conversion, is through a laneway at the back. There is a large double gateway in the lane which was locked and bolted before the purchase.

Proceedings started in June 1966, when plaintiff sought specific performance of the purchase agreement executed in January 1966; plaintiff also sought damages for breach of contract, or the forfeit of the deposit. The original closing date was 28th February, 1966. A right of way over the back laneway to the public road in common with the corners of the adjoining house was conveyed to the respective grantees in the conveyance. The plaintiff contended that there was no mention of the right of way in the description of the premises in the contract of sale, and sought specifice performance in respect of the premises only. The defendant contended that it was an express or implied term of the contract that the right of way was included: in the alternative he claimed rescission, repayment of the deposit and damages. Defendant also claimed that he was induced to enter into the contract by misrepresentations as to the right of way contained in a press

advertisement, and that the auctioneer had specifically stated that the right of way was included in the sale; this was denied by the plaintiff; who stated that there was no misrepresentation, as defendant knew laneway was overgrown, impassable and closed by a gateway. In the High Court, Teevan J. gave plaintiff a decree for specific performance, and dismissed defendant's pleas. It was held that the right of way was not included in the contract, because the naming of it in the conveyance and the press advirtisement did not form part of the contract. It was also held that there were factors—such as inspection of the laneway, and that he should have noticed its state—which prevented the claim of misrepresentation from succeeding.

On appeal, it was contended that the right of way was the right appurtenant to the land. In 1966, the auctioneer Adams, described the residence as "ideal for conversion". The defendant inspected the premises, and saw the condition of the lane; later on, after the auction, he inspected the barred gate. He further inspected the title deeds, and found the title conveyed the premises with the right of way. The plaintiff contended that in those circumstances the defendant should have made a requisition, which he did not. The plaintiff subsequently approved the draft conveyance which included the right of way, but says he did it inadvertently. There was subsequently a lengthy correspondence about the right of way between the parties.

The Supreme Court (Budd, Fitzgerald and McLoughlin J. J.) per Budd J., held that it would be common sense if any consequential right of way were included in the purchase of premises, which is included in the whole of vendor's interest, and that there was no doubt as to its inclusion. Furthermore there was a right of way in the lane appurtenant to the premises before 1908, when the conveyance ws made. As the press advertisement mentioned a back entrance, it would follow that a back entrance would be of no use unless it could be freely used through the lane, which undoubtedly infers a right of way. There is no evidence of any intention to abandon the right of way, nor of long disuse. If the right of way was to be excluded from the sale, it was the duty of the plaintiff to state so specifically, but he did not do so.

As regards the purchaser's position when a misrepresentation is made, it must bt shown that he had full and complete knowledge of the truth to take away his right to rely on the misrepresentation. When the defendant inspected the overgrown lane, this did not detract from his legal right to a right of way. There was no ground for raising this matter in the requisitions. Undoubtedly the representations contained in the tdvertisement pointed to a right of way, and the plaintiff had no right to assume to the contrary. It was clear that the defendant was induced to sign the contract on the material grounds, which were not accurate, that the house was suitable for conversion, and that access could be gained from the back of the premises. It was clear that the defendant would not have bought the premises if he did not think that those conditions would be fulfilled to his satisfaction. The plaintiff would have been entitled to enforce the contract notwithstanding the misstatements if these misstatements had not in this case gone to the root of the contract.

The plaintiff then contended that the defendant had by his actions intended to affirm the contract without the right of way, and submtted that the correspondence conveyed this. The correspondence does not bear this out, but rather proves that the defendant was entitled to have the right of way conveyed to him as part of the contract. No evidence was adduced that the defendant did not intend to claim the right of way. The defendant was ready and willing to take a conveyance which included the right of way, and was thus maintaining the contract; the question of repudiation did not consequently arise, save by the plaintiff, who would not execute a conveyance to the defendant to include the right of way. As no defect in the title to the right of way was proved, the plaintiff is not entitled to specific performance. The defendant is consequently entitled to recover as damages the loss sustained, namely the amount of the deposit (£825), the auctioneer's fees (£165), and the cost of investigating title when taxed. Separate judgment by Fitzgerald J. Appeal allowed unanimously.

(Pielow v. Ffrench O'Carroll—Supreme Court (Budd, Fitzgerald and McLoughlin J. J.)—unreported—19th December, 1969).

[COURT OF APPEAL]

*In re A SOLICITOR

1972 March 27 Lord Denning M.R., Karminski and Orr L.JJ.

A solicitor appeared before the Disciplinary Committee of The Law Society to answer allegations that he had (1) failed to comply with the Solicitors' Accounts Rules 1967 and (2) been guilty of professional misconduct in that he kept account books in such a form that it was not possible to ascertain readily at any one time the balances held in each client's account. The committee found that the allegations had been substantiated, that despite two adjournments the books were still not written up and that it was not possible to say whether there was any deficiency on his client account. The committee ordered the solicitor, who had relied upon an accountant to write up his books, to be suspended from practice as a solicitor for six months from January 15, 1972, during which time it should be possible for him to submit an accountant's report. The Divisional Court refused the solicitor's appeal.

On appeal to the Court of Appeal the solicitor put in a satisfactory report from a new accountant showing no deficiency and challenged the finding of professional misconduct.:—

Held by Lord Denning M.R., Karminski Orr L.JJ. (1) that the solicitor could not escape responsibility by handing over his books to a book-keeper or accountant and in view of his reprehensible negligence in failing to see that they were in order and his subsequent delay in getting them written up the committee's finding of professional misconduct was justified.

In re M. [1930] N.Z.L.R. 285 applied.

Per curiam. Negligence in a solicitor may amount to professional misconduct if it is inexcusable and as such to be regarded as deplorable by fellow solicitors. Professional misconduct is not confined to disgraceful or dishonourable conduct (post, pp. 873 A—C, H, 874B. C).

(2) That since the solicitod had at length put himself right by the production of an accountant's report showing his books to be in order his suspension from practice should be lifted and instead he should be ordered to pay all the costs before the committee, the Divisional Court and the Court of Appeal.

Decision of Divisional Court varied.

APPEAL from Divisional Court.

On December 16, 1971, the Disciplinary Committte of The Law Society found that allegations against a solicitor that (1) he had failed to comply with the Solicitors' Accounts Rules 1967 and (2) he had been guilty of professional misconduct in the manner in which he kept account books had been sustantiated. The committee ordered the solicitor's suspension from practice for six months from January 15, 1972, "during which period it should be possible for him to submit an accountant's report covering the accounting period from April 1, 1970 to January 15, 1972."

On February 14, 1972, the Divisional Court dismissed the solicitor's appeal.

The solicitor applied to the Court of Appeal for leave to appeal. The first ground of appeal was that there was no evidence to support the findings that he had been guilty of professional misconduct and/or the admitted statement of facts did not support such finding.

The facts are stated in the judgment of Lord Denning M.R.

(1972) 1. W.L.R. 869.

Restrictive Practices Act, 1972

THE effect of this Act which became law on 10th June 1972 is to enable the Minister for Industry and Commerce to set up the Restrictive Practices Commission which will exercise powers comparable in many respects to the existing Fair Trades Commission. The powers of the Commission extend to investigation of the affairs of the professions and in the exercise of their functions the Commission are to have regard to unfair practices listed in the third schedule to the Act. These are as follows:

Unfair practices

Any measures, rules, agreements or acts, whether put into effect for (or intended to put into effect) by a person alone, in combination or agreement (express or implied) with others or through a merger, trust, cartel, monopoly or other means or device whatsoever, which—

(a) have or are likely to have effect or unreasonably limiting or restraining free and fair competition,
(b) are in unreasonable restrait of trade,
(c) have or are likely to have the effect of unjustly eliminating a competitor,
(d) unjustly enhance prices of goods or charges for services or promote unfairly at the expense of the public the advantage of suppliers or distributors of goods or of persons providing services,
(e) sceure or are likely to secure, unfairly or contrary to the common good, a substantial or complete control of the supply or distribution of goods or any class of goods or the provision of services or any class of services,
(f) without just cause prohibit or restrict the supply of goods or the provision of services to any person or class of persons or give preference in regard to the supply of goods or the provision of services,
(g) restrict or are likely to restrict unjustly the exercise by any person of his freedom of choice as to what goods or services he will supply or provide or as to the area in which he will supply or provide goods or services,
(h) impose unjust or unreasonable conditions in regard to the supply or distribution of goods or the provision of services,
(i) without good reason exclude or are likely to exclude new entrants to any trade, industry or business,
(j) secure or are likely to secure unjustly the territorial division of markets between particular persons or classes of persons to the exclusion of others or
(k) in any other respect operate against the common good or are not in accordance with the principles of social justice.

Power to enter premises

The Council made representations to the Minister for Industry and Commerce on the Bill in general before it became law. Some but not all of the recommendations and proposals of the Council were included in the Bill as passed. The Council were particularly concerned with the powers conferred on the Examiner appointed by the Commission under Section 15 for the purpose of obtaining any information necessary for the exercise of the Examiner or any of his functions. An authorised officer will be entitled to enter and inspect premises, obtain information, and inspect and take copies from books, extracts and documents and records. The Council are of the opinion that these provisions if implemented might enable the authorised officer to obtain confidential information regarding client affairs. Representations to this effect were made to the Minister for Industry and Commerce.

Right of appeal to the High Court

Section 15 (3) provides that the owner of premises which an authorised officer proposes to enter may apply to the High Court for a declaration under the Section. Where the owner of premises to whom an authorised officer has made a requirement under the Section refuses access or refuses to comply with the requirement the owner has the same right of application to the High Court. The Court having heard the evidence and any representations made by the Examiner may at its discretion declare that the exigencies of the common good do not warrant the exercise by the Examiners of the powers conferred on them by the Section. The Examiner or the authorised officer will thereupon be prohibited from exercising the powers.

It seems unlikely that the Restrictive Practices Commission or any of its authorised officers would seek to inspect confidential files, documents or records in solicitors' offices. If they were to act otherwise the solicitor would no doubt invoke the right of application to the High Court and would in this respect have the approval and support of the Society in an appropriate case.

Statements during debate in Oireachtas

On the second stage of the Bill in Seanad Eireann Mr. Michael O'Higgins stated "So far as my profession of solicitor is concerned it is probably unnecessary to point out that the work a solicitor undertakes is absolutely confidential between the solicitor and his client. So far as the medical profession is concerned there is also the question of complete confidence as between the medical man and his patient. Under Section 15 of the Bill the Examiner is entitled to authorise any person in writing who then becomes an authrised officer to require information about any particular field in which the Examiner is conducting an investigation. Not only is he entitled to require that information be given but he is entitled to inspect books and records; not merely is he entitled to inspect books and records but he is entitled to take copies of extracts of any such books, documents or records. This is a matter which troubles me on the question of confidential relationship which exists so far as my professsion is concerned and I feel that the medical profession would feel the same way and which the members would insist absolutely in maintaining. Solicitors in many matters can give proper service to their clients only provided it is known, recognised and accepted by everyone that their relations with clients, their instructions from clients, their advice to the clients and their discussions with clients are to be regarded as absolutely confidential. The same could be said of the other branch of the legal profession, as well as the medical profession. There is a safeguard of sorts written into Section 15 but I do not think it meets the difficulty by providing that a person who is served with a notice by the Examiner may apply to the High Court to get a declaration to the effect that the investigation should not be carried out by the Examiner."

The Minister's views

The Minister in replying to the Debate stated

" Regarding Senator O'Higgins's comments on Section 15 I should like to state that this kind of power has been held by the Fair Trades Commission up to now in relation to fair trading and in nineteen years of operating the same provision in relation to the Commission no difficulty of that sort has arisen. I anticipate that Senator O'Higgins will say that ' this is a different type of situation. There is the question of confidentiality of papers'. Anyone whose books or records are examined in the context of fair trading would not be concerned with anybody else whereas inspecting documents in an employer's office or inspecting documents in a doctor's office could effect an innocent third party. It is a remote possibility that an authorised officer would want to see confidential information relating to a client of a solicitor or doctor. If this happened the solicitor or doctor could refuse and appeal to the Court under sug-Section (?) which is not in the existing legislation. This was specifically included in this legislation here to anticipate something more serious. Built into Section 15 are such phrases as " for the purpose of obtaining any information necessary for the exercise by the Examiner of his functions under this Act an authorised officer may . . ."

In paragraph (b) the emphasis is to give an authorised officer ' such information as he may reasonably require in regard to any entries in such books ".

In (e) we have the same thing which an officer may reasonably require.

Section 15 (5) spells out that the authorisation of an authorised officer shall indicate the matters in respect of which he may act under this Section. All that is there with the express purpose of preventing the type of situation which Senator O'Higgins fears. I would be fearful of that type of situation and I would hope that the Examier would be mindful of this too. There should be clearcul distinction in the authornsation which would be given to the authorised officer by the Examiner speling out exactly what function he has in relation to the examination of entries in books, documents and records."

Members may be relied upon to protect the clients' privilege against disclosure of confidential information. Having regard to the Minister's reply to the debate it is not anticipated that the Inspectors would seek to exceed their powers in the context of the Minister's statement.

Parliamentary Questions

DÁIL ÉIREANN

15th December, 1971.

Malicious Damages Claim

Dr. Byrne asked the Minister for Justice when the proposed legislation to relieve local authorities of the burden of claims in respect of malicious damage will be introduced.

Mr. O'Malley: The text of a Bill to amend and consolidate the law relating to compensation for malicious damage to property, which will provide for a number of changes which will reduce the cost to local authorities of malicious injuries proceedings, has been prepared and is now under examination in my Department. I hope to be in a position to introduce the Bill early in the New Year.

Mr. M. O'Leary: Can the Minister say whether the legislation will have retrospective effect?

Mr. O'Malley: No.

Mr. Tully: Can the Minister say whether it will be possible to put the Bill through before the estimates for 1972.

Mr. O'Malley: I understand they are going through tonight.

Mr. Tully: The Minister misunderstands. I am talking about the local authority estimates for 1971-72. These will be submitted about mid-February and can the Minister say whether this non-contentious Bill can be put through before then?

Mr. O'Malley: I do not think there is much chance of that and neither would I be certain that it will be non-contentious.

Dr. Byrne: Will the Minister endeavour to have the Bill through before the local authority estimates are submitted?

Mr. O'Malley: I am trying to expedite it but this is difficult because it is a very important Bill and needs a good deal of examination.

16th December, 1971

Land Registry

Mr. Ryan asked the Minister for Justice if he would state the average time to register new leases in the Land Registry; what steps he intended taking to expedite registrations of new leases and other transactions; and the reasons why the delays in the registry were growing in number and duration.

Mr. O'Malley: I am informed by the Registrar of Titles that, assuming that the application for registration is in order and that there are no queries, the average time taken at present to register a new lease in the Land Registry is three months.

There is an increase of 28 per cent in the estimated number of dealings lodged in the Land Registry in 1971 as compared with the actual number lodged in 1970. I understand that it is this increase that is mainly responsible for the growth in delays.

A reorganisation scheme affecting the Mapping Branch is at present under active examination. There are, however, substantial problems to be overcome in the matter of reorganising this particular Branch and I cannot say that a solution is in sight in the immediate future. On the other hand, I am very conscious of, and concerned about, the shortcomings in the Branch at present and attempts to remedy the position are being given priority.

The reorganisation of other aspects of Land Registry work is now well advanced and a major reorganisation scheme designed to increase efficiency in the registration of dealings is at present being put into operation. When this scheme is fully operational, as I hope it will within the next two months, a very considerable improvement in the position can be expected.

Jury System

Mr. M. O'Leary asked the Minister for Justice whether any consideration had been given to the exten-

sion of the jury system to include all adults on the electoral register.

Mr. O'Malley: Recommendations for amendments in the jury system have been submitted in reports made by the Committee on Court Practice and Procedure. These include a recommendation that the property qualification for jurors should be abolished and that inclusion in the electoral register should be the only qualification for jury service. Legislation dealing with all aspects of the jury system will be introduced in due course. Howeved, I can hold out no hope of introducing this legislation in the near future as priority must necessarily be given to more urgent legislative proposals.

Mr. Bruton: Could the Minister say what the position is in relation to the service of women on juries?

An Ceann Comhairle: That is a separate question.

Mr. O'Malley: That problem will be covered in the general Bill on jury service.

Mr. Bruton: How long does the Minister expect it will be before the Bill is introduced?

Mr. O'Malley: I cannot be very specific because I have at least four major Bills which will take priority. I do not want to give a specific time to the Deputy lest I should be unable to keep to it.

8th February, 1972

European Judges' Salaries

Mr. Cosgrave asked the Minister for Foreign Affairs if he will state the pay and other emoluments of the Judges of the Court of the European Communities.

Mr. B. Lenihan: Judges of the European Court of Justice receive a basic salary of £13,400. They are entitled also to head of family and residence allowances amounting to 5 per cent and 15 per cent respectively of basic salary, a representation allowance of £1,200 per annum, and dependant child's and school allowances of £150 and £170 per annum respectively for each child.

Removal, installation and travel expenses are also payable. There is a higher basic salary and representation allowance payable to the President of the Court.

17th February, 1972

Litigation Delays

Dr. O'Connell asked the Minister for Justice what proposals, if any, there are for expediting cases of litigation.

Mr. O'Malley: The causes of delay in litigation are manifold and the subject is too complex to be dealt with by way of reply to a Parliamentary Question. If the Deputy wishes to put down a question on some specific aspect of the matter, I shall see if I can usefully comment.

Departmental and Semi-State Body Reports

Dr. O'Connell asked the Minister for Justice what reports were commissioned by his Department and semi-State bodies under the control of his Department in each of the past ten years; what reports were published; the total cost of these reports and in what cases the findings were implemented.

Mr. O'Malley: The answer is in the form of a statement which I propose to circulate with the Official Report.

Following is the statement.

COMMITTEE ON COURT PRACTICE AND PROCEDURE

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.

Date set up: 13th April, 1962.

Cost to date: £2,800.

The Committee have submitted 16 interim reports to date as follows:

First Interim Report:
Preliminary Invetigation of Indictable Offences.

Second Interim Report:
Jury Service.

Third Interim Report:
Jury Trial in Civil Actions.

Fourth Interim Report:
Jury Challenges.

Fifth Interim Report:
Increase of Jurisdiction of the District and Circuit Court.

Sixth Interim Report:
The Criminal Jurisdiction of the High Court.

Seventh Interim Report:
Appeals from Conviction on Indictment.

Eighth Interim Report:
(1) Service of Court Documents by Post.
(2) Fees of Professional Witnesses.

Ninth Interim Report:
Proof of Previous Convictions.

Tenth Interim Report:
Interest Rate on Judgment Debts.

Eleventh Interim Report:
The Jurisdiction and Practice of the Supreme Court.

Twelfth Interim Report:
Courts Organisation.

Thirteenth Interim Report:
The Solicitor's Right of Audience.

Fourteenth Interim Report:
Liability of Barristers and Solicitors for Professional Negligence.

Fifteenth Interim Report:
On The Spot Fines.

Sixteenth Interim Report:
The Jurisdiction of the Master of the High Court.

The first ten Interim Reports have been printed, presented to each House of the Oireachtas and published. The other reports will be similarly dealt with as soon as possible.

Broadly speaking, the main recommendations of the First, Third, Fifth, Eighth and Thirteenth Interim Reports have been implemented.

BANKRUPTCY LAW COMMITTEE

Terms of Reference:

To consider and report on the law and practice concerning bankruptcy, the administration of insolvent

estates of deceased persons relating thereto; and to recommend the legislation that, in the Committee's opinion, is necessary and desrable to consolidate and amend the law.

Date set up: 23rd August, 1962.

Cost to date: £2,255.

(Note. A corresponding figure of £2,650 given in reply to a Dáil Question on 5th August, 1971, was incorrect. The correct figure at that date was £2,190).

Report: The Committee's report is at present being prepared but it is not known when it will be available.

LANDLORD AND TENANT COMMISSION

Terms of Reference:

The following were the initial terms of reference of the Commission:

1. To inquire into the working of the law relating to landlord and tenant (other than the Rent Restrictions Act, 1960) and to recommend such amendments, if any, in the law as the Commission thinks proper.

2. to furnish an interim report of the provisions relating to the grant of new tenancies under Part III of the Landlord and Tenant Act, 1931, and on any other aspects of the law which in the opinion of the Commission should be given priority.

These terms of reference were subsequently extended as follows:

3. to investigate and report on—

(a) whether any persons other than those given the right to a reversionary lease by the Landlord and Tenant (Reversionary Leases) Act, 1967, should be given such right, and

(b) whether any persons, other than those given the right to purchase the fee simple by the Landlord and Tenant (Ground Rents) Act, 1967, should be given such right;

4. to investigate and report on whether lessees holding their dwellings from local authorities under tenant purchase schemes should be given the right to purchase the fee simple of their dwellings.

Date set up: 20th January, 1966.

Cost to to date: £3,340.

Report: The Commission have furnished two interim reports which have been published in December, 1967, and June, 1968, respectively. It is not known when further reports will be available.

Certain of the recommendations made by the Commission, including those relating to the grants of leases to sports organisations, formed the basis of legislation included in the Landlord and Tenant (Amendment) Act, 1971.

A further Bill has been introduced to implement the bulk if the remaining recommendations.

29th February, 1972

District Court Prosecutions

Mr. T. J. Fitzpatrick *(Cavan)* asked the Taoiseach if he will arrange that prosecutions in the Dublin Metropolitan District Court will be conducted by solicitors; how many additional solicitors in the Chief State Solicitor's Office will be necessary to discharge the work in place of barristers; and if he will recruit the necessary additional solicitors.

The Taoiseach: Prosecutions are dealt with by the Attorney General in the exercise of his functions under Article 30 of the Constitution. The arrangements for nominating counsel to conduct prosecutions or having them done by a solicitor is a matter for him.

Mr. T. J. Fitzpatrick *(Cavan):* I take it the Taoiseach is aware of the Courts of Justice Act which was recently passed and which conferred a right of audience on solicitors in all courts in the land. Would the Taoiseach think that the practice of practically excluding solicitors from prosecutions in the Metropolitan District Court is contrary to the spirit of the Act? Is the Taoiseach aware that in the last year for which figures are available, junior barristers were paid a sum of more than £17,000 for appearing in the district court? Is the Taoiseach aware that some people who bring these prosecutions believe they would be much more efficiently conducted by full-time solicitors in the Chief State Solicitor's Office who are trained and engaged in this kind of work, rather than by giving them at the last moment to very inexperienced barristers? This is the practice that prevails at the moment. Finally, is the Taoiseach aware that many Garda officers who are responsible for bringing these prosecutions are dissatisfied with the way the prosecutions are conducted in court?

Taoiseach: In the first place I am not aware that Garda officers are dissatisfied with the manner in which prosecutions are brought now. If the Deputy contends that, let him produce some proof of it and the matter wil be investigated. The recent Courts of Justice Act conferred no higher right are regards prosecutions in the District and Circuit Courts on solicitors than they already had. With regard to the suggestion that fees amounting the £17,000 were paid to barristers. I do not know if that is the case. I have not looked at the figure recently. Perhaps it is.

Mr. T. J. Fitzpatrick *(Cavan):* This information was given to me recently in reply to a Parliamentary Question.

The Taoiseach: I will not contend in any way that cases could be better brought and more effectively brought by solicitors than by barristers. Again I want to say that it is a matter for the Attorney General whom to employ in the prosecution of these District court cases, or any cases for that matter.

Mr. T. J. Fitzpatrick *(Cavan):* My reference to the Courts of Justice Act was meant to suggest to the Taaiseach that that Act conferred a right of audience on solicitors in every court up to the Supreme Court.

The Taoiseach: I know what the Deputy meant.

Mr. T. J. Fitzpatrick *(Cavan):* This would suggest to me that the idea was that solicitors should be encouraged to practise in all these courts and that this practice of instructing barristers in every fiddling case in the District Court seems to be entirely contrary to the spirit of that Act.

Listing of Court Cases

Mr. Ryan asked the Minister for Justice whether the Rules of Court Committee or any other body has recommended that the lodgment of post cards with notices of trial be made compulsory in all cases in the Dublin Circuit Court so that parties on record may receive direct notice through the post of the listing of a case; if so, when such recommendation was made and when it is proposed to act on it; and if he will state the date of introduction of the present voluntary scheme.

Minister for Justice (Mr. O'Malley): As far as I am aware, no such recommendation has been made. The present voluntary scheme operating in the Dublin Circuit Court in relation to civil actions was introduced by arrangement with the Dublin Solicitors' Bar Association in 1965.

Education and Efficiency*

At the outset I might refer to two statements about the profession that deserve to be recorded. Master Baker or some long defunct Taxing Master said that solicitors get paid for work which they don't do and overpaid for some work which they do in order to compensate them for work for which they are underpaid or for which they receive no payment at all. The second statement is known as Murphy's law which postulates that "if anything can go wrong it will". I think these two statements between them summarise many of the difficulties which confront solicitors in the course of their daily practice. They combine between them the obvious facts that solicitors must organise their offices as business men which has received insufficient recognition in the past and they stress the necessity for increased efficiency to cope with the increasing speed and complexity of modern practice. The spectre of liability for professional negligence lurks continually in every office. It is a world wide phenomenon not confined to this country. The new generation of solicitors is faced with problems which never confronted their predecessors at the outset of practice and for this reason I have decided in this talk to avoid the well trodden ground of professional conduct and ethics and to deal instead with the question of running a solicitors office.

Professional ethics

Mr. Osborne who has already delivered a lecture on the question of professional ethics has informed you that the service which we render to our clients must take priority over our own interests. If any question of conflict of interest arises between the solicitor and the client the client's rights must take absolute precedence. This is the main characteristic of a liberal profession. It involves maintaining a high standard of professional competence which is created not alone by the arduous course of instruction and study with which you are all familiar as apprentices but also by keeping oneself up to date with the everchanging legal system by reading statutes, regulations and textbooks and by attendances at the courses of continuing education which are run by the Society of Young Solicitors.

Legal education reform

In 1969 the Society made proposals to the Minister for Industry and Commerce for the reform of legal education. The proposals had been made to the Commission on higher education as far back as 1961. The main obstacle to improvement of the present system is that the Society is tied by statute and that no substantial change can be made in the system without getting legislation through the Oireachtas. This takes many years. The Society's proposal is that a simple Bill should be introduced providing that the entire system of legal education and training for solicitors should be prescribed by regulation by the Law Society subject to judicial concurrence probably of the Chief Justice or the President of the High Court. This would enable the system to be adapted from time to time to meet changing circumstances and conditions. If the Society had these powers it would provide that every intending apprentice should first obtain a University degree and that he should subsequently attend the Society's law school for instruction on the practical subjects which are at present on the syllabus. Following attendance at the Society's law school and passing the professional examinations the apprentice would serve a short term of articled clerkship probably 1½ to 2 years in a solicitor's office. The advantage of this system would be that instead of a nominal apprenticeship as at present the apprentice would be a wholetime employee of the office and in that capacity would be able to earn a salary. Having served this shortened term of apprenticeship and satisfied the Society by interview that he had faithfully complied with the regulations the apprentice would be admitted to practice as a solicitor.

The Ormrod Report

The Society's proposals in many respects anticipated the recommendations of the Ormrod Report recently published in England. The Ormrod Report recommended that instead of apprenticeship the student should be admitted to the roll on a limited practising certificate after attendance at the University and the professional law school and passing the examinations. He would have to serve as an assistant solicitor for a prescribed period before admission to full practice on his own account. The common ground between the Society's recommendations and the Ormrod Report is the necessity of adequate full time practical training in the post-student stage before admission to full practice.

Is professional practice a business?

I have been stressing the importance of qualifying ourselves to give proper service to the public. The important point that the clients interests must take precedence over the solicitor's own personal interests has been sufficiently stressed. A solicitor in addition to providing a professional service has to manage a business and here we must remember that we are responsible for dealing in the aggregate with very large sums of client's monies. In my opinion it is of equal importance to the practising solicitor and his clients that he should be an efficient business man in regard to his own office affairs as that he should be learned in what our apprenticeship indentures describe as the "art, mystery practice and profession of the law".

If we do not manage our offices efficiently we shall fail to earn reasonable remuneration to pay our overhead expenses and staff and provide a reasonable profit. We shall fail to maintain the reputation of the profession by prompt and efficient conduct of our clients' business. Clients' money placed in our trust may be in danger.

Essentially from the business aspects a solicitor's practice is rather like a pharmacy. Each depends on annual turnover and cash flow if it is to live. Cash flow alleviated to some extent by the availability of bank credit is the life blood of any business.

When the bank manager comes to own more of your business than you do yourself it is time to think of getting out unless you see some prospect of achieving financial independence either by effecting economies, expansion of business by greater energy and efficiency, amalgamation or some other means. Therefore for the remainder of this talk I propose to consider the business aspect of practice.

*Extract from a talk to senior apprentices by the Secretary.

Getting business and doing it.

Many young solicitors starting practice concentrate on making contacts and getting new business. That indeed is laudable and necessary. It is however of equal and even greater importance to complete work already undertaken with efficiency. We have all heard of the whips and scorns of time, the laws dealys, the insolence of office and the spurns which patient merit of the unworthy takes.

The delays of the law are often unjustly attributed to our profession. That delays do exist cannot be denied often due to Government Departments and failure to reform the law and legal procedures and other causes outside our control. Sometimes I am afraid we are remiss ourselves in failing to organise our offices properly and to learn and apply the principles which are being adopted in business concerns many of which are our clients and look to us for guidance. It is a strange curcumstance that solicitors who are looked up to as the guides and mentors of their clients in matters not only of law but of worldly wisdom so often neglect the purely business aspect of their own practices.

It must be remembered that the efficiency and speed with which a solicitor works depends not only on himself and his staff but also on the co-operation which he receives from other practitioners and from Government Departments and other correspondents. Among the basic factors to be considered are control of office papers, an adequate accounting system, valuation of office time and co-operation with other practitioners.

Office papers

The control of office papers depends on the establishment of a simple and readily accessible filing system so that all documents which are required in connection with a particular case can be kept together in proper order and obtained without delay when required. Filing systems are various and every one has his own particular ideas and prejudices. Furthermore most individuals are either unable or unwilling to change a system already in operation. The main thing is to have a system and to operate it to the limit of its efficient use. For those who are about to instal a filing system or who find it possible to change a system already in operation I suggest that reference numbers combined with a double entry card index will be found to be the simplest and most efficient. Files in an office are of no use whatever unless the fee earner by which I mean the principal or other person dealing with a case or someone under his direction can put his hand on the file at a moment's notice and furthermore that all the relevant documents are on the file in the proper order.

Card indexes and numerical references

Each new case that justifies opening a file should be given a number. File numbers should be in a consecutive series. Two identical cards are prepared for each case and two card index boxes provided. Each card shows the name of the client, the title of the case, the name of the fee earner in charge and the case reference number. This is a double entry card index system with two identical sets of cards. The cards are stacked numerically in one box and alphabetically in the other so that the reference number of a particular case file can be traced from the alphabetical box and the name of a client in a matter of which the file number is known can be traced from the numerical box. Files themselves are kept in strict numerical order usually in steel filing cabinets in a filing room or space. All the cards of each client are stacked together in the alphabetical box so that the fee earner knows all the cases in hands for that client at any particular time. This is better than keeping all the files together because individual files, unlike individual cards, grow in size and cards are easily handled. Each new case file is added according to its number at the end of the line. The place of each file can be ascertained immediately from its number on the card.

It is absolutely essential that the reference number, the title of the case, the date and name of the person originating each letter, attendance or memorandum should appear on the document.

Removal of dead files

As cases are completed and billed out to the client the relevant cards are transferred to a dead index. At the same time the dead files are stacked away in cardboard boxes in numerical order awaiting final disposal or destruction. The advantage of this system is that any given time all the cards relating to current cases are stacked together in the live card index and the principal or partner in the firm should be assigned the duty of periodically examining the live card index to ascertain how cases are moving. The advantage of a card index which can be used as a ready reference for this purpose need hardly be stressed.

There are many other aspects of office management including accounting systems, time-costing and proper use of your own and staff time. These could well be made the subject of special talks by experts and I hope that articles about them will be published from time to time in the *Gazette*. I have concentrated chiefly on the filing system because I believe it is basic in any well organised office. You can't carry the facts in your head, if they can't be found readily on the file they are lost for ever.

Legal Charges in Sweden

Members of the Society were instructed by a manufacturing firm to collect a debt in Sweden. They instructed lawyers in Stockholm to write to the debtor threatening proceedings. This was done without any result and in January 1971 the Irish solicitors received an account from the Swedish lawyers for a total of 200 kroner (£18.42). Our members sent a remittance for this amount and asked that one further letter be written as nothing had been paid. They subsequently received a further account for another 200 kroner which they regarded as excessive. On the advice of the Society the matter was referred to the Secretary of the Swedish Bar Association. The Society has since been informed that the Swedish lawyers agreed to reduce their charges by 50%

The amount of the claim was £199 and the total charges which apparently involved writing two letters amounted to £27.63. It would appear that legal charges for debt collecting work are much higher in Sweden than in this country.

The Courts–custodians of citizens rights

IT WAS the function of the ordinary courts to determine whether or not rights had been infringed and, where there had been an infringement, what protection was to be afforded, said the Chief Justice, Cearbhall O Dalaigh, in Dublin.

He was introducing a booklet, "Your Rights as an Irish Citizen," published by the Irish Association of Civil Liberty.

The courts were the keystone in any structure of citizens' rights—they were the bulwark of those rights, the Chief Justice said. The court's judges took an oath to uphold the Constitution and the law, were independent in the exercise of their functions, sat in public and were irremovable except by the Oireachtas, and then only for stated misbehaviour.

The Chief Justice outlined the development of international conventions and declarations on human rights, and mentioned that there were several important protocols to the European Convention of Human Rights and Fundamental Freedoms—particularly the 1st and 4th Protocols—that Ireland had not yet given effect to.

Of the booklet, he said there was no presumption that every man must be taken to know the law. A modest judge, Mr. Justice Maule, had once said that it would be contrary to commonsense and reason if this were so.

But there was the rule that ignorance of the law did not excuse. "And," he continued, "in both of these circumstances—the absence of the presumption and the existence of the rule—we have more than sufficient reason to be grateful to the Irish Association of Civil Liberty for compiling and publshing this booklet."

The booklet filled a need, he added. In 1938 Mr. Justice Gavan Duffy had compiled a Constitutional catechism.

Rights and duties

It was important that citizens should know their rights, and what were the limitations on those rights; and to inform the citizens of their rights and limitations, was a contribution to the peace and happiness of the community.

Anyone who underlined rights had to be careful not to neglect to call attention to the corresponding duties, the Chief Justice stated. It could be said that the association had been careful to emphasise that one of the citizens principal obligations was to obey the law.

He referred to a 12th century Irish compilation, *Leabhar na gCeart*, which was a record of the rights and tributes due to Irish kings. Its contents underlined that the Declaration of Rights of Man and of the Citizen, made in France in 1789 was still far in the future.

But 1789 had been a very significant year, and it could never be forgotten that Article 2 of that declaration asserted: "The purpose of civil associations is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, resistance to oppression."

The American Bill of Rights of 1791 (the first ten Amendments) had been, with some limitations, a practical application of the French Declaration and of profound influence for good. But it had taken the experience of the second World War and of all that connoted, to awaken the world to the need to proclaim and to safeguard human rights.

Human rights

The last 25 years had seen the publication by the U.N. and the Council of Europe, of a number of declarations and conventions of human rights, which were of the highest importance, he went on.

The Chief Justice mentioned the International Bill of Human Rights, and noted the European counterparts. Firstly, the European Convention of Human Rights and Fundamental Freedoms, "which is in effect, if unfortunately not also in form, part of our law

Of great significance, there were the institutions of Strasbourg, the Commission of Court of Human Rights, to ensure enforcement. There was also the European Social Charter of 1961, and the Chief Justice stressed its importance.

He said that the human rights situation in a given country was composed of native elements, some of which were not matters of law, and the Constitution could be only one of the elements in the situation.

He suggested that, in its second edition, the association's handbook might glance at the important field of social right. For instance the Social Welfare Act, 1952, had introduced the point about independent deciding officers which was a great advance in civil law.

Among those who attended the launching of the booklet were Professor Denis Donoghue, Professor W. R. Stanford, and Professor Geoffrey Hand, dean of Faculty of Law, U.C.D.

Irish Times.

BOOK REVIEWS

Grundy (Milton)—Tax Haven—A World Survey—8 vo., pp. 173—London, Sweet & Maxwell, 1972, £600.
This is apparently the second edition of this work, which was first published on the Continent in 1969. Each chapter has been written by an expert bank or financial company of the unit concerned. The author has vigorously excluded territories such as Ireland, Malta, Monaco, Jamaica, Netherlands, etc., which only confer limited fiscal advantages. The countries which are included, and which grant substantial facilities for international transactions are: The Bahamas, Bermuda, The British Virgin Islands, The Cayman Islands, Gibraltar, Hong Kong, The Isle of Man, Jersey, Liberia, Liechtenstein, Luxemburg, The Netherlands Antilles, The New Hebrides, Norfolk Island, Panama and Switzerland. To take Switzerland as an example, there is a summary of the internal tax structure, including stamp duties, turnover tax with holding tax (on Swiss dividends) tax treaties, joint stock companies and private limited companies. There are useful passing references to double taxation conventions. It would seem that individuals using tax havens are primarily concerned with privacy. This book will be invaluable to practitioners who have rich clients who wish to dispose of their assets without having to discharge exorbitant taxation.

Charlesworth (J) and J. F. **Cain**—Company Law—Tenth Edition, 8 vo., pp. lxiv, 555—London, Stevens, 1972. Hardbound, £2.25. Paperback, £1.45.
Judge Charlesworth's Treatise on Company Law has undergone a vast expansion as a result of the learning displayed by Mr. Cain, who is now a Senior Lecturer in the University of Sydney. Mr. Cain has been editing this treatise since the 7th edition in 1960, and owing to the numerous decisions of the English Chancery Court and the enactment of the English Companies Act 1967, more than one hundred pages have been added to the text since the 8th edition in 1965. Despite this, the number of chapters has been reduced from 39 to 32. There is a special chapter on the protection of outsiders covering the Turquard Rule and its modern developments, but the former chapter on Statutory and Chartered Companies has been eliminated. There is a Scottish editor, Dr. Marshall, for Scottish cases, but it is unfortunate that not sufficient cognizance appears to have been taken of modern Irish cases. One result of entering the European Community will be the acceptance of the rule that a transaction decided on by the directors shall normally be deemed within the capacity of the company to enter into it; this gives very wide scope to directors. Henceforth a person who enters in to an *ultra vires* contract with a company in good faith and who does not actually know that it is *ultra vires*, will be able to enforce the contract against the company. Furthermore, if in future a preliminary contract prior to its formation purports to be made by a company or its agent, then, unless a contrary intention appears, the contract shall have effect as a contract entered into by the person purporting to act for the company; this would mean that a valid contract would henceforth be effective in a case like *Newborne v. Sensolid (1963)*. Mr. Cain has written upon a very complicated subject with the clarity, precision and mastery we have come to expect from him. The rules of company law, which are hard to master save by an expert, have been stated clearly and precisely, supplemented by the facts of cases when required. Invaluable for students.

Boulton (A. Harding)—The Making of Business Contracts—2nd Edition—8 vo., pp. xiv—London, Sweet & Maxwell, 1972—Concise and College Texts), £1.95.
It is unusual for a chartered surveyor, who also incidentally has a low degree, to write a book on contracts, but the fact that this work has undergone a second edition within seven years proves its success. The learned author has pointed that the vast majority of industrial or commercial contracts are governed by stereotyped conditions which often fail to be subjected to critical scrutiny. There is little doubt but that it will be of interest and value to the business executive and even to the student. It is most useful that advice is given to the content of typical forms of business contracts, such as contracts of insurance, of employment, know-who and agency agreements; the chapter on "writing the commercial agreement" is essential reading. In this edition, the special features governing hire purchase contracts have been listed. It is emphasised that the volume is primarily written for the student of business and management studies.

Melville (L. W.)—Precedents on Intellectual Property and International Licensing—Second Edition—8 vo., pp. xxxii, 368—London, Sweet & Maxwell, 1972 £7.50.
When the solicitor author of this learned work published his first edition under the title—"Precedents on Industrial Property and Commercial Choses-in-Action"—in 1965, it was already acclaimed by knowledgeable practitioners as an important land mark in compiling precedents. The reason was that it dealt not only with trade marks and patent proceedings, assignments of choses-in-action, mortgage of moneys due under contract, assignment of the benefit of a contract by way of mortgage, and draft regulations for certification trade marks. The present edition contains 80 more pages, but the material has now been reduced to 6 chapters namely (1) Licensing in relation to monopolies, trade secrets and know-how. (2) Patents. (3) Fine Art and Applied Art, which includes copyright licence, documentary film agreement, television film contract, film music contract, and computer programme licence. (4) Trade Marks, Trade Names and Goodwill. (5) Certification Trade Mark Licence. (6) Miscellaneous contracts including contract for purchase of patent applications, consultancy agreement, option to acquire film right, exclusive destributorship, and manufacturing subcontract of patented article. In addition relevant extracts of the English Patents Acts 1949, Restrictive Trade Practices Act 1956, the American Anti-Trust Legislation. The Treaty of Rome with relevant E.E.C. regulation and statement, and of the German and French Law of competition are included. It will be noted that this material is of special interest, and will be particularly useful to practitioners who wish to specialize in European Community Law. The matter has been edited with great clarity and precision and the printing is as usual excellent.

Younger Report–Curbs on bugging

ELAINE POTTER and JAMES MARGACH

A series of far-reaching proposals for protecting the private life of citizens in the age of computers and sophisticated spying services is set out in a report on the right to privacy to be presented by Mr. Reginald Maudling, the Home Secretary, at the beginning of next month. It is expected that Mr. Maudling will give general approval to the proposals, though the committee was appointed by his Labour predecessor, Mr. James Callaghan, just before the 1970 election.

The highlights of the report are:

1. Protection against unlawful surveillance through the creation of a new legal offence punishable by imprisonment and fine. The committee lists about 20 different spying devices, including an "infinity transistor," which can be fitted in three minutes and transmits all the sounds in a room, and flourescent dye to be applied to a person to be tailed.

2. Protection against the disclosure of information acquired unlawfully.

3. New rules to prevent the leakage of confidential information stored in computers in Government departments and elsewhere.

4. Stricter review of personal information acquired by credit-rating agencies, with the right of a citizen to know what the agencies know about him.

5. Banks are told to be more forthcoming in telling customers about inquiries made about their financial standing.

6. The operations of private detectives should be supervised by setting up a system of licensing, which could be handled by the police.

7. Press, TV and radio would be opened up to allow greater opportunity for members of the public to make effective complaint. The Press Council membership would be changed to recruit about half from outside the newspaper world.

8. Students, too, could be protected by a code of practice on the use of their personal records.

The 19-member committee is headed by Sir Kenneth Younger, former Director of Chatham House, and includes barristers, two MPs, journalists and novelist Margaret Drabble. In its report it says that privacy for the citizen is not just a question of taste which can be left to the restraints of social convention. On the other hand, the need to preserve freedom and the right to tell the truth openly makes it a difficult balance to strike between control and liberty.

Somewhat dismayingly, the Committee found that the public generally was not greatly concerned. Response to the Committee's request for information about privacy invasion was so small that they commissioned a public attitude survey. The survey showed that people attached less importance to protecting privacy, than to keeping down prices, reducing unemployment and stopping strikes. It rated between building more houses (more important) and building more schools (less important).

When Mr. Maudling makes his statement on Younger, he will also announce the setting up of an inquiry into safeguarding the citizen's private rights against invasion by nationalised industries, all state agencies and services and big semi-public bodies, as well as local authorities.

He will be able to announce measures being taken to tighten up the confidentiality of the mass of private information banked by the computers of a dozen and more Ministries. Whitehall, it is recognised, knows a¶ great deal about the private lives and family details of every citizen. The Younger Committee betrays anxiety about the risks of Whitehall departments centralising their mass of privately filed details.

The Home Secretary will soon receive a report of a committee of civil servants on their two-year investigations into ways of controlling this confidential information.

The Younger Committee was appointed after the Private Member's Bill of Mr. Brian Walden had been rejected. Younger was asked to consider whether legislation was needed to protect the individual citizen against intrusion into privacy. Brian Walden's Bill proposed the creation of a new general law of privacy, so that substantial infringements would be open to a civil legal action.

The Younger committee says the need for a general law of privacy has not been made out. Such a law might infringe upon other rights of greater importance, but in a minority report, Alexander Lyon, MP, argues that a general law of privacy would be an effective way of protecting the individual's rights.

Perhaps, the most important and far reaching of the Committee's recommendations is that an individual should have a legally enforceable right of access to the information held about him by credit rating agencies.

At present there is little protection for the citizen against a credit bureau—or indeed anyone—who collates information about him. As to the use of that information, Younger says it should only be possible successfully to sue for libel if the information was defamatory and was both untrue and provided maliciously by an agency.

To keep the activities of credit rating agencies under review Younger endorses the idea of a Consumer Credit Commissioner, recommended by the Crowther Committee on Consumer Credit.

(*The Sunday Times*) 11 June 1972

Court Committee Report on Master

The sixteenth interim Report of the Committee on Court Procedure relating to the Jurisdiction of tte Master of the High Court was published recently. The Committee first considered the previous functions of the Master of the High Court. It concluded that the main importance of the Master's office now lies in the judicial sphere and that consiquently he would have little time for exercising any administrative functions. The Committee considered that the Master should be a judicial officer with limited jurisdiction under Article 37 of the Constitution. The Master should by statute be given all the jurisdiction which a High Court judge now exercises in all *exparte* applications and in all motions on notice, except the following: —

(a) Matters relating to criminal proceedings;
(b) Matters concerting the liberty of the person, including attachment;
(c) The granting of injunctions;
(d) Applications for bail;
(e) Applications for the trial of any issue before the trial of an action;
(f) All applications to approve settlements in cases in which damages are claimed on behalf of infants where liability is in issue, and applications under section 63 of the Civil Liability Act, 1961;
(g) Probate Motions;
(h) Conditional or other orders in State Side matters save orders for enlargement or abridgement of time;
(i) Interlocutory applications in matrimonial cases; and

The Master should also continue to exercise all jurisdiction which is at present vested in him and which may in future be conferred upon him.

In order to simplify trial procedure it is recommended that in most actions the plaintiff must, within one month after the pleadings have closed, or are deemed to have been closed, take out a summons to ge known as a "Summons for Directions" returnable to the Master in not less than 14 days in the formed annexed in Appendix D to this report.

The object of this is to enable all matters which can be dealt with interlocutory applications, and have not already been dealth with, to be dealt with in so far as possible. In the hearing of the summons the master shall order and give such directions as he thinks fit. Upon the hearing the Master of the High Court, if satisfied that his orders and directions have been complied with, shall order that the action shall take its place in the list of cases ready for hearing in the High Court,—and shall sign the summons for directions. Unless an action is for summary judgment or an action which the Court has ordered to be listed without further pleadings normally no action would henceforth appear in the Court list for trial until the Master has given his directions. It is recommended that the Master should sit for five days a week during the Law Terms and that the person to be appointed as Master should be a practitioner of wide experience in litigation. Furthermore, in order to prevent a person from being adjudicated a bankrupt without any form of judicial intervention, it should henceforth be necessary for creditors to bring this adjudication before the Master and the Master should have the power to postpone the adjudication until such further notice as he deems necessary has been given to the debtor.

OBITUARY

Lorcan Gill —An appreciation

The recent sudden death of Lorcan Gill at his residence, Belclare, Westport came as a great shock, not only to the members of the Mayo Bar Association, of which he was a former President, but also to his large circle of friends and to the community he served so faithfully during his professional career.

Qualifying as a Solicitor in the year 1929, Lorcan soon established himself as one of the leading and most popular members of the profession. His quiet courteous and unassuming manner, more especially to his younger brethren, when in need of guidance, was a revelation to study, for Lorcan far preferred to hide his expertise and brilliance under the proverbial bushel, rather than impress any colleague.

All his life he was keenly interested in sport; my happiest recollections are long after he had retired from active rugby to see him taking his place on the local team in a vain effort to stem the opposition. Lorcan was truly a gentleman; his practice always appeared to me to be 'A man's word was his bond', and he certainly lived up to that ideal.

His passing has left a void in his ranks of the Profession that can never be filled. He will be sorely missed by his many friends both at the Bar and in the Solicitor's profession.

P.J.D

Mr. Edward W. Healy, Solicitor, died in June, 1972. Mr. Healy was admitted in Easter Term 1942 and practised at Pearse Street, Clonakilty, Co. Cork.

Mr. Cornelius M. J. Daly, Solicitor, died unexpectedly while on business in London on 4th July, 1972. Mr. Daly was admitted in Michaelmas Term 1929 and practised under the title Cornelius J. Daly & Co. at 19 South Mall, Cork, and under the title of Messrs. J. J. Ronayne & Co. in Midleton, Co. Cork. Mr. Daly was a member of the Council of this Society from 1952 to 1959 and was Vice-President in 1958-59. Mr. Daly had acted for many years with the President, Mr. O'Donovan, as Joint Honorary Secretary of the General Council of Provincial Solicitors Associations.

U.S. Death Penalty Ruled Cruel

By ALAN OSBORN in Washington

THE United States Supreme Court by a majority of five to four, held recently that the death penalty as carried out in America is "cruel and unusual punishment" and therefore illegal under the country's Constitution.

The long-awaited decision will spare for the moment the lives of 600 men in death cells throughout America. But because of the ambiguity of the 11 separate opinions issued in the ruling, it was unclear whether the court's decision would banish the electric chair permanently.

The Supreme Court Chief Justice, Mr Warren Burger, dissented from the majority decision, which he said had left the future of capital punishment in the United States "in an uncertain limbo."

Results 'unclear'

"Rather than providing a final and unambiguous answer on the basic constitutional question, the collective impact of the majority's decision is to demand an undetermined measure of change from the various State legislatures and the Congress," he said.

All four of the Justices appointed by President Nixon to the Supreme Court—Mr Warren, Mr Harry Blackmun, Mr Lewis Powell and Mr William Rehnquist—dissented from the ruling, which was delivered in respect of three specific death sentences in Georgia and Texas.

The narrowness of the ruling and the dissenting vote cast by Justice Blackmun surprised legal observers in Washington. Mr Blackmun has written extensively against the death penalty in the past.

He said that he bowed to no-one "in the depths of my distaste, antipathy and indeed abhorrence" for the death penalty, but concluded that "the court has overstepped."

Written opinions

The court's actual ruling on capital punishment came in the form of a brief unsigned opinion without comment or interpretation. The five majority justices all issued extensive written opinions giving a variety of reasons for their attitude.

Two justices—Mr William Brennan and Mr Thurgood Marshall—cited the eighth amendment to the constitution which bans "cruel and unusual" punishment, and concluded that this definition fitted the death sentence under all conceivable circumstances.

Justice William Douglas broadly agreed with this, though he thought there could be some exceptions. But he also concluded that capital punishment was incompatible with the "equal protection" of the laws.

Justices Potter Stewart and Byron White based their objections more on the manner in which legal executions were carried out. Mr Stewart said it was applied in a "wanton" and "freakish" manner, and Mr White said the penalty was applied so infrequently that it was doubtful that it met "any existing need for retribution."

Chief Justice Burger said he believed that under the ruling State legislatures were free to "carve out limited exceptions to a general abolition of the penalty."

"The legislatures can and should make an assessment of the deterrent influence of capital punishment, both generally and as affecting the commission of specific types of crime," he said.

ARGUMENT REJECTED
Liability of reporters

The United States Supreme Court recently gave its ruling on the right of newspaper reporters to respect "confidential sources."

The court found that the constitution did not protect reporters from appearing before a grand jury and answering questions. The issue had been fiercely argued in the light of attempts by courts and the Justice Department to demand access to reporters' notebooks and cameras and to seek identification of secret news sources.

The court rejected the argument that information given reporters on a confidential basis could be withheld from criminal investigations under the freedom of press and speech provisions.

The Guardian

Lodgments of Infant's Monies

Solicitors art reminded of their duty to ensure that no loss will accrue to an infant through any unreasonable delay in dealing with Orders of the Court as to lodgment of infants' monies in Court and as to the investment of same and of funds already in Court to the credit of an infant.

When the Court makes such an Order the Solicitor concerned should immediately bespeak same and attend the Accountant with an attested copy of the Schedule to the Order so that no undue delay will occur in complying with the directions of the Court.

It is to be understood that in the absence of a satistory explanation for such delay the Court may have to consider the question of recoupment of the infant's loss by the person responsible.

P. J. DUNPHY
Registrar
July 1972.

SOLICITORS GOLFING SOCIETY

PRESIDENT'S PRIZE (MR. J. W. O'DONOVAN) PRIZE AT DELGANY 23rd JUNE 1972

RESULTS

President's Prize—B. Rigney (21), 38 points.
Runner-up—S. V. Crawford (11) 37 points on 2nd nine.
Ryan Cup—J. Finnegan (18), 37 points on last 6.
Runner-up—P. W. Keogh (13), 37 points.
Best over 30 miles—F. P. Johnston (11), 36 points.
Best 1st Nine—F. X. Burke (12), 20 points on last 3.
Best 2nd Nine—David Bell (18), 22 points.
Best Score by Lot—B. O'Brien-Kenney (4), 37 points.
NEXT MEETING—Captain's Prize (T. D. Shaw) Mullingar, Saturday, 30th September, 1972.

CORRESPONDENCE

THE LANDLORD AND TENANT (Amendment) ACT, 1971

The Secretary,
Department of Justice,
72/76, St. Stephen's Green,
Dublin 2. 26th April 1972

Dear Sir,
A number of queries have been received from members who have been unable to buy the recent Landlord and Tenant Act. I am aware that the green paper as passed by both Houses is available but this is not a satisfactory substitute. I shall be obliged for information as to when the text of the Act will be available.
Yours faithfully,
Eric A. Plunkett,
Secretary.

Department of Justice,
72 St. Stephen's Green,
Dublin 2
3 May, 1972

E. A. Plunkett, Esq.

Dear Sir,
I am directed by the Minister for Justice to refer to your letter (EAP.L/5/72) of 26 April concerning the text of the Landlord and Tenant (Amendment) Act, 1971. The text of the Act in bilingual form will, it is anticipated, be on sale through the usual channels within the next two months.
Yours faithfully,
R. B. Toal

The Secretary,
Department of Justice,
72/76 St. Stephen's Green,
Dublin 2. 16 May 1972

Dear Sir,
I am directed by the Council to refer to your letter dated May 3rd on the subject of the delay in publishing the Landlord and Tenant (Amendment) Act 1971. You state that the text of the act in bilingual form is expected to be on sale through the usual channels within the next two months. This Act is of vital importance to the solicitors' profession and their clients and I am directed to enquire whether an English only version is available. The Act contains certain provisions which must be operated within twelve months in order to obtain certain relief and it is a serious matter that the profession cannot obtain copies of it. Please state whether the Bill as passed by both houses is now on sale in the Government Publications Sales Office so that the profession can be informed. The Council understand the normal practice is to publish the English version of statutes immediately after enactment and they think this practice should be continued. As the matter is rather urgent the Council would be obliged for an early reply.
Yours faithfully,
Eric A. Plunkett,
Secretary.

The Controllor,
Stationery Office,
Beggar's Bush,
Dublin 4. 17 May 1972

Dear Sir,
Thank you for your letter. I feel it is unnecessary to point out the gravity of this matter because this statute contains provisions enabling parties to obtain certain advantages if action is taken within twelve months from the date of operation of the Act. It is therefore absolutely essential that the Act should be available to members of the profession and their clients without delay. Would it not be possible to print the English version of the Act immediately, as is usually done, without waiting for the bilingual version. As this matter is on the agenda for the Council of the Society I should be obliged for a reply at your early convenience.
Yours faithfully,
Eric A. Plunkett,
Secretary.

Department of Justice,
72 St. Stephen's Green,
Dublin 2
26 May, 1972

Dear Sir,
I am directed by the Minister for Justice to refer to your letter (L/5/72) of 16 May and previous correspondence concerning the Landlord and Tenant (Amendment) Act, 1971.
An English only version of the text of the Act will not be published but, as already indicated, the Act in bilingual form will be placed on sale shortly. Although in the case of some legislation promoted by the Minister in recent years, an English only text of the Act was published before publication of the bilingual text, this is not the normal procedure. Only in special circumstances is an English only text of an Act published. Copies of the Landlord and Tenant (Amendment) Bill, 1971, as passed by both Houses of the Oireachtas, are available from the Government Publications Sale Office and have been so available at all times since the enactment of the Bill—price 4p, postage extra. The date on which the Bill became law (i.e. 7 December, 1971) was published in "Iris Oifigiúil" on 10 December, 1971.
Yours faithfully
R. B. Toal.

The Secretary
Department of Justice,
72/76, St. Stephen's Green,
Dublin 2. 7 June, 1972

Dear Sir,

I am directed by the Council to refer to your letter of May 29th. The Council however regard the matter as still being in a most unsatisfactory position. It is not in accordance with the ordinary principles of legislation that an Act should not be available to the public and to the members of the legal profession until six months adter enactment. In the present instance the convenience is particularly serious because solicitors have only a limited time under the act to bring applications for relief on behalf of their clients. Almost six months have gone by and the Act is still unavailable.

It is not a solution to suggest that solicitors should purchase copies of the Bill as passed by both Houses with copies of Iris Ofiguil containing the date on which the Bill became law. It is at least doubtful whether such documents are admissable in evidence and in any case it subjects the profession and the public to unnecessary inconvenience and expense.

Many solicitors' offices have standing orders with the Government Publications Sales Office for copies of Acts as published. Few offices have standing orders for copies of Bills either in the preliminaty or final stages and to expect them to place such orders would merely result in unnecessary expense.

The Council still think that there is an unanswerable case for publication of Acts in the English only version immediately after enactment so that the public can have immediate access to legislation.

I have been directed to pursue this matter with your Department and with the Stationery Office as a matter of importance to the public and the profession.

Yours faithfully,
Eric A. Plunkett,
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 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 30th day of June, 1972.
D. L. McALLISTER
Registrar of Titles.
Central Office, Land Registry, Chancery Street, Dublin 7.

(1) Registered owner: Sheelagh Crawford. Folio No.: 24201. Lands: Carrowkeel, County Mayo. Area: 0a. 1r. 6p.

(2) Registered Owner: Patrick J. O'Flaherty, Folio No.: 26407. Lands: Ballykeefe. Couny: Limerick. Area: 0a. 2r. 3p.

(3) Registered Owner: Robert Hood Mahaffey. Folio No.: 1138. Lands: Mongalvin, County Donegal. Area: 68a. 2r. 24p.

(4) Registered Owner: Mary Heuston, Lily Dunlea, Kathleen O'Neill, Eilis Kent. Folio No.: 41053. Lands: Cloghatisky. County: Galway. Area: 2a. 3r. 8p.

(5) Registered Owner: Jeremiah Harney. Folio No.: 8619. Lands: Granny. County Kilkenny. Area: 28a. 0r. 11p.

LOST WILL

Peter O'Riordan deceased formerly of 3 Herbert Park, Ballsbridge, Dublin 2, and late of Riverside House, Innishannon, Co. Cork.

The Representatives and next-of-kin of the above deceased who died on the 9th June, 1972, would be obliged for any person in possession of what purports to the lest Will of the deceased to communicate with the undersigned Solicitors as early as possible.

Dated this 7th day of July, 1972.
R. NEVILLE & CO.,,Solicitors
Bandon, Co. Cork.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

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Contents

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THE SOCIETY

Proceedings of the Council

20th JULY 1972

The President in the chair, also present: Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Christopher Hogan, Michael P. Houlihan, Thomas Jackson Jnr., John B. Jermyn, Francis J. Lanigan, Eunan McCarron, Patrick J. McEllin, Brendan A. McGrath, John Maher, Senator John J. Nash, Patrick Noonan, T. V. O'Connor, Patrick F. O'Donnell, William A. Osborne, Peter D. M. Prentice, Moya Quinlan, Robert McD. Taylor and Ralph J. Walker.

Window envelopes

In reply to an inquiry from a member the Council stated that there was no objection to the use of window envelopes by solicitors.

Solicitor executor

A member became a solicitor after the date of a will appointing him as executor. As the will contains no charging clause he sought the Council's views.

The Council on a report from a committee said that the will speaks from death and the executor will be precluded from charging any costs. Member could renounce his rights and in these circumstances if he is appointed to act for the personal representative he can charge professional fees or alternatively if the residuary legatee is competent and properly advised he may consent to the member acting as executor and making the usual professional charges.

Income tax and monies received for clients

The Council considered the liability of a solicitor to account to the Revenue Commissioners for income tax earned on monies received for clients and the liability of solicitors to personal assessments. The Council has advised members that they should not comply with notices received under Section 176 of the Income Tax Act, 1967, unless the client so directs and that they should inform the client that any tax charged on the solicitor will be deducted from the interest or income paid to the client. The Council considered the position of solicitor who may already have paid out substantial sums to clients and who may now be liable to back assessments.

In the view of the Council the following alternatives are open to solicitors who hold clients' monies.

(1) They may obtain the clients' consent to disclose the ownership of monies held on deposit receipt for them.

(2) With the consent of the client they may place the money on deposit receipt in the joint names of the client and the solicitor.

(3) If the client wants to avoid disclosure of his identity and will not agree to indemnify the solicitor the solicitor may refuse to place the money on deposit receipt and keep it on current client account.

(4) If the client wants to have the money on deposit receipt to earn interest and refuses to allow his identity to be disclosed the solicitor may arrange by agreement with the client that the solicitor will be indemnified by deduction of all payments made to the client in respect of his liability for tax (including sur tax) leaving the client to recover such amount as he can on a certificate in Form 18 if he is not liable to tax.

These provisions apply where client monies are kept on separate deposit accounts for different clients, and also where the solicitor expects to retain the money for more than the normal period. As regards in and out transactions in connection with sales where the money is kept for periods of a month or six weeks the normal practice is to keep the money in general client account. If this money is in a general deposit account and the solicitor gets the benefit of the interest he must pay the tax himself. The standing rule of the Council is that the solicitor should not retain monies improperly or unduly for the purpose of earning interest and if this rule is not observed the solicitor is accountable to the client for the interest earned.

Interest on monies lodged in Courts

A member wrote to the Society and complained of the present situation where no interest is paid on monies lodged in Court. The Council noted that interest is paid in England on monies lodged in Court in similar circumstances under the provisions of the Administration of the Justice Act, 1965, Sections 6 and 7, and decided that these provisions should be brought to the attention of the Committee on Court Practice and Procedure with a request that they consider the advisability of similar legislation being passed in Ireland.

Standard Conditions of Sale

A member wrote to the Society and suggested that Clause 3 of the Society's standard conditions of sale should be altered. Clause 3 provides as follows: "If from any cause whatever other than the wilful default of the vendor the purchase shall not be completed on that day, the purchaser shall pay to the vendor interest at the rate specified in the said memorandum on the balance of the purchase money remaining unpaid from the closing date up to the date of the actual completion". It was suggested that the word "wilful" should be deleted. On a report from the committee the Council decided that in the next edition of the Conditions of Sale the word "wilful" should be deleted. It was also decided that the format of the memorandum to the Conditions of Sale should be altered to provide more space for the names of the parties.

Michael Moran

Michael Moran, a solicitor's apprentice and son of Michael Moran, T.D., former Minister for Justice, was tragically killed in an accident. At a meeting of the Council held on the 16th August 1972 the following resolution was passed: "The President and Council of the Society tender their deep sympathy to Michael Moran and his family on the tragic death of his son Michael."

CURRENT LAW DIGEST SELECTED

All references to dates relate to *The Times* newspaper.

In reading these cases note should be taken of the differences in English and Irish statute law.

Arbitration

An order enabling an English company to enforce an arbitrators' non-speaking award of £35,855 against a Rumanian state company for non-delivery of a raw beet sugar consignment from Rumania was made by Mr. Justice Mocatta.

Prodexport State Company for Foreign Trade v E.D.&F. Man Ltd.; Family Division; 13/7/1972.

Contract

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Cairns. Judgments delivered July 3rd.

Where a contract imports the RIBA conditions, sums certified by the architects as due for completed work must be passed on to subsubcontractors for work done; and the subcontractors cannot deduct from a claim for those sums amounts said to be due for putting right the allegedly defective work done by the subsubcontractors.

Carten Horsley (Engineers) Ltd. and Others v Dawnays Ltd.; Court of Appeal; 4/7/1972.

Hire Contract

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

Television dealers who installed a set for a minor at his address but entered into a hiring agreement with one of his reatives were unsuccessful in an appeal against conviction for contravening Section 5 (1) (a) of the Wireless Telegraphy Act, 1967, by failing to notify the Postmaster General of the letting to the minor.

Pageantry Radio and T.V. Co.. Ltd. v Connell; Galione v Connell; Q.B. Division; 18/7/1972.

Restraint of Trade

Before Lord Justice Davies, Lord Justice Buckley and Lord Justice Stephenson. Judgments delivered June 30th.

An appeal to determine the validity of a covenant in restraint of trade in a standard form of contract used by hairdressers was competent even though the period covered by the restraint had expired. Their Lordships allowed the appeal, by Marion White Limited, Harpenden, against the decision of Deputy Judge Solomon at Bletchley and Leighton Buzzard County Court last November that a covenant imposing restraint of trade on Miss Ann Francis, of Wing, was contrary to public policy and void, and granted a declaration that the covenant was valid.

Marion White Ltd. v Francis; Court of Appeal; 3/7/1972.

Crime

Before Lord Wilberforce, Lord Pearson, Lord Simon of Glaisdale, Lord Cross of Chelsea and Lord Salmon.

To state as a proposition that men are incapable of being depraved and corrupted by pornographic books because they are addicts of such books is contrary to the whole basis of the Obscene Publications Acts, 1959. The Act is not merely concerned with the once for all corruption of the wholly innocent; it equally protects the less innocent from further corruption and the addict from feeding or increasing his addiction.

Director of Public Prosecutions v Whyte and Another; House of Lords; 19/7/1972.

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

In arriving at the value of blue publications for the purpose of determining a fine for evading the prohibition on their importation, the Court is not restricted by distinctions between the so-called black market and white market. What has to be sought is the price which a willing seller would accept from a willing buyer at the port or airport where the goods are landed.

Byrne v Low; Q.B. Division; 14/7/1972.

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

As a matter of strict law car auctioneers did not "offer for sale" a car they auctioned, and therefore could not be convicted of the offence of offering to sell an unroadworthy car contrary to Section 68 of the Road Traffic Act, 1960, as amended—now Section 60 of the Road Traffic Act, 1967.

British Car Auctions Ltd. v Wright; Q.B. Division; 12/7/72.

Before Lord Reid, Lord Morris of Borth-y-Gest, Viscount Dilhorne, Lord Diplock and Lord Kilbrandon.

The behaviour of an anti-apartheid demonstrator at Wimbledon last year which annoyed the spectators and caused them to protest vehemently was not "insulting behaviour" within Section 5 of the Public Order Act, 1936. The word "insulting" in that context has to be given its ordinary meaning and is not a question of law.

Brutus v Cozens; House of Lords; 19/7/1972.

Before Lord Justice Roskill, Mr. Justice Milmo and Mr. Justice Bridge.

The Court dismissed appeals by Clarksons Holidays Ltd. against their conviction at Halifax Quarter Sessions (Recorder, Mr. J. A. Cotton) on seven out of eight counts of recklessly making false statements in their 1970 holiday brochure, contrary to Section 14 (1) of the Trade Descriptions Act, 1968, regarding the nature and provision of facilities and accommodation at the Hotel Calypso in Benidorm, Spain.

Regina v Clarksons Holidays Ltd.; Court of Appeal; 7/7/72.

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

The fact that a publican gave S. A. Latter, aged 39, motor mechanic, three bottles of diabetic lager without telling him that it was stronger than ordinary lager was held to be a special reason for not imposing the mandatory disqualification for driving with an excess of blood alcohol contrary to Section 1 (1) of the Road Safety Act, 1967.

Alexander v Latter; Q.B. Division; 12/7/1972.

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

The Court held that "malicious damage" of whatever value and extent committed between 9 p.m. and 6 a.m., which entitled a police officer to arrest under Section 61 of the Malicious Damage Act, 1861, was an arrestable offence within Section 2 (4) of the Criminal Law Act, 1967, and that it was not necessary, in order to justify entry into property to arrest a person under Section 2 (6) of the 1967 Act, that the police officer who first suspects the person of having committed an arrestable offence and seeks to arrest him under Section 4 (4) of the 1967 Act was the same person who effected entry in order to arrest under Section 2 (6).

Regina v Francis, Court of Appeal; 4/7/1972.

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

When the Secretary of State approved the Alcotest (R) 80 device for the purposes of breath tests under the Road Safety Act, 197, he must be assumed to have had in mind that the device had an in-built potential of corrosion of the wire gauze holding the crystals in place in the tube.

Their Lordships so stated when dismissing an appeal by L. A. Parsons, pickling factory owner, of Llanelli, from his conviction at Carmarthenshire Quarter Sessions (Deputy Chairman, Mr. S. J. Havard Evans) after a three-day trial last August of driving with an excess proportion of alcohol in his blood, contrary to Section 1 (1) of the Act. He was fined £30, disqualified for three years and ordered to pay costs.

Regina v Parsons; Court of Appeal; 29/6/1972.

Before Lord Widgery, the Lord Chief Justice, Lord Justice Edmund Davies, Lord Justice Orr, Mr. Justice Browne and Mr. Justice Willis.

A hopelessly corrupt and wholly unreliable transcript of a summing-up was not of itself a ground for saying that a conviction was unsafe and unsatisfactory. A five-judge court dismissed an appeal by J. E. Le-Caer, aged 47, club proprietor, of Putney, from his conviction for malicious wounding at Inner London Quarter Sessions (Deputy Chairman, Judge Lermon, Q.C.) in October. An appeal against a two years' sentence was allowed, the sentence being reduced to one year.

Regina v Le-Caer; Court of Appeal; 26/6/1972.

Before Lord Justice Cairns, Lord Justice Stephenson and Mr. Justice Willis.

A punter who kept £106 of £117 paid to him by a bookmaker which he knew he was not entitled to because of a mistake on the bookmaker's part was held to be guilty of theft. Their Lordships, in a reserved judgment, dismissed an appeal by Donald Gilks, aged 35, a window cleaner, of Burleigh Rd., Sutton, against his conviction at South West London Quarter Sessions (Deputy Chairman, Mr. K. Bruce Campbell, Q.C.), of stealing.

Regina v Gilks; Court of Appeal; 27/6/1972.

The Court of Appeal (the Lord Chief Justice, Mr. Justice MacKenna and Mr. Justice Willis) certified that a point of law of general public importance was involved in the decision dismissing the appeal of Leslie Arthur Parsons from his conviction for driving contrary to Section 1 (1) of the Road Safety Act, 1967 (*The Times*, June 30th). The point was "whether an Alcotest (R) 80 device of the sort approved by the Breath Test Device (Approval) (No. 1) Order, 1968, for the purpose of the breath test defined in Section 7 (1) of the 1967 Act is a device within Section 7 (1) when used bona fide by a police officer under Section 2 and when the device before such use is part green in colour and defective by reason of corrosion so as to be capable of indicating a proportion of alcohol in the person's blood on a breath test which exceeds the prescribed limit and when such a device not so corroded when so used would not so indicate."

Regina v Parsons; Court of Appeal; 4/7/1972.

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

A motorist who drove across Oxford High Street with a slight inclination to the right in order to go from Turl Street into Alfred Street did not turn right into High Street and so commit a criminal offence.

Wright v Howard; Q.B. Division; Court of Appeal.

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

Fraudulent use of a vehicle excise licence within Section 26 (1) of the Vehicles (Excise) Act, 1971, was not proved by showing that an unlicensed car with a licence belonging to another car was left on a piece of land which was not a public road.

Their Lordships dismissed a police appeal from the dismissal by Cornwall justices of an information charging F. C. Lanyon with contravening Section 26 (1) (c) by fraudulently using a certain licence on a car on a piece of land at Trelawney Estate, Madron, last January.

Section 26 (1) provides: "If any person ... fraudulently ... uses ... any licence ... under this Act, he shall be liable ... to a fine not exceeding £200 or ... to imprisonment for a term not exceeding two years."

Cook v Lanyon; Road Transport; Q.B. Division; 13/7/72.

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

No reasonable person sitting in Court when a loader at Heathrow Airport was tried on charges of obstructing its proper use and behaving in a disorderly manner could have had a reasonable suspicion that the Court was biased against him, even if the justices' clerk had said "We know all about the loaders at the airport and their thieving." The circumstances would not have created a reasonable suspicion of bias in the mind of any reasonable person.

Regina v Uxbridge Justices ex parte Burbridge; Q.B. Division; 2/6/72.

Defamation

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Cairns.

It is improper and highly embarrassing to the defendants and the Court for plaintiffs who allege that a long newspaper article is defamatory of them to "throw" the whole article at them without specifying in the statement of claim what are the particular passages of which they complain and in what way they say those passages are defamatory of them. A statement of claim which is defective in those respects cannot stand.

DDSA Pharmaceuticals Ltd. v Times Newspapers Ltd. and Another; Court of Appeal; 27/6/1972.

EEC

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Cairns.

The Courts of this country will not take cognisance of the Treaty of Accession to the Treaty of Rome (signed at Brussels on January 22nd) until its terms have been enacted in an Act of Parliament. The Treaty was signed on behalf of the Crown in the exercise of the prerogative as embodied in the Bill of Rights, 1688.

McWhirter v Attorney-General; Court of Appeal; 30/6/72.

Family

The President held that when the Court was considering an application for financial provision for either party following dissolution of marriage it had no power to make more than one lump sum order.

His Lordship was giving judgment in open court after hearing in chambers an application by a wife for a further lump sum order.

C. v C.; Family Division; 13/7/1972.

The Divisional Court of the Family Division dismissed an appeal by a father from the refusal of justices to vary a custody order relating to his eldest son, now 16. The justices had granted custody of all four children of the family to the mother under the Matrimonial Proceedings (Magistrates Courts) Act, 1960, after finding the father guilty of persistent cruelty to the mother.

C. v C.; Court of Appeal; 4/7/1972.

Before Mr. Justice Cumming-Bruce.

The view of Professor Cheshire that there was judicial authority in England that capacity to marry was governed not by the pre-marriage lex domicilii of each party but by the law of the intended matrimonial home was adopted by Mr. Justice Cumming-Bruce.

His Lordship held, on a preliminary point, that a marriage contracted by Mrs. M. I. Radwan, now of Holden Road, Finchley, under Muslim law before the Egyptian Consul General in Paris in 1951 at a time when she was a British national with an English domicile, to Mr. J. P. Radwan, whose domicile then was Egyptian, was valid according to English law. She had petitioned for divorce on the ground of cruelty.

Radwan v Radwan; Family Division; 18/7/1972.

Gaming and Lotteries

Before Lord Reid, Lord Morris of Borth-y-Gest, Viscount Dilhorne, Lord Diplock and Lord Salmon.

It is not an essential ingredient of an unlawful lottery that there should be a fund or prizes in the hands of the promoters for them to distribute when the prize winners are ascertained provided the scheme has the overall object of distributing money by chance.

Atkinson v Murrell; House of Lords; 5/7/1972.

Landlord and Tenant

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

When money is demanded as rent for a period after the landlord knows of facts giving rise to a forfeiture, is paid as rent and accepted as rent, the law regards the demand and acceptance as unequivocal acts which constitute a waiver of the forfeiture. This is so notwithstanding that the demand and acceptance was due to an error in the office of the landlords' agents and the tenant knew that the landlords wished to end his tenancy.

In exceptional circumstances the Court, in the exercise of its discretion under Section 146 of the Law of Property Act, 1925, can grant relief from forfeiture notwithstanding a tenant's breach of covenant in unlawfully keeping a brothel on the premises contrary to Section 33 of the Sexual Offences Act, 1956, and Section 6 of the Sexual Offences Act, 1967.

Central Estates (Belgravia) Ltd. v Woolfar; Court of Appeal; 20/6/1972.

Limitation of Time

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Pearson, Lord Simon of Glaisdale and Lord Salmon.

A workman who contracted asbestosis at work and was awarded disability benefit for it in 1964 but did not get legal advice and bring an action against his employers until 1967 because in 1964 the works manager in his non-union factory wrongly told him that he could not get benefit and bring an action as well, was held by a majority of the House of Lords (Lord Reid, Lord Morris and Lord Pearson) to be entitled to keep an award of £13,700 damages by Mr. Justice Thesiger.

Central Asbestos Co. Ltd. v Dodel; House of Lords; 28/6/72.

Local Authority

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Cairns.

The practice of granting street traders' licences for pitches in London street markets on the basis of "first come, first served", followed by London borough councils since 1960, was overruld by the Court of Appeal in a case from Petticoat Lane. Their Lordships decided that there was no statutory basis for the practice, laid down in a case decided in 1960: that it could work injustice, particularly in the case of a "family" pitch; and that in future when councils met to consider a number of applications received on the same date, they should consider them on their merits.

Perilly v Tower Hamlets London Borough Council; Court of Appeal; 21/6/1972.

Motor Licence

Before Mr. Justice Bridge. Judgment delivered July 10th.

A boy who obtained more than a month before his sixteenth birthday a provisional licence to ride a motor cycle but who had not reached sixteen when the minimum age was raised from sixteen to seventeen was held not to "hold" a provisional licence.

Kinsey v Hartfordshire County Council; Q.B. Division; 11/7/1972.

Negligence

Before Lord Justice Davies, Lord Justice Buckley and Lord Justice Stephenson. Judgments delivered July 7th.

Breach of the Highway Code must not be elevated into a breach of statutory duty giving a right of action to anyone who could prove that his injury resulted from it, Lord Justice Stephenson said.

Powell v Phillips; Court of Appeal; 11/7/1972.

Planning

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Willis and Mr. Justice Bridge. Judgments delivered June 22nd.

Criteria for determining a planning unit that has to be considered when deciding whether there has been a material change in use of land were outlined by the Divisional Court.

Bundle and Another v Secretary of the Environment; Q.B. Division; 30/6/72.

Practice

An important point of practice was decided by the Court of Appeal when it allowed an appeal by the second defendant, Mr. F. W. Hadley, of Rugeley, Staffordshire, against an order of Mr. Justice Talbot on May 16th in a personal injuries case ordering that all further proceedings be stayed until the plaintiff, Mrs. S. Clarke, of Armitage, Staffordshire, granted him facilities for medical examination.

The Master of the Rolls, with whose judgment Lord Justice Cairns agreed, said that the plaintiff was willing to have a medical examination provided she had the opportunity of seeing the medical report that was obtained. The defendants' insurers said that that was contrary to the practice they had always adopted and that the proviso was unreasonable.

Cases of medical examination were on a footing on their own. If the defendant had the privilege of having the plaintiff medically examined it was only right that the plaintiff should have a sight of the report so that it could be agreed.

His Lordship knew that the practice that would no doubt be adopted after this case meant virtually that medical reports would be obtained on both sides and exchanged with a view to agreement. That was wholly desirable. If a defendant wanted to have the plaintiff medically examined that was a privilege, and if he sought to have the action stayed he should make the report available. If the present plaintiff got further medical reports herself she should reciprocate and show these reports to the defendant.

Clarke v Martlew and Another; 23/6/1972.

Restrictive Practices

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Pearson, Lord Kilbrandon and Lord Salmon.

The Restrictive Practices Court has been directed by the House of Lords to modify its order of 23rd May 1969 to accord with the majority opinions of Lord Reid, Lord Kilbrandon and Lord Salmon in relation to restrictive practices by newsagents.

The order, following a recommendation by the National Federation of Retail Newsagents, Booksellers and Stationers to members in March 1968 to boycott the *Daily Mirror* for a week unless the publishers agreed not to reduce the discount percentage to wholesalers, restrained the Federation from making any specific recommendation as to the action to be taken by its members "in relation to the same class of goods and in respect of the same matters", meaning thereby copies of the *Mirror*. The majority opinion was that on the proper construction of Section 6 (7) of the Restrictive Trade Practices Act, 1956, the "class of goods" extended or could extent to the ten national dailies.

National Federation of Retail Newsagents v Registrar of Restrictive Trading Agreements; House of Lords; 5/7/1972.

State Privileges

Before Lord Reid, Lord Morris of Borth-y-Gest, Lord Pearson Lord Simon of Glaisdale and Lord Salmon.

The public interest requires that all information received by the Gaming Board for Great Britain about an applicant for its consent to apply for a licence under the Gaming Act, 1968, shall be immune from disclosure, the House of Lords held. It is not a question of Crown privilege or privilege.

Rogan v Secretary of State for the Home Department; Gaming Board for Great Britain v Rogers; House of Lords; 28/6/1972.

Title to Goods

Before Lord Denning, the Master of the Rolls, Lord Justice Phillimore and Lord Justice Cairns.

A garage proprietor who bought a damaged Jaguar car for £75 from a rogue whom he honestly believed to be the owner and did £226 worth of work on it was entitled on equitable principles to recover that sum from the original owner when, in proceedings to decide to whom the car belonged, the original owner was awarded delivery of it.

Greenwood v Bennett and Others; Court of Appeal; 26/6/1972.

Trade Description

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

A dealer who supplied a vehicle advertised as a "beautiful car" was guilty of an offence under the Trade Descriptions Act, 1968, because the car was unroadworthy and unfit for use.

British Car Auctions Ltd. v Wright; Q.B. Division; 12/7/72.

Tax

Before Lord Denning, the Master of the Rolls, Lord Justice Buckley and Lord Justice Orr. Judgments delivered July 14th.

The Court held that annual payments made by management consultants, P-E Consulting Group Ltd., to establish a fund to acquire shares for the benefit of their employees were of a revenue and not a capital nature, and that they were wholly and exclusively expended for the purposes of their trade and accordingly deductible from profits for the purpose of ascertaining the amount of tax payable.

But what was revenue and what was capital expenditure was a question of law for the Courts to decide, and although evidence by accountants of the principles of commercial accountancy had always been of assistance, it could never be said that such evidence was binding or conclusive.

Heather (Inspector of Taxes) v P-E Consulting Group Ltd.; Court of Appeal; 18/7/1972.

The House of Lords by a majority (the Lord Chancellor, Lord Reid, Lord Simon of Glaisdale and Lord Salmon, Lord Morris of Borth-y-Gest dissenting) allowed an appeal by the taxpayer, Mr. B. J. Banning, from a decision of the Court of Appeal ((1970) TC Leaflet 2382) that he was not entitled to deduct from rents received by him, pursuant to Section 175 of the Income Tax Act, 1952, and/or paragraphs 8 and 9 of Schedule 4 to the Finance Act, 1963, £1,750 as being a "premium" paid by him within the meaning of Section 22 (4) of the 1963 Act.

The £1,750 was part of a sum paid by the taxpayer to his landlords in consideration of their abandoning their claim to terminate his lease at the end of its original term of seven years without the option of renewal by reason of his breaches of covenant in, *inter alia*, subletting the premises without consent, and of their consenting to the sublettings.

Section 22 (4) (see now Section 80 (4) of the Income and Corporation Taxes Act, 1970), provides: "Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord ... of the amount of that sum ..."

Banning v Wright (Inspector of Taxes); 21/6/1972.

Before Sr John Pennycuick, the Vice-Chancellor.

His Lordship allowed an appeal by Mr. E. Taylor, the Canacian businessman, against assessments to income tax based on the cost of air fares which had been reimbursed to him by United Breweries Ltd. and Charrington United Breweries Ltd.

Taylor v Provan (Inspector of Taxes); Ch. Div. 30/6/72.

Before Sir John Pennycuick, Vice-Chancellor.

A taxpayer, employed full-time as a pilot by a foreign airline and maintaining a home for his family in the United Kingdom, who made only 38 landings in the United Kingdom in six years, was nevertheless held to be resident in the United Kingdom for income tax purposes, under Section 11 of the Finance Act, 1956. His Lordship dismissed an appeal by the taxpayer, Captain J. G. Robson, from special commissioners who affirmed assessments to United Kingdom income tax, under Schedule E, Case I, for the years 1961-62 to 1966-67 in respect of his emoluments as a pilot.

Robson v Dixon (Inspector of Taxes); Ch. Div.; 23/6/1972.

Trade Union

Before Sir John Brightman, Mr. F. J. Fielding and Mr. R. E. Griffiths.

Section 5 (1) (e) of the Industrial Relations Act, 1971, does not confer on members of a registered trade union the right to take part in or conduct reasonable trade union activities on their employer's premises against his wishes. The Act does not restrict an employer's proprietary rights in respect of his own premises.

The Post Office v Ravyts and Others; National Industrial Relations Court; 7/7/1972.

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

An "industrial dispute" under the Industrial Relations Act, 1971, is not restricted to a dispute between an employer and those whom he employs; it covers any dispute between an employer and a worker or groups of workers as to terms of employment or allocation of work.

Midland Cold Storage Ltd. v Turner and Others; Court of Appeal; 10/7/1972.

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

The Transport and General Workers' Union is not liable for its shop stewards when they act outside the scope of the uthority delegated to them and take industrial action on behalf of the workers whom they represent. Nor is it guilty of unfair industrial practices nor in contempt of Court when its shop stewards commit such practices or persist in disobeying the order of the Court. If Parliament had intended an unregistered union to be liable for the acts of its shop stewards, whether authorised or not, it should have said so in the Industrial Relations Act, 1971.

Their Lordships so held, Lord Justice Buckley with some reservations, when they allowed eight appeals by the union, set aside fines of £5,000 and £50,000 imposed by the National Industrial Relations Court on findings that the union was in contempt of its orders, and set aside final orders finding the union liable for unfair industrial practices under the Act, on complaints by three haulage firms, Heaton's Transport (St. Helens) Ltd., Craddock Brothers, and Panalpina Services Ltd. of Hull, in connection with the blacking of container£ lorries by dock workers at Liverpool and Hull.

No order for costs was made.

Heaton's Transport (St. Helens) Ltd. v Transport and General Workers' Union; Court of Appeal; 13/6/1972.

Words and Phrases

"Cattle and Sheep"

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

A farmer convicted of cruelty to animals and ordered to be disqualified for having the custody of any "cattle" was rightly found to be in breach of the disqualification order by having the custody of sheep.

Wastie v Phillips; Q.B. Division; 11/7/1972.

"Yard"

Before Lord Widgery, the Lord Chief Justice, Mr. Justice Melford Stevenson and Mr. Justice Milmo. Judgment delivered July 10th.

The fact that an area is described as a railway yard, a shipyard, vineyard or any similar description of yard does not make it "yard" for the purposes of Section 4 of the Vagrancy Act, 1824.

Quatromini and Another v Peck; Q.B. Division; 11/7/1972.

BOOK REVIEWS

Union List of Current Periodicals and Serials in Irish Libraries by Sean Cooney and Donal O Luanaigh; fourth edition; volume I, A to I, 8vo, pp. lx, 1-358; vol. II, J to Z, 8vo, pp. 359-729; Irish Association for Documentation and Information Services; Dublin, 1972; £4.00.

A Union List is an invaluable vehicle of information to librarians, and this is no exception to the rule. This volume lists alphabetically all the learned periodicals—medical, scientific, legal, etc.—and states precisely in which learned library in the Republic of Ireland such periodical is to be found. The Law Society co-operated in this venture, and we find for instance that our library possessed the only complete set of English Law Times Reports from 1859. It will be appreciated that this vast task entailed a tremendous amoung of labour and erudition, and Messrs Cooney and O Luanaigh are to be deservedly congratulated upon a most meritorious achievement, which entailed listing 11,000 titles and 35,000 holdings in various libraries. This is an invaluable reference book which deserves the widest circulation.

Property Statutes edited by Sweet and Maxwell's Legal Editorial Staff under Professor J. H. Morris; second edition; Sweet and Maxwell, 1972; 8vo; pp. xlviii, 531; paperback; £2.80.

Conveyancing practitioners are well aware of the usefulness of Hood and Challis's *Conveyancing Statutes.* The first edition of this book was published as a modern English equivalent of Hood and Challis in 1968, and has been so successful that a second edition has now been called for. 78 pages of text are devoted to the Settled Land Act, 1925, while the Law of Property Act, 1925, takes up 135 pages, and the Land Registration Act and Rules take up 110 pages. If a section in an Act has been substituted by a section in a more modern Act, this is clearly stated in a footnote. All repealed sections are clearly annotated. This is a most useful practical volume listing cases relevant to every separate section which thus lead directly to the most up-to-date intricacies in the English Property Statutes, but unfortunately this law is not applicable to Ireland. The easiest way to adopt the up-to-date English property law here would be to take over in extenso with suitable modifications the draft Statute which Professor Sheridan and his colleagues proposed as a means of reforming land law in Northern Ireland.

Examination Results

Preliminary Examination

At the Preliminary Examination for intending apprentices to solicitors held from July 3rd to 7th the following candidates passed:

John M. Bourke, Paul Byrne, James Cahill, Stephen P. Cloonan, Joseph A. Comyn, Catherine Craig, Austin Cunningham, Bryan Curtin, Thomas M. M. Donaghy, Pauline Doyle, Andrew T. Dunne, Cormac D. Dunne, Frances M. Egan, Gerard Fanning, Sheila Fingleton, Finola Flanagan, Susan Fleming, John J. Garahy, Julia A. Gillece, John Timothy Gleeson, Michael J. Gleeson, Anne Griffin, Gerard F. Griffin, Martin B. P. Grogan, Killian G. A. Guihan.

Barbara A. M. Hanna, Paul G. Horan, Eoin Horgan, Eileen-Marian A. P. Howell, John Hurley, Peter H. Jones, Philip Joyce, Patricia J. Keenan, Brenda L. Kelly, Mary N. Kelly, Thomas J. Kennedy, Maura Kenny, Nathaniel Lacy, Conall Lavery, Muriel G. Lee, Una Lynch, Cathal M. MacCarthy, Brian MacDermott, Joseph F. Maguire, Raphael Mathews, Michael M. Moran, Fiona Muldoon, Paul MacArdle, Ann McBride, Edward W. McPhillips, James McPhillips.

Gerard M. Neilan, Deirdre O'Connell, Sighle O'Connell, Thomas O'Dwyer, Terence G. O'Keeffe, Patricia O'Neill, Raymond St. John O'Neill, Niall O'Sullivan, Patrick Power, Jacqueline Quirk, Philip Reidy, Alexander St. J. D. Ross, Nuala M. Rowe.

Thomas Anthony Shanahan, Robert V. Shannon, Niall Sheridan, Dan Smyth, Mairead Toale, Pearse T. Tuite, Valentine Turnbull, David M. Turner, Barry J. Wall, Veronica A. Watchorn, William X. White, Gary M. Wine.

108 candidates attended; 76 candidates passed.

First Irish Examination

At the examination held on 10th July 1972 under the Solicitors Act, 1954, the following candidates passed.

Maureen Aboud, Robert H. D. Agnew, Dermot Ahern, Patrick L. Brady, Ciaran J. Branigan, Francis X. Burke, Paul Byrne, Julienne M. Cahill, Stephen P. Cloonan, Helen Collins, Gerard C. Condra, Evelyn Cooney, Austin Cunningham, Bryan Curtin, Patrick Dalton, Eugene Davy, Raymond Deasy, Patrick M. Deegan, Kevin A. Doherty, Thomas M. Donaghy, Bernard Dowling, John Doyle, Michael G. Doyle, Pauline Doyle, Cormac D. Dunne.

Paul Ebrill, Frances M. Egan, Shaun Elder, Janet A. Erskine, Gerard Fanning, John M. Farrell, Michael G. Feehan, Michael P. Fitzpatrick, Eithne M. Flanagan, Susan Fleming, Astrid Flynn, Desiree N. E. Flynn, John T. Gleeson, Michael J. Gleeson, William F. Gleeson, Anne Griffin, Mary N. Griffin, Dorothy M. Gunne, Jean J. Gunne.

Emer M. Harnett, Nathaniel Healy, Mary Hederman, Richard M. Hogan, John Hurley, Peter H. Jones, Karen Jordan, Michael Joyce, William Kane, Brenda L. Kelly, Mary N. Kelly, William Kennedy, Denise Kenny, Muriel G. Lee, Terry Leggett, Joseph Leyden.

Cathal M. MacCarthy, Joan MacCarthy, Brian MacDermott, Sonia MacMahon, Michael M. Moran, Terence Moran, Thomas K. Mulcahy, Mary G. Murphy, Anne McBride, Patrick McCarthy, Timothy McCarthy, John McGrattan, Anne McKenna, John P. McKenna, Patrick J. McNally, James McPhillips.

Gerald P. O'Brien, Michael F. O'Connor, Patricia O'Donnell, Paul O'Donoghue, Michael F. O'Donovan, Tnomas O'Dwyer, Terence G. O'Keeffe, Anne G. M. O'Loughlin, Ann O'Neill, Patricia O'Neill, Dermot J. O'Rourke, Michael J. E. O'Sullivan, Cliona O Tuama.

Nicholas Quinlan, Jacqueline Quirk, Brian P. Redden, Philip Reidy, Patrick B. Rowan, Nuala M. Rowe, Thomas A. Shanahan, Robert V. Shannon, Maurice Sheehan, William J. J. Smith, Dan Smyth, Maurice T. Spillane, Mary B. Sweeney, Mairead Toale, Barry Wall, Roderick St. John Walsh, Henry J. Ward.

114 candidates attended; 106 candidates passed.

Second Irish Examination

Maurice Bannon, Robert P. Barrett, Barry St. John Bowman, Ursula A. Bowman, Peter Brady, James F. Cahill, Ivan Carroll, Raymond Cassidy, Eoghan P. Clear, John J. Coffey, Robert J. Coffey, Anne M. Colley, John A. Coughlan, David S. Cresswell, Peter O'Neill Crowley.

Gerard D. Diamond, Patrick J. M. Durcan, B.C.L., William Earley, David Ensor, Nessa Fitzsimons, B.C.L., Kevin Gaffney, Declan J. Gallagher, Caroline I. Halley, William G. J. Hamill, Matthew Hassett, Karl E. Hayes, B.C.L., Helen Heffernan, Margaret G. Hickey, Marie G. Hickey, Daire Hogan, B.A., Michael J. Horan, Anne Hughes.

Raymond D. Kelly, Ciaran Keys, B.A., Laurence P. Kirwan, Cyril P. J. Lynch, Colm MacGeehin, Daniel T. Maher, Stephen P. Maher, Martin Maloney, Vivian C. Matthews, Stephen Miley, George D. R. Mills, B.C.L., David A. Molony, Patrick C. Moriarty, B.C.L., Desmond Mullaney, Roderick V. McCrann, Petria K. McDonnell, Ross O Cathain, Mary O'Connor, Patrick J. O'Connor, B.C.L., Nancy O'Driscoll, B.C.L., John O'Dwyer, Patrick J. O'Flynn, Anne P. O'Grady, B.C.L., William F. O'Keeffe, Michael H. O'Neill, Brian P. O'Reilly, Felim H. O'Reilly, James R. Osborne.

Hilary J. Prentice, Elizabeth A. Ryan, B.C.L., Bryan C. Sheridan, Brendan Steen, Patrick J. Twomey, Patrick White.

72 candidates attended; 66 candidates passed.

Book-Keeping Examination

At the Book-Keeping Examination for apprentices to Solicitors held on June 21st the following candidates passed:

Passed with Merit: Mary E. Finlay, Robert Bolton, John Glackin, Elizabeth A. Ryan, B.C.L., John C. McKeown, John V. Shannon, Louis A. Healy, Andrew G. M. O'Rorke.

Passed: Brian P. Adams, Donald Ashe, Maurice Bannon, Robert P. Barrett, Peter P. Brady, David Brophy, James F. Cahill, Edward A. Coonan, David S. Cresswell, Carmel C. Deeny, Gerard D. Diamond.

William Earley, David Ensor, John P. Feran, John W. T. Finn, Raymond Finucane, Declan J. Gallagher, B.C.L., Brian Glen, Rory Harman, B.C.L., Karl E.

Hayes, Geraldine Heffernan, Harry P. Hunt.

Michael G. Irvine, Ciaran Keys, B.A., Francis D. Lanigan, Cyril J. Lavelle, Charles J. Maguire, Peter H. Mayne, Stephen Miley, George Mills, B.C.L., David A. Molony, Raymond G. Moran, Declan Moylan, Alan D. McCrea, Noel McDonald, Deirdre Nic Fionnlaoic.

Eamonn M. O'Beirne, James P. A. O'Boyle, Eamon P. O'Brien, Declan P. O'Connor, Patrick J. O'Connor, Carroll O'Daly, Nancy O'Driscoll, B.C.L., Anne P. O'Grady, Mary H. O'Meara, B.C.L., Charles F. O'Neill, B.C.L., Finbar O'Neill, B.C.L., Michael H. O'Neill, Vincent M. O'Reilly, James R. Osborne, John Joseph Power, Hilary J. Prentice, John J. Seery, Philip F. Tormey, Michael H. Traynor, Paul D. Traynor, Francis A. Wall, B.C.L. LL.B.

98 candidates attended; 65 candidates passed.

By order.

Eric A. Plunkett (*Secretary*).

Solicitors Buildings,
Four Courts,
Dublin 7.

Medico-Legal Society of Ireland

Officers and Council elected for 1971-72 are as follows: *Patron,* The Chief Justice, The Hon. Cearbhall O Dalaigh; *President,* Miss A. B. Cassidy, B.L.; *Vice-Presidents,* The Hon. Mr. Justice Henchy, The Hon. Mr. Justice Walsh, Professor Maurice Hickey, Dr. H. Jocelyn Eustace, Dr. F. McLaughlin and Mr. Donough O'Donovan; *Hon. Treasurer,* Mr. Raymond Downey; *Hon. Secretary,* Miss Thelma King; *Council,* Dr. Desmond Eustace, Mr. Denis Greene, Dr. Gilsenan, Professor P. Holland, Miss Carmel Killeen, Mr. Matthew Russell and Dr. R. Towers. *Immediate Past President,* Dr. Brian Woods.

Amendment of Landlord and Tenant Law

The Landlord and Tenant (Amendment) Act, 1971, enacted on 7th December 1971, has been on sale since June 30th. It is a serious matter that a statute which affects the rights of the public in such an important way should not be available to the public and the profession until more than six months after its date of enactment. The Society has made repeated representations to the Department of Justice and to the Stationery Office that the publication of statutes should not be held up until the Irish version is available. The cause of delay in the present instance is that the Act as already passed and printed in its English only version was not available on statute form until the Irish translation had been prepared.

Sporting leases

These are dealt with under Sections 2 to 5 of the Act. A sporting lease is one which is held by a sports club complying with the conditions in Section 2 including inter alia the expenditure of money on the building of land. The time limits for an application are specified in Section 3 of the Act.

Fixing of rent of a sporting lease

Section 6 provides that a fair rent is to be determined by the Court which shall have regard to the general intention of the Act in regard to sports clubs which is the advancement of outdoor sports, games, recreations and the preservation of open spaces for the common good. The Court may take into account the rent or other sum previously paid for the property by the sports club and any covenants or conditions under which it was so paid and to the rent paid by other sports clubs in the same or comparable locality. The Landlord and Tenant (Reversionary Leases) Act, 1958, is to apply as if the term "reversionary lease" in the 1958 Act included a sporting lease.

Leases deemed to be building leases

This is dealt with by Section 8 of the Act which applies to a lease granted in renewal of a lease which expired or was surrendered before 31st March 1931 and which if the 1958 Act were then in force would have been a building lease or proprietary lease. Subject to certain conditions such renewed or renewal lease is to be deemed to be a building lease within the meaning of the Act of 1958 and Section 10 of the 1958 Act is repealed.

Important provision as to rights of lessees under certain expired leases

Section 9 provides that where a lease expired within eight years before the passing of the Act and the lessee at that date is in possession of the land under a yearly tenancy or under a statutory tenancy or tenancy at will without having obtained a new tenancy from the lessor and no person was immediately before the passing of the Act entitled to be granted a reversionary lease the lessee shall *during twelve months immediately after the passing of the Act* (7th December 1971) have the same rights in relation to obtaining a reversionary lease as he would have had within fifteen years before the expiration of the expired lease if the 1971 Act had then been in force. Members are reminded that the rights of a tenant under this Section will expire on 6th December 1972.

Assignment of leasehold interest

Section 10 remedies an error which crept into Section 10 of the Rent Restrictions (Amendment) Act, 1967, which imposed a restriction on the assignment of controlled dwellings without the consent of the lessor. The restriction is deemed never to have applied to a house which is occupied for the purposes of his own residence by a person who holds it under a lease for a term of more than twenty-one years.

The foregoing is a necessarily incomplete summary of the provisions of the Act which will repay careful perusal by all members.

Finance Act, 1972

Part I: Income Tax; Chapter I: General

Section 1 imposes income tax and sur-tax for 1972-73 and subsequent years at percentage rates corresponding to the rates in force for the year 1971-72.

Section 3 increases the minimum age allowance from £150 to £175 for single and widowed persons and from £250 to £300 for married persons. It also ensures that persons aged 65 years or over who are entitled to age allowance will, where their income is wholly earned, obtain the same amount of relief as they would get if their income was wholly unearned.

Section 4 increases the married personal allowance by £70 to £494 (and to £594 in the year of marriage) and the single and widowed personal allowances by £50 to £299 and £324, respectively.

Section 5 raises each of the existing income tax child allowances by £20. It also provides for a further increase of £50 where the child is permanently incapacitated by mental or physical infirmity.

Section 9 removes the upper limit of £500 which is the present maximum amount of expenditure on health expenses which can be taken into account for income tax purposes.

Section 10 restores for the year 1972-73 and subsequent years the right to deduct the full amount of corporation profits tax payable by companies in computing profits for income tax purposes.

Chapter II: Occupational Pension Schemes

This chapter and the first schedule provide a new and more liberal code of tax provisions to replace the existing body of legislation relating to the treatment, for tax purposes, of retirement benefit schemes for employees.

Section 13 deals with the interpretation of various expressions, and gives effect to the first schedule.

Section 14 is concerned with the definition of retirement benefit schemes.

Section 15 sets out the conditions on which a retirement benefits scheme will be entitled to approval for tax purposes and enables the Revenue Commissioners to approve a scheme even though it may not comply with one or more of the prescribed conditions.

Section 16 provides certain tax exemptions and reliefs in respect of schemes fully approved for tax purposes under Section 15. The investment income of such schemes will be exempt from tax and relief will be available in respect of contributions by employers and employees.

The section also provides that lump sum contributions by employers and employees may be apportioned over a period of years for purposes of relief.

Section 17 re-writes, with modifications, the existing tax provisions relating to statutory schemes and extends the relief for contributions so as to include contributions in respect of benefits for widows, children and dependants. It also provides that, for purposes of relief, lump sum contributions to any statutory scheme may be apportioned over a period of years.

Section 18 imposes the same charge to tax, under the new code, on employees, in respect of certain retirement benefits provisions made for them by their employers, as is in force under existing legislation.

Section 19 provides that the charge to tax imposed by Section 18 is not to apply where the benefits are provided under a scheme approved by the Revenue Commissioners, or under a statutory scheme, or under a scheme set up by a foreign government for the benefit of its employees here.

Section 20 enables the tax on pensions payable under approved schemes to be collected under PAYE.

Section 21 provides for a uniform charge of 10 per cent on superannuation contributions refunded to members. The Minister for Finance may, by order, which must be laid before Dail Eireann, increase or decrease this rate.

Section 22 imposes the same uniform charge of 10 per cent on a specified portion of certain lump sums paid to employees in lieu of pensions in certain special circumstances. The specified portion is the amount by which the total lump sum paid exceeds the maximum lump sum which the employee would be entitled to under the ordinary rules of the scheme, or would have been entitled to if the rules had been liberalised to take advantage of the new code. The provision in Section 21 for changing the rate of tax chargeable thereunder also applies for the purposes of this section.

Section 23 secures that, where an employer receives a refund of his contributions to a fully approved scheme, the amount so refunded is to be brought into charge to tax but only to the extent that relief was originally allowable.

Section 24 authorises the amendment of the rules of existing schemes to enable them to come within the ambit of the new legislation.

Section 25, which is supplementary to Sections 16 and 17, amends with effect from 6th April 1968, Section 223 of the Income Tax Act, 1967, so as to give relief in respect of contributions to statutory schemes providing benefits for widows, children and dependants of employees who are members of such schemes. The section also provides, as from the same date, for the spreading of lump sum payments to any scheme to cover past years of service. The relief granted corresponds to that provided for under Sections 16 and 17. Under Section 16, the relief will apply only as from the date the particular scheme is approved under the new Code and, under Section 17, the relief will apply only as from 6th Arpil 1973. The present section will, however, give relief in respect of lump sums paid before those dates and on or after 6th April 1968 to approved or statutory schemes.

Part II: Death Duties

Section 26 provides a new scale of estate duty rates which are contained in the Second Schedule. The general exemption limit for estate duty is being increased from £5,000 to £7,500, and lower rates of duty are provided for estates valued between £7,500 and £11,000.

Section 27 raises the exemption limit for legacy and succession duties from £5,000 to £7,500.

Section 28 increases the special exemption limit of liability to estate duty of death benefits taken by widows or dependent children under superannuation schemes from £5,000 to £7,500. This section also corrects a drafting error in Section 24 of the Finance Act, 1965, to ensure that the exemption applies in all cases.

Section 29 increases the abatements of estate duty for widows and dependent children. The widow's abatement is raised from £1,500 to £2,000 and a dependent child's abatement is raised from £750 to £1,000.

Section 30 provides that foreign debts be deductible, for estate duty purposes, from all foreign property answerable for the payment of such debts, instead of from foreign personal estate only.

Section 31 increases, from £500 to £5,000, the jurisdiction of the Circuit Court to hear appeals from a decision of the Property Arbitrator in relation to the value of lands or house property for estate duty purposes.

Section 32 replaces Section 21 of the Finance Act, 1965. It is designed to prevent the avoidance of estate duty through the medium of discretionary trusts.

Section 33 gives a person accountable for the payment of estate duty in respect of non-quoted shares a right of appeal from decisions of the Revenue Commissioners to the Appeal Commissioners (appointed for the purposes of the Income Tax Acts) instead of the present right of appeal to the Courts. The section provides a right to have an appeal reheard by a judge of the Circuit Court or to have a case stated on a point of law for the decision of the High Court. The procedures for appeals will be the same as for income tax appeals.

Part III: Stamp Duties

Section 34 provides for an exemption from *ad valorem* stamp duty on loan stock issued by State-sponsored bodies where payment of interest on the stock is guaranteed by the Minister for Finance.

Section 35 extends to group pension policies the arrangements for payment of stamp duty by way of composition which are already in operation for individual insurance policies.

Section 36 provides for appeals to the Appeal Commissioners from decisions of the Revenue Commissioners in relation to the value of non-quoted shares for Stamp Duty purposes. The section corresponds to Section 33 which relates to appeals in estate duty cases.

Part IV: Corporation Profits Tax

Section 37 continues for a further period of one year the exemption from corporation profits tax hitherto enjoyed by certain public utility companies, building societies and the Agricultural Credit Corporation Ltd.

Section 38 alters the definition of "company" in Section 52 (3) of the Finance Act, 1920. The definition was so worded as to exclude from the charge to corporation profits tax any company, which by its constitution was precluded from distributing profits to members. In order to prevent avoidance of tax by the temporary adoption of such preclusion, it is proposed to delete the relevant words from the definition. As regards companies permanently precluded from distributing profits, these are being catered for under Section 39.

Section 39, which is consequential on Section 38 of the Bill, expands Section 43 of the Finance Act, 1922, so as to preserve the exemption from corporation profits tax in favour of companies permanently precluded from distributing profits to members.

First Schedule

The First Schedule is supplemental to Chapter II of Part I of the Bill which contains provisions relating to the treatment for tax purposes of retirement benefit schemes for employees.

Part I of the Schedule deals with matters of administration and the making of regulations by the Revenue Commissioners for the purpose of implementing the new legislation.

Part II widens the tax exemption given to assurance companies in respect of their income from investments referable to contracts of assurance covering fully approved superannuation schemes.

Part III lists consequential amendments and applies the existing penalty provisions to cases of failure to carry out obligations under the new code.

Part IV contains transitional provisions.

Part V applies the uniform rate of 10 per cent to refunds of contributions and commutation payments made under certain schemes approved under existing legislation.

Part VI imposes a tax charge on payments made contrary to the conditions on which a scheme has been approved.

Second Schedule: Scale of Rates of Estate Duty

Principal Value of the Estate	*Rate % of duty*
Exceeding £7,500 and not exceeding £8,000	1
Exceeding £8,000 and not exceeding £9,000	2
Exceeding £9,000 and not exceeding £10,000 ...	3
Exceeding £10,000 and not exceeding £11,000 ...	4
Exceeding £11,000 and not exceeding £12,500 ...	6
Exceeding £12,500 and not exceeding £15,000 ...	8
Exceeding £15,000 and not exceeding £17,500 ...	10
Exceeding £17,500 and not exceeding £20,000 ...	12
Exceeding £20,000 and not exceeding £25,000 ...	14
Exceeding £25,000 and not exceeding £30,000 ...	16
Exceeding £30,000 and not exceeding £35,000 ...	17
Exceeding £35,000 and not exceeding £40,000 ...	21
Exceeding £40,000 and not exceeding £45,000 ...	24
Exceeding £45,000 and not exceeding £50,000 ...	27
Exceeding £50,000 and not exceeding £55,000 ...	30
Exceeding £55,000 and not exceeding £60,000 ...	33
Exceeding £60,000 and not exceeding £75,000 ...	37
Exceeding £75,000 and not exceeding £100,000	41
Exceeding £100,000 and not exceeding £150,000	45
Exceeding £150,000 and not exceeding £200,000	50
Exceeding £200,000	55

UNREPORTED IRISH CASES

Judgment mortgage not defective because of errors in the description of lands unless misleading, and is deemed sufficiently verified on oath.

Ashtown Car Sales Ltd. borrowed money from Credit Finance, the plaintiffs, and on 31st March 1968 gave a debenture charged on their assets to secure its repayment. As additional security, Credit Finance got a guarantee dated 26th April 1969 by three persons including the defendant by which each of them guaranteed the repayment to the plaintiffs of the amount due by Ashtown Car Sales Ltd. When there was £5,977.50 due, proceedings on the guarantee were brought by the plaintiffs against three guarantors. The plaintiffs first got judgment for this sum and costs against one of the signatories on 27th October 1970 and on 16th November 1970 they got judgment and costs against the defendant. The judgment was obtained by default. An affidavit under the Judgment Mortgage Act, 1850, was filed in the Central Office on 22nd December 1970 and in the Registry of Deeds on December 23rd. The plaintiffs have now brought this action to raise the amount due to them which is secured by the judgment mortgage. The defendant contends firstly that the affidavit is not sufficiently specific as to whether the mortgage is against 5 Howth Road or 578 Howth Road, but it was held that the property was identified with sufficient clarity. It was secondly contended that the description of the property was not verified on oath, but it was held without citing authority that the description of the property was sufficiently verified. Judgment for the full amount claimed and costs was accordingly awarded to the plaintiffs.

[Credit Finance Ltd. v Michael Grace; Kenny J.; unreported; 29th May 1972.]

Applicant, convicted of murder in 1956, entitled to *habeas corpus*.

(1) The applicant was convicted of murder at the Central Criminal Court before Teevan J. and a jury on the 19th April 1956. As the applicant was under 17 years of age, he could not be sentenced to death. The sentence passed was that "The applicant was to be detained until the pleasure of the Government be made known concerning him."

(2) The subsequent warrant directed that the applicant should be detained in Marlborough House.

(3) On the 2nd May 1956, the applicant having attained 17 years of age, he was directed to be removed to Mountjoy Prison. On the 15th May 1956, the applicant was directed to be removed to St. Patrick's Mental Institution, Clonmel, on the 14th August 1956 the applicant was directed to be removed to the Modified Borstal class at Mountjoy.

(4) In July 1957 the applicant was directed to be removed to the Central Mental Hospital, Dundrum, as two doctors certified he was insane.

(5) On the 29th January 1968 the applicant wrote to the High Court from the Central Mental Hospital that his detention was not in accordance with law, and applying for a *habeas corpus*. The President, having obtained the relevant documents, came to the conclusion that the order should be refused, and an order made on the 15th February 1968 confirmed this.

(6) On the 17th December 1968 the applicant appeared in person before the Court of Criminal Appeal for an application for an enlargement of time within which to give notice of an application for leave to appeal against conviction and sentence imposed in April 1956. The Court refused the application.

(7) As a result of further correspondence, the President informed the applicant on the 16th June 1969 that no new grounds had been disclosed for granting a *habeas corpus*.

(8) By letter of the 17th June 1969 the applicant made a further application to the High Court which was inquired into and refused by Murnaghan J. on July 15th. The applicant was informed that his attendance in Court was not necessary.

(9) The applicant appealed from Murnaghan J's refusal to grant a *habeas corpus* to the Supreme Court. The Supreme Court, by order of the 15th December 1969, directed the Governor of the Central Mental Hospital to produce the body of the applicant before the High Court on the same day. The applicant was duly produced before the President of the High Court who ordered that the proceedings should stand over for argument.

(10) The case came on for full hearing in April 1970 and, on the 27th April 1970 the President adjudged that the applicant's detention was insufficient, and ordered the immediate release of the applicant. The grounds were that the sentence imposed was to entrust to the Government the power to select the punishment which was to be visited on him, and that, following *Deaton* (1963) I.R., this was inconsistent with the Constitution.

(11) The State then appealed to the Supreme Court against the granting of *habeas corpus* by the President.

(12) Walsh J. stated that the decision of the Court turns upon the effect of Section 103 of the Children's Act, 1908. The section provides that, in the event of a conviction, the Court should sentence the young person to be detained during His Majesty's pleasure, and then shall be liable to be detained in legal custody in such place as the Chief Secretary shall direct. This means in effect that a question of punishment was contemplated. If the section purports to rest an authority in the Executive, then, following *Deaton,* such a provision is inconsistent with the Constitution. By virtue of Section 11 of the Adaptation of Enactments Act, 1972, the power of the Chief Secretary to determine where the accused is to be detained is now vested in the Minister for Justice. But the term "during His Majesty's pleasure" does not vest this power in the Executive as the President found. In Deaton's case, it was stated that the selection of punishment was an integral part of the administration of justice, and therefore falls exclusively within the judicial sphere. An examination of English constitutional law would show that the King had exercised powers of a judicial nature in mediaeval times, such as the prerogative of mercy and the right to commute sentences. Article 2 of the Constitution of 1922 states that all powers of government and all authority,

legislative, executive and judicial in Ireland, are derived from the people of Ireland; Article 51 of the same Constitution declared that the executive authority of the Irish Free State was vested in the King (see judgment in *Byrne v Ireland,* 1961 *Gazette*). Nowhere in the Constitution of 1922 is there any reference to the King exercising the prerogative of mercy or any modicum of judicial power, save appeals to the Privy Council. It follows that, after the Constitution of 1922 had been enacted, the King had no function whatsoever in the selection of punishment or the administration of justice. Consequently the words "during His Majesty's pleasure" were inconsistent with the Constitution of 1922, and were not carried over either by that Constitution, or by the present Constitution of 1937. If the Court sentences a young person to be detained, the sentence may be brought to an end at any time by the Court and the power to determine the duration of the sentence is vested exclusively in the Courts. There is nothing in the Constitution which indicates that an indeterminate sentence may not be imposed.

(13) The sentence imposed was not the correct statutory one by Section 133 of the Children's Act, 1908, but the one imposed in cases of insanity under the Trial of Lunatics Act, 1883. The formula and sentence was one which was not authorised by law and cannot stand, and the President's decision must be allowed. The appeal was accordingly dismissed by the full Supreme Court. Separate judgments were delivered by the Chief Justice and by McLoughlin J. (who disagreed with the Constitutional argument).

[The State (Pascal O'Hara) v. Governor of Central Mental Hospital and the Attorney General; Full Supreme Court; unreported; 20th December 1971.]

Revenue Commissioners entitled to claim estate duty to husband's half share under Succession Act.

The wife, who was domiciled in the Republic of Ireland, made her will in April 1967. She appointed the defendant bank to be executors, and, having given legacies, gave the husband her personal belongings and £15,000 if the husband did not survive her for the period, she left her property to a number of relatives. Her husband made a similar will on the same day. She died on the 4th May 1969 and was not survived by any children. Her estate was valued at £95,000. The husband was unconscious at the time of his wife's death, and died the following day. Neither husband nor wife renounced the legal right to which each was entitled in the estate of the other, by Section 111 of the Succession Act, 1963.

The Revenue Commissioners contended that the husband was competent to dispose of the half share of the wife's estate for the purposes of Section 2 (1) (a) of the Finance Act, 1894. The defendant bank contended that the husband had never elected to taking the legal right in the wife's estate, and so was not entitled to any share of it. Until six months from receipt of notice of the right, the surviving spouse has a vested right to take the legal right. It follows that, as the husband had a vested right to take the legal right during lifetime, he was "competent to dispose" within the Finance Act, 1894, of the half share, and the Revenue Commissioners can thus claim estate duty upon it. This result was not foreseen at the time the Succession Act was passed.

[re Douglas Urquhart, decd.; Revenue Commissioners v Provincial Bank of Ireland; Kenny J.; unreported; 2nd June 1972.]

Subsequent action that first registered owner is declared full owner will not deprive a bank of a right to a charge on the lands on behalf of second registered owner.

The first-named defendant, the father, was registered as full owner of the lands in Folio 33488, Co. Roscommon, in November 1960. In April 1963 he transferred the lands to his son, Michael, the second-named defendant, subject to the father's right to reside in the dwellinghouse, and to be suitably supported and maintained, but there was no specific covenant about this. In June 1963 the son Michael was registered as full owner and the right of the father to reside in the dwellinghouse and to be supported and maintained was entered as a burden on the Register. In October 1964 the son Michael applied to the plaintiff bank for an advance to be secured by the deposit of the Land Certificate relating to Folio 33488.

The Land Certificate was duly deposited with the bank in December 1964 and Michael now owes the bank £893 for advances made. In June 1967 the father issued a Civil Bill in the Circuit Court against the son claiming to have the deed of transfer of April 1963 set aside on the ground that it was obtained by fraud and undue influence. The order of the Circuit Judge made in March 1968 stated that this deed of transfer was void, and that the son was to hand it up to the father for the purpose of being cancelled. The Circuit Court made no inquiry as to the whereabouts of the Land Certificate, and the plaintiff bank had no notice of the Circuit Court proceedings until the Land Registry requested them to lodge the Land Certificate so that the father could be registered once more as full owner. This the plaintiff bank refused to do, but, despite this the father was registered as full owner in July 1968 and the burden in his favour was deleted. The plaintiff bank have now sued the two defendants, father and son, for a declaration that they are entitled to a charge on the lands arising out of the deposit of the Land Certificate. The plaintiffs contention that they took the deposit in good faith and so have a valid security against both defendants is well sustained; a purchaser or a mortgage of an equitable interest who takes in good faith without notice of a claim is not bound by it. The rights of the father to reside on the land have now been deleted from the folio, and he cannot now revive it.

[Provincial Bank of Ireland v Patrick Glynn and Michael Glynn; Kenny J.; unreported; 19th June 1972.]

Arbitration award of costs set aside.

A written agreement was made in February 1964 between the plaintiffs, owners of the land, and the defendant building contractors, who contracted to build licensed premises at Artane for £15,838. The agreement was the 1959 standard agreement of the Royal Institute of Architects of Ireland save that the words "schedule of items" were substituted for "bill of quantities". Although mahogany and red deal were specified for some of the work, it was subsequently agreed to substitute a better and harder timber called "amonphosis". In placing this material the contractors claimed that they were entitled to be paid on the basis that the work was "polishing" for which the appropriate rate is about eight times that for "painting". At plaintiff's request the President of the Royal Institute of Architects appointed the second-named defendant to act as arbitrator.

The arbitration proceedings were held in November 1966. The arbitrator acted with great care, but the net result of his award was that the defendant contractors had received £41.50 more than the plaintiffs had allowed in the final bill of measurement. As regards costs, the arbitrator was of opinion that the plaintiffs had won on one issue, and that the defendant contractors had won on the other issue. He directed on 7th February 1967 that "each party shall pay the costs of its own professional advice and witnesses. The arbitration charges of £313.75 shall be divided in the following manner: £168.75 to be paid by the claimant. £145 to be paid by the respondent." There had been no preliminary discussion as to the award for costs. The arbitrator considered that the treatment of hard wood was deemed to be "polishing" rather than "painting", and that the plaintiff had delayed unduly in producing a bill of measurements.

In Feb. 1967 the plaintiffs issued a Special Award naming the contractors as defendants in which they claimed that the award of costs made by the arbitrator should be set aside on the grounds (1) that it was bad on its face and (2) because the arbitrator "misconducted" himself in directing the plaintiffs to pay £145 costs. The contractors did not appear. In October 1967 Kenny J. heard the summons, and considered that the plaintiffs had succeeded in the two parts, and that the arbitrator should have awarded the costs to the successful plaintiff; the arbitrator had misconducted himself only to the extent that he had not exercised a proper judicial discretion. In September 1969 the arbitrator applied by motion to have the order of October 1967 set aside on the grounds that the summons which led to the order was not served on him. While the arbitrator did nothing blameworthy yet he was injuriously affected by the order. Kenny J. stressed that in litigation, the Court must decide the issues on the contentions of the parties, and is not entitled to give judgment on grounds which were not mentioned. The award must accordingly be set aside on the grounds that the arbitrator did not hear the plaintiffs before deciding that they had delayed the proceedings. As the award of costs of its own professional advice and witnesses was made, this award is void for ambiguity, as this expression was not properly explained. Kenny J. suggests, in order to reach a settlement, that the power of the original arbitrator should be removed, and that another arbitrator should be substituted for him.

[re Arbitration Act, 1954; Lynam & Sons v Leonard and Donnelly Ltd. and MacKenna; Kenny J.; unreported; 31st May 1972.]

Custody of three children awarded to mother. Former Supreme Court Order varied.

The husband and wife in this case are now separated. By order of 20th January 1969 Kenny J. awarded the custody of the eldest boy then aged 9, and of the girl, then aged 7, to the father, and the mother was given custody of the youngest boy, then aged 5. This order was affirmed by the Supreme Court on 13th July 1970 after a hearing which lasted nineteen days. The husband alleged that he saw misconduct taking place between the wife and another man in her house in January 1972. An inquiry agent alleged that similar incidents had taken place five times in March and April 1972. On the seventeenth day of the hearing, Kenny J. informed counsel that he did not require any further evidence as he was satisfied beyond doubt that the testimony on which these charges were based was false, and that he was convinced that the wife was not guilty of adultery. On June 27th the counsel for the husband stated that as he was satisfied that the evidence of the inquiry agent was not to be believed, he wished to withdraw a motion for custody of the youngest son based on the wife's alleged misconduct. Kenny J. found that the husband was guilty of a satanic hatred for his wife. He had for instance during the course of the hearing written to his wife's father complaining that he had been compelled to cite her before the Court on account of her conduct. Furthermore the inquiry agent got the eldest boy to place secret microphones in his mother's house in order to obtain alleged evidence of adultery. The microphones were constructed in such a way that, if a radio set was wired into the frequency of the microphone within one mile, the conversation in the room could be heard. The wife had given truthful evidence even when she had to make admissions. The husband had corrupted the two elder children to spy on their mother and had told them about the mother's alleged adultery. The harm which had been done to the children was beyond description. It is a matter of urgency that the two elder children should be placed in the custody of the wife, which is to take place on the day following this judgment. The alleged conditions for the children's welfare in the husband's residence no longer existed. It would be more suitable to send the eldest boy to boarding school in September 1972; the girl will go to a local day school for the present, but is to go to boarding school in September 1973; the younger boy is also to remain in a local day school for the present. For the present, the husband will be allowed to see the children for one Saturday in July and August, but he will have to apply to the Court to arrange future visits. Order of the Supreme Court varied by granting custody of the three children to the wife.

[P.B. v N.F.B.; Kenny J.; unreported; 4th July 1972.]

NOTICE

An original lease dated the 12th June 1827 made between Mathew Lynam and Patrick Marlay relating to the lands in Tallaght containing 88 Irish acres granted for a period of twenty-one years from the 25th March 1827 was left in the photocopying room in Solicitors Buildings, Four Courts. Will the solicitor or his assistant who left this document please call to Mr. William O'Reilly to collect it.

Law Changes Exceed even Police Demands

by MICHAEL ZANDER

Sweeping changes to the rules of evidence which, if implemented, could undoubtedly tilt the balance of justice in favour of the prosecution, were proposed by the Criminal Law Revision Committee yesterday.

Some of the more radical proposals go beyond what even the police had called for.

The report, which comes after eight years of study, was welcomed by both the Home Office and the Police Federation but fell foul of civil liberty groups and legal associations.

Mr. Jefferey Gordon, general secretary of the British Legal Association, which represents solicitors, said the whole content of British justice could be at stake. Justice, the British section of the International Commission of Jurists, feared the committee had failed to provide adequate safeguards for the innocent, and the National Council for Civil Liberties accused it of "an abandon more appropriate to the casino than the court."

In the Commons, the Home Secretary, Mr. Reginald Maudling, described the report as a "framework for early and necessary reform" but said he would take account of the views expressed by interested bodies.

As forecast in the Guardian proposals include the abolition of the caution and a suspect's right to silence. The report recommends that the police no longer say that the suspect need not say anything. On the contrary, he should be warned that failure to mention any fact which he wishes to rely on at his trial can be held against him.

The warning should be given in writing at the moment a suspect is charged and jury or magistrates could later be invited to draw any inferences from failure to mention relevant facts prior to the written warning.

It was the restriction on the right to silence which Mr Tony Smythe, general secretary of the NCCL, was most concerned with. "These are more menacing than anything predicted before the publication of the report for they cover not merely the appearance in court but the crucial and damaging time within which the suspect remains in police hands," he said yesterday.

"The suspect who omits to tell the police something that will help his defence is to be made to suffer in two ways. First, his omission may be subjected to adverse comment subsequently at his trial. Secondly, the omission may be used to corroborate other evidence negative to his defence.

"In this situation he needs legal advice but the committee makes no reference to the right to consult a solicitor. As this concept has already been attacked by the Lord Chief Justice and, incredibly enough by the Law Society itself, it seems likely that the omission is intentional."

Mr. Ronald Bell, Q.C., M.P., speaking for the Criminal Law Committee of the Monday Club, also had reservations on this point, although generally welcoming the report. He said it would be dangerous if any strong inference were to be drawn from silence under questioning and the wording of the draft would need reconsideration.

It was sensible to abrogate the rule that the prosecution could not comment on the failure of the accused to give evidence. But the report went too far in proposing that the accused should be formally called on to give evidence. This procedure could lead to "elements of farce" and might attach too much significance to the accused's silence.

The proposals on admissibility of evidence of previous convictions also needed most thorough consideration "for it is highly charged with possible consequences for the vital presumption of innocence" he said.

The committee, under the chairmanship of Lord Justice Edmund Davies, was set up to advise the Home Secretary. All ten previous reports have been adopted by the Government of the day. Yesterday's report is accompanied by a draft bill but the Government is unlikely to move to introduce legislation until the autumn.

The report makes no proposals to alter the basic feature of criminal trial—the assumption that a defendant is innocent until proved guilty—or the role of the jury.

However, the suggestion that the accused should lose his right to remain silent in the witness box and also his right to make an unsworn statement from the dock would mean a fundamental change in procedure. He would be formally called to give evidence and warned that failure to do so could be followed by adverse comment. A wife could also give evidence for the prosecution.

It is also proposed that Judge's Rules on interrogation should in future be drawn up and issued by the Home Office, though on the advice of the judges.

Proposals benefiting the prosecution include:

(1) Abolition of the rule that a confession is inadmissible if made as the result of a threat or inducement. In future a confession would be inadmissible if made as the result of oppressive treatment or of a threat or inducement likely in the circumstances to make a confession unreliable.

(2) Previous convictions could be introduced where the accused admits the facts but denies that he had the state of mind required to prove the case. Previous convictions could be used to rebut a defence of accident or mistake.

(3) Allowing the prosecution to rebut indirect representations that the accused is of good character (say, by wearing a respectable suit) by introducing evidence of previous convictions and past misconduct.

(4) Making a spouse a competent witness in all cases, and compellable in cases of violence against a child of the household under sixteen.

(5) Abolition of the rules requiring corroboration of the unsworn evidence of children (unless the offence is a sexual one).

(6) Abolition of the warning against relying on uncorroborated evidence of accomplices or the sworn evidence of children. Instead the judge would have a general discretion to warn where appropriate.

●Continueud on page 237

Commissioners for Oaths

A three-year qualification to be appointed as Commissioner for Oaths is no longer necessary. For many years the Courts have operated a rule of practice appointing solicitors as commissioners for oaths by which the applicants were required to have not less than three years in practice as a condition of eligibility. The Chief Justice has now reviewed this practice and has decided that it no longer serves any useful purpose. He has accordingly indicated that he will in future not require a solicitor-applicant to be a practising solicitor of not less than three years standing and has requested that this information be brought to the notice of the profession.

Should a Solicitor give an undertaking without an Irrevocable Retainer by the Client?

The Council have been considering the difficulty in which a solicitor can find himself when he has given an undertaking on behalf of a client and the client subsequently withdraws his retainer and instructs some other solicitor. Depending upon the terms of the undertaking given a solicitor could in certain circumstances find himself in a position of grave embarrassment. For example if a client instructed a solicitor to give an undertaking to a bank to pay over in discharge of an overdraft monies coming to his hands belonging to the client and if the client subsequently terminated the retainer and called upon the solicitor to account to him for all further monies coming into his hands or already held and not paid over in accordance with the undertaking the solicitor might find himself liable to proceedings by the former client for the recovery of his money on the one hand and proceedings by the bank on foot of his undertaking on the other.

The Council have approved of the following form of authority and undertaking which a solicitor could use on being instructed and prior to giving any undertaking on behalf of the client. The solicitor should write to the client as follows:

Dear Mr. A. (client),

In order to complete this matter I shall have to give an undertaking to the bank which will bind me professionally to (set out the terms of the undertaking).

I must have your authority and retainer both of which shall be irrevocable in order to give this undertaking and if you will write that you agree I shall proceed with the matter immediately.

Yours faithfully,

(Solicitor).

An unconditional affirmative reply in writing from the client will constitute the necessary authority. The solicitor would then be in a position, if the client purported to terminate the retainer, to act according to the undertaking given to him. The letter in reply from the client should be stamped with the appropriate revenue duty. This is £0.50 in the case of a document under seal. The duty of £0.2½ on agreements under hand only has been abolished.

Members are advised to refer again to an important statement regarding undertakings at page 185 of the June *Gazette*. This deals with other important matters precedent to the giving of an undertaking, e.g. the existence of an enforceable contract and what happens if either party is unable or unwilling to complete and the provisions which should be included in its undertaking to provide for such contingencies.

New Court Rules

District Court

The District Court Rules Committee has made new rules providing for an increase of 25 per cent in the costs of the former jurisdiction and also providing a new scale of costs for the extended jurisdiction. Subject to concurrence by the Minister the new rules will come into operation in September 1972. These rules will be published in full in the November *Gazette*.

Circuit Court

New rules providing a scale of six day costs are already in operation. The general scales of costs for solicitors were agreed and were submitted by the rules committee to the Minister for Justice who signified his concurrence and returned the rules to the committee. Agreement as to the rules concerning the rules and scales of counsels' fees was not reached. The Minister indicated that he was prepared to sign rules dealing with solicitors' costs. At the last meeting of the rules committee the rules relating to solicitors' costs were considered. The rules as received from the Department were not signed and the matter was deferred to a meeting to be held in October.

High Court

Agreement was reached between the Society and the rules committee and the Department of Justice for an increase of 20 per cent of the present scales. Rules were made by the committee and submitted to the Minister for signature. They have not been signed pending discussion between the Minister and the Society on certain matters. A meeting to deal with these outstanding matters will be held in the near future.

Land Registry

The Council were informed that rules giving effect to an increase of 30 per cent on the costs of voluntary transfers, applications under Rules 33-35 and costs under Rules 121 (6) have been made and will take effect from 2nd October 1972.

Vagueness in the Law of Conspiracy

by MICHAEL ZANDER

Criminal conspiracy was described in a recent case by Lord Diplock as "the least systematic, the most irrational branch of English penal law". The late Justice Jackson of the US Supreme Court called it "an elastic, sprawling, and pervasive offence ... so vague that it almost defies definition".

It dates from 1354 but it was only properly established by the Star Chamber in 1611. It is triable on indictment and there is no limit to the penalty that can be imposed.

The crime is committed even if the conspiracy is never put into effect, providing there was an agreement of two or more persons to do unlawful things or to do lawful things by unlawful means. In the Hain case it was conceded that the aim of disrupting a rugby or a cricket tour is itself perfectly legal. What was complained of was that unlawful means had been used.

It is a crime to conspire to commit most crimes including a summary offence. It is also a crime to conspire to defraud someone even where the act itself is not a crime at all.

In a much-criticised case of *Shaw v the DPP* the House of Lords ruled in 1961 that there was a crime of conspiring to corrupt public morals. This was confirmed by the law lords in June of this year in the Knuller case in which the judges ruled however that there was no such offence known to English law as conspiracy to outrage public decency.

In the Hain case the crucial issue has been the extent of the crime of conspiracy in relation to civil wrongs. Obviously it would be absurd for the law to punish as a criminal conspiracy triable on indictment an agreement between two people to walk in a private park without permission.

In 1819 a court refused to extend the law of conspiracy to a band of people who committed trespass with arms by night for the purpose of snaring hares. The only other relevant precedent is the Bramley case in 1946 in which five people were charged at the Old Bailey with conspiracy to trespass and to commit forceable entries by putting squatters in unoccupied houses.

Summing up to the jury, Mr. Justice Stable (by a coincidence the father of Mr. Owen Stable, Q.C., who led for the prosecution against Hain) said that a conspiracy could be criminal if it was intentionally directed to deprive someone of their legal rights, providing it was a suitable matter for the criminal law.

Normally breaches of civil law were remedied only in the civil courts through damages or an injunction. But if it was something that affected the community as a whole it might constitute the crime of conspiracy. The judge directed the jury to consider whether the numbers involved, the methods adopted, and the magnitude of the common aim took it out of the sphere of the civil law and made it a matter of public concern for citizens concerned in the maintenance of good order and security.

The jury found the accused guilty on all counts. No appeal was taken and the judge's direction was never subject to further scrutiny. The judge in the Hain case relied greatly on this direction. He told the jury that the offence was committed if legal rights on matters of substantial public interest were interfered with by unlawful means which were of substantial public concern.

It will always be difficult for the prosecution to produce evidence of a conspiracy in cases of demonstrations though the fact that a number of people act in concert can be used as evidence against them. It is not often that the prosecution have available—as it had here—a book by one of the participants describing what occurred in detail.

One great objection to conspiracy charges is their tendency to vagueness. The indictment in the Hain case contained four counts of conspiracy supported by a bewildering number of examples or "particulars". Not unreasonably, the defence claimed that if the jury found Hain guilty in relation to, say, one of seventeen separate examples mentioned in Count One he would be guilty on that count without anyone, not even the judge who had to pass sentence, knowing that he had been acquitted of the other sixteen.

The Law Commission working party is due to publish a paper on the law of conspiracy early next year. Its principal recommendation is likely to be the abolition of criminal conspiracy in relation to acts that are not themselves crimes. In that event a prosecution such as that brought against Peter Hain would become impossible.

The Guardian (August 1972)

DISCHARGE FROM DEATH DUTIES

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 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 in 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 the deletion of the words "and his executor is not accountable for the estate duty in respect of such property". 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 over 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 would appear that a possible construction of the amendment of the section is that on the sale of property by personal representatives now the purchaser is put on inquiry as to payment of death duties.

The Secretary took the matter up with the Estate Duty Office. They are to make enquiries and communicate further with the Society.

Criminal Law Revision—The Prosecution Viewpoint

by LIAM McMENAMIN, Solicitor

"It is better that ten guilty men go free, than one innocent man should suffer."

This is the basic premise of the Criminal Code, running through the legal fabric from the Roman law, restated forcibly in Blackstone's Commentaries, and maintained by legislation and the Courts until the present time.

But can modern society indulge in the luxury of such a lofty sentiment? This is a most serious issue, warranting the most earnest consideration. Society in its own enlightened self-interest would do well to make a thorough examination of the present-day Criminal Code. It is time that equal emphasis be placed on another fundamental principle—That the first duty of Government is to protect the life of the individual, and the second duty is to protect his property.

Can both principles exist side by side? Of course they can. All laws must be just and fair, based on commonsense and fair play. The Criminal Code is so heavily weighed in favour of an accused person that justice becomes a game played under artificial rules with knowledge of these rules and their application to the peculiar facts of each case being the paramount consideration, rather than seeing justice done. It is an elementary proposition that any Judicial Tribunal must have the *truth*—no rule of law or evidence should hinder such truth being ascertained. It is sad that the capacity to pay for the best criminal lawyer can defeat punishment, just as the hiring of the best financial brains can evade payment of income tax and death duties.

Revision of Criminal Code

It is remarkable how little thought has been given to revision of the Criminal Code, and indeed only arises now in the days of the professional criminal, and atrocities committed in the name of "political crime". Let us examine the historical background. Even in the days of Blackstone (1723-1780) his contemporary Bentham (1748-1832), the philosopher and reformer, was highly critical. When speaking on the Rules of Silence (the right of an accused person to remain silent and to say nothng) he expressed himself thus:

"If all criminals of every class had assembled, and framed a system after their own wishes, is not this Rule the very first they would have established for their security? Innocence never takes advantage of it; innocence claims the right of speaking, as guilt invokes the privilege of silence."

This is a quotation of a statement made 130 years ago. It is of equal and even greater validity today. Added to the professional criminal and the political criminal, there is the subversive agitator. There is now a cult of violence, regrettably fostered and fanned by the news and television media, who in their wisdom can give saturation coverage to openly declared men of violence, while the same issue or news bulletin might just squeeze in a bare mention of some serious and thoughtful paper or lecture delivered at a seminar or group study.

Changes listed

How have things changed since Blackstone and Bentham? Consider the following points:

(1) Another contemporary was Sir Robert Peel (1788-1850), the founder of the first modern police force.

(2) Until well into the twentieth century, all evidence would have been virtually eye-witness, before the development of forensic medicine and pathology as exact sciences, which in turn made such a basic change in the detection of crime, and in so very many cases being much more in ease of a suspected individual than leading to a conviction.

(3) The art of fingerprinting has now been reduced to a very exact science, but total records are no more than fifty years old. This was the most significant advance of all in criminal detection—again exonerating more than convicting.

(4) The Penal Code is now operated by a responsible police force, who in turn are advised by law officers who are well aware of the duties and responsibilities.

It must be admitted that old notions die hard—that the police are pressured to look for someone for a crime, and are not too particular whether such person is actually guilty or not, even going so far as to fabricate evidence. This may have been so; but the public can have total assurance that in these times nobody connected with the administration of the criminal law will attempt deliberately to convict an innocent man. Indeed any attempt by a police officer to do so would in all probability mean instant dismissal from the force. It is worth noting at this juncture that one of the leading voices for criminal law reform is that of a policeman, Mr. Robert Mark, the Commissioner of the London Metropolitan Police. Mr. Mark has given many lectures on the subject, and he certainly does not call for anything like draconian powers for the police—indeed all he does is make a simple request for an even break. His theme is that it is much better to have sensible reforms now rather than have desperate measures when crime threatens to overwhelm society. He argues forcefully that only the police have the total picture, with special regard to the vital statistics of unsolved crime.

Having therefore advanced some arguments in favour of the ascertainment of *truth,* we can consider how society and the individual can be protected, each at the same time. Science, as stated, has become a crucial factor, with such latter-day extensions as the blood alcohol tests, paraffin tests to show discharge of weapons, etc. This then gets to the consideration of the two basic principles of the criminal law: (1) The Burden of Proof, and (2) The Rule of Silence.

The Burden of Proof

(1) The Burden of Proof: The presumption of innocence must, of course, be maintained. The onus must

rest on the State to prove what they allege. It is up to the Government of the day to supply the trained men to detect crime, and these men must be given all necessary facilities to assist them in such detection. The police must be aided by pathologists and trained scientists and chemists to assist them with every possible scientific aid. No juryman need have a crisis of conscience if he feels that the prosecution could have proved their case beyond doubt if some extra effort had been put into the investigation, and votes for an acquittal. The State must discharge their primary duty of protecting the citizen and his property, although in practice this is but a pious sentiment if one takes as a yardstick the amount of money devoted to such a purpose from the public purse. If some Government Department or Agency decides that the numerical strength of a police force should be reduced without taking into account the deterrent factor of a police presence, then they cannot complain if they have sown the seeds of anarchy.

This brings us on to the quantum of proof. Juries are told of the "beyond all reasonable doubt" burden on the State. To a fresh and inexperienced juryman this direction from a trial Judge can lead to agonising scruples of conscience. But take the experience of juries in the Crown Courts in England. Here a juryman can serve on three or four juries in one sitting of the Court, and can end up in his last case smiling at the verbal histrionics of defending counsel which had affected him so much in the first case. Therefore we must apply another principle in deciding on the quantum of proof, and one can do no better than quote Viscount Simon: "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent" (Stirland 1944 A.C. 315 at 324). Applying this principle logically, a jury should be instructed to apply the yardstick that the injured party is entitled to the same legal rights and protection as that afforded to the accused. Somehow there is a mistaken natural sympathy for a person accused, probably arising from the feeling that here is an unfortunate individual being steamrolled by the overpowering forces of the law. The innocent victims seem to be overlooked or indeed forgotten. Nowhere is this more poignant at the present time than in Northern Ireland, where so many have died and their admitted murderers have been condemned only by a few brave voices. So all law must be fair to all sides just as in the civil law. There is no argument to permit an entire code of protective laws for a person who has committed a serious crime. Justice must be for both sides.

The Rule of Hearsay Evidence

The major changes could come in the Rules re Hearsay Evidence, and of evidence of previous character and convictions. With regard to hearsay, one of course cannot allow the Courts to end up judging cases on gossip or the like, but there could be a wide discretion allowed to the Courts to allow evidence of statements made in the absence of the accused, so long as the Court could in its reasonable discretion decide that such statements formed part of the *res gestae*. Judges and juries must see obvious gaps in the State evidence, and while an experienced Judge can have a good idea of the reason for the omissions, a jury must be mystified, and feel as if they are watching a censored film or the like.

May I digress at this point to make reference to the latter-day phenomenon of television and press reporters being apparently able to detect criminals and crime, while the authorities remain impotent or powerless. The simple fact is that these reporters are putting their own self-interest before their public duty. They appear willing to quote any type of shadowy individual or statement purported to emanate from them, and then put it across to the public as being actual fact. It is high time this practice was stopped by making the controllers of the various types of media liable for contempt of Court for not making a full disclosure of all information available to them which would lead to a criminal being brought to justice. The public do not realise that criminals (political or otherwise) relish publicity, but will not be so forthcoming with information when being questioned by the authorities. They get the impression that the police are at best incompetent, and at worst condoning the breaches of the law.

Evidence of previous character

With regard to evidence of previous character and convictions, this is a question to be treated with great care. If the State could put in such evidence, then it might consider a lessening of the quantum of proof necessary for such cases. It could afford an easier task for a malicious person to indict and convict on false evidence. On balance the present rule is the most equitable—if the accused invites an attack on his character then he must stand the consequences. However, there are potent arguments on the other side; the recent case of the poisoner Young in England where he had a serious prior history of poisoning. Also the writer has often noticed a convicting jury remaining anxiously in the jury box awaiting the comments and sentence of the trial Judge, and having their anxiety and uneasiness dispelled when the police officer reads out the list of previous convictions.

The Rule of Silence

(2) The Rule of Silence: The proposed revision of the Judges Rules in England to abolish the legal caution is a just, fair and long-overdue amendment to the Criminal Code. Again to quote eminent legal authority, on this occasion Professor Glanville Williams, LL.D., F.B.A.: "Immunity from being questioned is a rule from its nature can protect the guilty only." In his excellent treatise "The Proof of Guilt" (The Hamlyn Lectures, Seventh Series) Professor Glanville Williams sets out the difference between the English Criminal Code and the Code operated by countries on the Continent. Basically the English system is accusatorial; the Continental systems are inquisitorial. On the Continent a suspected person in essence must explain himself, and do so at a very early stage of the proceedings. Here an accused person can remain totally silent until every scintilla of prosecution evidence is known to him, and can then talk or remain totally silent. It can be said that in the English code any semblance of a fair trial commenced only from the passing of the Criminal Evidence Act, 1898. Prior to that Statute a defendant could not give evidence in his own defence. Revision became a necessity when counsel for the defence relied on the ploy that their unfortunate innocent client would immediately convince the jury of his innocence if only the law allowed him to give evidence. In an attempt to defeat this stratagem (before the passing of the Act) some Judges allowed defendants to make an unsworn statement from the dock, and not be cross-examined on same. This compromise, of questionable merit, still subsists in the legal code right to this day.

Abolition of Caution

So therefore while the State must discharge the burden of proof, they must be given a fair run in their

gathering in of evidence. With the legal caution, they must warn a suspected person not to say anything that might be incriminating. This rule, with all its nuances and imperfections, is the most difficult obstacle in crime detection, and has been a fecund source of legal argument before the Court of Criminal Appeal for many years. There must surely be a case for its total abolition. An innocent man is only too happy to avail of every opportunity to proclaim and protest his innocence. The caution may have had some validity in the days of Bill Sykes and criminals of similar mental calibre; latter-day criminals in the know can treat a police interrogation with insolence. This is, of course, after they have got over their initial surprise that the law is of such material assistance to them.

Majority verdict of jury

So much for legal theory. To commence commenting on the practice side would take a long time, but there is one very overdue legal reform necessary, and that is to make a jury verdict a majority decision of 10 votes to 2 to replace the unanimity rule. Such a provision was included in a Criminal Justice Bill, but has not yet reached the Statute book. Apart from all other forceful arguments for the change, there is the added value of it enabling juries to take in verdicts of guilty in unpopular political cases where juries have to take into account possible threats and intimidation. If the 10-2 rule was law, then an accused and his cohorts would not know who the dissenters were.

The Special Criminal Court

Lastly a comment must be made on the operation of the Special Criminal Court as now established in this country. It must be regarded as a success, as it has dealt swiftly and effectively with a national crisis, but has also preserved two of the fundamental principles of the criminal law—the accused has been given a fair trial, and justice has been done. The time taken to have an accused brought to trial is speeded up considerably, and in this country it has worked wonders for the morale of the Garda Siochana who have had some frustrating experiences with reluctant juries. Indeed it can be suggested that other countries still operating the English legal system could well introduce such Courts to deal with very serious national problems, such as drug traffic crimes. For countries like the United Kingdom and the U.S.A. such a Court would be a very small price to pay for the efficient control and punishment of people transgressing the drug traffic laws, from which so much other crime emanates.

Local Authority Solicitors' Association

The annual general meeting of the Association was held on Friday, 10th March 1972, at the Solicitors' Buildings, Four Courts, Dublin.

he following officers were elected: *Chairman,* Michael J. Leech; *Secretary/Treasurer,* Dermot Loftus; *Committee,* Messrs Timothy Murphy, Peter A. Fitzpatrick, Donal M. King, Henry Murray and William Dundon.

Tributes were paid to the former Chairman of the Association, the late Mr. Dermod M. F. Walsh, Law Agent, Dublin Corporation, and the meeting adjourned for an interval as a mark of respect. In proposing a vote of sympathy to the relatives of the late Mr. Walsh and also to the Dublin City and County Manager, Mr. William Dundon said that not alone had the Association lost a loyal colleague, but that the legal profession as a whole would be much the poorer at Mr. Walsh's death.

Following the annual general meeting a seminar was held, during the course of which papers on the following subjects were given:

(a) "Sales under Section 90 of the Housing Act, 1966, and the effect of the Housing (Loan Charges Contribution and Management) Regulations, 1967, Thereon" by William Dundon, City Solicitor, Limerick.

(b) "The Implications of the Decision in Listowel U.D.C. v. MacDonagh (105 I.L.T.R. 99)" by Timothy Murphy, County Solicitor, Kerry.

(c) "Relator Proceedings" by Michael J. Leech, Law Agent, Dun Laoghaire Corporation.

(d) A talk on "Land Acquisition Problems" was given jointly by Brendan Kiernan, B.L., Legal Adviser, Department of Local Government, and Michael Murphy, B.L., Assistant Legal Adviser, Department of Local Government.

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Rules which would help the defence are:

(1) Greater freedom to attack prosecution witnesses without risking the introduction in evidence of previous convictions. These would only be admissible if the main purpose of the imputation was to challenge the witness's credibility. The defendant could therefore safely allege that evidence had been planted on him.

(2) Any burden of proof on the defendant (for instance to prove his insanity) would be discharged if proved on a balance of probabilities rather than beyond a reasonable doubt.

(3) A warning that the jury should always be told of the danger of acting on uncorroborated evidence where the prosecution's case is based wholly or mainly on identification evidence.

Proposals such as the wider admissibility of hearsay evidence and the abolition of sworn evidence for children under fourteen could help either side.

The Guardian (30th June 1972)

CORRESPONDENCE

LESSOR'S COSTS

The Secretary, Department of Justice,
72-76 St. Stephen's Green. Dublin 2.

6th April 1972

Dear Sir,

I have been directed by the Council to make representations to the Minister for Justice that legislation should be introduced compelling all lending institutions to bear their own costs in the same manner as lessors are compelled to bear their costs under Section 32 of the Landlord and Tenant (Ground Rents) Act, 1967.

The Council noted the recent statement on this subject by the Minister and support it. They consider that the rule should apply to all mortgages irrespective of the nature of the security whether it be for housing, commercial or other purposes.

The Council also directed that representations should be made about the present delay in the Land Registry in effecting first registrations of titles which is the cause of very considerable inconvenience and expense to the public and the profession.

They will be obliged for urgent consideration of both of these matters by the Minister and for a reply to this letter stating any action proposed on the matters mentioned.

Yours faithfully,

Eric A. Plunkett (*Secretary*).

The Secretary, Department of Justice,
72-76 St. Stephen's Green. Dublin 2.

7th June 1972

Dear Sir,

I have been directed by the Council to state that they have noted with interest the passage in the speech of the Minister for Justice on the Departmental estimates in which he said that he intended to introduce legislation providing that a mortgagee should not be entitled to pass on the costs of the mortgage to the mortgagor on the same lines as the principle embodied in regard to leases under the Act of 1965. This matter had already been the subject of prolonged discussions at the Council and they had about the same time decided to advocate the introduction of such legislation. It should apply not alone to building societies but also all mortgagees. The Council are also of the opinion that the practice of builders and lessors of passing on to lessee/purchasers incidental costs such as the expenses of producing documents of title, certificates of compliance with various statutory requirements and indemnity against roads charges should also be terminated. Furthermore the Council take the view that a builder should not be entitled to charge the person for whom the house is erected with the builder's costs of the building agreement. In essence the view of the Council is that on a transaction involving the lease or erection of a new house with a contemporaneous mortgage each party should pay the costs of his own solicitor and the only costs payable by the lessee/purchaser should be the costs of his own solicitor. I am to request that these views should be communicated to the Minister.

Yours faithfully,

Eric A. Plunkett (*Secretary*).

Department of Justice
72-76 St. Stephen's Green
Dublin 2
4th July 1972

Dear Sir,

I am directed by the Minister for Justice to refer to your letter of June 7th and previous correspondence conveying your Council's representations that legislation should be introduced requiring lending institutions to bear their own costs in relation to mortgages and also their representations in relation to delays in first registrations of titles in the Land Registry.

With regard to the costs of mortgages, it may be noted that the Minister in his recent statement in the Seanad on the subject dealt with the position of private house purchasers rather than with the costs of mortgages generally. Legislation to make mortgagees liable for their own costs in the case of all mortgages irrespective of the nature of the security could have undesirable consequences. Accordingly, the Minister does not propose to deal with mortgages generally but he proposes to consider a short Bill to make the mortgagee liable for his own costs in cases where the mortgage is to finance private house purchase. In this connection, you are doubtless aware of the answer given by the Minister to a recent Parliamentary Question (Dail Report for 25th May 1972, cols. 498-499). The Bill could include a provision extending to mortgages generally the simplified form of release for which provision in relation to building society mortgages is already made by Section 42 of the Building Societies Act, 1874. The latter proposal is one that was made by a former President of your Society, Mr. Eunan McCarron, and that was brought to the notice of this Department.

The representations of your Council in regard to the incidence of builders' costs and lessors' costs (apart from the solicitor's costs of a lease) are being brought to the notice of the Minister for Industry and Commerce for consideration in connection with the Prices (Amendment) Bill, 1971.

With regard to the second matter raised in your letter of 6th April 1972 the position is that over the past two years there has been a very considerable increase in the intake of work in the Land Registry which, combined with certain staffing and organisational difficulties, has resulted in delays and the accumulation of arrears. Comprehensive plans have been drawn up to remedy the situation and a scheme of reorganisation is already in the process of being implemented affecting one major area of the Registry's activities, viz. dealings. One of the

critical factors in delays generally has been arrears in the Mapping Branch. Plans for the reorganisation of this branch have recently been completed and are expected to be implemented in the near future. When the reorganisation of the Mapping Branch has been accomplished it is expected that there will be a considerable improvement in the position in the Land Registry and that the foundation will have been laid for the provision of a greatly-improved public service. In the meantime, special attention is being given to some categories of first registrations, including those in areas where compulsory registration has been introduced and also registrations of leasehold interests carved out of registered land.

Yours faithfully,

Cathal Crowley.

REGISTRY OF DEEDS

The Secretary, Department of Justice,
72-76 St. Stephen's Green, Dublin 2.

20th June 1972

Dear Sir,

I am directed by the Council to refer to the Society's letter dated Aril 25th and to enquire if any progress has been made with the proposed legislation regarding the Registry of Deeds. As you are no doubt aware the law in Northern Ireland has been to a large extent consolidated by the Registration of Deeds (Northern Ireland) Act, 1970 (1970 Ch. 25). The Council take the view that there is an urgent requirement for similar legislation here.

The Council will be obliged if you will bring to the attention of the Minister the suggestion already made that the procedure for registration of deeds should be simplified by a standard form of document (not a memorial as under the present practice) which might be printed with the information required from the applicant for registration and spaces for filling in the necessary particulars—something in the nature of the form required for obtaining the PD stamp at the present time but on durable paper and of a suitable form for binding.

The Council take the view that the narrative form of memorial prescribed by the Statute of Anne is unnecessary under modern conditions. The only requirement should be that the document would contain all the necessary information and would be signed at the foot by the appropriate party with an affidavit of execution if necessary. The provisions which seem to be necessary in such a standard document would be those in Schedule 1 to the Northern Ireland Act of 1970. It is unfortunate in a case that under present staff shortage conditions mistakes are frequently made in the setting out requirements of memorials in the Registry of Deeds and a simple form which would require only the specified signatures would be preferable.

The Council would be glad to be consulted on this legislation before it takes final shape.

Yours faithfully,

Eric A. Plunkett (*Secretary*).

VOLUNTARY TRANSFERS

The Secretary,
Incorporated Law Society.

Listowel, Co. Kerry.
16th June 1972.

Dear Sir,

I have been experiencing a great deal of difficulty lately in agreeing to a reasonable figure with the Stamp Duty and Valuation Offices in respect of the above transactions. Not only is there difficulty in agreeing upon a figure, but there is a delay of several months regularly, particularly when the matter is referred from the Stamps Branch of the Revenue Commissioners to the Valuation Office and back again. I have one case in mind in which the Stamps Branch fixed a valuation of £9,000. Subsequently we furnished auctioneer's certificates to the effect that the place was only worth £5,000. The matter was referred to the Valuation office and now nine months later they have fixed a value of £10,000 without ever having seen the place.

The amount of stamp duty involved in these transfers is relatively small and cannot be a source of any great income to the State.

It might be worth while to write to point out the position. Possibly representations could be made to the Minister for Finance in respect of these. If stamp duty is going to continue in these father to son transactions, then it should be fixed on an artificial value basis—something equivalent to estate duty in cases at least where the valuation is less than £50.

No doubt you have an appropriate commission to whom you could refer this letter to see if the problem could be tackled in any way as suggested above. If there are any further particulars you require, I shall, of course, be pleased to supply them.

In these days of high cost of administration, anything that delays office matters for months and months should, in my opinion, be one of serious concern to the profession.

Yours faithfully,

Robert Pierce.

SOLICITORS BENEVOLENT ASSOCIATION

The Editor,
Law Society Gazette.

15 St. Stephen's Green,
Dublin 2.
11th July 1972.

Dear Mr. Gavan Duffy,

On Mr. McCarron's elevation to the position of Director of the Solicitors Benevolent Association I have been appointed to succeed him as Secretary, and I have been instructed to ask you to insert a notice to this effect in the forthcoming issue of the *Gazette* and to state that any communications regarding the Benevolent Association should, in future, be sent to me as Hon. Secretary, at 15 St. Stephen's Green, Dublin 2.

Yours sincerely,

(Miss) Thelma King.

CIRCUIT COURT RULES (No. 2) 1972

S.I. No. 189/1972

These Rules, which may be cited as the Circuit Court Rules (No. 2) 1972 shall come into operation on the 1st day of September 1972.

Rule 1

Rule 3 of the Circuit Court Rules, 1971 (S.I. No. 41 of 1971), is hereby revoked and the following Rule is substituted therefor:

(7) Whenever the plaintiff's claim is for a debt or liquidated claim only, the endorsement, besides stating the nature of the claim shall state the amount claimed for debt or in respect of such demand, and for costs, respectively, and shall further state that, upon payment of such amount and costs within six days after service, further proceedings will be stayed. The amount to be so claimed for costs in all such cases where there has not been any order for service of the Civil Bill, or notice thereof, out of the jurisdiction, or for substituted or other service, or for substitution of notice for service, or declaring service effected sufficient, or any notice by advertisement of the issuing of the Civil Bill, shall be as follows:

If the demand does not exceed £10 ..... £0.75 If the demand exceeds £10 but does not exceed £25 ... £1.50 If the demand exceeds £25 but does not exceed £50 ... £2.15 If the demand exceeds £50 but does not exceed £250 ... £3.40	Together with such outlay limited to stamp duty and service fees as may be appropriate to proceedings in the District Court.
If the demand exceeds £250 but does not exceed £500 ... 4.50 If the demand exceeds £500 but does not exceed £1,000 £6.00 If the demand exceeds £1,000 but does not exceed £1,500 £7.00 If the demand exceeds £1,500 ..... £8.00	Together with such outlay limited to stamp duty and service fees as may be appropriate to proceedings in the Circuit Court.

If there are more defendants than one, the above amounts may be increased by the sum of £0.35 for each additional defendant served.

Rule 2

Rule 5 of Order 58 of the Rules of the Circuit Court, 1950 (S.I. No. 179 of 1950), is hereby revoked and the following Rule is substituted therefor

(5) The award of costs in any case shall include witnesses expenses unless disallowed in whole or in part by the Judge. Such expenses shall be measured by the Judge or where the Judge so directs by the County Registrar, subject to an appeal to the Court.

In this rule the word "expenses" shall in the case of an expert witness include his reasonable charges in respect of all necessary matters preliminary to the hearing.

BOOK REVIEWS

The Year Book of World Affairs
1971 volume: 8vo, pp. xvi, 343, £5.00
1972 volume: 8vo, pp. vi, 380, £5.25
London Institute of World Affairs and Stevens.

Unlike the companion volume, *Current Legal Problems*, this Yearbook does not deal specifically with legal problems, but is very comprehensive and universal in its appeal. The 1971 volume contains philosophical or scientific treatises on "International Assistance in Psychological Perspective" or on "Space Business". The only contributions that might be said to contain a legal element appear to be that of Professor Schwarzenberger's "Equality and Discrimination in International Economic Law". The 1972 volume is more interesting from a legal point of view, as it contains another interesting contribution from Professor Schwarzenberger—"Equity in International Law" in which he emphasises how equitable principles such as good faith and the principle of sovereign equality have been applied internationally. There is also a contribution by Mr. Dickstein on the topical problem of "International Law and the Environment". The questions of "Immunity of Officials associated with permanent United Nations Establishment" and of "Eastern Ruropean approaches to public International Law" are also fully explored. There are also interesting articles on "French Foreign Policy" and on the "Washington Monetary Agreement". It will be seen that many international problems have been treated from various points of view.

A Guide to European Community Law by P. S. R. F. Mathysen; London, Sweet and Maxwell, 1972; 8vo, pp. xxiv, 204; paperback; £1.50.

This is a really useful yet comprehensive guide to European Community Law, and the author is not only a director with the European Commission, who knows the practical workings of the Community, but is also a Professor of Law in the University of Nigmegen. Prof. Mitchell in his preface has rightly stressed that the need for the uniform and direct application of Community law springs directly from the economic purposes of the Community. The learned author first deals with Community law, its precedence over national law but not over international law, then the background to the Treaties establishing the Coal and Steel Community, and the European Atomic Energy Community, and finally the European Economic Community itself, whose objective is at least theoretically stated as "an even closer union among European people to be achieved by a harmonious development of economic activities". The various activities of E.E.C. (agricultural, industrial, monetary, etc.) are then submitted to a useful analysis. The powers of the European Parliament, the Council of Ministers, the European Commissioners and of the Court of Justice are then fully explored, and there is a short chapter on the fiscal provisions. Professor Mathysen has succeeded within the compass of 200 pages in explaining clearly to us the leading features—theoretical and practical—of Community law. A most useful book.

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 30th day of September 1972.

D. L. McALLISTER

Registrar of Titles.

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

Schedule

(1) Registered Owner: Jeremiah Twomey; Folio 28973; Lands: Lackabane; County: Kerry; Area: 0a. 2r. 0p.

(2) Registered Owner: James Garvey; Folio: 2229; Lands: Kilvoydan North; County: Clare; Area: 29a. 0r. 30p.

(3) Registered Owner: Cornelius McSweeney and Terence Lynch as tenants in common of undivided moieties; Folio: 23312; Lands: Ballincloher; County: Kerry; Area: 6a. 2r. 12p.

(4) Registered Owner: Feale Valley Industries Limited; Folio: 33438; Lands: Derra West; County: Kerry; Area: 2a. 3r. 28p.

(5) Registered Owner: Richard Walsh; Folio: 2409; Lands: Ballyedmond; County: Dublin; Area: 12a. 3r. 8p.

(6) Registered Owner: Bridget Mullen as personal representative of James Mullen; Folio: 1111; Lands: Sheepgrange; County: Louth; Area: 16a. 2r. 26p.

(7) Registered Owner: Jeremiah Harney; Folio: 8619; Lands: Granny; County: Kilkenny; Area: 28a. 0r. 11p.

(8) Registered Owner: Caroline S. J. McDowell and Herbert George French McDowell; Folio: 4106; Lands: Saint Helens; County: Dublin; Area: 20a. 3r. 11p.

(9) Registered Owner: William Fitzgerald; Folio: 25165; Lands: Farranavarra, Synone, Synone and Ballysheehan; County: Tipperary; Areas: 302a. 0r. 12p., 363a. 3r. 4p., 30a. 2r. 20p., 0a. 0r. 30p.

(10) Registered Owner: Thomas Kilcoyne, Philip Gannon, Jack McDonnell, William George Delaney and Dermot M. McDermott; Folio: 35554; Lands: Demesne; County: Roscommon; Area: (i) 4a. 0r. 24p., (ii) 4a. 0r. 25p.

(11) Registered Owner: Michael P. Kelly; Folio: 11040; Lands: Streamstown; County: Westmeath; Area: 19a. 0r. 26p.

(12) Registered Owner: Hanoria Hannon; Folio: 4929; Lands: Cloonagashel and Ardrea; County: Sligo; Area: 22a. 0r. 20p. and 15a. 2r. 30p.

(13) Registered Owner: James Malone; Folio: 10079R; Lands: Inistioge; County: Kilkenny; Area: 7a. 2r. 30p.

(14) Registered Owner: Patrick Loftus; Folio: 19946; Lands: Cloghans; County: Mayo; Area: 3a. 1r. 2 .2p

(15) Registered Owners: James Walsh and Margaret Walsh; Folio: 42007; Lands: Raharoon East; Area: (i) 63a. 3r. 22p., (ii) 26a. 1r. 1p.

(16) Registered Owner: Hugh Kelly; Folio: 1022; Lands: Newtown (Parish of Inch St. Lawrence); Area: 37a. 1r. 31p.; Lands: Also Newtown (Parish of Caherconlish); County: Limerick; Area: 17a. 3r. 35p.

(17) Registered Owner: John Kehoe; Folio: 7362; Lands: Ballydine; County: Tipperary; Area: 38a. 3r. 16p.

LOST WILLS

John Joseph (otherwise Jack) Murray, late of Ballymore-Eustace Road, Blessington, Co. Wicklow. Date of death, 8th July 1972. Will any solicitor or other person holding or knowing the whereabouts of a will of the above-named deceased please contact the undersigned. Arthur E. MacMahon, Solicitor, Naas.

Miss Bridget Birmingham, 4 Wynne's Terrace, Dundalk, Co. Louth. Spinster, deceased. Any solicitor or person having knowledge of a will made by the deceased who died on the 19th June 1971, please communicate with Daniel O'Connell & Son, Solicitors for next-of-kin, Francis Street, Dundalk.

OBITUARY

Mr. John R. Colfer died in August 1972. Mr. Colfer was admitted as a Solicitor in Hilary Term, 1942, and practised under the style of Colfer Son & Poyntz, at Bridge Street, New Ross, Co. Wexford.

Mr. W. A. P. O'Connor died in August 1972. Mr. O'Connor was admitted as a Solicitor in Easter Term, 1955, and practised under the style of Mr. Liam A. P. O'Connor & Co., at College Street, Killarney, and also at Kenmare, Co. Kerry.

Mr. J. P. Neilan died on 2nd August 1972. Mr. Neilan was admitted as a Solicitor in Michaelmas Term, 1936, and practised under the style of P. J. Neilan & Sons at Ballaghaderreen, Co. Roscommon.

THE GAZETTE OF
THE INCORPORATED
LAW SOCIETY
OF IRELAND

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Contents

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EDITORIAL

Value Added Tax

Although the Italians have wisely refrained so far from introducing Value Added Tax, which, according to the terms of the Treaty of Rome, they undertook to do, the Irish authorities have rushed the introduction of this tax unnecessarily on the 1st November next, even before Ireland has officially joined the European Community. One can only take with a grain of salt the assurance that prices will not be considerably increased by the imposition of this tax, as it is known that the Department of Finance expect an additional revenue of £8 million in a full year. It is indeed strange that the electorate will calmly allow itself to be fleeced in economic matters, while many would react violently to political problems. There is little doubt but that the cost of administering this scheme, whether by the State or by others, will be fantastic, and ultimately the consumer will have to pay for this unnecessary folly. It will be interesting to see whether in fact any prosecutions will be undertaken as a result of alleged overcharging.

The Judiciary and Strasbourg

There have been various judicial changes arising from the appointment of our Chief Justice, the Hon. Carroll O'Daly, to be a judge of the European Court of Justice in Luxembourg, and from the death during the long vacation of Mr. Justice McLoughlin of the Supreme Court. The universal respect and popularity in which our Chief Justice is held, will ensure that he will fill a most worthy place amongst his jurist colleagues in Luxembourg. The position of Chief Justice as from 1973 has not been filled, and it would be idle to speculate who will be appointed. Mr. Justice Henchy's previous experience as a Professor of Jurisprudence, will be an invaluable asset to him in writing learned judgements as a Judge of the Supreme Court in succession to Mr. Justice McLoughlin. Mr. Thomas Finlay's well-deserved promotion to the High Court arises from the fact, that, in addition to his being an excellent advocate and jurist, he presented the Irish case against the British authorities in Northern Ireland before the European Commission of Human Rights in Strasbourg with a mastery that will long be remembered. The strong case which he and the Attorney-General, Mr. Colm Condon, had made, ensured that the Commission of Human Rights admitted five grounds as worthy of further consideration.

Senator Robinson's Bill

This is not the first time that a useful social measure has been attacked for the wrong motives. A Bill, introduced by Senator Professor Mary Robinson and Senator John Horgan, purported to restrict the sale of contraceptives to hospitals, dispensaries, registered chemists and other places licensed by the Minister for Justice. When the matter came before the Senate in June, the Government refused a first reading, on the ground that it would introduce similar legislation. The Bill could not then be published save at private expense, and it was unjustly attacked on the ground that it would allow contraceptives to be sold at random everywhere, and would cause serious disruption. When the Bill was finally published at the end of October, the severe restrictions as to the sale of contraceptives were first brought to public attention to the extent that an editorial in the conservative *Sunday Independent* of October 29th even praised it.

THE SOCIETY

Proceedings of the Council

MEETINGS OF THE COUNCIL

SEPTEMBER 28th

The President in the chair, also present: Messrs W. B. Allen, Walter Beatty, Bruce St. J. Blake, John Carrigan, Anthony E. Collins, Laurence Cullen, Gerard M. Doyle, Joseph L. Dundon James R. C. Green, Gerald Hickey, Michael P. Houlihan, Nicholas S. Hughes, Thomas Jackson Jnr., John B. Jermyn, Francis J. Lanigan, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, Patrick C. Moore, George A. Nolan, Patrick Noonan, John C. O'Carroll, Peter E. O'Connell, Thomas V. O'Connor, Patrick F. O'Donnell, William A. Osborne, Peter D. M. Prentice, Mrs. Moya Quinlan, Ralph J. Walker.

The following was among the business transacted.

Lecturer and examiner in tax law

Mr. Michael O'Keeffe, B.L., was appointed in place of Mr. Diggin owing to the unforeseen inability of the latter to lecture on dates which would not be in conflict with university lectures.

Circuit Court costs

It was reported that the making of new scales of Circuit Court costs including the costs of the increased jurisdiction have been postponed due to failure to reach agreement on the scale of counsels' fees to be included in the new rules. The Minister was prepared to sign the rules already submitted giving effect to solicitors' scales of costs but the Rules Committee were divided on this proposal and no rules have yet been made. It was decided that a letter should be written to the appropriate authorities that rules should be made dealing with solicitors' remuneration leaving counsels' fees to be dealt with separately.

Land Registry delays

A member wrote to the Society enclosing a list of 80 dealings lodged with the Land Registry from as far back as March 1969 in which the title had not yet been registered It was decided that the matter should be taken up with the Department of Justice and with the solicitor members in Dail Eireann.

Private Motorists Protection Insurance Co.

The P.M.P.A. offer a legal service to their members on the same lines as the A.A. A member wrote to the Society enclosing a letter written by the P.M.P.A. Insurance Co. offering to act for the member in pursuing a claim for damages to his car in which the P.M.P.A. Insurance Co. had third party liability only. Correspondence between the Society and the P.M.P.A. Insurance Co. disclosed the information that the company had no contractual insurance interest in the case. They do, however, wish to operate a practice whereby a member of the Association would be entitled to a legal service in return for his membership subscription. It was decided that the P.M.P.A. be informed that the type of letter written in this case is objectionable on the ground that there is a selection of a particular solicitor to represent members and that if the Association wish to provide a legal service the client should have the right to choose his own solicitor.

Professional privilege

Members acted for an insurance company which was defrauded by one of their employees in a substantial sum. The employee was convicted and served a term of imprisonment. Members were instructed to institute proceedings against four banks for negligence. The proceedings had been settled. Neither members' clients nor the banks wanted the publicity of Court proceedings. Prior to the discovery of the fraud the employee had consulted member in connection with the purchase of a house and paid the sum of £200 towards the deposit. Members still hold the deposit although they have been asked by this client to return it. They know that the money rightfully belongs to the insurance company and the company has information as to the position and have asked them to pay it over in part satisfaction of the employee's liability. The Council stated that the matter is covered by professional privilege and that no information or payment should be given to the company without the client's consent. If the company obtained a)garnishee order the position would be different.

Delay in the publication of statutes

It was decided that the matter be taken up with the solicitor representatives in the Oireachtas.

Estate duty on property sold by personal representatives in the course of administration

The Secretary drew attention to the provisions of Section 32 of the Finance Act, 1971, which amended Section 8 (4) of the Finance Act, 1894. The effect of this amendment seems to be that a purchaser from personal representatives of leasehold property in the course of administration may have to require a certificate of discharge from death duties. The Secretary had been in communication with the Estate Duty Office and while it appeared that this was not the intention of the amendment the position seems to be doubtful. It was decided to send a case to counsel for advice.

Blackhall Place

A request has been received from the Dublin Corporation for permission to use the premises as a transit centre in the event of an influx of refugees from Northern Ireland in the case of an emergency. It was decided to accede to the application subject to a complete indemnity to be drafted by the Society's solicitors against any liability for damage to persons or property.

Irish Complaint before European Commission in Strasbourg

Here is the text of the statement issued by the European Commission of Human Rights.

On October 1st, 1972, the European Commission of Human Rights decided after hearings of the parties which took place in Strasbourg from September 25th to 29th, 1972, that certain parts of the application submitted by the Government of Ireland under Article 24 of the European Convention on Human Rights and Fundamental Freedoms were inadmissable, but admitted certain other parts of that application for further investigation without in any way prejudging its opinion as to whether or not the complaints concerned showed a violation of the Convention.

The Commission first noted that, as the result of an undertaking given by the British Government to the effect that there would be no prosecutions of offences under the Northern Ireland Act, 1972, for acts or omissions which occurred prior to the enactment of that Act, the Government of Ireland have withdrawn their application, submitted under Article 7 of the Convention, in relation to that Act. The Commission therefore decided to strike this application off their list of cases.

The Commission then declared inadmissible the Irish Government's complaint under Article 2 (right to life) of the Convention (the causing by the security forces of deaths in Northern Ireland in August and October 1971 and in Derry on January 30th, 1972) that there has been on the part of the British Government an administrative practice failing to protect the right to life. The Commission found that no such practice had been established by the Irish Government and that therefore the deaths concerned would have to be examined individually and not as examples of a practice and it would have to be shown by the Irish Government that the domestic remedies available in Northern Ireland had been exhausted in each case (Article 26). The Commission, however, found that the Irish Government had now shown this to be the case and that, therefore, this part of the application was inadmissible.

Methods of interrogation to be further investigated

The Commission then considered the Irish Government's allegation that the methods of interrogation of persons detained and interned violated Art. 3 of the Convention and that such methods amounted to an administrative practice.

The British Government denied that there was, or had been, any treatment of detained or interned persons in a manner contrary to Article 3 and it then submitted that certain techniques of interrogation previously authorised had been discontinued.

The Commission found that the treatment complained of, particularly the methods of interrogation, did constitute an administrative practice and called for further investigation in connection with Article 3.

Furthermore, the Commission declared admissible the allegations of the Irish Government concerning internment without trial and detention as carried out in Northern Ireland under the Civil Authorities (Special Powers) Act, 1922, and the regulations made under it. In this connection the Commission considered the British Government's notices of derogation under Article 15 of the Convention and also noted that both parties agreed that a public emergency existed within the meaning of Paragraph (1) or Article 15. The question remained whether the measures taken by the British Government in connection with detention and internment exceeded the limits under Paragraph (2) of Article 15 in that they were not strictly required by the exigencies of the situation. The Commission found that, in accordance with its established practice, this question could not be decided at the admissibility stage but should be made the subject of an examination on the merits. The Commission accordingly admitted the matters relating to internment and detention in connection with Articles 5 (the right to liberty), 6 (right to fair hearing in determination of civil rights), and 15.

Internment exercised with discrimination

The Commission next considered the Irish Government's allegations that the detention and internment power were exercised with discrimination on the grounds of political opinion and were thus a breach of Article 14 of the Convention (which prohibits discrimination on various grounds). The Commission here found that these allegations under Article 14, with respect to the right guaranteed under Articles 5 and 6, in conjunction with Article 15, were admissible.

The Commission finally considered the Irish Government's allegation that the administrative practices referred to also constituted a violation of Article 1 of the Convention, which provides that "the high contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this convention". The Commission decided to reserve to an examination of the merits the issue whether there was any breach of Article 1 of the Convention. This part of the application is, therefore, also admitted.

The Commission's decision, which will be published in due course, will summarise the parties' arguments and explain further the reasons of the Commission's decision.

The Commission has now under Article 28 to establish the facts of the case and to put itself at the disposal of the parties with a view to securing a settlement. It will first invite the Irish and then the British Government to submit their written observations on the merits of the admitted complaints and will later decide on its further procedure.

STRASBOURG CASE ADMITTED

Human Rights Commission to take up Complaints against Britain

The European Human Rights Commission yesterday admitted five of the seven charges brought by the Government against Britain to further investigation, including one which will determine whether the measures taken by the British Government under the Special Powers' Act—among them internment—were strictly required by the situation.

While the outcome of the hearings which lasted all of last week has been obviously very satisfactory to the Government, the Commission in announcing it underlined that admission of the application in no way prejudged its opinion as to whether or not the complaints concerned violated the European Convention of Human Rights and Fundamental Freedoms.

Of the seven charges, two are not to be taken any further. One of them, relating to the Northern Ireland Act, 1972, involved retrospective legislation, but the British Government pointed out that no offences would be prosecuted under it which occurred before the Act was passed, and so the Irish Government withdrew the charge.

The Commission also found that the Government had not made out a case proving that the killing by British troops in the North at various dates last year and on Bloody Sunday in Derry last January, were the result of "administrative practice", and did not admit the charge.

The most important finding of the Commission, however, admitting part of the Irish application, is the one relating to the Special Powers Act which has never before been challenged in an international setting, largely because of the British Government's derogation from the Convention. However, the Irish case resting on Article 15, contended that this derogation only had effect "to the extent strictly required by the exigencies of the situation", and the Commission concluded that this could only be decided by examining the merits. To this extent, the Special Powers Act and, more precisely, the internment without trial and detention, are to be investigated.

The investigatory stage will also include examination of the Government's charges involving interrogation methods, and discrimination on political grounds. For the first time, too, the Commission has accepted a submission that charges should be investigated accusing the British Government of failing to "secure" the rights and freedom of people in the North, a decision which extends the application of the Convention on Human Rights as it deals with broad responsibility of Governments rather than particular responsibility.

The Procedure

Under the procedure of the European Commission, Ireland would now have to prepare a submission on the merits of the case within two months of hearing the full judgment of the Commission—which is not expected to be ready for a month or two—following which Britain will have two months to prepare its reply. A group of Commissioners will then visit Ireland to take depositions and try to effect a friendly settlement. If this is successful, the Commission will draw up a report of the case for the Committee of Ministers and Secretary-General of the Council of Europe for publication and this will consist of a brief recital of the facts and a statement of the solution reached.

However, if at this stage no solution is achieved, the Commission will draw up a report on the facts and state its opinion on whether the Convention has been breached. The Committee of Ministers and Ireland and Britain will receive copies of this report, which will not be published. It can contain proposals for a settlement, if the Commission thinks necessary.

It is only at this stage that the Dublin Government will have to consider whether to bring the case to the European Court of Human Rights. Both countries would be obliged to accept the Court's verdict, from which there is no appeal, and the Convention provides that if there has been a violation and under British law only partial reparation can be made, "the decision of the court shall if necessary afford just satisfaction to the injured party".

On the other hand, if the Irish Government does not decide within three months after the report is in its hands to go to the Court, the Committee of Ministers of the Council of Europe must decide by a two-thirds majority whether the Convention has been violated and, if so, within what period Britain must act to remedy the grounds of complaint. It is only if satisfactory action is not taken that the facts are made public by the publication of the report. As the Commission stresses, the procedure is designed at all stages to try to conciliate and not to condemn.

The Irish case argued last week was based on four objectives laid out in the initial submissions. These were to ensure that the British Government secured for everyone in the North the basic rights and freedoms under the convention of life and liberty and particular rights described in various articles of the Convention; to bring breaches of certain articles to the attention of the Commission; to determine how far some of the legislation and administrative practices in the North were compatible with the Convention and to ensure that Britain observed the engagements undertaken by signing the Convention.

Vindication of Irish case

One possible step now could be pressure by the Irish Government on the British to drop all practices which could be described as brutal or as torture. There is a possibility that if the Irish Government was fully convinced that such practices had indeed ceased then it would consider some form of withdrawal.

On the torture charges, however, the Irish case was on firmer ground. The position was strengthened by the evidence of a leading Dutch psychiatrist on the effects of torture and more than 100 individual cases were also entered in the evidence. The British reply that domestic remedies were available to people alleging that they had been tortured was countered on the ground that, effectively, no domestic remedy is adequate. The consequences of torture from a psychological point of view cannot be determined precisely in money terms in the way that physical damage in a road accident, for example, can be assessed. And this argument was presented together with the contention that after the Compton and Parker reports, it could be sustained that an administrative practice of torture involving hooding, wall-standing, lack of food and sleep, and noise, had existed and that even if it had stopped, as the British contended, this needed to be proved.

Under the heading of discrimination, the Government's arguments were restricted to claiming that activities by British troops, such as house-searching, were conducted in a politically discriminatory fashion but no allegations were made of religious discrimination.

The British reply essentially was that discrimination under the Special Powers Act (by, for example, troops regularly searching one man's house) had a remedy in the possibility of asking the High Court for an Order showing *mala fides*. This, the Irish representatives argued, was virtually impossible to do in practice.

Irish Times (2nd October 1972)

Spring Seminar of Solicitors in Galway on Tax Law

The Spring Seminar of the Society of Young Solicitors was held in the Great Southern Hotel, Galway, on 25th and 26th March 1972. The seminar was arranged with the Association of Provincial Solicitors, and there was a large attendance of 250. The first very technical paper was given by Mr. Joseph Charleton, Accountant, on "Shares in Private Companies and Estate Duty". He emphasised that the Finance Act, 1965, was mainly devised to stop up loopholes in Estate Duty which had been discovered by the combined wits of the legal and accountancy profession. In practice almost every source of income goes on producing capital and it is a simple and effective process to capitalise the annual income tax return. Examples of those who would benefit by this form of capitalisation would be: (1) The family businessman who has built up a large business in his sole name with business properties and a good house. His life insurance might often be inadequate. In this case the businessman should doubtless convert his business into a limited company and make a settlement of the shares among his family. As regards trading companies, the control will eventually be decided by the destination of the profits when formed, and, in effect, the gift comprised in the settlement must be unconditional, absolute and final. In the new company, in order to avoid heavy taxation, the settlor must make himself a minority shareholder. He must divest himself of control, and he will only feel safe when the five years period has elapsed.

(2) The private individual with a large portfolio of investments and a good house. Here the keypoint is the intention of the settlor. Where he is likely to be survived by his wife and children, perhaps the best way is to make certain outright gifts to his wife and arrange that she and himself are minority shareholders in the family investment company which will be mainly for his children and other relatives.

Mr. Garrett Gill, S.C., gave the second lecture on "Trusts and Settlements", and emphasised that the commonest form of settlement until recently was the marriage settlement. However, recent legislation, in particular Section 28 of the Finance Act, 1965, and Section 41 of the Finance Act, 1971, had drastically limited the benefits to be derived from such a course. The word "Settlement' has been differently defined at various times by various Acts, and cognisance would have to be taken of Section 2 of the Settled Land Act, 1882, followed by the decision of Palles C.B. in *Attorney-General v Power* (1906) 2 I.R., and of Kenny J. in re *Oranmore and Browne—Revenue Commissioners v. Royal Trust Co. Ltd.* (1971). The useful exemption to estate duty under Section 5 (2) of the Finance Act, 1894, was also fully considered. A wider definition of the term "Settlement" was provided by Section 20 (5) of the Finance Act, 1949, as amended by the Finance Act, 1941, and by Section 21 of the Finance Act, 1961. The lecturer stated that the Revenue Commissioners are in the happy position of making words mean what they want them to mean, and the broad definition was thus carried further in Section 447 of the Income Tax Act, 1967.

Before 1965, with regard to discretionary settlements, there was no estate duty payable on the death of any of the class of possible beneficiaries save in very exceptional circumstances. There are excellent precedents of discretionary trusts in successive editions of Potter and Monroe's *Tax Planning,* which are worth consulting. In considering the framing of discretionary trusts, the following provisions will have to be taken into consideration: (1) Section 28 of the Finance Act, 1961, as amended by Section 35 of the Finance Act, 1971; (2) Section 21 of the Finance Act, 1965; and (3) Sections 438, 443, 444 and 445 of the Income Tax Act, 1967. The effect of each of these sections will require very careful consideration.

The next paper was given by Mr. P. J. Egan, Principal Inspector of Taxes, on the Irish Value Added Tax which is to be introduced on 1st November 1972. The present system of sales tax was changed primarily as a requirement of entry into the Community (although the Italians have wisely refrained from introducing it yet).

Other alleged advantages are that "it makes evasion more difficult and that it will relieve the element of double taxation", doubtless by vastly increasing the cost of living. Value Added Tax is a tax on consumer expenditure which is levied in direct proportion to the price of goods and services supplied regardless of the number of stages in the production. The total tax is collected from the person who sells the goods or renders the services. The following are the essentials of liability to this tax: (1) A taxable activity must be carried on; (2) by an accountable person; (3) from whom consideration must accrue. Taxable activity includes the delivery of goods and the rendering of services in the course of exercising any trade, vocation or profession. Goods given a zero rating in the Second Schedule are completely exempt from tax. The term "goods" includes most movable and immovable objects, including all land and buildings. Any person who delivers taxable goods or renders a taxable service in the course of business is deemed to be an accountable person. Farmers, fishermen and certain small traders can elect to be exempted, and special arrangements will be applied to landlords, solicitors, accountants, and veterinary surgeons. An accountable person is required to furnish to the Revenue Commissioners particulars which will enable them to register him.

Goods coming into the State will be taxed at the same rate as the delivery of goods within the State. It is to be noted that, on the delivery of land and buildings, where chargeable to lax, and on building work and repairing and maintaining buildings, only 60 per cent of the consideration is chargeable. The normal consideration is that agreed upon at the time the goods are delivered or the services are rendered.

It is to be noted that all building work, and the "delivery" of lands and buildings has been brought within the scope of this tax. However, there is no liability on the sale of agricultural land or on the sale of houses already built and occupied before November 1st next. A purchaser will have to pay this tax in respect of any house built after 1st November 1972 but will not

have to pay any tax on selling it subsequently, even if he has carried out improvements thereto. A person who has a freehold interest is regarded as making a delivery if he transfers the whole of his interest or grants a lease for more than ten years. The amount on which tax is chargeable is confined to 60 per cent of the total consideration.

The final lecture was given by Mr. E. A. Cummins, Manager of the Trustee Department of the Bank of Ireland, on the subject of "Administration of Estates". This very abstruse subject was dealt with under the following headings: The Succession Act, Domicile of Choice, Quoted Share Valuations, Policies of Life Insurance, Superannuation Funds, Joint Property, Trusts and Settlements, Discretionary Settlements, Shares in Private Companies, Interest on Estate Duty, Certificates of Discharge from Death Duties, Liquidity, Pre Death-Duty Planning, Land and Farm Values, and other matters. This lecture contains eighteen pages of close foolscap typing and Mr. Cummins gives very many useful hints in administering an estate.

It was certainly surprising that some of the most abstruse problems of any law should have attracted such a wide audience, but presumably the social events played a large part in bringing the members together.

NOTICE

It is hoped that the Special Seminar of the Young Solicitors Society, organised by the Faculty of Law of the University of Exeter in South West England, on European Community Law, on 30th September and 1st October 1972, in Dublin, will be fully reported in the December issue. It is also hoped that the Autumn Seminar, on Family Law, to be held in Waterford on 4th and 5th of November will be reported in that issue.

Use jails to eradicate pornography – Lord Longford

New laws to make it easier to jail pornographers are demanded today in the 520-page report of Lord Longford's unofficial commission on pornography. It demands prison sentences of up to three years for "blue" film makers and organisers of live sex shows. And it wants the new laws to cover radio and television, theatres and cinemas—and sex education in schools.

The young are particularly vulnerable and therefore need special protection, the report says.

It cites instances of links between pornography and criminal corruption, one of them involving a boy of seventeen. "The painful irony of the present situation is that the young—those who claim to be the most disturbed by the public violence they read about in the press—are precisely those who are, above all, being conditioned to accept, and to participate in, private violence such as we have described—the sadistic and brutal hardcore of pornography."

The commission was set up sixteen months ago by the 66-year-old Lord Longford. Among the sweeping legal changes it demands are:

A two-fold law under which it would be illegal to: Display in a street or other public place any written, pictorial or other material which was held to be indecent; produce or sell any article which outraged contemporary standards of decency or humanity accepted by the public at large.

Prosecutions and penalties

Penalties for inducing people to act in obscene shows or take part in pornographic films should be a fine or imprisonment for not more than three years, or both. Distributing or exhibiting publicly "any written, pictorial or other material which is indecent," should lead to fine or imprisonment for no longer than six months, or both. The present film censors should be replaced by a collective board of councillors, film-makers and professions most concerned with young people.

Prosecution would be easier if the report's definitions of obscenity and pornography became law and "should therefore be much more readily undertaken". Pornography it defines as that which "exploits and dehumanises sex, so that human beings are greeted as things and women in particular as sex objects".

The test of obscenity should be: "An article or a performance of a play is obscene if its effect, taken as a whole, is to outrage contemporary standards of decency or humanity accepted by the public at large."

"The proposed reform of the law relating to obscene publications would apply to sex education in schools. It would then be illegal to show children under educational auspices any material which may not be shown in a public place. We recommend the recognition that sex education is primarily an affair for parents. No local authority or school should have the right to arrange programmes of sex education without full consultation with the parents concerned."

The report says the number of pornographic book shops has doubled in the last three years and that the "blue" films trade has recently created its first millionaire.

In a breakdown of the pornography trade, the report says that the mail-order business will continue to increase unlss it is stopped.

In a chapter devoted to violence and pornography the report says there is clearly a link between the two.

The two most common effects of pornography, it says, are "an ever-growing appetite for pornography until it becomes a positive addiction leading to all sorts of deviant obsessions and actions" and "a deadening process, a diminished sensitivity, a ceasing to be shocked."

Irish Times (20 September 1972)

EUROPEAN SECTION

THE IMPACT OF EEC COMPANY LAW ON THE COMPANY LAW OF IRELAND

by G. M. GOLDING

In reply to a Parliamentary Question recently, the Minister for Industry and Commerce stated that "EEC Directives will necessitate numerous changes in existing company law". However, he later added, "Only one Directive on company law has so far been adopted by the EEC."

Such a comment may escape notice by the lay public-but now that this country is over the threshold of the Common Market, legislators and the legal profession will have to become more aware of the effect of EEC law on our existing law, and cease thinking of the mass of Common Market legislation as an amorphous body of rules which have little or no effect in practice.

In fact, while the amount of "secondary" or "subsidiary" legislation—in other words, Regulations, Directives and Decisions of the Council and Commission of the European Communities under Article 189 of the Treaty of Rome—may appear imposing and formidable, a closer examination reveals that much of it is of unexciting content for the lawyer.

When, in turn, the part which is "lawyers' law" is extracted and analysed, a very small proportion of the whole will be found to necessitate the amendment of existing Irish law. This is well exemplified by the British European Communities Bill (which may have become an Act by the time this paper is published). The whole Bill is comprised of only thirty-seven pages, and of these all the provisions required to incorporate EEC company law into U.K. company law are contained in three pages (clause 9).

No more is required of member States than the approximation of the respective national laws to the extent required for the Common Market to function as a whole. For example, in Britain where the *ultra vires* rule remained in full force, the EEC Directive on company law necessitates (as wll be seen) a radical amendment; whereas, in Ireland—the *ultra vires* rule having been extensivey modified by the 1963 Act—it appears that no amendment at all will be required to give effect to this part of the Directive.

Finally, therefore, there is no question of setting up a new system of company law for the Community; all that is involved is a series of modifications of the company law of each member State to be effected by the institutions of that State and by its own legal machinery.

Before considering the provisions of the one and only existing EEC Directive on company law, it should be mentioned that there are other Proposals for Directives affecting company law, under consideration. They will deal, broadly, with company accounts, share capital, mergers and management. All these (and the sole existing Directive) derive their origin from Article 100 of the EEC Treaty, which obliges the Council, acting on a Proposal of the Commission, to issue Directives for the approximation of such legislative and administrative provisions of the member States as have a direct incidence on the establishment or functioning of the Common Market. Company law falls within the scope of that Article.

Article 58 of the Treaty is global, by nature self-executing, and provides for the assimilation of companies of member States to natural persons for the purposes of effecting the right of establishment and free movement of capital within the Common Market.

Article 54 (2) provides for the implementation of the general programme relating to the right of establishment by way of Directives; and Article 54 (3) (g) provides for the harmonisation of member States' company law relating to the protection of the interests of members and of third parties.

In addition to this programme of harmonisation, draft Conventions are in course of preparation pursuant to Article 220 which provides that member States shall negotiate with each other for (inter alia) the mutual recognition of companies, the maintenance of their legal personalty when the registered office is transferred from one member State to another, and the merger of companies subject to the municipal law of different member States. Under this Article a Convention on the mutual recognition of companies has already been negotiated and was signed by the six original member States on 29th February 1968.

Ultimately, there is the most ambitious project of all —the draft Regulation relating to the setting up of a European Company. (There are two papers dealing with the European Company in the *Gazette,* Vol. 64, No. 4A, September/October, 1970.)

As we are concerned only with the effect of the single operatve Directive relating to company law, at this stage it may not be out of place to remind the reader that, in Common Market parlance, a Directive (as defined by Article 189 of the Treaty) shall be binding, as to the result to be achieved, upon each member State to which it is directed, while leaving to the national authorities the choice of forms and methods.

The first Directive applies to both public and private, profit-making, limited liability companies (and also, as a matter of interest, probably to limited partnerships). What modifications of our law will be required? They fall into two groups: (1) publicity and (2) validity of transactions entered into by the company.

(1) Publicity

All those documents relating to a company which presently have to be filed in the Companies Office will, in addition, now have to be published in some official organ—presumably *Iris Oifigiuil.* Also, particulars of the appointment and termination of appointment of persons who are (a) empowered to represent the company *vis-a-vis* third parties and in litigation and who (b) take part in the administration, supervision or control of the company will have to be filed and published. likewise.

Companies with net assets in excess of a given figure

(yet to be determined) will be obliged to file and publish their audited balance sheets annually. Probably, most Irish private companies will be exempt from this provision by virtue of the amount of their net assets not exceeding the amount—still to be determined—which will exempt them. (The second Directive will state the relevant amount, and this part of the first Directive does not become operative until then.)

Company notepaper and invoices are to mention : (i) the registration number of the company and its country of registration; (ii) the type of company it is; (iii) its registered office; (iv) whether it is in liquidation. If the amount of capital is mentioned, reference wil have to be made to the subscribed and paid-up capital.

(2) Validity of transactions

It is noteworthy that the rule in *Kelner v Baxter* (1866) L.R. 2 C.P. is codified in Article 7 of the Directive : pre-incorporation agreements, while not binding on the company subsequently incorporated, are binding on the parties thereto. However, the Directive seems to be neutral on the question of ratification.

Next, the rights of the third party are established in answer to his questions, "Is the transaction within the power of the company?" and, "Is it within the apparent authority of the person I am dealing with?"

The *ultra vires* rule, prior to the 1963 Act in Ireland and up to the enactment of the European Communities Bill in Britain, may briefly be stated as rendering void any transaction not covered by the objects clauses of a company as set out in its Memorandum of Association. In 1963, Section 8 of our Companies Act in fact *preserved* the rule, but modified it : "Any act or thing done by a company ... shall be effective in favour of any person relying on such act or thing who is not shown to have been actually aware, at the time when he so relied thereon, that such act or thing was not within the powers of the company."

It is submitted that this already gives effect to the result envisaged by Article 9 (1) of the EEC Directive, which is worth setting out in full :

> The company shall be liable to third parties in respect of transactions carried out by its authorised officers, even if such transactions are unconnected with the objects of the company, unless the said transactions exceed the powers that the law confers or allows to be conferred on such authorised officers.
>
> However, member States may provide that the company shall not be liable when such transactions are outside the objects of the company, if it proves that the third party knew that the transaction went beyond those objects or could not be unaware of it, in view of the circumstances, except that for this purpose publication of the objects clauses shall not by itself be sufficient to consitute such proof.

On the other hand, our statutory draughtsman may deem it wiser, in the interests both of harmonisation of laws and of clarity, to adopt the new British provision (Section 9 (1) of the European Communities Bill) :

> In favour of a person dealing with a company in good faith, any transaction decided on by the directors shall be deemed to be one which it is within the capacity of the company to enter into, and the power of the directors to bind the company shall be deemed to be free of any limitation under the Memorandum or Articles of Association; and a party to a transaction so decided on shall not be found to enquire as to the capacity of the company to enter into it or as to any such limitation on the powers of the directors, and shall be presumed to have acted in good faith unless the contrary is proved.

One other provision crystallises the rights of third parties.

Irregularities in the appointment of officers having the power to bind the company cannot be pleaded against third parties when such appointment has been made public, unless the company can prove that the third party had notice of the irregularity.

It follows that the difficulties created by *Royal British Bank v Turquand* (1856) 6 E.&B. 327, are avoided by the Directive. The essence of the rule in *Turquand's case* is that a third party dealing with a company is not bound to ensure that all the internal regulations of the company have in fact been complied with as regards the exercise and delegation of authority. Under the Directive any limitation on the authority of the company's officers imposed by its Memorandum or Articles of Association or by a resolution are without effect against third parties even when made public, unless—again—the company can prove that the third party had notice of the irregularity : what matters is the ostensible and not the actual authority.

The last part of the Directive deals with "invalidation" or "nullity", a phenomenon apparently peculiar to French and Belgian company law. The grounds for nullity include : absence of charter, illegal nature of the company's objects, incapacity of all the founding members of the company. Its effect on Irish (and U.K.) company law will apparently be nil.

The other Directives will have to be dealt with, like all EEC subsidiary legislation, as and when they become effective. (It will be appreciated from the foregoing discussion that the result of the first Directive is not to transform our company law into some strange continental system, but merely to tie up some loose strings which we probably would have done ultimately.

At present, company growth is frustrated by the variance of company laws and fiscal provisions of each member State of the EEC in such a way as to maintain a fragmented character of the Community. At the moment, a company may not expand across its national frontiers into the other member States without forming a series of subsidiary companies. It is virtually impossible for any company to move its seat from one country to another, and it is impracticable for a company to form a merger with another company from a different member State.

In order to produce in the Common Market the degree of concentration of companies which is desirable, it is necessary for them to break out of their national confines. This will be achieved (a) by harmonisation of existing company laws by Directives, and (b) by the new departure still to become effective, namely the European Company.

DUBLIN SOLICITORS' BAR ASSOCIATION

At a recent function held at the Ballymascanlon Hotel, Co. Louth, the president of the Dublin Solicitors Bar Association, Mr. Gordon A. Henderson, presented the president of the Belfast Solicitors Association with a presidential medallion for the Belfast Association. The medallion, which is similar in style to that worn by the president of the Dublin Association, has as its main features the arms of the city of Belfast. The function was attended by a number of officials of both Associations and it was generally agreed that the gesture was a most timely one.

European Communities Bill, 1972

Explanatory Memorandum

The purpose of the Bill is to make provision so as to enable Ireland to fulfil the obligations which will arise from her membership of the European Communities, namely, the European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM). It is proposed to achieve this by giving in the State the effect and application required by the treaties governing the European Communities to the provisions of the treaties and of the acts adopted by the institutions of the Communities (i.e. Secondary legislation) and by authorising the making of Ministerial regulations to enable, where this is not otherwise achieved, the provisions of the treaties and of the acts to be fully effective in the State.

Section 1 gives the definition of "the European Communities" and of "the treaties governing the European Communities". The latter definition consists of a listing of the treaties which established the three Communities and of the treaties and other acts amending and supplementing them, together with the Treaty of Accession of Ireland (and the other applicant countries) to the European Economic Community and the European Atomic Energy Community and the Council Decision concerning accession to the European Coal and Steel Community. The listing is completed so as to include any treaties or other acts amending or supplementing those listed which have entered into force before the date of accession (1 January 1973). Any such treaty or act entering into force between the date of signature of the Treaty of Accession (22 January 1972) and the date of accession will not be included in the definition of "the treaties governing the European Communities" unless the Government make an order, to be approved in draft by both Houses of the Oireachtas.

Section 2 provides that the treaties governing the European Communities and the acts adopted by the institutions of the Communities shall, with effect from 1 January 1973, be binding on the State and shall be part of the domestic law of the State under the conditons laid down in the treaties. This provision follows from Article 2 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties which is annexed to the Treaty of Accession and which states as follows:

> From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions of the Communities shall be binding on the new member States and shall apply in these States under the conditions laid down in those Treaties and in this Act.

The provisions of the treaties and of the acts of the institutions fall into two categories, namely, those which are directly applicable in member States and those which are not directly applicable and which require implementing measures by member States. Insofar as secondary legislation is concerned, that which is directly applicable is comprised mainly of regulations in the case of the EEC and EURATOM and decisions in the case of the ECSC and that which is not directly applicable is comprised mainly of directives and decisions in the case of the EEC and EURATOM and recommendations in the case of the ECSC. By virtue of **Section 2,** the provisions of the treaties and of existing and future secondary legislation of the Communities will have the effect and application in the State required by the treaties.

Section 3 confers power on a Minister to make regulations to enable **Section 2** to have full effect. Ministerial regulations will be required mainly in order to implement in the State the provisions of the treaties and of the secondary legislation of the Communities which are not directly applicable. They will also be required to enable certain directly applicable provisions of the treaties and of the secondary legislation to have full effect in the State. The regulations may contain incidental, supplementary and consequential provisions, including provisions for repeal, amendment or application of other law.

Section 4 gives statutory effect to regulations made under **Section 3.** Provision is included for such regulations ceasing to have effect unless they are confirmed by Act of the Oireachtas passed not later than the end of the year following that in which they are made. The section also provides for the summoning of Dail Eireann at the request of a majority of the members if, when such regulations are made and before they are confirmed or cease to have effect, the Dail stands adjourned for more than ten days.

Section 5 provides for short title.

There are two Appendices to this Memorandum. Appendix I contains a list of the secondary legislation of the Communities as at 31 May 1972 which will come into force in Ireland on or after the date of accession. Appendix II contains a list of the principal Irish enactments which will be affected by Community law. This list is a comprehensive one but it does not purport to be exhaustive.

It is to be noted that Part 2 of the British European Communities Act 1972 has not been re-enacted in the Irish Bill and consequently no provision appears to have been made for listing specified repeals or to eventually apply the European Community's common customs tarriff in Ireland, or to set up the Intervention Board for Agricultural Produce, or to finance the Sugar Board under new arrangements, or to bring Company Law in Ireland in conformity with Community arrangements, or to provide for compatibility in restrictive trade practices. It is not made a criminal offence to give false evidence on oath before the European Court of Justice or to disclose EURATOM classified information to unauthorised persons.

Under Section 2 of the Bill, not only the treaties governing the European Communities which are fully listed in Section 1, but also the Acts adopted by the Institutions of the Community, shall be binding on the State as part of the domestic law of Ireland. These Acts comprise directives, regulations, recommendations and decisions and can be described as the secondary legislation of the Communities. These regulations, directves, recommendations and decisions, are set out in full in Appendix I to the Explanatory Memorandum under the following headings.

(A) BUDGETARY POLICIES

(1) European Communities—1 Regulation of 1971.

(2) European Coal and Steel Community—11 Decisions.

(3) European Communities—2 Decisions.

(B) COMMERCIAL POLICY
(1) European Economic Community—30 Regulations.
(2) European Coal and Steel Community—1 Recommendation and 2 Decisions.
(3) European Economic Community—16 Decisions.

(C) COMMUNITY INSTITUTIONS
(1) European Economic Community—41 Regulations.
(2) European Atomic Energy Commission—48 Regulations.
(3) European Communities—19 Regulations.
(4) European Coal and Steel Community—11 Decisions.
(5) European Economic Community—7 Decisions.
(6) European Atomic Energy Committee—3 Decisions.
(7) European Communities—5 Decisions.

(D) COMPETITION
(1) European Economic Community—13 Regulations.
(2) European Coal and Steel Community—29 Decisions.

(E) CUSTOMS QUESTIONS
(1) European Economic Community—85 Decisions.
(2) European Economic Community—7 Decisionsi nad
(2) European Economic Community—7 Decisions and 10 Directives.
(3) European Coal and Steel Community—1 Decision.

(F) ECONOMIC AND FINANCIAL AFFAIRS
(1) European Coal and Steel Community—1 Decision.
(2) European Economic Community—11 Decisions and 7 Directives.

(G) EURATOM
(1) European Atomic Energy Community—8 Regulations, 16 Decisions, 4 Directives.

(H) RIGHT OF ESTABLISHMENT
(1) European Economic Community—37 Directives.

(I) SOCIAL AFFAIRS
(1) European Economic Community—9 Regulations.
(2) European Coal and Steel Community—2 Decisions.
(3) European Economic Community—14 Decisions. 4 Directives.

(J) TAXATION
(1) European Economic Community—6 Directives.

(K) TECHNICAL STANDARDS
(1) European Economic Community—29 Decisions.

(L) TRANSPORT
(1) European Economic Community—19 Regulations.
(2) European Coal and Steel Community—9 Agreements, 1 Recommendation.
(3) European Economic Community—17 Decisions, 4 Recommendations, 4 Directives.

(M) AGRICULTURAL FINANCE (EAGGF)
(1) European Economic Community—46 Regulations.
(2) European Economic Community—2 Financial Regulations, 1 Notice.

(N) AGRICULTURAL STRUCTURE
(1) European Economic Community—10 Regulations.
(2) European Economic Community—1 Decision, 5 Directives.

(O) AGRICULTURE (Certificates, Levies, Restrictions, etc.)
(1) European Economic Community—52 Regulations.

(P) AGRICULTURE (Consultation Committees and General Matters)
(1) European Economic Community—9 Regulations.
(2) European Economic Community—23 Decisions.

(Q) ANIMAL FEEDING STUFFS
(1) European Economic Community—1 Decision, 5 Directives.

(R) ANIMAL HEALTH
(1) European Economic Community—12 Directives, 4 Decisions.

(S) BEEF AND VEAL
(1) European Economic Community—65 Regulations.

(T) CEREALS
(1) European Economic Community—107 Regulations.

(U) CERTAIN PROCESSED AGRICULTURAL PRODUCTS
(1) European Economic Community—30 Regulations.
(2) European Economic Community—1 Decision.

(V) EGGS AND ALBUMENS—FLAX AND HEMP
(1) European Economic Community—30 Regulations.
(2) European Economic Community—11 Regulations.

(W) FISHERIES
(1) European Economic Community—29 Regulations.

(X) FOOD STANDARDS
(1) European Economic Community—15 Directives, 1 Decision.

(Y) FORESTRY
(1) European Economic Community—4 Directives.

(Z) FRUIT AND VEGETABLES
(1) European Economic Community—64 Regulations, 1 Decision, 2 Directives.

(AA) PROCESSED FRUIT AND VEGETABLES
(1) European Economic Community—14 Regulations.

(BB) HOPS—LIVE PLANTS AND FLOWERS
(1) European Economic Community—2 Regulations.
(2) European Economic Community—12 Regulations, 1 Directive.

(CC) MILK AND MILK PRODUCTS
(1) European Economic Community—101 Regulations.

(DD) OILS AND FATS
(1) European Economic Community—113 Regulations, 1 Decision.

(EE) PIGMEAT
(1) European Economic Community—42 Regulations, 1 Decision.

(FF) PLANT HEALTH
(1) European Economic Community—3 Directives.

(GG) POULTRY MEAT
(1) European Economic Community—9 Regulations.

(HH) RICE
(1) European Economic Community—46 Regulations.

(II) SEEDS AND PROPAGATING MATERIAL
(1) European Economic Community—1 Regulation, 2 Decisions, 14 Directives.

(JJ) SUGAR
(1) European Economic Community—110 Regulations.

(KK) TOBACCO
(1) European Economic Community—13 Regulations.

(LL) WINE
(1) European Economic Community—68 Regulations, 1 Directive.

Appendix 2 sets out a list of existing Irish legislation which will be affected by Community Law. This includes *inter alia*

(1) the provisions of the Land Act, 1965, regarding the right of establishment in certain cases;

(2) the provision of the Companies Act, 1963, regarding the distribution of accounts in certain cases;

(3) the provision of the Road Transport Acts restricting liberalisation of licensing requirements for specified types of transport;

(4) the provision of the Aliens Act, 1935, and Aliens Order restricting the free movement of persons and services;

(5) the provision of the Court of Justice Acts in so far as they prohibit the European Court of Justice from assuming jurisdiction to give preliminary rulings in conditions contemplated by the Treaty of Rome, and finally

(6) the Enforcement of Court Order Acts, 1926 and 1940, by which henceforth certain decisions of the Community Institutions will have to be enforced.

There appear to be altogether 1095 Regulations, 161 Directives, 6 Recommendations and 203 Decisions which will become part of Irish domestic law on 1 January 1973.

BOOK REVIEWS

International Institute for Legal and Administrative Terminology. French-English glossary of French Legal Terms on European Treaties. London, Sweet & Maxwell, and Munich, Langenscheidt, 1972; 8vo; pp. 64; £1.50.

This little glossary is absolutely indispensable to all practitioners who will have business to transact with the European Commission, or the European Court of Justice. It is the twelfth volume of the European glossary of Legal and Administrative Terminology. It explains that a "demande reconventionelle" is a counterclaim and that a "décision à titre préjudiciel" is nothing less than a preliminary ruling. The practitioner who will have mastered the terms in this little book will have no difficulty in discussing legal problems with his French colleagues.

The Lawyer's Diary—1972-1973 edited by J. F. Mason and Sweet & Maxwell's Legal Editorial Staff; London, Sweet & Maxwell, 1972; 8vo; pp. 190, plus single page diary for every working day (Monday to Friday).

This is a complimentary volume to Butterworth's "Lawyer's Remembrancer" inasmuch as what is not contained in the one volume is likely to be contained in the other. This diary contains calendars from 1971 to 1975, and methods of ascertaining any day of the week from 1851 to 2000, it also contains English postal information, conveyancing costs, probate fees, bankruptcy lists, and British Income Tax. The large single page for appointments on working days is a great boon.

The Lawyer's Remembrancer edited for 1973 by A. L. Summers; London, Butterworth, 1972; 12vo; pp. 350 plus 52 weekly calendar; £2.60.

Messrs Butterworth are to be congratulated upon their annual publication, *The Lawyer's Remembrancer,* which contains much useful information, such as names of High Court and Circuit Court Judges, Recorders, Circuit Administrators, Stipendiary Magistrates, Under-Sherriffs, Legal Aid Offices, College of Law and Council of Education, Law Report Abbreviations, Architect's Fees and Stock Exchange Information. Under Commercial Abbreviations, we find that "N/a" means no advice, whereas "n/a" stands for non-acceptance. The rules about counsels' fees, county court proceedings and costs, High Court proceedings and costs, etc., are clearly explained. It is interesting to note that under "Auctioneer's fees" the 5 per cent rate on sale only applies to the first £500, then there is a 2.5 per cent scale up to £5,000, and a 1.5 per cent on the residue; the uniform 5 per cent applied in Ireland is unknown. There are also useful notes on Registration of Title and searches and inquiries. Irish practitioners who wish to learn the current English practice in all these matters would be well advised to purchase this book.

Annual Survey of Commonwealth Law 1971. London, Butterworths, 1972; 8vo, pp. xxxv plus 712; £14.

Members who are acquainted with the previous volumes in this series after 1965, will appreciate the immense amount of labour which is required to produce this unique survey, which includes the most important decisions of the particular year from Courts in all parts of the Commonwealth. This si an invaluable medium for the study of comparative law, as each legal subject has been edited by an expert in the subject, like Dr. Yardley for Fundamental Rights, Dr. Simpson for Real Property Law, Dr. Brownlie for International Law, and Dr. Paul O'Higgins for Labour Law; almost all of the writers are dons in either Oxford or Cambridge. There is an unfortunate tendency to dismiss Irish cases in a few lines, if not in a footnote, with the result that the

basis of Irish judgments is lost. It is hoped that this unfortunate tendency will be remedied in future. Otherwise this volume has well maintained the high standard of its predecessors.

British Government Today by Barry Jones; London, Sweet and Maxwell, 1972; 8vo; pp. xv plus 236; £1.

This is one of the useful books that have appeared in the series "Concise College Texts". The author is not only a qualified barrister, but also headmaster of a school in Bristol; he has a most felicitous style, and has acquired the knack of imparting knowledge in an interesting way. The usual subjects such as the Executive, the Legislature and the Administration of Justice are dealt with succinctly. The author is right in suggesting that much of Criminal Law is obscure, confused and uncertain and should be replaced by a Modern Criminal Code. The author is against fusion of the legal profession, and the main reason given is the fact that a small Bar will develop a mutual confidence with the Bench. The real weakness of the British Constitution is that it is unwritten, and is consequently liable at will to change by the Government of the day.

Gale (Charles James) The Law of Easements, fourteenth edition by Spencer Maurice and Robert Wakefield; London, Sweet and Maxwell; 8vo; pp. xliv plus 410; £9.

Since Gale published the first edition of his learned work in 1839, there have been no less than ten different editors in the different editions. In the tenth edition (1925), which contained 591 pages, Mr. W. J. Byrne had not changed the alterations made by Mr. Carson in 1916. In the eleventh edition (1932), which contained 611 pages, Mr. Graham Glover had to contend with the edition by Spencer Maurice and Robert Wakefield; London, Sweet and Maxwell; 8vo; pp. xliv plus 410; £9. Since Gale published the first edition of his learned work in 1839, there have been no less than ten different editors in the different editions. In the tenth edition (1925), which contained 591 pages, Mr. W. J. Byrne had not changed the alterations made by Mr. Carson in 1916. In the eleventh edition (1932), which contained 611 pages, Mr. Graham Glover had to contend with the changes brought about by the English Property Statutes. Mr. McMullen, in editing the twelfth edition in 1957, which contained 589 pages, brought the case law up to date. Mr. Bowles, in editing the thirteenth edition in 1959, which was reduced to 422 pages, wrote an interesting preface, in which he listed the changes, such as the discarding of the first chapters (170 pages), and its replacement by new material (115 pages), the rewriting of the chapters on Prescription and on Rights of Way, and the omission of citations from the Civil Law. The present editors in this edition have fortunately continued the lead given by Mr. Bowles, by omitting a chapter on Nuisances, and the citation of lengthy judgments has been pruned; furthermore they have included a new chapter on Easements and Registered Land, and yet succeeded in keeping the work within a reasonable compass, which is in itself a remarkable achievement. It is unfortunate that the editors appear to have omitted vital Irish Cases, such as *Smyth v Dublin Theatre Co.* (1936) IR 692, as to ancient lights, *McDonagh v Mullholland* (1931) IR 110, and *Maude V Thornton* (1929) IR 454—as to ways of necessity. As these cases are just as important as corresponding English cases, it is surprising that they have not received the full exposition they deserve. Otherwise the standard which this workh ad previously attained has been well maintained. The printing and setting are as usual exceilent.

Human Rights in the World by A. H. Robertson; Manchester University Press, 1972; 8vo, pp. vii plus 280; £3.60.

Those of us who had the privilege of listening to Dr. Robertson lecturing on human rights in our library a few years ago will remember how, due to his erudition and masterful exposition, he had demonstrated what a master of his subject he was. We had already read with interest his views about "Human Rights in Europe" when it was first published in 1963, and now he has extended his unrivalled knowledge to the world. Apart from dealing with the Human Rights Universal Declaration and the European Convention he has some new material on the United Nations Covenant on Civil and Political Rules, on the Inter-American Declaration of Human Rights, on the permanent Arab Commission and on the proposed African Commission on the same subject; the full text of most of these are given. A distinction is made between universal human rights, an humanitarian law which relates to particular categories like the sick, the wounded and prisoners of war. Those who wish to specialise in this important subject, could not do better than learn it from a master like Dr. Robertson.

UNREPORTED IRISH CASES

Law prohibiting the sale or importation of contraceptives held constitutional.

The plaintiff is a young married woman whose husband is a fisherman. They were married in 1968 and had four children. The plaintiff's doctor has advised her that if she had any more children her life would be in danger with cerebral thrombosis. The plaintiff decided to resort to artificial methods of prevention of conception. The use of the pill in her case would be dangerous, and the doctor prescribed for her other remedies, which she ordered from England. When the medicine was sent through the post, it was seized by the Customs authorities on the ground that the importation of contraceptives is prohibited. As the Revenue Commissioners would not release the medicine, the plaintiff brought an action for a declaration that Section 17 of the Criminal Law Amendment Act, 1935, which prohibits the sale or importation of contraceptives, is unconstitutional, and consequently null and void.

Each of the following articles of the Constitution was relied upon to uphold the contention that the relevant section was unconstitutional.

(1) Article 45—*Directive Principles of Social Policy.* It is to be noted that the beginning of this Article in the prevalent Irish version differs from the English version and appears to exclude from the cognisance of the Courts only questions as to the attempts of the Oireachtas to have regard to the principles laid down in framing legislation or *actes préparatoires.* It would seem, therefore, possible to argue that it does not preclude the consideration of the directive by the Courts when an enacted Statute of the Oireachtas is under review. However, the fact that in Article 45 (4) (1) the State pledges itself to safeguard the weaker interests of the community does not make it relevant in this case.

(2) Article 44—*Freedom of conscience.* The fact that in Article 44 (2) (1) freedom of conscience and the free practice of religion are, subject to public order and morality, guaranteed to every citizen, is not relevant in this case. The contention that freedom of conscience means freedom to decide what is best in the interests of one's husband and family and to act accordingly is unsustainable because freedom of conscience in this Article means freedom to choose a religion and to act in accordance with its precepts, and not freedom to arrive at decisions on matters of one's own private welfare and to act accordingly.

(3) Article 41—*The Family.* The fact that in Article 41 (1) (2) the State guarantees to protect the family in its constitution and authority as the necessary basis of social order and as indispensable to the welfare of the nation and of the State is not relevant in considering the constitutionality of Section 17 of the 1935 Act.

(4) Article 40—*Privacy.* It was contended that amongst the unenumerated rights guaranteed to citizens under Article 40 was the right to privacy and that the Section impugned was inconsistent with that right. In support of the contention, the American case of *Grimwold v Connecticut* was cited, in which a majority of the American Supreme Court held that one of the fundamental rights guaranteed by the United States Constitution was the right to privacy and that legislation making it illegal to use contraceptives was an infringement of that right. In considering this factor O'Keeffe P. thought that the state of public opinion—which is a variable factor—was to be determined with reference to the time of the adoption of the Constitution in 1937. Accordingly the fact that the impugned Section was adopted in the Dail without a division does not reflect a public opinion in favour of the right of privacy.

Accordingly O'Keeffe P. held that the impugned Section 17 of the Criminal Law Amendment Act, 1935, is not inconsistent with the Constitution.

[Mary McGee v Attorney-General and the Revenue Commissioners; O'Keeffe P.; unreported; 31st July 1972.]

Defendant workman who delays in defending pleadings not entitled to picket; plaintiff company entitled to a perpetual injunction restraining picketing.

(1) The defendant was employed by the plaintiff company as a lorry driver in 1960.

(2) In May 1960 the defendant was suspended for refusing to drive a particular lorry. After a conciliation conference by the Labour Court, a settlement was reached whereby he was to be re-employed on a probationary basis for six months.

(3) The defendant resumed working on a probationary basis from the company's bulk plant in Cork in Sept. 1966 but the company soon decided he was unsatisfactory, and that he could not be continued after six months. The grounds given by the manager of the Cork plant were (a) that he had demanded preferential treatment for shift work, and (b) that he had failed to cooperate in the company's pension scheme. He was finally dismissed in March 1967 on the further grounds of (c) poor timekeeping and (d) trying to influence fellow drivers not to help in the company's sales promotion campaign.

(4) The defendant's trade union contended that the company had unjustly dismissed him, and the matter was referred to the Labour Court. This Court issued its recommendations on 15h July 1967 to the effect that the defendant had not been victimised, and that it was entirely due to his own fault that his services had been terminated.

(5) The defendant was dissatisfied with this recommendation, but his fellow-employees in Cork refused to support him in a proposed strike.

(6) In 1967-68, litigation took place between the defendant and his union, the Irish Transport and General Workers Union.

(7) Private efforts to reinstate the defendant were unsuccessful and suddenly, at the end of January 1968, the defendant and some others picketed plaintiff company's bulk plant and oil installations in Cork.

(8) At this time, plaintiff company started plenary proceedings claiming an injunction to restrain the defendant from watching, besetting or picketing the company's premises in Cork; the injunction was not continued after 5th February 1968 when the defendant undertook not to picket pending the hearing of the action.

(8) The matter became dormant, and the defendant only lodged an appearance in January 1969. The company delivered a statement of claim in May 1969 but the defendant delivered his defence more than two years later, in October 1971.

(9) Meanwhile, on 3rd September 1971, as no defence had been delivered for more than a year, a notice of intention to proceed was served by the plaintiff company. In January 1972 the defendant's solicitor threatened to have the case dismissed for want of prosecution, and consequently the plaintiff served a notice of trial in February 1972.

(10) The defendant seeks to resume a right to picket. A trade dispute undoubtedly resulted in 1967, at the time of the Labour Court recommendation, and in fact continued to exist until the picketing in January 1968. There appears to be no judicial authority deciding when a picket ends.

(11) When Kenny J. made the order of 5th February 1968 it was conditional on the defendant not having in the meantime by his conduct shown that he had brought the trade dispute to an end. The onus of proving this clearly rests on the defendant who asserts he has a right to reinstatement. The defendant, however, has given no satisfactory explanation as to why he allowed such long periods to elapse before entering an appearance and delivering his defence. These unexplained delays are inconsistent with the maintenance of a trade dispute. The defendant had been employed elsewhere, and only took action when he was faced with loss of employment. It follows that there is no trade dispute at present subsisting, and that the injunction to restrain picketing will be made permanent.

[Esso Teoranta v McGowan; Henchy J.; unreported; 23rd June 1972.]

Original summons may be renewed for good reason.

Murnaghan J. had refused to renew a plenary summons under Order 8, Rule 1, of the Rules of the Superior Courts 1962. This was a claim for damages for negligence arising out of a collision in Co. Monaghan, on 13th July 1965. On 4th July 1968 a plenary summons was issued by the local solicitor of the party who sustained injuries against a customs official, but the Chief State Solicitor had denied liability on behalf of the official. The solicitor had also been in touch with the insurance company of the car in which the plaintiff was a passenger. In 1968-69 the plaintiff made frequent calls upon the local solicitor, but no progress was made. Finally the plaintiff put the matter in the hands of a Dublin solicitor to whom the papers were transferred.

Order 8, Rule 1, states that no original summons shall be in force for more than twelve months—but before that time expires, the plaintiff may apply to the Court to renew the summons. The *ratio decidendi* of the case of *Baulk v Irish National Insurance Co.* (1969) I.R. 66, is the fact that the Statute of Limitations would defeat any new proceedings which might be necessitated by the failure to grant the renewal sought and would thus constitute "other good reason" and accordingly moved the Court to grant the renewal; furthermore the defendants had been aware from the very beginning, of the plaintiff's intention to sue them. This case is on all fours with Baulk's case. Accordingly the order of Murnaghan J. was reversed, and the original summons was renewed from the date of this judgment. Dissenting judgment by Fitzgerald J.

[McCooey v Minister for Finance and McGeough; Supreme Court; O Dalaigh C.J. and Budd J. per the Chief Justice, Fitzgerald J. dissenting; unreported; 16th December 1971.]

Conditional order for prohibition against the Special Criminal Court refused.

Application for an Order of Prohibition against the Special Criminal Court established by Part 2 of the Offences against the State Act, 1938, which is provided for by Article 38, Section 3, of the Constitution. A proclamation made by the Government in May 1972 brought Part 5 into effect, and an order creating scheduled offences was subsequently made.

The applicant was charged in the District Court with one scheduled offence and with two unscheduled offences. Under Section 45 of the Offences against the State Act, 1939, the District Justice, if he received a direction to that effect from the Attorney-General, had no alternative but to send the applicant forward for trial to the Special Criminal Court, whether the offence was indictable or not, which he did. Section 46 makes the same provisions in respect of non-scheduled offences, provded the Attorney-General certifies in writing that the ordinary courts are, in his opinion, inadequate to secure the effective administration of justice and the preservation of public peace and order. The giving of the certificate does not involve an adjudication, and is not an exercise of the judicial power. Furthermore the applicant's constitutional rights under Article 40 have not been infringed, in so far as there is an appeal provided to the Court of Criminal Appeal from the decision of the Special Criminal Court. It follows that the existence of the Special Criminal Court is not an infringement of any constitutional right.

The application for a conditional order of prohibition was consequently refused.

[State (Bollard) v Special Criminal Court; Kenny J.; unreported; 20th September 1972.]

Local Authority not liable if Department of Posts and Telegraphs does not make good the surface of a road after laying a cable.

Plaintiff's heavy truck involved in accident near Thomastown, Co. Kilkenny, on 30th January 1967. The truck was driven at night on a narrow road, and, to avoid oncoming traffic, the driver was compelled to pull in on extreme side of the road. The verge gave way under the weight of the truck, and the left front wheel sank to the ground to axle level. The resultant damage cost the plaintiff £453.75 in repair to the truck and towage, which he seeks to recover from defendant Council. Before this, near the spot where the accident occurred, a trench had been opened near the road by the Department of Posts and Telegraphs to lay a coaxial cable. After the cable had been laid, the trench had been negligently filled in. The work of restoning the highway had been accomplished by departmental servants, and not by the County Council. who had only re-surfaced the road.

In interfering with the road surface, the Department were relying on their own statutory power. Sections 6, 7, 10, 18 of the Telegraph Act 1863 are fully quoted. Section 18 states that the Department may with all convenient speed, complete the work, fill in the ground

and make good the surface. Although the Department had statutory power to lay the cable, they nevertheless obtained formal consent from the County Council for the work—but this was unnecessary

It follows that the County Council is not responsible for the negligence of the Department of Posts and Telegraphs. Circuit Court judgment affirmed. Appeal dismissed

[Johnston v Kilkenny Co. Council; Teevan J.; unreported; 6th July 1970.]

High Court ruling in drink case—order discharged.

In the High Court in Dublin yesterday Mr Justice Murnaghan held that it was within the jurisdiction of a District Justice not to grant an adjournment in a case because a case of similar type was under an appeal to the Supreme Court.

He refused to make absolute a conditional Order of Prohibition which had been directed to District Justice Donnchadh Ua Donnchacha, ordering him to show cause why he should continue with the summary hearing of a charge brought against James Llewellyn, of Elm Road, Donnycarney, Dublin, in view of the fact that an appeal in a case of a similar nature was pending before the Supreme Court

Mr Llewellyn is charged with having driven a motor car while his body contained a quantity of alcohol such that within three hours after driving the car the concentration of alcohol in his blood would exceed 125 milligrammes to 100 millilitres of blood.

The validity of the Road Traffic Act on this point under the Constitution was challenged in the High Court, but the President of the High Court (Mr. Justice O'Keeffe) dismissed the case, and an appeal to the Supreme Court is now pending.

Mr. Llewellyn sought the adjournment of the charge against him on the grounds that the issues raised in the case pending before the Supreme Court were directly in point in the case against himself and that, if the District Justice proceeded with the hearing of the summary charge against him, he (Mr. Llewellyn) would be deprived of the view of the Supreme Court on the validity of the law under which he was charged.

The District Justice had said he felt obliged to proceed with the hearing because there had been a determination of the matter in the other proceedings before the High Court. An Order of Prohibition had then been sought.

Mr. E. M. Walsh, S.C. (for Mr. Llewellyn), said that the district justice had adjourned the hearing of the case against Mr. Llewellyn when his attention had been drawn to the fact that a High Court action was pending in a similar matter. That action had been dismissed, but, when told that an appeal was pending, the district justice had indicated that he was not prepared to grant another adjournment.

A conditional Order of Prohibition was subsequently granted to Mr. Llewellyn, on whose behalf it had been submitted that in effect the adjudication determining the amount of alcohol came from the analyst's certificate and that it could not be challenged.

Mr. Walsh said that a substantial amount of law had yet to be argued in these proceedings—it was for the Supreme Court to decide the propriety of convicting or acquitting.

Mr. D. P. Sheridan, S.C., for the District Justice, said that the presumption was that any legislation passed by the Oireachtas was constitutional until the contrary was shown. It would be an invasion of the jurisdiction of a District Justice not to allow him to proceed with the hearing.

Mr Justice Murnaghan, discharging the conditional order, said that he was afraid that at the Bar judgments of the High Court were not always regarded with the solemnity they deserved. It was more or less taken for granted that the Supreme Court would set the judgment aside. That was not the situation. A judgment of the High Court was a serious matter and was the law.

What he was being asked to do in this case was to say that the district justice must exercise his discretion in this case by granting the adjournment. It seemed to him, said Mr. Justice Murnaghan, that he was to decide whether, in doing what he did, the district justice was acting without jurisdiction He was satisfied that the district justice was acting within that jurisdiction.

£20,000 bail reduced by half.

Hugh Meenan, of Barrack Street, Cork, and of Liscloon, Shanfallan, Derry, who is charged with armed robbery from the Cobh branch of Allied Irish Banks Ltd., applied in the High Court, in Dublin, to have his bail reduced.

Meenan had been allowed personal bail of £10,000 and one independent surety of £10,000. Mr. Justice Murnaghan varied the order and directed that he be admitted to bail in two independent sureties of £5,000 each. Mr. Justice Murnaghan said that Meenan was charged with a very serious offence which must, in present circumstances, carry quite a heavy sentence if he were convicted.

Mr. Meenan is charged with conspiracy to rob the bank and, with two others, being armed with a Webley and Scott pistol, on August 24 last, robbing Godfrey F. J. Bernal of £9,200.

Mr. Gordon Hayes, solicitor, for Mr. Meenan, read an affidavit by his client in which he said he had been in custody since August 26. He believed all the money, except about £100, had been recovered. He required bail to enable him to put his domestic and financial affairs in order.

CURRENT LAW DIGEST SELECTED

All references to dates relate to *The Times* newspaper.

In reading these cases note should be taken of the differences in English and Irish statute law.

Banking

Before Mr. Justice Browne.

A £200,000 fraud claim by Bank Russo-Iran, an Iranian subsidiary of the Russian state-bank, failed against Gordon, Woodroffe & Co. Ltd., an English confirming house and shipping and forwarding agents, only because according to Iranian law the company were released from all liability by a document signed by the bank.

Mr. Justice Browne, in a 249-page reserved judgment, handed out after a 62-day hearing, held that the bank had succeeded in establishing in English law a cause of action against the company for fraudulent misrepresentation over four letters of credit issued in connection with English language books for Iranians and that the damages were £202,000. They had also established an alternative cause of action for money paid under a mistake of fact. Further the bank had established that the conditions under the rules of private international law for the validity of the causes of action were satisfied. The company were not discharged from their liability in respect of the causes of action by a contract with Mr. E. Manafzadeh, the central figure in the case, who had not been called by either side and against whom criminal proceedings were pending in Iran. But the company were released from all liability by a document which, when properly construed, released everyone, including the company, from any claim by the bank in respect of the letters of credit frauds.

Bank Russo-Iran v Gordon Woodroffe and Co. Ltd.; QBD; 4/10/1972.

Crime

Before Lord Justice Karminski, Mr. Justice O'Connor, Mr. Justice Forbes.

One person unlawfully fighting was properly charged with and convicted of affray, their Lordships decided when giving reasons for dismissing on Friday an appeal by V. Taylor, 27, from conviction of affray by a majority verdict of 10 to 2 at Nottingham Crown Court (Mr. Justice Phillips) in March.

The Court certified that a point of law of general public importance was involved in the question whether a person commits the offence of affray if he alone is fighting to the terror of other persons. Leave to appeal was refused, but legal aid was granted for a petition to the House of Lords for leave to appeal.

Regina v Taylor; Court of Appeal; 9/10/1972.

Before Lord Justice Lawton, Mr. Justice Swanwick and Mr. Justice Philips.

Conspiracy to trespass is an indictable offence, and the crime of unlawful assembly can be committed in a building because the public peace can be endangered by a rowdy, disorerly meeting just as much as if it is held inside a building as outside.

Regina v Kamara and Others; Court of Appeal; 12/10/72.

Before Lord Widgery, Mr. Justice Caulfield, Mr. Justice Eveleigh.

Where a deportation order is made by the court against a person undrr Section 9 of the Commonwealth Immigranta Act, 1962, and the person appeals against being deported to the country specified in the order, he must show that another country is willing to receive him. Their Lordships so held when refusing an application by D. M. Ali, a Turkish Cypriot, for an order of certiorari to quash directions for his removal to Cyprus made by the Home Secretary in April 1972.

Regina v Secretary of State for the Home Department and Another, ex parte Ali; QBD; 21/9/1972

Before Lord Justice Cairns, Mr. Justice Browne and Mr. Justice Kilner Brown.

When directing a jury trying a person charged with having contravened Section 5 (b) of the House to House Collections Act, 1939, by use of a document "which so nearly resembled a prescribed certificate of authority as to be calculated to deceive" the trial judge must tell them to put the document used and a prescribed certificate side by side and by careful comparison decide whether they are satisfied that the document used so nearly resembled a prescribed certificate as to be calculated, in the sense of likely, to deceive people who saw it.

Their Lordships so stated when quashing convictions of J. S. Davidson, 21, of Old Trafford, at Manchester Crown Court (Judge Gerrard) in June for obtaining by deception contrary to Section 15 (1) of the Theft Act, 1968, attempting to obtain by deception, and contravening Section 5 of the 1939 Act. Concurrent sentences totalling 12 months had been imposed.

Regina v Davison; Court of Appeal; 7/9/1972.

Family Law

Before Sir George Baker, Mr. Justice Payne and Mrs. Justice Lane.

A husband who lives apart from his wife because of delusions that she intended to murder him and who refuses to pay her maintenance was held to be guilty of wilful neglect to maintain her under Section 1 of the Matrimonial Proceedings (Magistrates' Courts) Act, 1960.

Brannan v Brannan; F.D.; 10/10/1972.

Before Mr. Justice Ormerod.

When considering financial provision for the wife following dissolution of marriage the court should consider conduct as a factor which might modify the amount which was arrived at after consideration of all the other factors specified in Section 5 of the Matrimonial Proceedings and Property Act, 1970.

Watchel v Watchel; F.D.; 5/10/1972.

Planning

Before Lord Denning, the Master of the Rolls, Lord Justice Edmund Davies and Lord Justice Stephenson.

Where mining operations consisting in the excavation of sand and gravel are carried out without planning permission, the removal of every shovelful is a separate act of unauthorised development in respect of which a valid enforcement notice can be served on the operators.

Thomas David (Porthcawl) Ltd. v Secretary of State for Wales; C.A.; 5/10/1972.

Vendor and Purchaser

Before Mr. Justice Goulding.

It was ruled that a vendor of residential property who had failed to disclose terms of an existing lease of a flat on the property was not entitled, under general condition 22 of the National Conditions of Sale (18th edition) to serve a notice to complete making time of the essence of the contract, and thereafter to forfeit the deposit on non-completion within the specified time allowed. It was further held that where such non-disclosure was first discovered by the purchaser on the last date for compliance with the notice, the purchaser must have a reasonable opportunity to consider whether the non-disclosure materially affected the value or description of the property, even if the notice was valid and time had thus become of the essence of the contract.

Mr. Justice Goulding was delivering judgment on an application by the purchaser, Pagebar Properties Limited, London W, for summary judgment for specific performance of the contract under Order 86 of the Rules of the Supreme Court against the vendor, Derby Investment Holdings Ltd., London W.

Vacation Court; 29/9/1972.

Tax

Before Lord Denning, Lord Justice Buckley and Lord Justice Orr.

Miss Hayley Mills, the actress, won her appeal against the decision that her earnings as a child are taxable. Their Lordships, Lord Justice Orr dissenting, allowed her appeal from Mr. Justice Goulding who held (*The Times*, 17 December 1971: [1972] 1 WLR 473) that she was a settlor within the meaning of Section 405 of the Income Tax Act, 1952, and assessable to surtax arising out of arrangements made in 1960 and 1961.

Mills v Inland Revenue Commissioners; C.A.; 17/10/1972.

Human Rights Pact as Irish Bill of Rights

Mr. Sean MacBride, S.C., suggested last night that the European Convention on Human Rights and the machinery it provides should be used to safeguard the minority rights in both Northern Ireland and the Republic.

After indicting both parts of the country for having "a shocking record of both ignorance and lack of initiative in the field of human rights", he said that in any settlement of the present Anglo-Irish conflict there would have to be provision for the protection of the minorities we had.

Speaking on "The Rights of Man", he told a meeting of Tuairim in Cork: "On the one view, it may be the nationalist minority in the North or on another view, it may be the Unionist or Protestant minority in a united Ireland" that will have to be protected.

"Whatever settlement we have," he said, "there will be a substantial minority; it will be necessary to give constitutional safeguards for this minority in the nature of a Bill of Rights.

The European Convention as a Bill of Rights

"We have, in the European Convention, a ready-made Bill of Rights which should apply to the whole of Ireland. It already does apply, in name at least. Why not, by a solemn declaration make its provision enforceable by the Courts in Ireland and provide for a right of appeal to the European Commission and Court of Human Rights? We have a ready-made instrument and machinery there. Why not examine now the manner in which it could serve to protect minority rights in Ireland? As it stands, the Convention and its organs can be used.

"If necessary a simple Covenant could given the Commission and Court of Human Rights special functions in regard to minority rights in Ireland."

We had a shocking record of both ignorance and lack of initiative in the field of human rights. This applied to all our administrations, North and South. The periods since 1922 during which we have not had political internment or Special Courts in the North or the South had been very few and far between.

"I often wonder whether much of the violence from which we suffer, does not stem, at least in part, from the disregard of our Governments for the protection of human rights and from the apparent degradation of political standards, often in high places," Mr. MacBride said.

He described the Universal Declaration of Human Rights of 1948 as one of the most important landmarks in the history of mankind, more important even than the Magna Carta, because it was universally accepted and because it was much more detailed and comprehensive than the earlier declarations of human liberty.

Convention not ratified

At the United Nations, our country had voted for the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of all forms of Racial Discrimination. But for some unknown and unstated reason, our Government had failed to ratify any of these three Conventions. "This is particularly reactionery in the case of the Convention on Racialism which has been ratified by the Holy See and by Great Britain," he said.

Britain's ratification is in the name of Northern Ireland also; so we have a situation in which racial discriminaion is outlawed under international law in Britain and Northern Ireland, but not in the Republic. This is harmful to Ireland internationally."

Neither of the two Human Rights Covenants had been ratified by either Ireland or Great Britain. "Why this reticence? Is it because we do not wish to implement the protection of the human rights proclaimed in the Universal Declaration of Human Rights," Mr. MacBride asked. "Britain has signed the Human Rights convention but not ratified them. But we have not even signed them much less ratified them."

Irish Times (20th September 1972)

Solicitors' Golfing Society

Autumn Outing (Mullingar, 30/9/1972)

Captain's (T. D. Shaw) *Prize*
Winner, B. Kirby (14), 5 up.
Runner-up, G. Walsh (13), all square.
St. Patrick's Plate (Handicap 12 and Over)
Winner, B. G. Donnelly (9), 1 up.
Runner-up, J. M. O'Donnell (10), 2 down.
Veteran's Cup
Winner, S. N. Mahon (17), 1 down.
Runner-up, W. A. Tormey (14), 2 down.
First nine, A. O'Carroll (4), all square.
Second nine, James Kelly (10), all square—last six.
Competitors from more than Thirty Miles Prize
Winner, Noel Tanham (13), 2 down.
Best Score by Lot
Winner, E. J. Margetson (14), 4 down.

Appointments

Mr. Michael O'Beirne, Deputy Solicitor, Irish Land Commission, has been appointed Solicitor to the Irish Land Commission in succession to Mr. James Geary, who has retired.

Mr. Liam Lysaght, Deputy Chief State Solicitor, has been appointed Chief State Solicitor in succession to Mr. Donough O'Donovan, who has retired.

"Go-it-alone" House Buyer agrees to use Solicitor

The man who had been told he would lose his £708 deposit and the chance to buy his three-bedroom council house unless a solicitor signed one of the conveyancing documents bowed yesterday to the council's demands.

Mr. John Pridmore, a factory worker, of Saint Alban's, withdrew the transaction from the National House Owners' Society, which had been acting for him, and put it in the hands of a solicitor for completion.

The Luton solicitor now acting for him, who asked not to be named, said he had agreed to take the case free of charge on condition Mr. Pridmore paid to charity the difference between what he paid the society and the scale fee that would have been charged by a solicitor.

Mr. Pridmore has paid £35 to the society for acting or him and £33 as fees for the council which is providing him with a mortgage. Solicitors' scale charges for the sale of a £4,000 house with unregistered title are £60.

St. Alban's Council had not allowed the sale to be completed unless a solicitor had verified that photostat copies and extracts of title deeds which they had sent to Mr. Pridmore as the "abstract of title" corresponded to the original title deeds still in their possession.

The National House Owners Society maintained that the documents could be verified by anyone, not necessarily a solicitor. St. Alban's Council insisted that it should be a solicitor.

Threat to lose deposit and purchase of house

They warned Mr. Pridmore that if he fails to complete the transaction within a month he would lose his deposit and the chance to buy the house.

Last night Mr. Sydney Carter, founder of the National House Owners' Society, said that as Mr. Pridmore had been in danger of losing the house and his deposit they had already sent a draft for the £3,400 outstanding to the council and asked them to sell the house to the society.

He had also included an open cheque for up to £100 to cover any incidental expenses. "We can sort out Mr. Pridmore's mortgage later."

Mr. John Jeffrey, the council's deputy clerk, said the council would not be able to sell the house to the House Owners' Society. "It is a council house and subject to all sorts of conditions."

He defended the council's requirement that the documents would only be certified by a solicitor. When the council was granting a mortgage and the purchaser was represented by an outside solicitor, it was this solicitor's responsibility to verify the abstract of title and they would accept his verification.

Mr. Carter, who has described the council's attitude as "ridiculous" and as an attempt to extend the solicitors' monopoly in conveyancing, said he was sorry Mr. Pridmore had decided to withdraw the case from them.

"People are not prepared to fight the establishment as much as we are. They just want things to go smoothly. I can understand their point of view."

Delays due to town council's requirements

He admitted that there had been delays in the case but claimed these were due to the council's requirement. "If Mr. Pridmore says he has paid rent he should not have done we will look into it and compensate him."

It would not be proper for the council's lawyers having drawn up the abstract as seller to verify it as mortgagee, he claimed.

A purchaser acting for himself would have to get a solicitor to verify the abstract and pay him just for that or instruct lawyers acting for the council as mortgagee to do it for him at a fee, he said.

In recent years the Law Society, the solicitors' governing body, has kept up a running battle with the National House Owners' Society and has warned of dangers of entrusting conveyancing transactions to "unqualified conveyancers".

Last November, a High Court action brought on behalf of the Law Society against Mr. Carter was settled after Mr. Carter gave an undertaking that he would not prepare conveyancing documents for "fee, gain or reward" contrary to the Solicitors' Act. This protects the monopoly of solicitors in conveyancing.

Daily Telegraph (19th September 1972)

Birmingham Conference of the British and Irish Association of Law Librarians

by M. NEYLON (Librarian, King's Inns)

The third annual conference of the British and Irish Association of Law Librarians was held at the University of Birmingham during the weekend September 14th to 17th. Approximately sixty attended, including members from England, Scotland, Ireland, Wales, the United States, Australia and Japan. The theme of the conference was *The Administration of Justice—A Guide for Law Librarians.*

Friday morning was spent visiting libraries, including the Harding Law Library and the Birmingham Law Society Library and the Courts. On Friday afternoon, at the first session of the conference, Professor G. J. Borrie gave a stimulating talk on the aims and activities of the Institute of Judicial Administration of which he is director. There were seven sessions in all. Among the matters reviewed were legal literature; the courts as constituted by the Courts Act, 1971, implementing the Beeching Report; the Ormrod Report; the origin, function and organisation of the Home Office and the services, resources and administration of its library.

At a panel session on Saturday morning Mr. Justice James, a presiding judge of the Midland and Oxford Circuit, the President of the Birmingham Law Society, a barrister-at-law and a law lecturer each gave his views as to what services were required in a law library. Among the many points emphasised was the necessity to have books readily available and for that purpose to restrict lending facilities to overnight or weekends. Since the library was a laboratory for the users it should be adequately stocked and with present day needs should have world-wide material, including reports and statuts. They deplored the fragmentation of law libraries having regard to rising costs, the scarcity of trained law librarians and the increasing volume of legal material, the greatest explosion being in Common Market law. Other points referred to were the desirability of teaching library usage to all first-year students and the advisability of withdrawing from open access books listed for recommended reading and in frequent demand. In their opinion the law librarian should have an outline of major works, be familiar with the indexes of such works and keep a note of what books are in demand.

Sandwiched between visits to legal institutions and discussions were the annual general meeting, receptions given by Sweet & Maxwells, Butterworths and Birmingham University as well as meetings of the executive committee and the sub-committees on acquisitions, cataloguing and classification, the Society of Public Teachers of Law, standards for multiple copies in law libraries and publications.

The topics discussed were interesting and diverse. The passage in Gibbon's *Decline and Fall* describing the potentate whose library of 62,000 volumes demonstrated the variety of his taste and were all of use was adverted to by one of the speakers. This writer can attest to the very great benefit which accrued to those who attended this conference. These benefits are too numerous to mention. It is, I think, a *sine qua non* that all wishing to keep abreast of developments in current legal literature and law librarianship should attend this annual conference.

At the annual general meeting the appointment of Professor Owen Hood Phillips to the office of President of the Association was announced and the information was received with applause.

It was agreed that the 1973 Conference should be held at Edinburgh next September, to be organised by the Chairman and Mr. G. H. Ballantine of the Signet Library. The theme will be Common Market Law.

Committee on Practice and Procedure on Family Law

The Committee on Court Practice and Procedure are at present giving consideration to matters of Court Procedure concerning the following topics:

(a) Matrimonial disputes including property and child custody disputes.
(b) Care of children in want of care.
(c) Juvenile offenders.
(d) Legitimation.
(e) Affiliation.
(f) Desertion.
(g) Adoption.
(h) Legal aid in relation to the above topics.

They will also receive submissions on problems of substantive law in relation to the above topics.

The Society has been asked to submit recommendations and the President has apponted a Committee to this end.

This Committee would welcome submissions by members on any of the relevant topics, which submissions should be forwarded in writing to the Secretary on or before the 30th day of November 1972 and should be marked for the attention of the Family Law Committee.

MISCELLANEOUS COURT RULES

DISTRICT COURT (COSTS) RULES, 1972

S.I. No. 175 of 1972

The District Court Rules Committee, in exercise of the powers conferred on them by Section 91 of the Courts of Justice Act, 1924, Section 72 of the Courts of Justice Act, 1936, and Section 17 of the Interpretation Act, 1937 (as applied by Section 48 of the Courts (Supplemental Provisions) Act, 1961), and Section 34 of the Courts (Supplemental Provisions) Act, 1961, do hereby, with the concurrence of the Minister for Justice, make the following Rules of Court:

1. These Rules may be cited as the District Court (Costs) Rules, 1972.

2. These Rules shall come into operation on the 1st day of September, 1972, and shall be read together with all other District Court Rules for the time being in force.

3. (1) The costs to be awarded in proceedings instituted in the District Court on or after the 1st day of September, 1972. shall be in accordance with the Schedule of Costs hereto.

(2) The Scales of Costs set out in the Schedule of Costs hereto shall be substituted for those set out in the Schedule of Costs to the District Court (Costs) Rules, 1964 (S.I. No. 279 of 1964) as substituted by the Schedule of Costs to the District Court (Costs) Rules, 1970 (S.I. No. 315 of 1970), which are hereby annulled save as to any proceedings pending in the District Court on the coming into operation of these Rules, which proceedings shall be continued and completed as if these Rules had not been made.

SCHEDULE OF COSTS

Solicitors' Costs in Summary Judgment Proceedings

Amount due at the date of issue of civil process	If amount due is paid within ten days of service of civil process	If amount due is not paid within ten days of service of civil process
Not exceeding £10	£0.90	£1.95
Exceeding £10 and not exceeding £25	£1.40	£2.65
Exceeding £25 and not exceeding £50	£2.10	£3.85
Exceeding £50 and not exceeding £75	£3.15	£5.40
Exceeding £75 and not exceeding £100	£3.35	£5.80
Exceeding £100 and not exceeding £175	£3.95	£7.00
Exceeding £175 and not exceeding £250	£4.55	£8.20

The above Scale of Costs shall in every instance be exclusive of and in addition to all actual and necessary outley.

The above Scale of Costs shall apply to any proceeding at the suit of the Attorney General or any Minister of State or Government Department.

If the Civil Process is defended the costs of the successful party shall be in accordance with the appropriate contract. breach of contract and tort scale.

SCHEDULE OF COSTS

Solicitors' Costs in Contract, Breach of Contract and Tort Proceedings and in Claims for Damages Unconnected with Contract

Amount due at the date of issue of civil process, and in case of dismiss the amount sued for	Settled before entry	Costs of decree if case not defended	Costs of decree if case defended	Costs of dismiss
Not exceeding £10	£1.25	£3.15	£3.70	£3.35
Exceeding £10 and not exceeding £25	£1.75	£5.25	£8.75	£8.40
Exceeding £25 and not exceeding £50	£2.45	£7.35	£11.55	£11.20
Exceeding £50 and not exceeding £75	£3.15	£9.50	£14.50	£13.00
Exceeding £75 and not exceeding £100	£3.85	£12.00	£17.00	£16.00
Exceeding £100 and not exceeding £175	£5.95	£17.00	£25.50	£24.00
Exceeding £175 and not exceeding £250	£8.05	£21.00	£35.00	£31.00

The above Scale of Costs shall in every instance be exclusive of and in addition to all actual and necessary outlay.

The above Scale of Costs shall apply to actions for wrongful detention brought by virtue of Section 33, Subsection (3) of the Courts (Supplemental Provisions) Act, 1961, according to the value of the goods as determined by the Court.

The above Scale of Costs shall apply to actions for wrongful detention arising out of a hire purchase transaction.

The above Scale of Costs shall apply to any proceeding at the suit of the Attorney General or any Minister of State or Government Department.

SCHEDULE OF COSTS

Solicitors' Costs in Ejectment Proceedings Instituted by Civil Process

Annual Rent	Settled before entry	Costs of decree if case not defended	Costs of decree if case defended	Costs of dismiss
*Not exceeding £27	£1.60	£3.50	£4.40	£3.70
Exceeding £27 and not exceeding £53	£2.10	£6.5	£7.90	£7.20
Exceeding £53 and not exceeding £100	£3.10	£13.00	£14.90	£14.00
Exceeding £100 and not exceeding £175	£4.60	£16.00	£25.00	£22.00
Exceeding £175 and not exceeding £250	£6.10	£19.00	£30.00	£25.00
Exceeding £250 and not exceeding £315	£7.60	£23.00	£35.00	£32.00

The above Scale of Costs shall in every instance be exclusive of and in addition to all actual and necessary outlay.

The above Scale of Costs shall not apply to ejectment proceedings brought before the Court on summons pursuant to the provisions of Section 15 of the Summary Jurisdiction (Ireland) Act, 1851, Section 10 of the Summary Jurisdiction (Ireland) Amendment Act, 1871, or Sections 81, 84, 85 or 86 of the Landlord and Tenant (Ireland) Act, 1860. In such proceedings costs shall be in the discretion of the Justice and shall not exceed £3.20 in any case, unless the Justice for special reason shall otherwise order.

* The above Scale of Costs shall apply to ejectment proceedings brought before the Court by civil process pursuant to the provisions of Section 82 of the Civil Bill Courts (Ireland) Act, 1851, as applied to the District Court by Section 17 of the Courts of Justice Act, 1928.

SCHEDULE OF COSTS

Solicitors' Costs in Summary Proceedings brought by Summons for the Recovery of Rates

Amount sued for	Costs before hearing	Costs after hearing
Not exceeding £2	£0.40	£0.75
Exceeding £2 and not exceeding £5	£0.50	£1.40
Exceeding £10 and not exceeding £25	£0.75	£1.85
Exceeding £25 and not exceeding £50	£1.40	£3.15
Exceeding £50 and not exceeding £100	£1.60	£3.85
Exceeding £100	£1.75	£5.25

The above Scale of Costs shall in every instance be exclusive of and in addition to all actual and necessary outlay.

SCHEDULE OF COSTS

Solicitors' Costs in Proceedings under the Enforcement of Court Orders Acts, 1926 and 1940

Costs in Relation to Instalment Orders

Amount due	Costs
Not exceeding £5	£1.45
Exceeding £5 and not exceeding £10	£2.20
Exceeding £10 and not exceeding £25	£3.70
Exceeding £25 and not exceeding £50	£4.40
Exceeding £50 and not exceeding £100	£5.90
Exceeding £100	£7.35

(or such greater sum as the Court shall think proper)

The above Scale of Costs shall in every instance be exclusive of and in addition to all actual and necessary

Actions Transferred from the High Court to the District Court

A plaintiff in succeeding in such action shall be entitled to no greater costs than would have been allowed him under the foregoing Scales if the suit had been instituted in the District Court. A successful defendant will be entitled, in addition to the Scales of Costs set out in this Schedule to a minimum sum of £11.75 or such greater sum as the Justice may in the circumstances think fit.

Explanatory Note (this note is not part of the instrument and does not purport to be a legal interpretation thereof)

These Rules, which come into operation on 1st September 1972, provide for revised scales of solicitors' costs in the District Court. The Scales of Costs set out in the Schedule to the Rules replace the Scales of Solicitors' Costs set out in the Schedule of Costs to the District Court (Costs) Rules, 1970 (S.I. No. 315 of 1970). The new scales cover the increased jurisdiction of the District Court under the Courts Act, 1971 (No. 36 of 1971).

SCHEDULE OF COSTS

Miscellaneous Costs

Drawing each additional copy of a civil process necessarily served after the first	£0.30
Drawing witness summons and copies thereof, attending at District Court Office for the purpose of issuing same and correspondence as to service	£0.70
Attending in Court, not otherwise provided for, where allowed by the Justice, not exceeding	£1.05
Service of document required to be served by registered post	£0.15

The above Scale of Costs shall be chargeable in addition to the charges in the other Scales in the Schedule.

S.I. No. 227 of 1972

SOLICITORS' REMUNERATION GENERAL ORDER, 1972

We, the body in that behalf authorised by the Solicitors' Remuneration Act, 1881, as adapted by the Solicitors' Remuneration Act, 1881 (Adaptation) Order, 1946 (S.R. and O. 1946 No. 208) made pursuant to the Adptation of Enactments Act, 1922, do hereby, in pursuance and execution of the powers given to us by the said Statute as so adapted, and after due compliance with Section 3 of the Solicitors' Remuneration Act, 1881, make the following General Order.

(1) This Order may be cited as the Solicitors' Remuneration General Order, 1972, and this order and the Solicitors' Remuneration General Order, 1884, the Solicitors' Remuneration General Order (No. 1), 1920, the Solicitors' Remuneration General Order, 1947, the Solicitors' Remuneration General Order, 1951, the Solicitors' Remuneration General Order, 1960, the Solicitors' Remuneration General Order, 1964, and the Solicitors' Remuneration General Order, 1970, shall be read together and may be cited as the Solicitors' Remuneration General Orders, 1884 to 1972.

(2) The following fees chargeable under Schedule II of the said General Order of 1970 shall be increased as follows:

Item	2	£0.34 shall be increased to	£0.41
Item	3	£0.14 shall be increased to	£0.17
Item	4	£0.11 shall be increased to	£0.13
Item	5	£0.06 shall be increased to	£0.07
Item	6	£0.03 shall be increased to	£0.04
Item	7	£0.17 shall be increased to	£0.20
Item	8	£1.12 shall be increased to	£1.34
Item	9	£0.03 shall be increased to	£0.04
		£0.39 shall be increased to	£0.47
Item	10	£0.03 shall be increased to	£0.04
Item	11	£0.42 shall be increased to	£0.50
Item	12	£1.12 shall be increased to	£1.34
Item	13	£0.84 shall be increased to	£1.01
Item	14	£1.12 shall be increased to	£1.34
Item	15	£21.17 shall be increased to	£25.40
Item	16	£3.36 shall be increased to	£4.03
		£21.17 shall be increased to	£25.40
Item	17	£0.42 shall be increased to	£0.50
		£0.56 shall be increased to	£0.67
Item	18	£0.34 shall be increased to	£0.41
		£0.11 shall be increased to	£0.13
Item	19	£0.14 shall be increased to	£0.17
Item	20	£3.92 shall be increased to	£4.70

This Order shall apply only to business transacted after the 17th day of May 1972.

Dated this 17th day of May 1972.

Cearbhall O Dalaigh (Chief Justice)

Brian Walsh (Senior Ordinary Judge of the Supreme Court)

James W. O'Donovan (President of Incorporated Law Society of Ireland)

Note

This Order authorises an increase in specified charges in solicitors' costs for non-contentious business. It does not affect the present commission scale fee on sales, purchases, leases, mortgages or settlements.

THE REGISTER

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 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 November 1972.

D. L. McALLISTER

Registrar of Titles.

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

Schedule

(1) Registered Owner: Michael Reginald Kealy; Folio: 206; Lands: Hacketts Town, Lower; County: Carlow; Area: 10a. 1r. 8p.

(2) Registered Owner: Patrick J. McDonald; Folio: 11428; Lands: Plot of Ground (Situate on the West side of Shanard Avenue, Parish of Santry); County: City of Dublin; Area: 0a. 0r. 12p.

(3) Registered Owner: Alice Cummins; Folio: 485; Lands: Annaghkeenty; County: Leitrim; Area: 11a. 0r. 24p.

(4) Registered Owner: William Fitbgerald; Folio: 25165; Lands: (1) Farranavarra; Area: 302a. 0r. 12p.; (2) Synone; Area: 363a. 3r. 4p.; (3) Synone; Area: 30a. 2r. 20p.; (4) Ballysheehan; Area: Oa. Or. 30p.; County: Tipperary.

(5) Registered Owner: Robert Keane; Folio: 17880; Lands: Kilmagoura; County: Cork; Area: 64a. 1r. 22p.

(6) Registered Owner: Patrick Farrell; Folio: 3824; County: Longford; Folio: 1651; County: Roscommon; Lands: (1) Glebe; Area: 36a. 2r. 8p.; (2) Ballyclare; Area: 8a. 3r. 0p.

(7) Registered Owner: Michael Tierney; Folio: 10020; Lands: Cornamult and Muckloonmodderee; County: Tipperary; Area: 26a. 2r. 14p. and 29a. 1r. 1p.

(8) Registered Owner: Teresa Butler; Folio: 14532; Lands: Drumercool; County: Roscommon; Area: 23a. 0r. 7p.

(9) Registered Owner: Margaret Courtney; Folio: 10084; Lands: A plot of ground with the house thereon situate to the West side of Iona Park in the parish of St. George and District of Glasnevin; County: City of Dublin.

(10) Registered Owner: Michael Doherty; Folio: 2612; Lands: Carrowmore; County: Donegal; Area: 22a. 1r. 30p.

(11) Registered Owner: Timothy England; Folio: 1947; Lands: Cooleshill, County: King's; Area: 20a. 3r. 13p.

(12) Registered Owner: Bridget Connolly; Folio: 4003; Lands: Townparks; County: Kings; Area: 15a. 2r. 4p.

(13) Registered Owner: Padraig Mac an Ri; Folio: 54149; Lands: Knock South; County: Galway; Area: 1a. 0r. 18p.

MISSING WILLS

William Robinson, 44 Roseveale Court, Killester, Dublin 5. Will any solicitor holding a will of the above-named deceased who died at Mercers Hospital, Dublin, on 15th October 1972, contact the undersigned solicitors for the administrators as soon as possible. Dated, 27th October 1972. Florence G. McCarthy, Solicitor, Loughrea, Co. Galway.

Surgeon Patrick Hogan, T.D., deceased. Will any person knowing the whereabouts of the will of the above-named, please contact the solicitors for the next-of-kin. Messrs Ryan, Wallace & Crivon, 31 Dame Street, Dublin 2. Telephone 773069.

THE GAZETTE OF THE INCORPORATED LAW SOCIETY OF IRELAND

DECEMBER 1972
Vol 66 No. 10

Contents

EDITORIAL

The Offences Against the State (Amendment) Act 1972

We condemn unreservedly the destruction to property caused by bombs in Northern Ireland regardless by whom it was perpetrated, as well as the appalling injuries and loss of life caused not merely by bombs but also by deliberate assassinations in the Six Counties; we also deplore the unnecessary harassment of Catholic districts by British troops. Yet the bombs which fell on Dublin on the evening of December 1st were most fortuitous in securing an easy passage for this draconian legislation.

tionality, if the matter were brought before it.

Section 2 enacts that if a scheduled offence under the 1939 Act has been committed, and a Guard believes that a person in the vicinity knows of the circumstances in which the offence was committed, he can demand under penalty the name and address of such person, and his means of knowledge of the offence. But the substantive offences of the Act are contained in Sections 3 and 4. If a person, who is charged with being a member of an unlawful organisation, has made at any time a written or oral statement, implying or inferring that he was such a member, or omitting to deny that he was such a member at a material time, this will be deemed sufficient evidence that he was in fact a member and will subject him to specified penalties on conviction (Section 3, subsection 1). If a Chief Superintendent in such proceedings states, before the Special Criminal Court, that he believes that the accused was at a material time a member of an unlawful organisaton, this statement shall be sufficient evidence that he was then a member, and he will be subject to the prescribed penalties of up to two years imprisonment (Section 3, subsection 2). It is unlawful under specified penalties of up to four years imprisonment to make an oral or written statement or to hold or to take part in any meeting, procession or demonstration in public, that constitutes a vague interference with the course of justice, which apparently consist in directly or indirectly influencing any Court or authority concerned with the prosecution or defence of a case.

It is a fundamental and inalienable principle of the criminal law that anyone accused of an offence is presumed innocent until he has been found guilty by a Court. If a Court is now to accept the opinion of a Chief Superintendent, or an alleged oral or written statement as to whether anyone is a member of an unlawful organisation or not or to convict participants in processions this will not only introduce a drastic change in the law of evidence, but appears to be equivalent to an indirect method of internment, if the accused is convicted.

The late President of the High Court, in *The State (Burke) c. Lennon* (1940), I.R. 144, said that the right to personal liberty meant much more than mere freedom from incarceration, and if a man is confined against his will, he has lost his personal liberty, whether the restraint be called imprisonment, detention or internment. At page 155, he said : "The Constitution with its most impressive Preamble is the Charter of the Irish People, and I will not whittle away. In my opinion, the Constitution intended, while making all proper provisions for times of emergency, to secure his personal freedom to the citizen as truly as did Magna Charta in England." Like the 1939 Act, the 1972 Act is a permanent non-emergency piece of legislation passed with undue haste. There is ample evidence to prove that the powers under the 1939 Act were more than sufficient to charge anyone with subversive activities if the Government had cared to use them. The draconian police powers under this Act are completely superfluous. One would consequently expect vigorous opposition from lawyers on the ground that, under Article 40 (3) of the Constitution, this legislation does not respect the personal rights of the citizen, and does unjustly attack his person by changing unnecessarily the recognised standard laws of evidence.

Auction of King's Inns Books

The Benchers of King's Inns deserve the strongest possible censure from the Irish public. They decided to sell all their books on English and foreign literature, travel, philosophy, etc.—in a word, all books that did not strictly pertain to the realm of law. It is to be noted that some of these books were *incunabula,* printed before 1500, and others were the only copies extant in Ireland; furthermore many volumes had been donated to the King's Inns on the express condition that they were kept there permanently. Despite the fact that the King's Inns is an exceptionally rich corporation, which, unlike our Society, does not publish annual accounts, the Benchers' sole concern appears to have been to accumulate funds unnecessarily. They thus decided without any apparent motive to sell those irreplaceable books through public auction at Messrs. Sotheby in London without giving Irish Libraries a proper opportunity to purchase them beforehand. The first auction last May realised more than £64,000, and presumably the auction in November extending over several days, realised at least as much. Despite the fact that the Government weakly allowed these invaluable books to be exported from Ireland, no explanation of any kind has yet been forthcoming from the Benchers as to why it was necessary to sell them to accululate these fantastic sums. One can only question dubiously this alleged necessity. The Irish public in a matter of such public concern is entitled to a full explanation from this body which should be given even at this late stage.

THE SOCIETY

Proceedings of the Council

MEETINGS OF THE COUNCIL

OCTOBER 19th

The President in the chair also present Messrs Walter Beatty, Bruce St. J. Blake, 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, Eunan McCarron, Patrick McEntee, Brendan A. McGrath, John Maher, Patrick C. Moore, Senator J. J. Nash, George A. Nolan, Ptter E. O'Connell, Rory O'Connor, Thomas V. O'Connor, Patrick F. O'Donnell, William A. Osborne, Peter D. M. Prentice, Mrs. Moya Quinlan, Robert McD. Taylor, Ralph J. Walker.

Extraordinary members from Northern Ireland

The President on behalf of the Council welcomed Messrs J. A. Young, President and John L. Pinkerton, Council member of the Incorporated Law Society of Northern Ireland who were present by invitation.

Stipulations in agreement for leases with regard to costs and outlay

It was decided to take the opinion of Counsel as to whether the Society have power to make a Professional Practice Regulation prohibiting stipulations in contracts obliging a lessee to pay the lessor's stamp duty and other outlay including mapping fees and having certificates of compliance endorsed on leases and other matters.

Private Motorists' Protection Association

The Association issued a letter to members, who carry third party insurance only, advising them that where they are not responsible for the accident they will be making a claim direct on the third party involved and should they experience any difficulty with the claim to contact the legal department of P.M.P.A. who may be in a position to give assistance. The Society was in correspondence with the P.M.P.A. who wrote stating that on receipt of a request for assistance from member the Association would confirm to a solicitor chosen by the member that it will pay any costs recovered as the result of taking the case on its behalf. The Council on a report from a committee stated that there is no objection to this procedure provided that the member of the Association should have the right to choose his own solicitor at the expense of P.M.P.A.

Professional undertakings

Members asked for guidance as to their obligations on the following form of undertaking:

> We hereby undertake that in the event of our client entering into a contract for the sale of the leasehold interest then any balance outstanding on foot of this debt be paid out of the proceeds of sale within three days of completion of the sale.

The negotiations for the sale broke down and no contract was signed. The clients continued to pay the specified instalments of the debt and eventually the premises were again offered for sale through different auctioneers and the contract was signed for a figure much lower than the figure agreed at the previous abortive sale. It then became clear that the amount of the purchase money was insufficient to pay off the company's creditors in full. After the contract was signed but before completion of the sale the company went into voluntary liquidation. The question arose as to whether the claim of the liquidator to the proceeds of sale took priority over member's undertaking to the particular creditor. The Council having considered the matter advised members to seek a direction of the Court as to the legal position.

The committee were prima facie of the opinion that the situation had radically changed since the date of the undertaking although it was phrased in general terms "entering into a contract" the contract contemplated at the date of the undertaking no longer exists and in fact never came into being. The Council however refrained from expressing any opinion on the legal or professional aspect of the matter without a direction of the Court.

In another matter members enclosed a form of undertaking submitted to them by the local branch manager undertaking to hold documents on completion and trust for the bank and to lodge them as soon as the usual formalities in connection with stamping, registration and legal searches have been completed and not to allow while the documents remained in their possession any act which would result in the property being mortgaged or assigned without the bank's consent. They asked for guidance as to their professional and financial position. The Council on a report from a committee stated that in the event of completion of the undertaking members would be involved both in professional and financial liability. They were further advised that in the absence of an irrevocable authority and retainer members might be bound to hand over the documents and would then be caught between their obligations under the undertaking and their instructions from the client.

Land Registration costs

The Council were informed that rules giving an effect to an increase of 30% in the costs of voluntary transfers and applications under Rules 33-35 and costs under Rules 121 (6) have been made with effect from 2nd October 1972.

District Court Costs

New District Court costs are in operation since 1st September 1972.

Building Societies and completion of transactions

In formal discussions between lending bodies' solicitors and representatives of the Society it was arranged to discuss a number of matters of interest to the profession. It was suggested on behalf of the Society that lending institutions should not insist that a borrower be registered with absolute title in respect of

premises situated in an area of compulsory registration. Tht representations made by the Society were however unsuccessful and the existing practice will be continued. All the solicitors representing the lending institutions however agreed that in any case of difficulty they would not insist on a mortgagor attending at the offices of the mortgagee's solicitor to complete the mortgage. It was also reported to the meeting that in some cases a solicitor for a building society closed transactions with more than one borrower at the same time and this was regarded as open to objection. It was submitted on behalf of the Society that each completion should be a separate and private transaction. Nine lending institutions were represented at the meeting and it was stated on behalf of each of them that the practice sought by the Council in this connection is followed.

Solicitor's registered place of business

The Committee on Court Practice and Procedure in its Eighth Interim Report recommended that the requirement that the solicitor conducting litigation in the Superior Courts must have a place of business within a radial distance of two miles from the Four Courts should be abolished. Section 23 of the Courts Act 1971 was designed to carry this effect into recommendation but the necessary rules of court to give effect to it have not yet been made. A letter was sent to the Superior Court Rules Committee asking that the ruies be amended so that a solicitor would be no longer required to have a registered place of business within the two miles radius of the Four Courts.

District Court—Solicitors and Client costs

Members were instructed to recover a debt of £82 and had to travel 18 miles to a District Court to obtain the decree. The proceedings were successful. The sum of £8 was deducted from the amount collected as a solicitor and client charge. The Council on a report from a committee stated that the proper practice is to inform the client upon acceptance of the instructions that a solicitor and client charge is likely to be involved. However failure to inform the client would not prevent a solicitor being entitled to charge on a solicitor and client basis. The solicitor should inform the client of his right to have the solicitor and client bill taxed if he regards it as excessive.

Certificates for banks

Members wrote to the Society on the subject of the practice of one of the banks which will now seal documents only if there is a certificate on the back to the effect that the document is in order for sealing to be signed by their law agent or by the solicitor acting for the customer. While this poses no problems where the solicitor is acting for the bank the position is very different in the case of a trust in which the bank is to be the trustee. In such a case the solicitor is acting for the settlor and he is not advising the bank as to its correctness or otherwise of the deed or whether it is suitable for the bank to execute it at all. To sign the certificate puts the solicitor in the position that he is advising the bank as to the propriety of executing the particular document. The Council on a report from a committee stated that a solicitor not acting for the bank should not be asked to advise the bank as to the propriety of executing the particular document.

Dublin Corporation leases

Members drew attention to cases where purchasers are taking leases from the Dublin Corporation. The law agent will not send out the engrossment of the lease as a matter for completion but requires the purchaser to attend personally at the Corporation to sign the lease. This frequently results in delay as well as inconvenience. It takes two or three months to have the leases sealed by the Dublin Corporation and this imposes hardship on the builder and purchaser alike. The matter was referred to the Dublin Solicitors' Bar Association who were asked to take the matter up with the Corporation and to refer back to the Society.

Legal Aid

It was decided to summon a meeting of solicitors on the legal aid panel throughout the country to discuss the present scales of legal aid fees and any appropriate action to obtain an increase in the scales.

World Peace through Law Conference

The Abidjan World Conference on World Peace through Law will be held in Abidjan, Ivory Coast, August 26th-31st, 1973. This Conference is the first such world meeting of the legal profession ever to be held in Africa. Discussions will be held in such areas as: religion and the law, international organizations, human rights and urban development.

A special charter flight from Paris to Abidjan on August 25th has been arranged, returning to Paris, September 1st, 1973. The round trip fare will be $250.00 (U.S.) per person (£105).

Further information and application forms can be obtained upon request from the Law Society of Ireland.

International Congress of Jewish Lawyers

The Second International Congress of Jewish Lawyers and Jurists, organized by the International Association of Jewish Lawyers and Jurists will be held in Jerusalem, Israel on August 19th-23rd, 1973, under the auspices of the President of the Supreme Court of Israel and the Minister of Justice.

The Congress will be held within the framework of the celebrations of the 25th anniversary of the State of Israel, and will be dedicated to 25 years of legislation and judicature in Israel.

For information and for preliminary registration apply to The Secretariat of the Congress, Daphna Events, P.O.B. 29234, Tel-Aviv, Israel.

UNREPORTED IRISH CASES

Section 60 of Workmen's Compensation Act 1934 and Section 6 of the Act of 1953, which prohibit a workman from taking a civil action for negligence unless within a specified time, of accepting compensation, do not conflict with the Constitution.

(1) On 12th December 1963, the plaintiff, who was in the employment of the defendants, sustained an accident in the course of his employment and he alleges negligence and breach of statutory duty against the defendants.

(2) On 7th March 1966, he issued proceedings in the High Court for damages and negligence, and delivered a statement of claim on 21st December 1967. The defendants denied negligence, and pleaded contributory negligence.

(3) The defendants also contended that, while the plaintiff was incapacitated, the defendants paid him a weekly sum of £4.50 for workmen's compensation. They pleaded that the plaintiff's proceedings were not maintainable as not having been commenced within the statutory time allotted by Section 60 of the Workmens Compensation Act 1934. The plaintiff replied that Section 60 was unconstitutional, as it had not been carried over by the Constitution. On 7th March 1969, an order directed that a judge alone should try these preliminary issues.

(4) Pringle, J. held that Section 60 of the 1934 Act as amended by Section 6 of the 1953 Act were not inconsistent with the Constitution, and that the plaintiff had not instituted the proceedings within 12 months of the accident. It was also stated that the plaintiff had not exercised his option to either claim workmen's compensation or to take proceedings for negligence, as he was apparently not aware he could not claim both.

(5) The defendants—appellants— contended on appeal that Section 6 of the 1953 Act related only to the exercise of the option provided for in Section 60 of the 1934 Act, and did not refer to cases such as this, where workmen's compensation had been accepted without the exercise of the option. In *Young v. Bristol Aeroplane Co.* (1946) A.C. The House of Lords expressed the view that the mere acceptance of workmen's compensation as such was not in itself the exercise of an option, and was not a bar against maintaining proceedings at common law. The former Supreme Court arrived at a different conclusion in Irish cases. For instance, in *Walsh v. E.S.B.* (1944) I.R., when the same defence as to payment of workmen's compensation had been set up, O'Byrne, J., giving the majority judgment of the Supreme Court, held that the fact that the defendants paid workmen's compensation was to make them liable under the Act, and the plaintiffs could not contravene Section 60(2), by making the defendants liable independently of the Act; this subsection provided that the employer should not be doubly liable to pay workmen's compensation—and damages at common law. In *Kavanagh v. Dublin Gas Co.* (1947) I.R., the majority of the Supreme Court held that, once the payments of compensation had been made, there was an admission of liability by which the employers were bound, and declined to follow Young's case (1946). Walsh's case ought not to be followed otherwise it would have meant that an employer by speedy action in immediately paying workmen's compensation could eliminate the danger of being sued at common law.

(6) The real effect of Section 60 is that it did not prevent an employer choosing to pay under both headings if he so wished, and if he voluntarily paid workmen's compensation in the first instance. Therefore the statutory provision which provides that an injured party having alternative remedies against the party who is insurable for the injury may not make the second party liable to pay under both headings, is not inconsistent with the Constitution.

(7) At common law, it was necessary to prove fault, whereas workmen's compensation is statutory. This Court is established under the 1961 Act and is free not to follow decisions of the former Supreme Court. Section 60 of the 1934 Act was not affected by the ordinary period of limitation in respect of common law actions brought by workmen, provided they had not accepted workmen's compensation under the Act. Accordingly Pringle J. was correct in holding that Section 60 (2) was carried over by the Constitution, and that the plaintiff's proceedings are not maintainable because the appeal was not instituted in time. The appeal was accordingly dismissed by the full Supreme Court.

(8) It is also clear that Section 6 of the 1953 Act does conform with Article 40(1) or Article 40(3) of the Constitution. This section states that, if proceedings are not instituted within 12 months of the accident, then they can be instituted within the following 12 months only if substantial grounds are advanced; the section purports only to cut down the time in respect of those who have actually received payment of compensation under the Act. Economic compensation may force a workman to claim and accept compensation under the Act, and yet he should not thereby be debarred from seeking further relief under common law. The State may differentiate between citizens in pursuit of personal rights—in *O'Brien v. Keogh,* it was held that Article 40 does not require identical treatment of all persons without recognition of differences in relevant circumstances. Section 6 has protected workmen from their previous vulnerable position, and has placed them in a more advantageous position. It does not conflict with Article (40)1 of the Constitution. As regards Article 40(3) of the Constitution, it is clear that Section 6 of the 1953 Act does adequately defend and vindicate the personal rights of the workmen.

[O'Brien v. Manufacturing Engineering Co. Ltd.; Supreme Court; unreported; per Walsh, J.; 28th July 1972.]

Judge wrongly admits confession as not made voluntarily and acquits aicused—Reference to Supreme Court under Criminal Procedure Act, 1967.

(1) Section 34 of the Criminal Procedure Act 1967 provides that, if a verdict on a question of law is found by direction of the trial judge, The Attorney General, may, without prejudice to this verdict refer this question of law to the Supreme Court by means of a statement to be settled by the Attorney General in consultation with the Judge.

(2) The trial of the accused was held in Dublin Circuit Criminal Court before Judge McGivern in April 1968. He pleaded not guilty to shop-breaking in Premier Tailors, and to having stolen £250 in cash and diamond earrings and brooch on 3/4 December 1967.

(3) The accused was in custody at Store Street Station on 9th January 1968, in connection with other matters, when Detective Inspector Lalor said to the accused: "What about Premier Tailors? I believe you did it". The accused replied: "We did it, and we got £225 in an envelope in the safe". The Inspector then cautioned the accused, and asked him to make a statement, which the accused refused to do. The admissions of the accused were repeated in more detail to Sergeant Ryan two hours later.

(4) Judge McGivern held that all the evidence in paragraph 3 was inadmissable as this was not a voluntary confession as there appeared to be evidence by the Guards which would convict him. As the prosecution was unable to adduce any further evidence, the Judge directed the jury to enter a finding of not guilty by direction.

(5) The Attorney-General referred the matter to the Supreme Court on the ground that the accused had freely admitted his guilt. The application would be grounded upon a "Book of Evidence", which are the documents which the prosecutor is obliged to serve to the accused under the Act.

(6 When a question of law is thus referred to the Supreme Court, it must be decided, on the basis of factual evidence given at the trial, and not upon any statements of evidence before the preliminary hearing. A trial judge however has no discretion to admit an inculpatory or exculpatory confession made by an accused which is in law inadmissable because it was not voluntary. If the accused's statement arises under the "Judges Rules", the trial judge has a discretion to admit or not voluntary admissions, as held in *McCarrick v. Leary* (1964) I.R. 225. But this did not arise in the present case.

(7) If, as may have happened here, the confession was induced by a false pretence, a trick or a fraud, this does not of itself exclude the confession if the trick is not illegal, nor a breach of accused's constitutional rights.

(8) The trial judge in excluding the evidence did not exercise his discretion at all, as no reference was made to the Judges Rules. The judge wrongly rejected the evidence, because he did not consider the question whether the confession was involuntary. If an accused, who is in fact guilty, believes that it might in the long run be advantageous to him to admit his guilt rather than conceal, any resulting confession is not to be impugned. The Court should not consider the statements made to Sergearn Ryan. Accordingly the full Supreme Court held that the Trial Judge had no grounds for holding that the answers to the reference to Premier Tailors was not voluntary.

[People v. Cummins; Reference under Criminal Procedure Act 1967; Supreme Court per Walsh J.; unreported; 26th July 1972.]

Breach of Union rules does no entitle the Executive Committee of the Union to declare an illegal strike and place pickets unsupported by the members.

(1) All plaintiffs and defendants are members of the Automobile and General Engineering and Mechanical Operators Union.

(2) One of the defendants, Reilly, was formerly employed by Ballsbridge Motors Ltd., but was dismissed in February 1972 following allegations that he had taken spare parts worth 20p for his own use from the store. The engineering committee of this section was not satisfied that Reilly was guilty, but the employers refused to reinstate Reilly.

(3) On 2nd March 1972, the committee sent a letter to the employers stating they were in dispute with them. On 3rd March, the Labour Court investigated, and recommended that Reilly's dismissal be regarded as a suspension with pay, pending recommendations by a Rights Commissioner but this was not accepted by the Union.

(4) On 5th March, the members of the Executive Committee of the Union informed the workers at Ballsbridge Motors that they had taken a decision to strike. The workers present were prevented by the Chairman of the Executive from discussing this. Pickets were accordingly placed on the premises on 6th March.

(5) None of the members of the union were in favour of the strike, nor did they wish to picket. The only lawful person who can picket is Reilly.

(6) The plaintiffs claim that the Executive Committee has called a strike in breach of the rules of the union, and seek a declaration that it was *ultra vires* for the Union to direct the withdrawal of labour or the placing of pickets contrary to the wishes of the members, and that the notices concerning this was invalid. On 10th March, Kenny J. granting an interim injunction ordered each of the defendants to be restrained until further order, from picketing the premises. On 22nd March, Pringle J. refused an interlocutory injunction, because the declaration was unlikely to be successful, and that no irreparable damage can be proved.

(7) The Supreme Court held that the Executive Committee had directed its members to refuse to work and thereby create a strike with the employers. The members have not refused to work, and, there cannot therefore be any strike. It would be contrary to the meaning of the rules that the Executive Committee should circumvent them. The protection afforded by the Trade Disputes Act 1906 does not permit the defendants to sit in breach of the rules of their union. The activities of the defendants constitute a clear interference with the employment of the plaintiffs. There should accordingly be an order of perpetual injunction restraining the defendants from picketing, according to the full Supreme Court.

[Darby and others v. Leonard and others; full Supreme Court per Walsh J.; unreported; 26th July 1972.]

Right to Ancient Lights does not include right to Modern Lights.

The plaintiff, Mary Lavin, the writer (now Mrs. Scott) was awarded £1,700 damages by Teevan, J. on 31st July 1968, for diminution of access to light to her premises, caused by a building erected near her premises by the defendants. These premises are new, and were converted into a residence by the plaintiff. The defendant's premises, opposite the plaintiff's comprises a substantial building erected in three sections; the centre section is 124 feet high; these premises cost £600,000 to build. While the defendant's premises were being built, there was a preliminary letter, from plaintiff's solicitor in May 1967 advising them that the building would diminish the light, and seeking an assurance that no buildings would be put up which

would interfere with the plaintiff's residence. The defendants replied that the building would not interfere with the plaintiff's right to light. The nearest point of defendant's premises is 43 feet from plaintiff's new ground floor windows.

The defendants appealed on the ground that Teevan, J. should not have awarded damages in respect of obstruction of light to new windows which were not ancient lights; they also contended that the plaintiff was not entitled to damages for loss of amenity as well as damages based in the diminution of the value of her property. The obstruction of genuine ancient lights in plaintiff's premises is not disputed. The plaintiff contended that *Griffith v. Clay* (1912) 2Ch. 291—decided that general damages may include compensation for obstruction to light of modern windows in the same way as if they were ancient lights—but this was rejected by Fitzgerald, J. However it was held that a judge is entitled to take into account as much loss of amenity in the future use of the premises, as the future selling value of the property. The sum of £1,700 bears no reasonable relation to the injury suffered by the plaintiff in respect of these matters. Consequently the Supreme Court (Fitzgerald and McLoughlin, J., per Fitzgerald, J., Walsh, J., dissenting) allowed the appeal.

[Scott v. Goulding Fertilisrs Ltd.; 29th February 1972; Supreme Court; unreported.]

Directors and their Accountants are entitled to make Copies of Books of Account of the Relevant Company.

Plaintiff and second defendant are directors of the company, the first defendant. The plaintiff complained that he had been excluded from the management of the Company, and sought an inspection of the register of members, the minute book, and the books of account, and wished to have an accountant with him when he was checking this. The defendants refused to allow anyone except the plaintiff to see the books of account although they would allow an accountant to see the register of members and the minute book. Kenny, J., held that under section 147 of the Companies Act 1963 quoted, the right of a director to inspect the books of a company, when he has an obligation placed on him, the breach of which may involve him in criminal liability, necessarily implies that he has the right to employ a qualified agent to advise him. The question whether proper books are being kept is essentially one on which an accountant is the only person qualified to advise upon. The director and his accountant are also entitled to make copies of the books of account or any part of them.

[Daniel Healy v. Healy Homes Ltd. and Kilcoyne; Kenny, J.; unreported; 19th June 1972.]

Supra-National Justice?

by CONOR BRADY

Recent court decisions seem to indicate that, at least within the E.E.C. the tradition is changing of countries refusing to extradite those wanted for political offences.

These are good days for Europe's policemen. From Holland to Sicily and from Glasgow to Kerry, the men involved in law enforcement are doing nicely from their governments' fears of organised political violence. Very quietly and with scant notice from the international press, European governments in recent months have begun a significant tightening of their lines of international policing and individual states have made substantial improvements in the pay, conditions and staffing of their police forces.

At the level of international relations there has been a noticeable hardening in recent months among European justice systems. The most significant manifestation of this was a decision in August by the Belgian courts to grant the Italian Government's request for the extradition of three members of a Leftist group wanted for offences in Italy with clear political overtones. The three men were members of the October 22nd, Movement, one of Italy's largest left-wing groups and their offences as stated to the Belgian court were kidnapping and armed robbery.

What the Belgian court was not told—and apparently did not want to know anyway—was that the three faced numerous other charges in Italy of a more overt political nature. As it was, the two offences with which the Belgians were charged were politically connected in themselves.

The Belgian decision, unprecedented in that country's judicial history, was in violation of the long-standing convention among European Governments that extradition is not granted in political offences. Significantly too, a similar application two years ago by the Portuguese Government was turned down by the Belgians and legal observers believe there is a significance in the fact that while Portugal is outside the E.E.C., both Italy and Belgium are members of the community.

Left-wing co-operation

It is known that police authorities in Italy, France and Germany have long been seriously concerned at the growth in international co-operation among left-wing groups in their respective areas and while the convention of refusing extradition for political offences has been honoured, a noticeable increase in co-operation on political matters has come about between Italian, French and German police. With the Belgians now adopting a strong line however, it might well be asked whether the entire E.E.C. area is moving towards a very much closer system of police co-operation especially in regard to the handling of left-wing activists.

The justification for introducing some measure of uniformity among European police forces rolls easily off the tongues of Justice officials; free flow of money and goods provides more opportunities for the criminal; reduction of frontier formalities and work restrictions makes the policeman's job of tracking people and goods more difficult. And up to a point this approach is valid. The problem, however, is to know just how far such standardisation should be allowed to go and whether it should also be extended to include the courts and the judicial system.

There are signs already that the British may be contemplating some moves towards European standards in these matters—influenced no doubt by the growth of political violence in Northern Ireland and in England itself. The British would be the last to admit that they

Continued on page 275

CURRENT LAW DIGEST SELECTED

All references to dates relate to *The Times* newspaper.

In reading these cases note should be taken of the differences in English and Irish statute law.

Bills of Exchange

Before Lord Reid, Viscount Dilhorne, Lord Diplock, Lord Simon of Glaidale and Lord Corss of Chelsea.

The holders of a bill of exchange who knew that it would be dishonoured on presentation on the due date but through a clerical error posted the necessary notice of dishonour early so that it was delivered to the drawer by the same post as the bill was delivered to the bank and dishonoured were held to be entitled to payment on the bill. A majority of the House of Lords decided that where the evidence did not show which of the two pieces of paper—the bill and the notice of dishonour—was received first, it was to be presumed that they took place in the order which would make the notice valid. Applying that presumption the House hold that the dishonour of the bill preceded the notice so that the notice was good.

Eaglehill Ltd. v. J. Needham, Builders, Ltd. 26/10/72; House of Lords.

Contract

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

An indemnity clause in the Road Haulage Association's Conditions of Carriage (1967 revision) which provides that "The trader shall ... keep the carrier indemnified against all claims or demands whatsoever" in excess of £10 on any one consignment was construed by the Court of Appeal as wide enough to require a trader to indemnify the carrier against a claim for £998 for the loss of three gold watches arising out of the negligence of the carrier's own servant.

Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd. and Rennie Hogg, Ltd.; 25/10/72; C.A.

Before Lord Denning, the Master of the Rolls, Lord Justice Edmund Davies and Lord Justice Stephenson.

The RIBA Standard Form of Building Contract Local Authorities Edition with Quantities (1968 revision) was strongly criticized by the court as "a farrago of obscurities" and the redrafting of some of its clauses recommended to make clear precisely what had to be done to constitute taking possession of a part of works in progress, with consequential shift of fire insurance risks, where the parties know that a factory will continue working during building operations.

English Industrial Estates Corporation v. George Wimpey & Co. Ltd. 3/11/72; C.A.

Crime

Before Lord Justice Lawton, Mr. Justice Chapman and Mr. Justice Wien.

[Judgment delivered October 20th]

The court certified that a point of law of general public importance was involved in their decision to dismiss appeals against conviction under section 25(1) of the Immigration Act, 1971, namely, "Whether the offence created by section 25(1) of being knowingly concerned in carrying out arrangements for facilitating entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an illegal entrant may be committed by actions of the accused performed after the time of disembarkation of an illegal entrant".

Regina v. Singh; Regina v. Meeuwsen; 23/10/72; C.A.

Before Lord Justice Lawton, Mr. Justice Chapman and Mr. Justice Wien.

A man who was sentenced to three months' imprisonment for driving 25 yards while disqualified—which he has already served—was given in substitution a one day's sentence, which meant his immediate discharge. An order activating a six months' suspended sentence, which he had already begun to serve, was quashed, thus leaving the suspended sentence still running.

Regina v. Smithers; 19/10/72; C.A

Damages

Before Lord Denning, the Master of the Rolls, Lord Justice Megaw and Sir Gordon Willmer.

Where a girl's prospects of marriage have been diminished as a result of personal injuries, the courts in following the present practice of assessing the damages under itemized headings should guard against the danger of overlapping and should not include the diminished prospects of marriage under more than one heading.

Harris (an infant) v. Harris; 11/11/72; C.A.

Damages for breach of contract to provide a winter sports holiday are not confined to matters of physical inconvenience and discomfort but may include damages for the disappointment and frustration for not obtaining what was promised.

Jarvis v. Swan Tours, Ltd.; 19/10/72; C.A.

Easements

Before Lord Justice Russell, Lord Justice Edmund Davies and Lord Justice Stamp.

[Judgment delivered October 31st]

A servient owner's undertaking to repair and maintain ramps, placed on a right of way to stop cars being driven at an excessive speed, is a sufficient remedy for the owner of the dominant tenement because the successor in title to the owner of the servient tenement will be liable for a disturbance of the easement if he lets the roadway fall into disrepair so that the ramps become a substantial interference with the right of way.

Saint & Another v. Jenner & Another; 6/11/72; C.A.

Estate Agents

Held that estate agents who had received a pre-contract deposit which was returned to the intending purchaser when the sale fell through were entitled to retain interest which they had received by placing the money on deposit with their bankers.

Potters (a firm) v. Loppert; 9/11/72; C.D.

Evidence

Before Lord Justice Karminski, Mr. Justice O'Connor and Mr. Justice Forbes.

[Judgment delivered October 20th]

The transcript of evidence given by a witness at a trial which ended in the jury disagreeing and who died before the retrial took place was held to be admissible at the new trial.

Regina v. Hall; 23/10/72; C.A.

Master and Servant

Before Lord Denning, the Master of the Rolls, Lord Justice Megaw and Sir Gordon Willmer.

An employee who was given notice of dismissal before the sections of the Industrial Relations Act, 1971, which give a rght to compensation for unfair dismissal came into force, can bring an action against her employers for unfair dismissal where the notice given expired after the sections came into operation, for on the proper interpretation of section 23(2) the contract under which she was employed was terminated on the date when the notice expired.

H. W. Smith (Cabinets) Ltd. v. Brindle; 8/11/72; C.A.

Negligence

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

A widow who had committed adultery and deserted her husband five weeks before he was killed in a road accident failed in her appeal to the House of Lords from decisions dismissing her claim for damages under the Fatal Accidents Acts, 1846-1959, because she had not shown that if he had lived there was a reasonable expectation of a reconciliation.

Davies v. Taylor; 25/10/72; House of Lords.

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

Where two canvassers work together soliciting prospective customers at their homes, the canvasser whose car is used for the purpose is still driving in the course of his employment when he is taking the other home.

Elleanor v. Cavendish Woodhouse Ltd.; 25/10/72; C.A.

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

[Judgment delivered October 31st]

Reasons were given by the court for dismissing in July appeals by ICI against the judgment of Mr. Justice O'Connor (*The Times,* April 22nd, 1971) awarding £15,000 damages against them to Mr. Christopher Wright, aged 49, of Liverpool, and £6,000 to Mr. Thomas Cassidy, aged 50, of Speke, two Dunlop workers, on their claim that they had contracted bladder cancer through exposure to carcinogenic substances manufactured by ICI and sold to Dunlops.

Cassidy v. Imperial Chemical Industries Ltd.; 2/11/72; C.A.; Wright v. Same.

Security for Costs

Where the plaintiff in an action is a limited company the court's discretion to make an order for security for costs is unfettered, Mr. Justice Mars-Jones held in the Queen's Bench Division when refusing an application by Parkinsons for security against Triplan.

Sir Lindsay Parkinson Ltd., v. Triplan Ltd.; 1/11/72; Q.B.D.

Trade Disputes

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

The Trade Descriptions Act, 1968, was not intended to make a criminal offence out of what was really a breach of warranty, the Lord Chief Justice said when giving judgment on a prosecutor's appeal under the Act.

Beckett v. Cohen; 30/10/1972; C.A.

Trespass

Before Lord Denning, the Master of the Rolls, Lord Justice Megaw and Sir Gordon Willmer.

A canoeist may be liable for interference with the fishing rights of an angling club although no one is actually fishing at the time of the passage of the canoe. If fishing rights are substantially interfered with an action can be brought in respect of that interference without proving special damage.

Rawson and Others v. Peters; 2/11/72; C.A.

Words and Phrases

Before Mr Justice Megarry.

Where a fried fish and chip shop remains open after 11 p.m. for the sale of fish and chips to the public, whether to be consumed on or off the premises, the shop comes within th definition of a "night cafe" in section 47(1) of the Greater London Council (General Powers) Act, 1968.

Sudders and Others v. Barking London Borough Council; 25/10/72; C.L.D.

Land Registration Rules, 1972

S.I. No. 230 of 1972

The Land Registration Rules 1972—S.I. No. 230 of 1972, came into force on 20th October 1972 and replace in full the Land Registration Rules of 1966, as well as the Land Registration (Solicitors' Costs) Rules 1970.

The present Rules contain 242 Rules, and 108 Forms. There is a full Schedule of Costs, in which Part 1 contains the scale of charges on sales, purchases and mortgages. Both the Vendor and Purchaser's Costs on Sale work out at £4 for the first £1,000, then £3 between £1,001 and £3,000, £1.50 between £3,001 and £10,000, and £0.75 per £1,000 above £10,000.

Part 2 deals with scales of charges relating to leases, which works out at £15 in respect of the first £100 of rent, £5 in respect of each subsequent £100 up to £500 and £2 for each £100 rent above £500. Part 3 deals with costs in relation to fee farm grants. Part 4 deals with the remuneration of a solicitor for arranging transfers by a registered owner. In this case, Rule 238 defines "Value" as equivalent to 50 times the rateable valuation. Part 5 deals with the scales of charges in respect of application for conversion of possessory titles. Part 6 deals with Judgment Mortgages, and Part 7 deals with costs of production of a Land Certificate and of a Certificate of charge.

The Land Registration Rules can be obtained from the Governmest Publications Sale Office, Henry St. Arcade, Dublin 1, for 32½p, plus 7½p for postage.

SUPRA-NATIONAL JUSTICE — Continued from page 273

were adjusting their institutions towards the European system of justice but many of the recommendations in the recent report of the Criminal Law Revision Committee are very close to the European way of doing things.

Replacing jury system

For instance, the possibility of replacing the jury system with an inquisitorial system for criminal cases is mentioned in the Report and this derives largely from the French model in which an examining judge presides at trials. Further, the continental police operate under considerably more flexible regulations with regard to the cautioning of suspects and the admissability of evidence. Again, the Criminal Law Revision report suggests that the British police might have their hand strengthened by changing the law in these matters in Britain.

As a quid pro quo in a standardisation of European criminal law and police regulations, the British might well point out that the Community is beginning to adopt the traditional British approach towards political crime. British courts have been notoriously slow to make any concessions towards political motivation as an extenuating factor in crimes of violence. While accepting that political motivation is valid, the British legal system has traditionally supported the view that crimes against the law, committed even in pursuit of a political aim, are in themselves non-political.

The established order throughout Europe is worried —and not without good cause.

The British police believe that liaison is extensive between the left-wing groups in Britain and in Germany and France. The Germans believe that their radicals are in touch with the I.R.A. The French fear that their Gauchistes have Irish and British contacts. The Gardai are still unsure of the validity of the claim by Dublin leftists that they blew up the German Embassy on behalf of the Baader-Meinhoff gang.

The question of standardising European criminal law will become more urgent as the E.E.C. moves closer towards full political union. Certainly it will be necessary to establish clear principles for the ordering of relations between police forces and for the regulation of international jurisdiction over prisoners. We inherited a few good things from the British regime—one was their code of law and we would be well advised towards caution before we abandon it.

—*The Irish Times,* 14th November, 1970

Committee on Court Practice and Procedure

The Solicitor's Right of Audience

THIRTEENTH INTERIM REPORT
OF THE COMMITTEE ON
COURT PRACTICE AND PROCEDURE

To: *Desmond O'Malley, Esq., T.D.,*
Minister for Justice

MAJORITY REPORT

INTRODUCTION

(1) The Committee on Court Practice and Procedure were appointed by the Minister for Justice on the 13th 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 have taken the topic of the Solicitor's Right of Audience as the subject-matter of this their Thirteenth Interim Report. The term "right of audience" as used in this Report means right of audience as an advocate.

(3) The Committee sought from the persons and bodies whose names are set out in Appendix A hereto views on the subject matter of this Report and on the question of whether a voluntary fusion of the professions of the solicitor and the barrister would be in the interests of litigants. The Committee received views on these subjects from the persons and bodies named in Appendix B hereto. A small number of others wrote to say that they had no news to offer. We intend to devote a later Interim Report to the latter topic.

(4) The Committee also, by notice published in the daily press, invited members of the public to submit views on these topics. These matters, however, are not ones which have interested the public sufficiently to reply to our newspaper notices. It is now over fourteen months since the press notices appeared and replies have been received from only three persons (two of whom were solicitors). We wish to express our gratitude to all those who assisted our work by offering their views either in reply to our letters seeking assistance or in response to the newspaper notices.

PRESENT POSITION

(5) The right of audience in the High Court and Supreme Court is not based on statute or rule of court but on usage and practice. It is not therefore a question of a right but a privilege given by the Court. Except when the procedure can be and has been prescribed by statutory authority or has been settled by long usage, a court or other tribunal has the right to regulate its own proceedings—see *Collier v. Hicks* [1831], 2B. & Ald. 633, at pp. 668, 670, 672. The long established usage of the former Superior Courts in this country and in Great Britain was that solicitors have not had a general right of audience in the Superior Courts. This usage has been continued in the High Court and Supreme Court since the establishment of the State.

(6) The general picture within the State is that, while barristers have a right of audience in all courts, solicitors have such a right in the District Court and in the Circuit Court but, save for some minor exceptions, not in the High Court. The right of audience in the Supreme Court is confined to members of the Bar. When a barrister is formally called to the Bar in the Supreme Court by the Chief Justice, he is in express terms admitted to practice as an advocate in the Courts of Ireland. High Court Judges have on occasions permitted solicitors a right of audience in a case to move an adjournment or seek some other interlocutory order. A litigant in person is permitted to exercise a right of audience to make his own case in all courts and it is believed that this right of access to the courts established under the Constitution is a right guaranteed by the Constitution. The question as to whether a right of audience can be exercised other than as a litigant in person or by a member of the legal profession was considered by the Supreme Court in two recent decisions, viz: *Battle v. Irish Art Promotion Centre Ltd.* [1968] I.R. 252 and *The State (Richard Tynan)* v. *Governor of Portlaoise Prison (Re Michael Woods)* delivered 19th December 1967 (not yet reported). In the former case a lay person was not permitted to act as advocate for a limited company of which he was the managing director and in which he was the owner of one half of the issued shares. In the latter case it was held that a lay person was permitted to make a complaint to the High Court that another person was being detained otherwise than in accordance with law and to move the Court to enter into an enquiry into the matter pursuant to Article 40 of the Constitution. It was also held, however, that when the detained person was produced in Court pursuant to the order of the Court, the lay person whose complaint had put the inquiry in train was not entitled to appear as an advocate for the detained person although he was permitted to advise him and assist him in the examination of the cause of the detention offered in justification by the person holding custory of the person so detained.

(7) The provisions of the relevant statutes and rules of court regulating the solicitor's right of audience are mentioned in the following paragraphs.

District Court

(8) Rule 7 of the District Court Rules, 1948, allows any party to any proceedings in that court to appear by his solicitor. The rule also provides, *inter alia* that in summary proceedings the Justice may give leave to a defendant's father, son, husband, wife or brother to appear and be heard on his behlaf where the Justice is satisfied that the defencant is from unavoidable cause unable to appear.

Circuit Court

(9) The solicitor's right of audience in the Circuit Court is based on usage. The Rules of the Circuit Court make no express provision for the solicitor's right of audience as an advocate but they do provide (in rule 1 of Order 59 of the 1950 Rules) that "any act required by these Rules to be done by a party may be done by him in person or by his Solicitor".

High Court

(10) The position as to the solicitor's right of audience before the High Court in bankruptcy matters is governed by section 372 of the Irish Bankrupt and Insolvent Act, 1857, whereby a right of audience is given to "every Attorney or Solicitor of any of the Superior Courts of Law or Equity in Dublin". When this Act was passed, the Court of Bankruptcy in Ireland was a separate court in which much of the business was done before commissioners and registrars. The Court of Bankruptcy did not become part of the High Court of Justice in Ireland on the establishment of that Court by the Supreme Court of Judicature Act (Ireland), 1877, and did not do so until 1897 when the solicitor's right of audience in bankruptcy matters was preserved by the Supreme Court of Judicature (Ireland) (No. 2) Act, 1897.

(11) Solicitors have been given the right of audience in certain circumstances to appear before the High Court when exercising its criminal jurisdiction. The position is dealt with by Rule 8 of Order 85 of the Rules of the Superior Courts which reads:

> "An accused person may be represented and appear by a solicitor (without counsel) in the Central Criminal Court (by leave obtained before the day of trial) where the Central Criminal Court is satisfied that such accused person has not sufficient means to engage and retain counsel on his behalf, and in any such case such solicitor shall have the right of audience (including the right to address the jury)."

Court of Criminal Appeal

(12) Rule 31 of Order 86 of the Rules of the Superior Courts reads:

> "31. In all preliminary and interlocutory proceedings and applications the parties thereto may be represented and appear by a solicitor alone."

Position of qualified assistant

(13) The position of a person engaged as a qualified assistant solicitor in regard to rights of audience is governed by section 65 of the Solicitors Act, 1954, which reads:

> "65. Where a solicitor enters an appearance or is acting generally for a party in an action, suit, matter or criminal proceedings, a solicitor qualified to practice who is acting as his assistant shall have a right of audience therein in any court or tribunal in which the first-mentioned solicitor has a right of audience."

APPROACH TO QUESTION OF RIGHT OF AUDIENCE

14. As already indicated in paragraph 3, this Committee is presently engaged in considering the question whether a voluntary fusion of the professions of the solicitor and the barrister would be in the interests of litigants. While the question whether solicitors should have a general right of audience in the High Court and Supreme Court is relevant to the question of fusion, it is our opinion that it merits separate consideration in the existing context of the division of the legal profession into the two branches of solicitor and barrister.

ARGUMENTS AGAINST CHANGE IN PRESENT POSITION

(15) The main arguments advanced to us in support of the existing position are:

(i) Advocacy in court is a specialised function which, in so far as the High Court and Supreme Court are concerned, is best left to those whose professional training and experience specially fits them for it. At present this training and experience are to be found in the barrister's field, while other aspects of litigation, such as ascertaining from prospective witnesses the facts of a case, are within the solicitor's domain. Unskilled advocacy may be detrimental to the client in that injustice may be done to him. The technicalities of the law of evidence are formidable particularly in criminal proceedings and some have been convicted who might otherwise have been acquitted if a particular line of cross-examination had been avoided. This has happened even with experienced counsel defending an accused person and would happen much more easily if his defence were in the hands of a person inexperienced in or infrequently engaged in the specialised function of advocacy.

(ii) Proceedings in court would be prolonged and the outcome made less predictable where inexperienced advocates do not appreciate what requires to be proved and what need not be proved in a particular case.

(iii) An objective approach to the conduct of a trial would be exceedingly difficult when an advocate has been closely associated with the client's case as a solicitor frequently is. One of the advantages of the present system which confines the right of audience in the High Court to barristers is that it provides an independent and impartial advocacy. This is because the barrister has no direct contact with the client but only accepts instructions through a solicitor. The solicitor, on the other hand, has a commitment to his client with whom he may be on close personal terms and on whom he may depend for a substantial proportion of his living over a period of years. A barrister seldom acts for a client with whom he is personally acquainted and rarely acts for the same client with any great regularity.

(iv) The judge's task is made easier when the advocate shares the same professional experience in advocacy as the trial judge has experienced.

(v) A lowering in the standard of advocacy in civil cases would be undesirable. The poorer the level of advocacy in any court, the greater is the onus thrown on the court to supplement the advocate's work by research to be undertaken prior to delivery of judgment with a consequential delay in the determination of cases.

(vi) If the solicitor's right of audience were extended to all courts, the extended right would be little used as is borne out by the present experience of the Circuit Court. In the Circuit Court, the barrister and the solicitor enjoy equal rights of audience but the current practice is that solicitors seldom exercise their right of audience and instead they prefer to instruct counsel in the belief that in this way they better serve their client's interests. The practice in this regard varies somewhat from Circuit to Circuit. If the extended right of audience is to be but little exercised by solicitors, then the proposed change would confer no real benefit on the public and there would consequently appear to be no good reason why a small number of litigants should be exposed to the hazards of inexperienced advocacy and the efficiency and standards of the courts impaired.

(vii) It would be uneconomic for the average solicitor to avail of such right of audience to any appreciable extent. Acting as advocate in court would necessitate the solicitor absenting himself from his other professional duties not alone to attend court but also to engage in the time-consuming legal research necessary to keep himself abreast of current law on the particular topics on which he decides to embark as advocate.[1]

(viii) The present exclusive right of audience in High Court and Supreme Court proceedings given to barristers would preserve within that profession the solidarity and understanding which fosters the opportunity for discussions between counsel with a view to the settlement of cases.

ARGUMENTS IN FAVOUR OF CHANGE IN PRESENT POSITION

(16) The main arguments advanced to us in favour of extending the solicitor's right of audience to all courts are:

(i) The exercise of the solicitor's extended right of audience would eliminate some duplication of work and result in a reduction in costs to litigants. At present, if the solicitor looks up the law in a particular case, the barrister will nevertheless feel obliged to repeat the process himself. Under an extended right of audience some solicitors who have a taste for advocacy would specialise in presenting particular types of cases to a court. In cases where this arrangement would be feasible, the cost to the client could be somewhat less than that under the present system. In these particular cases there would be no duplication of work, no time spent in preparing elaborate instructions for counsel, no waiting on counsel and no failure of communication by the solicitor in informing the barrister of all relevant aspects of the case. The solicitor would have to spend more of his time on the case but the end result in the bill of costs for the client would be a smaller payment than under the present system where he pays for the time of both solicitor and barrister. There would be at least a proportion of cases in which, under a system of extended right of audience, there would be no appreciable diminution of the level of advocacy and a definite saving to the community. This is an important aspect where the client's ability to finance a case is a major consideration.

(ii) In the cities there is a current tendency in the solicitors' branch of the legal profession towards amalgamation of firms with the result that while the number of firms will be smaller, there will be more solicitors in each firm and, in such case, one of the members can more easily have assigned to him the task of acting as advocate in litigation in which the firm is engaged. Even outside the larger centres of population, there is a growing tendency to form partnerships of two or more solicitors or to employ a qualified assistant. In this way one solicitor in a firm could concern himself mostly with non-litigious work while the other could engage in court work. This is regarded as a welcome trend in the public interest in that it provides a qualified person always available to clients in the office, while the partner or assistant does the court work and may profit from the opportunity to develop any talent he may have as an advocate.

(iii) There are many motions and *exparte* applications which could be competently dealt with by a solicitor which at present are given to counsel. Even a litigant who wanted counsel to be retained to present his case to the High Court would be facilitated by a change in practice whereby his solicitor would be able to move some of the simpler interlocutory matters and to seek any necessary adjournments.

COMMITTEE'S VIEWS

(17) We are of opinion that solicitors should be granted a right of audience in all courts, at least until it appears that the disadvantages to the public interest of such extension outweigh the advantages.

(18) While accepting that there is unlikely to be any significant change in the present pattern of engaging barristers to act as advocates in the High Court and Supreme Court, we are of opinion that the litigant should be free to instruct his solicitor to act as his advocate in those courts if he so chooses. It also appears to us that there should be some saving to the litigant in costs in that solicitors would be entitled to be heard in such small matters as ruling settlements of cases and seeking adjournments.

(19) We appreciate that the exercise of a right of audience in the High Court, where the advocate is concerned with the examination of witnesses and addressing juries, differs considerably from its exercise in the Supreme Court where the advocate is concerned with arguments on important points of law. We are of opinion, however, that some of the difficulties at present envisaged for the solicitor-advocate before the Supreme Court would be obviated if the system of appeal briefs,

recommended in our Eleventh Interim Report at paragraph 48, were first adopted.

(20) We also appreciate the force of the submissions in support of the existing restriction. It is probable that, in the initial period at least, the grant of full right of audience to solicitors will give rise to many of the difficulties envisaged in those submissions. We feel, however, that in all the circumstances this risk would be justified to enable actual experience of the system to be gained so that a final decision on its continuation may be based on that experience.

METHOD OF EXTENSION OF RIGHTS OF AUDIENCE

(21) If it is thought desirable to make any change in the law as to the rights of audience on foot of our recommendations, it would seem that, apart from direct intervention by the judges of the High Court and the Supreme Court, there are two possible ways to affect such a change :

(a) by statute, or

(b) by rule of court.

(22) It is our view that, apart from the contentions touched upon in paragraph 24 hereof, the latter method is the more suitable one for dealing with the matter in question. It is difficult at this stage to evaluate the repercussions on both branches of the profession of the change envisaged and it may be desirable to effect some further change in the light of experience after a trial period of a few years. For instance, it might at some future juncture be thought desirable to allow a discretion to be vested in judges to indicate that the right of audience in designated topics might be restricted to barristers only or even to certain members of the Bar only. In the event of some such change being desirable, it would be easier to effect it by amending rules of court. The introduction of an amending rule is the quicker and more flexible way of effecting a change. It is often difficult to find parliamentary time for such a topic where it is desired to make the change by statute, whereas an alteration in rules of court is primarily a matter for the relevant Rules Committee. It should be appreciated also, of course, that in making rules of court, the Minister for Justice exercises a function in that the amending or repealing rules come into force only if the Minister concurs in their making—see Courts of Justice Act, 1936, sections 68, 70 and 72.

(23) It is our view that, in general, matters of court procedure should be left to be regulated by rules of court and for many years this has generally been the practice. The recommendations to alter the present practice in regard to rights of audience in the courts does not require the amendment of any existing statute but a change in what is entirely a procedural matter.

(24) We do not wish to express any opinion on the question as to what extent the Oireachtas may validly legislate for matters dealing with court procedure which, hitherto at least, have been within the control of the judiciary in the administration of justice in the Courts established under the Constitution. The full implications of the judicial power of government referred to in Article 6 of the Constitution and of the independence of the courts referred to in Article 34 have yet to be elaborated by decisions of the High Court and of the Supreme Court.

(25) If a right of audience in all courts is to be granted to solicitors, it should be done by a rule made by the Superior Courts Rules Committee. This Committee is set up under Act of the Oireachtas and is composed of members of the Judiciary and of the Bar and of the solicitor's profession and, as any rule it makes requires the assent of the Minister for Justice, it thereby directly and indirectly embraces the three organs of government referred to in Article 6 of the Constitution and represents the branches of the legal profession affected.

RECOMMENDATIONS

(26) We recommend :

(1) That a right of audience as an advocate be granted to solicitors in all proceedings in all courts including the High Court and the Supreme Court;

(2) That a right of audience as an advocate be restricted generally in all courts to barristers and solicitors subject to the judge's discretion to authorise a party in a particular case, for special reason, to be represented by someone other than a barrister or solicitor;

(3) That if the change recommended is to be effected it should be by means of a rule of court made by the Superior Courts Rules Committee.

Signed : Brian Walsh, *Chairman,* John Kenny, J. C. Conroy, Cathal Ó Floinn (*subject to reservation*), Dermot P. Shaw, B. P. McCormack, C. S. Andrews, Juan N. Greene, K. P. O'Reilly-Hyland, R. J. Law.

8th March, 1971 J. K. Waldron, *Secretary.*

RESERVATION BY CATHAL Ó FLOINN

(1) I agree with the majority of my colleagues in recommending that the right of audience as an advocate be granted to solicitors in all courts including the High Court and the Supreme Court. I am, however, unable to agree with them in regard to the method of extension of the right which they recommend.

(2) It seems to me to be indefensible that one branch of the legal profession should have a monopoly of the right of audience in the higher courts. I am convinced that the extension of the right should contribute significantly to a lowering in the overall cost of litigation. I cannot accept the argument that the extension of the right of audience in the High Court and the Supreme Court will necessarily lower the standard of advocacy to the detriment of the public interest. I would not agree with my colleagues in their view (expressed in paragraph 22 of the Majority Report) that it may be desirable to effect some further change by way of restriction of the solicitor's right of audience in the light of experience after a trial period of a few years.

(3) For the above-mentioned reasons, while I appreciate that (as mentioned in paragraph 23 of the Majority Report) any change in the existing position would be a change in a procedural matter only and would not require the amendment of any existing statute, it is my view that a change of this nature in such an important matter concerning the administration of justice should be effected by statute and not by rule of court.

(4) Accordingly, while I agree with my colleagues who have signed the Majority Report in their recommendations in paragraph 26 at (1) and (2), I recommend that the extension of the present right of audience as an advocate should be effected by statutory provision.

8th March, 1971 Cathal Ó Floinn

"On the Spot Fines"

FIFTEENTH INTERIM REPORT OF THE COMMITTEE ON COURT PRACTICE AND PROCEDURE

To: *Desmond O'Malley, Esq., T.D., Minister for Justice*

(1) The system whereby an accused person is given the option of paying a fixed penalty in lieu of attending in court for trial has come to be known as the "On the Spot Fines" system.

(2) So far it has been applied to car-parking offences. This Committee has indicated at paragraph 40 of our Fifth Interim Report dated 20th April, 1966, that the system had operated well and had resulted in a substantial saving of time in the District Court and of the police and of other parties attending court. We also indicated in that paragraph that the system "could with advantage be extended to other petty offences which can be appropriately dealt with by a fixed penalty and which do not involve any appreciable degree of moral culpability". We have been requested to expand our views on this topic by indicating to what extent the system might be extended to other offences.

(3) The present system was initiated under section 103 of the Road Traffic Act, 1961, as amended by section 64 of the Road Traffic Act, 1968, and is enforced by traffic wardens in Dublin and by the Garda Siochana in other areas.

(4) The statutory provisions, shortly stated, enable a garda or traffic warden, who finds a mechanically propelled vehicle and has reasonable grounds for believing that an offence (to which section 103 applies) involving the use of the vehicle is being or has been committed, to affix to the vehicle (or deliver to driver) a notice in the prescribed form stating:

(a) that such person is alleged to have committed that offence,
(b) that such person may, during a period of twenty-one days beginning on the date of the notice, make to a member of the Garda Siochana at a specified Garda Siochana station a payment of a prescribed amount accompanied by the notice,
(c) that a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice or, if the payment specified in the notice is made during that period, at all.

(5) Section 103 has been applied to offences committed under section 84 (stands for street service vehicles), 86 (stopping places and stands for omnibuses), and 90 (parking of vehicles on public roads) by the Road Traffic Act, 1961, (section 103) (Offences) Regulations, 1962 (S.I. No. 91 of 1962) as amended.

(6) We repeat our view, already expressed in paragraph 40 of our Fifth Interim Report that the operation of this system of "On the Spot Fines" does not amount to conducting a trial. It gives an accused person the option to pay a fixed penalty or to attend the court for trial. Thus the operation of the system in no way contravenes the provisions of the Constitution relating to the administration of justice.

(7) In general, we are of opinion that offences which could be suitably disposed of under the "On the Spot Fines" system would be summary offences in respect of which:

(a) there is no appreciable degree of moral culpability,
(b) a small fixed penalty would be appropriate, and
(c) there would be little occasion for controversy as the offence committed would be visually apparent.

(8) Applying the guidelines mentioned in the previous paragraph we are of opinion that the most suitble types of additional offences which could be dealt with under the system are those relating to:

(1) Construction, equipment and use of mechanically propelled vehicles (under the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations, 1963, as amended);
(2) Lighting of mechanically propelled vehicles (under the Road Traffic (Lighting of Vehicles) Regulations, 1963, as amended);
(3) Driving mechanically propelled vehicle at a speed in excess of the relevant speed-limit but only where a speed-detection instrument is used (under the Road Traffic (Speed Limits) Regulations, 1963, as amended);
(4) Failure to display tax disc on mechanically propelled vehicle (under the Roads Act, 1920, section 5(6) and the Registration and Licensing Regulations, 1958 and 1962);
(5) Allowing identification mark on mechanically propelled vehicle to become not easily distinguishable (under the Roads Act, 1920, section 6);
(6) Having wireless set or television set without holding a broadcasting receiving licence (under Wireless Telegraphy Act, 1926, and Broadcasting (Receiving Licences) Regulations, 1961);
(7) Failure of keeper of dog to pay dog duty (under Finance Act, 1925, section 37);
(8) Street-trading (selling or offering for sale goods by retail in a street to passers-by) without a street-trader's certificate granted by the Commissioner of the Garda Siochana (under Street Trading Act, 1926);
(9) Stall-trading without a street-trader's stall licence granted by Dublin Corporation (under Street Trading Act, 1926);
(10) Depositing litter on street (under local bye-laws);
(11) Failure to make an annual return to registrar of companies (under the Companies Act, 1963, sections 125, 126, 127 and 128);
(12) Failure to make an annual return to the Registrar of Friendly Societies (under the Industrial and Provident Societies Act, 1893, section 14); and
(13) Food Hygiene Regulations, 1950.

(9) We recommend accordingly that the "On the Spot Fines" system be extended to the offences set out in paragraph 8.

(10) We also recommend that the fixed penalty be coupled with a two-period time-limit for payment and that the fine be £2 if paid within fourteen days and, if not so paid, be £3 if paid within a further fourteen days. We consider, however, that the fine should be £10 in regard to the offences already referred to under the Companies Act, 1963, and the Industrial and Provident Societies Act, 1893.

(11) In regard to the offences of having a wireless set or television set without holding a licence, we recommend that the defaulter be given the option of pay-

ing the fine at a Post Office. In this way a defaulter who wishes to pay his fine and take out a new licence at the same time would be facilitated.

(12) The delivery of a notice under section 103 (Fine Notice) is an optional matter for the prosecuting officer and in the case of any breach of the regulations he may abstain from delivering the notice and instead may institute a prosecution.

(13) The Committee are of opinion that the extension of the system to offences under the Road Traffic Regulations made in regard to equipment and lighting of mechanically propelled vehicles would bring in its train one very important result apart from the saving of court time and police time. The particular result we have in mind is the opportunity to have equipment defects corrected before these defects lead to accidents. The present position is that prosecutions in regard to infringements of these regulations are brought mainly after the occurrence of road accidents. The public interest would, of course, be best served by having an efficient and expeditious system in operation whereby these infringements could be detected and remedied as soon as possible. The "On the Spot Fines" system would seem to provide the answer if the wording of the Fine Notice were expanded to require the offender, when paying his fine at the appropriate Garda Station to produce the vehicle to show that the defect or defects in question had been remedied. We recommend that this course be adopted.

(14) The Committee has also given some consideration to the question as to whether the Fine Notice (expanded as indicated in paragraph 13) might require the offender to get, within a specified period after the service of the notice, a clearance certificate from the Garda Siochana to the effect that the vehicle has complied in all respects with the equipment and lighting regulations. However, we do not recommend this course in view of the extra demand on police time that would be involved.

(15) With a view to making the preventive aspect of the system more effective, we recommend that a notice be published in the daily press from time to time warning the public that the enforcement of particular regulations under the Road Traffic Acts (particularly in regard to equipment of mechanically propelled vehicles) would be actively pursued during a particular stated period. We feel that this would be a useful reminder to the public and an indication that the law was more concerned with securing the remedy of defects rather than fining defaulters.

(16) The recommendations in this report are those of all the members of the Committee save to the extent that the Hon. Mr. Justice John Kenny has set out in his Note of Dissent which is appended hereto.

Signed : Brian Walsh, *Chairman*

23rd July 1971 J. K. Waldron, *Secretary*

NOTE OF DISSENT BY THE HON. Mr. JUSTICE KENNY

(1) I do not agree with the recommendation in paragraph 8(1) that the "On the Spot Fines" system should be applied to offences in connection with mechanical or other defects in motor vehicles. I think that a person who drives a motor car which he knows has a mechanical defect or smooth tyres or bad brakes commits an offence which involves a high degree of moral culpability. There is little difference in moral blame between the offences of driving when drunk and of using a motor car which is known to be defective. I do not agree that a small penalty is appropriate for such a crime and I am convinced that the nominal penalties (10p for each defective tyre) which are imposed in some district court areas for offences of this type have led to the view that they are trivial.

(2) The application of the "On the Spot Fines" system to these offences will confirm the view that they are not grave. I find it difficult to believe that anyone can think that a fine of £2 is appropriate for a case where a person drives a car with brakes or tyres which he knows are defective.

(3) The number of serious accidents will continue to increase unless we take effective steps to punish those who drive defective vehicles. I hope that the next Act amending the Road Traffic code will provide for mandatory disqualification from driving of one year at least when a person is convicted of driving a defective vehicle.

23rd July, 1971 John Kenny

A "Maigret" accused

Dr. Nicola Scire, former Rome police superintendent, appeared here today accused of corruption, disclosing official secrets, and complicity in illegal gambling.

Scire, who was arrested in May, 1969, was alleged to have received 350,000 lire (£240) a week from the owner of a secret gambling club. Twenty-five people, including three policemen, were also accused.

If found guilty on all charges, Scire, nicknamed the Italian Maigret, could face between 11 and 42 years in prison, a life's ban on holding office, and large fines.

He was alleged to have given tip-offs about planned police raids. A high-level reshuffle in the Italian police took place after his arrest.

Today's first hearing was devoted mainly to defence arguments that recorded telephone conversations, which form the basis of the prosecution's case, should not be admitted as evidence.

In Melegnano, the Public Prosecutor, Signor Francesco Novello, bought a copy of the first Italian language edition of Playboy and then ordered a nationwide confiscation of the magazine.—Reuter and UPI.

—*Guardian,* 7th November 1972

LEGISLATION

Marriages Bill, 1972

Explanatory Memorandum

1. The Marriages Bill, 1972, settles a minimum age for marriage, clarifies certain points of difficulty and removes certain restrictions arising from existing marriage laws as well as amending some other provisions of the marriage code which dates back to 1844.

2. *Section* 1 fixes 16 years as the normal minimum age for marriage. It provides, however, that the authorities of religious bodies mentioned in the section may grant permission to marry to persons under 16 in certain circumstances such as propriety and welfare and that, on application made in a summary manner to the High Court, similar permission may be given in the case of marriages in registrars' offices, or for the smaller religious groups. Persons under 16 seeking exemptions must have resided in the State for four months.

3. *Section* 2 deals with the validation as to form of the religious marriage of an Irish citizen which was solemnised at Lourdes and also provides for the registration in Ireland of these marriages. French law prescribes that the only valid marriage is the civil marriage before the Mayor.

4. *Section* 3 will remove any doubt as to the validity in law of certain Church of Ireland marriages, i.e. where, following closing of churches or the amalgamation of parishes, the church district in which the parties resided was not attached for marriage purposes to the church where the marriage was solemnised.

5. *Section* 4 permits the secretary of a synagogue to appoint a deputy to act in relation to the registration of marriages solemnised in the synagogue during the secretary's absence.

6. *Section* 5 is designed to facilitate members of certain religious groups who have only a small number of churches in the State. At present in such cases it is necessary for at least one of the parties to reside for 23 days in the registrar's district in which the church in which they wish to marry is situated before the registrar can issue a licence to marry. If neither of them resides in such district, one of them has to change residence temporarily. Under the section such period of residence will no longer be necessary—the requisite notice can be given in the registrar's district in which he or she resides.

7. *Section* 6 deals with the consent of parents or guardians to the marriage of persons under 21 years and provides (a) for right of appeal in a summary manner to the High Court against a refusal of such consent, (b) that a person who is without a parent or guardian under the age of 21 must obtain consent from the Court, (c) authority for the Minister, by regulatins, to reduce the age under which consent must be obtained from 21 to a lesser age.

8. *Section* 7 makes a requested change in nomenclature (i.e. "Church" for "Meeting House") for the Presbyterian Church.

9. *Section* 8. The Assistant to the Registrar has not formal statutory powers in relation to marriages as he has in respect of births and deaths. This section makes provision accordingly.

10. *Section* 9. The provisions relating to marriage of members of the Church of Christ Scientist in registrars' offices will be altered so that notice of intention to marry need not be published in the newspapers.

11. *Section* 10. The Church of Ireland are restricted by a reference in an Act of 1870 dealing with marriages to rules of the Church in force in 1870. This reference is being altered to rules of the Church in force from time to time.

12. *Section* 11 removes residence restrictions on the marriage of members of the Church of Ireland who, for example, moved to suburbs and continued attending at a centre city church. The section will enable the parties to marry in the church where one of them worships or in the church attached to the district where he or she lives.

13. *Sections* 12 *and* 13 deal with special licences (under which persons may be married without a qualifying residential period and in any building). Up to now both parties were required to be of the religion of the person issuing the special licence. These sections provide that only one of them need be of that religion. Section 13 also adds the Chief Rabbi to the list of those authorised to issue special licences.

14. *Section* 14 will permit a building to be licensed or registered for marriage purposes for use by two or more religious bodies and will effect changes in the law to enable temporary buildings to be similarly licensed or registered (where for example the building normally used is closed for repairs).

15. *Section* 15. Cases have arisen where a party to a marriage was so ill that he or she could not travel to a registrar's office to be married. This section will enable the Registrar to issue a special licence and so authorise the registrar to travel to where the sick party is and officiate at the marriage ceremony there.

16. *Section* 16 wipes out all existing legal restrictions as to the hours of the day at which marriages might be performed by religious denominations. It also extends the times for marriage in registrars' offices from 8 a.m. to 5 p.m.

Permanent Bureau—Hague Conference on Private International Law

Nomination of an English-speaking Secretary

The Society has received particulars of this appointment which is open to lawyers. The final date for applications will be 1st February 1973. Any interested members should apply to the Secretary quoting E/8/72.

EUROPEAN SECTION

Irish Lawyers In Europe

Right of Establishment and Free Supply of Services

by ERIC A. PLUNKETT

The provision of the Rome Treaty and the various protocols attached to it will be of great importance to Irish solicitors now that Ireland has joined the Community. This involves obligations as well as privileges and it is a matter of opinion whether the obligations imposed upon the profession in Ireland following on competition from foreign lawyers will confer a benefit or involve a disadvantage for the profession in Ireland. It is however necessary to face the position that the Treaty when finally operative will require a removal of the restrictions which at present exist on complete freedom of movement of professional men between the countries in the Community.

Removal of restrictions on freedom of establishment and free supply of services

(a) *Background*

The Treaty of Rome was signed on 25th March 1957. The transitional period is twelve years which may be extended to a maximum period of fifteen years. There are three stages in the transitional period of four years each.

Articles 53-54 dealing with the abolition of restrictions on the right of establishment provides that restrictions are to be abolished by progressive stages in the course of the transitional period. This means in effect that when the Treaty is fully implemented companies, firms and professional people will be entitled to set up business in any part of the Community on a permanent basis.

Articles 59 and 60 provide for the removal of restrictions on freedom to provide services within the Community. Services include in particular those provided by professional men. The restrictions are to be progressively abolished during the transitional period.

Article 55 provides that the restrictions with regard to freedom of establishment and free supply of services are not to apply to occupations which involves even occasionally the exercise of official authority. There has been an argument in the Community as to whether this includes the practice of the legal profession which in some States has been regarded as an exercise of official authority.

The Council of the Community on 25th October 1961 adopted a general programme for the removal of restrictions on freedom of establishment Head III provides that all prohibitions and impediments whether resulting from legislative or administrative provisions or practices are to be removed in accordance with a time table which is specifically applicable to legal advisers and tax consultants.

On the same date the Council adopted a general programme for the removal of restrictions of the free supply of services and for the reciprocal recognition of diplomas and degrees. (This matter is also dealt with in article 57 of the Treaty). It seems that as far as the legal profession is concerned it has not been found possible to implement fully the time table set out in these programmes.

Freedom of establishment carries the right to set up offices throughout the E.E.C. The freedom to supply services relates to occasional professional services for particular clients.

(b) *Draft directives of E.E.C. Commission*

On 17th April 1969 the Commission of the E.E.C. submitted a draft directive on the terms and conditions of achieving freedom to supply services in respect of certain activities of the barrister-at-law (avocat). Freedom to supply services is an activity of temporary or intermittent character as distinct from freedom of a permanent nature. At this stage it may be pointed out that owing to the fact that there is only one type of lawyer on the Continent known generally as advocate who discharges the functions of both solicitor and barrister and as neither the U.K. nor Ireland were parties to the Treaty or conventions thereunder the various documents do not distinguish between the profession of barrister and solicitor. Now that Great Britain and Ireland have joined the E.E.C. this matter must be resolved. The draft directive recites that the effective freedom of establishment must be preceded by the mutual recognition of diplomas and therefore freedom of establishment must be left to later directives. The draft directive stated that the member states should eliminate all restrictions mentioned on title 3 of the programme on the activities of advocates consisting of :

(1) consultation activities,
(2) free oral exposition before the Courts, access to relevant files, visiting detained persons and attending at preliminary hearings and the member states are to take the necessary action to give legal effect to these proposals within one year.

These provisions relating to freedom to supply services are to come into operation in advance of freedom of establishment. As regards Court appearances the visiting lawyer must be introduced to the Court according to the usages of the local Bar and must act in concert with the barrister or solicitor who is a national of the receiving member state. Any requirement that the foreign lawyer must be registered with the professional organisation of the receiving state is to be abolished but the professional organisation is entitled to require evidence as to his professional status and reputation.

The draft directive of 17th April 1969 was not approved by the European Parliament and a new draft was submitted with a number of amendments to meet the objections raised and this was accepted by the European Parliament on 21st September 1972. The main features of the original draft are preserved. The next step will be the submission of the draft by the European Parliament to the Council of the E.E.C. which may accept or reject it. The draft directive has been received in the French version only but an English translation is in course of preparation and will be published in the Gazette.

(c) *Consequences*

Although the original draft directive was by its terms applicable to advocates as such this was partly due to difficulties of translation and there is little doubt that the position of solicitors will have to be considered and any necessary additional directives or amendments of the present directive to authorise foreign lawyers to carry on the practice of solicitor in the Republic will no doubt be made. Its effect on members of the Incorporated Law Society of Ireland would appear to be as follows.

Foreign lawyers might become entitled to engage in the following activities:

Formation of companies,
Conveyancing and property transactions,
Probate, Administration and trust work,
General commercial practice.

The main significance of these provisions would be the opening of the door to foreign lawyers engaged by clients having business transactions in Dublin and elsewhere. This might have a serious effect on conveyancing and commercial work as it is well known that substantial outside interests are at present involved in much of the development work in Dublin and elsewhere.

It must be remembered however that the Treaty of Rome and the various conventions following it are not the result of negotiations between professional or other interests in the various states. They are inter-state agreements and the professional and other interests have no influence except insofar as they may be able to impress their views on their own governments.

Respective rights of solicitors and counsel of Britain and Ireland in the representation of clients before the European Courts and corresponding rights of Continental Lawyers in British and Irish Courts

There are two matters to be considered viz. (1) the right of audience before the E.E.C. Court and (2) appearances before the ordinary Courts of the member countries (municipal Courts).

The Court of Justice of the E.E.C. is the subject of a protocol of the Rome Treaty. The jurisdiction conferred upon the Court by the Treaty (and it has no other) falls under four main heads.

Proceedings against institutions of the Community,
Proceedings against States,
Reference from National Courts or tribunals for interpretation of provisions of the Treaty applicable to proceedings in the National Courts of member States under Article 177 of the Treaty.
Cases between the Community and its employees.

Article 17 of the Protocol deals with the right of audience before the E.E.C. Court. The rules of procedure of the E.E.C. Court prescribe three stages, viz.

(1) the written procedure consisting of the pleadings and written arguments lodged by each party,
(2) the procedure of inquiry under which the Court itself may interview witnesses but in which apparently the parties take only a minor part,
(3) the oral procedure where the advocates submit arguments on behalf of their clients.

In the official French translation of Article 17 of the Protocol the reference to advocat is "un avocat inscrit à un barreau de l'un des Etats membres". In the official English translation the Article provides that the States and institutions of the Community shall be represented before the Court by an agent appointed for each case and that the agent may be assisted by an adviser or by a lawyer entitled to practise before a Court of a member State. Other parties must be represented by a lawyer entitled to practise before a Court of a member State. Such agents, advisers and lawyers when they appear before the Court enjoy the rights and immunities necessary to the independent exercise of their duties under conditions laid down in the rules of procedure. University teachers being nationals of a member states whose law accord them a right of audience shall have the same rights before the Court as are accorded by the article to lawyers entitled to practise before a Court of a member state. There has been a difference of opinion in England as to whether solicitors have a right of audience before the European Court. The matter has been resolved by a compromise reached between the Law Society and the Bar. The term lawyer is wide enough to include both counsel and solicitor.

These matters however are no longer relevant in the Republic. Section 17 of the Courts Act 1971 enacted that a solicitor qualified to practise in the Republic acting for a party in any Court has a right of audience in that Court. Solicitors are therefore advocates in the full sense in all Courts in the Republic and should therefore have the same right of audience as Irish counsel in the European Court. Where the rules of European domestic courts permit foreign lawyers to appear Irish solicitors and counsel would also have the same status.

Resolutions of Consultative Commissions of European Bars

Resolutions passed at Edinburgh on 29th April 1972 relating to the practice of the profession of lawyer in foreign countries

The First Resolution expressed the common doctrines of the Bars of the European Community on the question of liberalisation of the services of lawyers upon a report made by the rapporteur Maitre Louis Pettiti.

The Consultative Commission, having brought to the notice and confirmed its previous resolution taken in Milan on 7th October 1971 and in Amsterdam on the 25th April 1970 has decided:

That the liberalisation of non-contentious activities including that of consultation of all lawyers of the

member states shall have to be realised upon the norms hereinafter defined :

(1) These activities will have to be exercised according to the rules of the Bar where the practitioner originally practised as well as the rules of the Bar which he intends to join, under the dual control and dual discipline of the professional institutions concerned.

(2) To this end the Consultative Commission will draft contracts of an optional nature so that they can be submitted to the different bars and professional institutions for their adhesion.

Second Resolution relating to the activities of foreign lawyers in the member states of the European Community (rapporteurs Maitre E. Graziadei and E. Biamonti).

The Consultative Commission having observed that the profession of lawyer in the countries of the European Community is subject to strict rules which are destined to protect the interests of the public, and having observed that it would be contrary to the spirit of the Treaty of Rome that barristers and other lawyers coming from non-member states should not be subject to the identical struct rules. Quite apart from any more liberal laws which might be adopted by certain member states upon some of the points enumerated hereafter (the Commission) considers that :

(1) The exercise of professional activities of lawyers of non-member states within the Community should be subject to :

(a) Verification beforehand of the existence of actual reciprocity to practice in the country of origin.

(b) That the professional institutions of the country where the lawyer of the non-member state intends to practice, should agree to receive him. In order to implement this, it will be necessary for the bars concerned to intervene with the government of their countries in order that statutes or administrative rules can be introduced relating to the conditions under which foreign lawyers may practice and may stay in the said country.

(2) To ask the bars of the member states, under no circumstances to have any professional contacts with the lawyers of non-member states who, having manifested their intention to practise in a member state, have not received in advance the agreement of the professional institution concerned.

All these resolutions were adopted unanimously and also by the observers from Ireland, Denmark, Norway and the United Kingdom.

Resolution Adopted at Luxembourg on 7th October 1972

The Consultative Commission of the Bars of the countries of the European Community, having met together at Luxembourg on the 7th October 1972, and having taken cognizance of the actual state of the procedure in Community countries relating to the directive which sets out the rules whereby certain services in relation to certain activities of lawyers shall be freely given and also sets out in particular the supplementary report given out in the name of the Juridical Commission to the European Parliament by Mr. Nicholas Romeo (European Parliamentary Document 72-73, sitting of 31st August 1972).

Having considered in its essence the real interest of all those who require legal assistance, approves unanimously and underlines the absolute necessity of liberalising the rules relating to services of advocates in the courts of the European Communities.

The Commission considers in this light that the liberalisation of the rules of pleadings will be subject to some difficulties. As regards this liberalisation, certain delegations will reserve their position and will lay much stress upon their respective governments in regard to any points which appear to them to be essential. The Commission has noted the objections stated by certain delegations concerning the application of articles 55 and 56 of the Treaty.

Resolutions adopted at Amsterdam on 25th April 1970

Draft convention relating to the exercise of certain legal and extra-legal activities of lawyers. This convention is subject to the necessary adaptations in the different official languages, and to different national laws and to different professional customs.

The lawyers of the member states of the Community, having considered that as a result of the intensification of legal and economic links amongst the contracting states and of the numerous legal rules which are common to all contracting states, it is consequently desirable that on the basis of services rendered by them, lawyers should exercise their activities upon all the territory and before all jurisdictions of the contracting States.

Have resolved to conclude a convention to that effect and have agreed upon the following rules :

Article 1

(1) The lawyer of a contracting state may, provided that he is assisted by a lawyer who is qualified to plead in the place where his services are required, plead in Civil business, Criminal business, Tax business, Administrative business, and business relating to Social Services before the Courts of another contracting state. state.

(2) This right implies that the foreign lawyer will have access to the official file or will have the right to visit a detained person and to correspond freely with him without being compelled to undertake any other formality other than those imposed upon the lawyer of the contracting state where this right is exercised.

Article 2

The lawyers of contracting States may give written opinions or oral consultations upon any problem relating to Common Law, Tax Law, Administrative Law or Social Services Law, and may assist or represent their client with individuals or companies other than courts upon all the territory of another contracting state.

Article 3

(1) In the exercise of their activities the lawyers of contracting States may benefit upon all the territory and before all Courts of another contracting State from the same guarantees as those which are given to lawyers of the contracting States where those activities are exercised; this applies particularly to rules of professional secrecy and to rules making the official file inviolable. In such cases the foreign lawyers assume the same duties as the local lawyers.

(2) If this is prescribed by rules of court, foreign lawyers must wear in court the robes prescribed by the national law.

(3) The lawyers of a contracting State may exercise all the activities stated in the aforementioned articles 1 and 2, by means of establishing a special office with a lawyer of another contracting State.

Article 4

In the exercise of their activities upon the territory or the jurisdictions of another State, the lawyers of a contracting State shall be subject to their own professional rules as well as to the professional rules applicable to the territory of the contracting State where the legal activities are exercised.

Article 5

(1) In the case of a breach of the professional rules committed by a lawyer the professional association of a contracting State where the breach has been committed, may forbid or limit the exercise of the activities previously mentioned in Articles 1 and 2, by the lawyer guilty of such breach upon all the territory and before all the courts of the contracting State for a definite or indefinite duration, provided however that the disciplinary authorities of the contracting State concerned have the necessary powers to exercise jurisdiction.

(2) The disciplinary process is conducted and the sanctions imposed and applied according to the professional rules then existing in the contracting State where the breach has occcurred.

(3) The disciplinary authorities of the contracting State of origin of the lawyer who has committed the breach will be notified of the institution of disciplinary powers against him. In all cases, full and accurate copies of the official file will be sent to these authorities.

Article 6

(1) This Convention will be ratified and the instruments of ratification will be deposed before the European Commission in Brussels.

(2) This Convention will come into force on the 1st day of the 2nd month which will follow the date of the deposit of the second instrument of ratification.

Article 7

The present Convention may be revised at the request of a contracting state, within a period of three years after it has come into force.

Signed in Amsterdam on the 25th day of April 1970.

The Consultative Commission of European Bars met in Luxembourg in the Palais Cassel on the 5th, 6th and 7th October 1972 under the presidency of Maitre de Gryse, dean of the National Order of Advocates of Belgium. The reception on the 6th of October was given by the Ministry of Justice of Luxembourg.

The Consultative Commission of the European Bars having considered the report of Maitre Pettiti has decided to pursue its action with a view to promoting bi-lateral and multi-lateral Conventions amongst European Bars and if necessary amongst governments of member States. These Conventions would define and delimit the activities allowed under the heading of "Consultation" other than temporary consultations. The Commission would also adopt the principle of a Convention and of professional rules which would have the effect of ensuring organic co-operation amongst advocates.

This Convention would also take note of the various activities of the advocate's profession in each member State. This Convention would also consider the equilibrium necessary to sustain in practice the legitimate interests of local Bars, notably those of member States adjoining one another. This co-operation could be realised by means of formal organic Conventions or by any other means required. As a basis for a new Convention the Consultative Commission would recommend the project on the subject elaborated in Amsterdam as well as the formal resolution adopted in Edinburgh by actually limiting this project and this resolution to the subject of consultation. These agreements when reached can be brought officially to the notice of the bars concerned and to the notice of legal professional associations.

Record Damages of £77,000 awarded

Miss Merry Hamp, 18, who fought to regain her sight after being blinded at school, was awarded record damages of £76,878 in the High Court.

The sum paid to Miss Hamp, whose home is in Park Road, Cheadle Hulme, Cheshire, was the highest ever made to a woman in Britain for personal injuries and also a High Court record.

With interest it is likely that Miss Hamp will receive more than £80,000.

Miss Hamp, who now has severely restricted vision after a series of operations, was praised by Mr. Justice Phillips for her courage and perseverance since the explosion in the laboratory at Mount Carmel Convent School, Alderley Edge, Cheshire, six years ago.

He awarded her £36,000 for her pain and suffering and loss of amenities of life; £11,000 for loss of future earnings; £5,500 for future medical assistance, and £28,849 agreed special damages for past operations and other medical treatment.

The special damages also included £4,471 to her father, Mr. John Hamp, a television producer. The damages were awarded against the Sisters at St. Joseph's Hospital, Mount Carmel Convent School.

The judge said that since the explosion, which occurred while she was crushing chemicals for use by the chemistry instructor, Miss Hamp had endured six years of continual pain and discomfort, mostly in darkness.

"During the last six years, she has undergone almost constant treatment in this country, in Spain and America in a couragous battle to save part of her sight."

Civil Professional Associations in France

by Maître Marcel Catteron of the Paris Bar

The recent reform accepting the new status of French Legal Professions should interest practitioners. The subject deserves to be further and more explicitly examined, but this cannot be done here at the moment. Our purpose is to consider summarily a survey on a newly developed form of Company accessible to members of liberal professions, such as solicitors (avoues), attorneys, barristers, etc.

This institution was, up to recently regulated by a decree (Décret) of 30th November 1969, which has been recently amended by a later decree of the 13th July 1972. This purports to harmonise the 1969 decree with the statutory law issued on the 31st December 1971, which regulates and renews the lawyer's profession. Let us emphasise, from the outset, that in spite of the fact that the French Minister of Justice has attempted to foreshadow the future implications of the reform, having previously taken advice from all kinds of professions affected by the new statute, the decree has elicited, on the whole, more approval than criticism.

Objections have mainly arisen from lawyers educated in the traditional individual manner who appraise mostly the personal link set up with their clients, a link based on mutual confidence and private relationship.

On the other hand, most up to date lawyers favour the use of a collective partnership organisation which stresses the serious advantages to be derived from the sharing of both financial assets and intellectual contribution, thus facilitating team work and means of specialisation.

This point of view appears to be especially realistic in view of the prospect arising from the expansion of business in the Common Market and the establishment of multinational firms in Europe and abroad. Let us now examine the main provisions of the said decree. These regulations apply to physical persons practising the liberal professions of the law. The rules establishing the profession are shown, as regards the decree as well as its practical running, as incorporating the following matters :

(1) The assignment and transfer in whole or in part of shares; (2) the dissolution, liquidation and other forms of activity set out in a great number of articles of the said decree. The main and essential object of the professional association is the purpose of sharing in common that profession with those who have an identity of interest and of sharing profits and losses. This decree concerns especially the profession of barristers. The Continental idea of a practice in common of barristers registered in a particular Bar (inscrits dans un Barreau) or in different provincial Bars existing within the competence of the corresponding local Cour d'Appel, should be stressed. In any case, the minimum number of members practising individually or through the body of the Company, in any provincial Bar is five. Such a company must previously be registered and authorised by the President of the Bar (Batonnier) of the area from which it depends. If an association is established by means of barristers who belong to a Bar of another district in France acceding to it, the draft articles of association must first be submitted for approval to the President of the Bar (Batonnier) duly qualified in the area of practice. The Batonnier refers the request to his local Bar Council (Conseil de l'Ordre) in order to determine the lawfulness of the contract setting up this body. If this case is rejected, the claimants are entitled to lodge an appeal within a period of two months. This professional association is entitled to set up a subsidiary, provided that the firm is situated on the particular territory which submits to the jurisdiction of the local Court (Tribunal de Grande Instance).

It follows that the basic provisions and principles of the previous decree of the 30th November 1969, have been superseded by the decree of July 1972. Therefore the exclusive use of the name of "Civil Professional Association" is granted to civil companies, enjoying the protection of some legal status, duly registered and authorised by the President of the Bar (Batonnier) and undertaking a professional activity by means of several members working in common.

Thus it appears that the above decree concerning particularly the Barristers' profession, takes no account of the other lawyers, the profession of which is ruled by a specific law, such as that of juridical advisers (Conseils Juridiques) and companies who act as financial advisers (Sociétés Fiduciaires).

Let us now look on the means of application of this professional institution as seen from the point of view of experienced commercial lawyers. Of course, a few problems might arise in the future, especially on account of (1) the disciplinary rules laid down by the different Bars and also (2) on financial questions such as the appreciation of the value of the shares during the running of the company whether taking place in the case of sale, winding up, death or retirement of the partners.

The main reason is that the shares in such a Company represent mostly an intellectual contribution, the value of which is somewhat subjective as compared with the assets in kind and in cash issued by the other partners.

Of course this aspect of the nature of the shares is due to the essential nature of the Company and has been enacted by the law to facilitate the access of young lawyers. They are limited as regards their contribution more often to the level of their earnings and they would expect to participate with their own money in the rise of the Company as well as in their professional activities in the future. Their ambition is entirely reasonable and is looked at with favour by the law. Nevertheless, the matter might eventually involve for the partners some problems when the contract comes to an end, in the event for instance of the dissolution of the firm by means of a free sale and especially in the event of a compulsory liquidation ordered by a Court.

Of course, the difficulties must not be overestimated if the partners, duly aware of their rights and liabilities, do pay full attention to the drafting of their contract

and happen to foresee the problems which will arise. Moreover especially from the legal point of view, the institution appears to portend a very special function. This is due to the dual nature of legal personality, with all its subsequent rights and liabilities, which is granted by the legislator as much to the professional company as to its members acting individually in their professional dealings.

Such a somewhat ambiguous and complex situation might possibly involve serious problems, if the Association has to submit, independently from its associates, though in fact through their own activities, to all obligations imposed on the profession, in particular to all its liabilities and penalties. Thus the association can be brought to trial and forced to dissolve itself on account of the misconduct of a single unfair partner.

Therefore, the most serious care must be taken by the founders with regard to the choice of associates if they want to avoid later, many drastic problems which give rise to difficulties in hampering the essential spirit of co-operation which is the basis of the relationship duly established as much amongst the partners themselves as amongst their clients.

Let us hope that the freedom granted by the law to the founders as regards the drafting in a proper manner of the articles of association as well as of the memorandum, may often prevent the above mentioned difficulties. Besides, it must be pointed out that adherence to this legal status is entirely optional and that the law recognises all forms of professional associations previously existing such as joint offices (Cabinets Groupes) and Barristers Associations (Associations d'Avocats) which are deprived of corporate status.

In conclusion, it seems that the Civil Professional Association represents a successful effort to encourage team work in legal matters as well as ease of accession to a modern type of law practice, favoured actually by the prospect of the recent reform of the lawyers profession in France and which will probably expand in the future in the Common Market.

North: Let's have Concrete Proposals —S.A.D.S.I. Inaugural

The responsibility of ensuring that this island would not become a shambles rested not on the people of the North but on the politicians of the Republic, British Labour M.P., Mr. Kevin McNamara (Kingston and Hull) told the inaugural meeting of the Solicitors' Debating Society of Ireland in Dublin last night.

Mr. MacNamara, who was speaking to the motion, "That the memory of the dead is an obstacle to the progress of Ireland" (carried), said that the real sufferers in the North were not the minority, much as they had endured, but the Unionist working class majority who had been stripped and left naked of their position and status and told that they must share them. Stripped of everything they believed in because their leaders had let them down, they had turned to the U.D.A., the Vanguard and Loyalist Workers Association.

Referring to the proposed Referendum on Article 44 of the Constitution in the Republic Mr. MacNamara commented: "Big cheese—smashing—a good liberal gesture', but the Government in the Republic had to put forward terms and conditions to the frightened people in the North before there could be any question of a united Ireland. The people in the North would have to be assured that they would be able to retain their dignity.

They in England had got to do what they could to ensure that there was something for the people of the North within a united Ireland but, above all, the Republic must cease burying its head in the sand and making pious gestures but come forward with concrete proposals. This would achieve more than any Green Paper or an additional battalion of British troops in the North. A realistic statement from the Republic would do more for a united Ireland than all the dead who had gone before—both Orange and Green.

Mr. William Deeds, Conservative M.P. for Kent, said that England had survived two world wars because it had a sound constitutional Left in the British Labour Party.

In Northern Ireland there had been no serious constitutional Opposition over the last 50 years and the subversive elements had been able to cause violent revolution. Without a constitutional Left an unconstitutional Left was apt to develop and that was precisely what had happened in the North.

Mr. Bob Cooper, Northern Ireland Alliance Party, said that in Wolfe Tone they had the glorification of a blood sacrifice. There was nothing beautiful in the violent deaths of young people being blown to pieces but there was something beautiful in people living for their country in reconciliation.

James Connolly had thrown away all he had worked for because of a sectional interest. They should remember that Tone fought for the unification of Protestant, Catholic and Dissenter and that Connolly fought for the unification of the Protestant and Catholic working classes.

Mr. James W. O'Donovan, president, Incorporated Law Society, who presided, said that for the past 50 years, the people in the Republic, as far as our separated brethren in the North were concerned, had been blind, deaf and dumb. It was about time we did some concrete thinking south of the Border.

One student complained that the Society had failed to protest against internment and Special Courts in the North and had not given its moral support to the minority in the North by raising its voice against the Compton Report.

Mr. Henry Kelly, *The Irish Times* correspondent in Belfast, also spoke.

Irish Independent, 26/10/1972

REALITIES OF LEGAL AID

by GARRETT SHEEHAN, Solicitor

When the Minister for Justice, Mr. O'Malley, spoke on "Legal Aid in Ireland" at a recent world conference in Belgrade, he made three points which need further examination. First, he declared that it has been traditional for members of our legal profession to give their services to needy clients at reduced fees or completely free. Second, that legal aid is available in criminal cases. And third, that legal aid and advice in civil matters would be too costly to introduce.

Whatever about the past it would not seem true of the legal profession today that it caters for the poor. The majority of accused persons who appear daily in minimum fee of £10-£15 for legal representation at this level would appear to be too high for many defendants. Few lawyers appear to be concerned about this. And it is not sufficient for Mr. O'Malley to point out that the judges act with scrupulous fairness. A District Justice or Circuit Court judge is not a defence attorney.

Even where an accused person pleads guilty there may be a number of factors in mitigation of his guilt which require a presentation by a lawyer. Recent articles in *The Irish Times* by Nell McCafferty on the Children's Court and "Women in Court" showed that on the occasions she was present in the juvenile court and in Court Four at the Bridewell the majority of children and women were not represented.

The rapid growth of the Free Legal Advice Centres is further evidence that the legal profession is not serving the poor. If the people who attend these centres knew of solicitors who would attend to their legal problems for a fee they could reasonably afford, they would surely go straight to them.

The Gap

Mr. O'Malley claimed that the Legal Aid Scheme, which was introduced in 1965 for criminal cases, was comprehensive in character and provided not only for legal aid in criminal courts of first instance but also in the various Courts of Appeal. A close reading of the 1962 Criminal Justice (Legal Aid) Act shows that this could be true. However, there is at least one serious gap in the Act which would refute the Minister's claim that it is comprehensive. An amendment in the Criminal Procedure Act 1967, provided that where a person elects to be tried by a judge and jury, instead of having his case dealt with summarily in the District Court, he is not entitled to legal aid for the preliminary investigation of his case. If the case is one where the Attorney General refuses or is unable to consent to summary trial, legal aid will be granted only if the charge is one of murder.

To be entitled to legal aid in the District Court, a poor person must show that the charges he faces are serious or else that it is essential in the interest of justice that legal aid be granted. Legal aid is granted at the discretion of the District Justice and such decision is not appealable. Thus, on one occasion last April, legal aid was refused in the case of a 16-year-old boy, known to be mentally handicapped, who appeared on charges of larceny and housebreaking. A further weakness of this part of the Act is that in many cases legal representation is necessary to show that a particular case is a proper one for legal aid.

The greatest weakness of the 1962 Act is that it contains no provision for informing accused persons of their possible right to legal aid. The Department of Justice appears to be reluctant to remedy this defect. In the Children's Court, for example there is a notice measuring six inches by four on the wall on the right as you go into the main building. This notice is partially blocked by the door and it is pure chance if any parent or child ever sees it.

No Notice

In Court Four at the Bridewell (the court where all accused adults in the Dublin Metropolitan District first appear) there is no notice. If Mr. O'Malley is concerned about the rights of accused persons, the least he could do would be to ensure that they are aware of their possible right to legal aid.

Finally, Mr. O'Malley said that in view of more pressing demands on State resources it would be too costly to introduce civil legal aid at the moment. One wonders if he has given thought to the establishment of Legal Centres in poor areas. In January, 1967, the Society of Labour Lawyers held a meeting in London and recommended the establishment of such centres as a means of ensuring that justice would be available for all. This meeting had previously found that despite the fairly comprehensive system of legal aid in both civil and criminal matters operating in the U.K. there were still many people who needed legal advice but did not get it. The society suggested that the system of local legal centres be introduced by way of a pilot project in three or four areas.

The Department of Justice should finance a pilot project in Dublin. This project could be set up in any one of a number of areas. One could be started, for example, close to the Five Lamps at Amiens Street and would initially serve the surrounding areas—North Wall, East Wall, North Strand, Fairview, Killarney Street, Summerhill, Hardwick Street, etc. While such a centre could be self-supporting, this would not be of primary importance. An efficient and free legal service could be provided for the people of these areas at approximately £12,000 a year. The centre should be run by a solicitor of five years' standing in general practice and he would be assisted by a barrister and solicitor, both of whom would have to have had at least three years' continuous practice since qualifying. The centre could advertise its service in the Local Post Offices and possibly by the distribution of handbills in the areas concerned.

The combined wisdom of both the Incorporated Law Society and the Bar Council would no doubt help to indicate how such a centre could be most effectively run.

In the introduction to their pamphlet entitled *Justice for All,* the Society of Labour Lawyers says: "A society which relies so heavily on law as an instrument both of social order and reorganisation, including the distribution of wealth and other advantages, has a duty to ensure that its members are enabled to conduct their lives within the law, receive justice when the law is enforced against them, and take advantage of the benefits which the law confers upon them." In Ireland this duty is clearly not being discharged. The establishment of local legal centres would go some way towards a remedy.

The Irish Times, October 1971

BOOK REVIEWS

Labour and the Law by Kahn Freund (Otto); Hamlyn Trust Lecture no. 24; London, Stevens, 1972; 8vo; pp. xii plus 270; Paperback, £1.80.

Dr. Kahn Freund is a well known expert on trade union law; he naturally praises an allegedly orderly system of labour relations in Britain as an achievement, and criticises the common law for not balancing collective forces. He contends that, as Labour Law is the basis on which most earn their living, every lawyer should master its principles; he points out that almost everywhere this law depends essentially on the union—in other words the power of management is co-ordinated with that of organised labour, yet they have a divergency of interest. Yet the purpose of Labour Law is to regulate and restrain management as much as labour. It is stressed that the purpose of regulatory legislation is to curb management. The rules of employment thus become a complex variable amalgam of legislation and of collective agreements. Collective bargaining from the management viewpoint will prevent interruption of work, and from a labour viewpoint will ensure that jobs will be secure and wages satisfactory; the dynamic method consists in instituting a joint industrial council. The common law and industrial law endeavour to propound *ad hoc* solutions; then there are numerous unwritten trade practices. In Britain, management is often represented by an employer's association, which produces a complex structure of bargaining levels. These are some of the points which Dr. Kahn Freund stresses in the Hamlyn lectures; all his points are illustrated by useful examples and deserve careful study by those who will specialise in industrial relations.

European Community Treaties, including the (British) European Communities Act 1972 edited by Sweet & Maxwell's Legal Editorial Staff; London, Sweet & Maxwell, 1972; Paperback, £2.85.

This is a very useful volume giving the English Language texts of: (1) The Treaty establishing the European Coal and Steel Community; (2) The Protocols (a) on the Statute of the Court of Justice of April Europe (1951). (3) The Convention on the Transitional Provisions (April 1951); (4) The Treaty of Rome establishing the European Community and Protocols annexed; (5) Implementing Convention on the Association of Overseas Countries and Territories with the Community (March 1957); (6) Convention on Certain Institutions common to the European Communities (March 1957); (7) Protocol on the Statute of the Court of Justice of the Communities (March 1957); (8) Treaty establishing the European Atomic Energy Committee; (9) Treaty establishing a single Council and a single Commission; (10) Protocol on Privileges and Immunities; (11) Treaty establishing Budgetary Provisions; (12) Treaty concerning Accession of Denmark, Ireland, Norway and United Kingdom —and Act concerning conditions of Accession; (13) Final Act of Accession of January 1972; (14) British European Communities Act 1972.

Dr. K. Simmonds, director of the British Institute of International and Comparative Law, as Advisory Editor to Sweet & Maxwell's Legal Staff, has ensured that all the texts are accurate, and shown us the vast extent of European Community primary law to be derived in one volume. This volume is essential to all practitioners who will be dealing with all aspects of commercial law which will be affected by European Community Law.

Principles of Labour Law by Roger W. Rideout; London, Sweet & Maxwell, 1972; 8vo; pp. xxxi plus 442; Paperback, £3.50.

Dr. Rideout, reader in English Law at University College, London, has written a most interesting book on Labour Law. In part 1 he deals with the contract of labour, which includes such items as (1) the form of the contract of services, (2) the batgaining procedure and machinery, (3) the effect of the collective agreement on the contract of employment, (4) the terms implied by common law (willingness to serve, obedience, reasonable care, respect of trade secrets), (5) termination of the contract by notice, frustration, death, or rescission for breach of contract, (6) remedies for dismissal, (7) discrimination in employment, (8) statutory control of wages and hours of work, and (9) redundancy. Part 2 deals with Employers liability including Vicarious Liability and Industrial Safety Legislation. Part 3 deals with National Insurance relating to Unemployment, Sickness and Industrial Injuries. Part 4 deals with Industrial Organisations such as Trade Unions, Rights of Members, The Common Law relating to Industrial Disputes including intimidation and conspiracy, unfair industrial practices by workers and employers, and finally emergency provisions. In the chapter on "Admission to Membership", such up to date English cases as *Edwards v. Graphical Society*—(1971) Ch 354 and *Faramus v. Film Artistes Association*—(1964) AC 925 are fully described and criticised. A glance through the index has failed to elicit any reference to any Irish case, save a note reference to *Ferguson v. O'Gorman*—(1937) IR 670, and to *Hynes v. Conlon* (1929). If this book is to be of use to Irish practitioners in the future, it would be necessary for the learned author or an assistant to set out separately in an appendix, all the important Irish cases since 1922. On account of its primary constitutional importance, one would have expected an elaborate discussion of *Educational Co. v. Fitzpatrick* (No. 2)—(1963) IR and some account of *E.I. Co. v. Kennedy*—(1968) IR. The learned author in this erudite work has managed to mention practically all English reported cases on the subject, important and otherwise, which entailed countless research and trouble. If he had been more selective, he would have doubtless exposed himself to the criticism of his colleagues, but it would seem justifiably so. This is by far the best volume on labour law that has yet appeared, and can be recommended without qualification to practitioners who specialise in this important branch of law.

How they "cooked" the Navy's Books

The "Navy case"—"a blatant and downright fraud on the public," as Mr. Justice Bridge described it yesterday—was simplicity itself. And it was turned into something approaching a fine art by Andrew Cathcart, a product of the Glasgow slums who was drafted into the Navy in 1946, shot up to the rank of lieutenant within 15 years, and who was gaoled for four years at Winchester yesterday.

Official reports fairly glowed with admiration of the "zealous" and "hard-working" Scot who was rapidly rising through the ranks of the Navy's catering branch. Cathcart was superefficient. He had to be. If he had been anything less he would have been unable to build up a surplus so big that the Navy could not detect the frauds to follow.

To this day, no-one knows just how big the fraud was, or for how long it had been going on. But Mr. Justice Bridge said yesterday that the trial, had revealed a "horrifying picture of catering departments and naval establishments which for long years, it seems, have been riddled with corruption and dishonesty."

The swindle centred around fake invoices and worked in one of three ways. Supplies either sent invoices for goods that were not delivered, or they listed inflated prices on the invoices. The third twist involved catering officers destroying correct invoices and making out new ones listing ficticious items. This jacked the bill up to something approaching the per capita catering allowance.

There is still no precise information on where or when the fraud began, although it more than probably grew out of the "backhander" system—cash payments of around five per cent of the total value of orders placed—given to caterers by their suppliers. The backhander system did not directly affect the process of goods bought by Navy establishments.

It is thought that the backhander system has been in operation for at least 25 years, and probably a lot longer. In some cases, the sums involved amounted to about £1,500 a year. (The Navy spends £1.7 millions a year with private food merchants. The yearly catering bill for a frigate is about £10,000.) What is known is that Lieutenant Cathcart began operating some time in 1968, when he was catering officer to Britain's largest naval shore establishment, HMS Collingwood, between Portsmouth and Southampton.

And when Cathcart came to trial a few weeks ago, amost every one of his co-defendants from Collingwood and, later, HMS Raleigh, claimed that the greying, be-spectacled and slightly-built Scot had started them on the road to arrest and charges of conspiracy and deception.

Cathcart quickly got into his stride, printing stacks of blank invoices bearing the letterhead of Frederick Wain Ltd., a Portsmouth food supplier who was gaoled for two years yesterday. When the genuine invoices came in. Cathcart simply destroyed them and typed out new ones. (A careful man, he realised after filing the fake invoices away that if they had come in the post—as they were supposed to have done—they would be folded. His fake invoices had no fold. So he took them out of his files, carefully folded each one in the right places, and then replaced them.)

Supply officers would then sign cheques for the amounts shown on the invoices—and, indeed, roughly half of the money was in fact spent on food for the ship or establishment concerned. But the rest was split between the catering officer (usually, 80 per cent) and the wholesaler.

The catering officers—by this time, the fraud had "spread like wildfire", as the court was to be told—needed the bigger share; they had their overheads to take into account. At Collingwood, for instance, Cathcart had a group of petty officers and chief petty officers working under him. And he had to also pay a "good housekeeping" bonus to his cooks.

(The Navy did not keep delivery records, so there wa no way of checking the discrepancy between the price on the invoice and what was actually delivered.)

As business boomed, Cathcart expanded. His monthly take-home cut (his Naval salary was just over £3,000) enabled the former Glasgow kitchen boy to buy four cars, expensive hi-fi and stereo equipment, a large house in the trendiest suburbs of Plymouth and costly photographic equipment.

According to Sub-Lieutenant Barrington Blogg, who replaced Cathcart at HMS Collingwood when the latter was posted to Plymouth, the fraud was bringing in £2,500 a month when he—Blogg—took over.

The fraud was finally exposed on December 3rd last year when a new officer replaced Blogg. He was told by the men in the section about what was going on, and he promptly reported it to senior officers. The word reached the Ministry of Defence, and at that point Portsmouth police were called in.

For five weeks, a squad of detectives "did their homework", keeping their work under the tightest of wraps. One whisper would have led, almost certainly, to the destruction of vital documentary evidence. On January 4th, the police learned that Collingwood's new catering officer was due to receive a payout from Frederick Wain.

He agreed to become the bait, driving under surveillance to Wain's warehouse in Middle Street, Portsmouth, where he was given a cheque for £766.

Then the raids started in earnest; offices and warehouses were visited, as were the homes of navy men, and thousands of bills, invoices and receipts seized linking the fraud to bases and depots throughout Britain.

—*Guardian,* 15th November 1972

Examination Results

First Law Examination

At the First Law Examination for apprentices to Solicitors held from the 4th to 8th September 1972 the following candidates passed:

Passed with merit: Rory McEntee, Patrick J. McCartan.

Passed: Diarmuid Barry, Catherine Bergin, James J. Binchy, John G. Brady, Geoffrey Browne, B.A., John J. Carlos, Peter O'Neill Crowley, Geraldine Davy, Philomena M. Devins, James Maurice Devlin, B.A., John G. Dillon-Leetch, Gerard J. Doherty, B.C.L., Mary-Catherine Dolan, Ivan Durcan, Vivian M. Emerson, B.A.

Eugene P. Fanning, Grace M. Fitzgerald, Geraldine Gaugham, John M. M. Griffin, Edward G. Hall, B.A., Michael J. Hanrahan, Timothy Boucher-Hayes, Thomas Hayes, Edward C. W. Hughes, Mary F. Hutchinson, Caroline M. T. Keane, Colin O. Keane, B.A., Charles Kelly, Simon W. Kennedy, Agnes S. Kirwan.

Joseph F. Langwell, Doreen Levins, Richard Liddy, B.A., H.Dip., Hugh F. Ludlow, Celine M. Martin, B.A., Derek J. Mathews. Kevin Matthews, B.Comm., Arthur D. S. Moran, B.A. (Mod.), David Morris, Fionnuala M. R. Murphy, Bryan McAlister, Dermot M. P. MacDermot, David F. McMahon, Thomas A. Nally.

Bernard J. O'Beirne, David C. O'Brien, Eimear O'Brien-Kelly, Isolde A. O'Connell, Patrick O'Connor, M. D. O'Donohoe, Richard O'Hanrahan, Kathleen A. O'Leary, Anne P. O'Regan, Brian P. O'Reilly, Eugene C. M. O'Sullivan, Thomas P. Quinn, B.C.L.

Ann Regan, Patrick D. Rowan, M.A., Linda M. Scales, Thomas J. Stafford, Michael Staines, Terence D. Sweeney, Rosaleen Tyndall, Catriona Walsh, B.A., Ronan Walsh, Richard R. Whelehan, Michael D. White.

154 candidates attended; 69 passed

Second Law Examination

At the Second Law Examination for apprentices to Solicitors held from the 5th to the 9th September the following candidates passed.

Passed with merit: Rosalind E. Hanna, B.A., Patrick T. Kennedy, Mary E. Finlay, B.A., Daire Hogan.

Passed: Donald Ashe, B.C.L., Robert P. Barrett, Rosemary P. Bolger, Robert Bolton, Francis V. Burke, B.A., Declan C. Carroll, B.C.L., Hugh A. Carty, Patrick F. Clyne, LL.B., David S. Cresswell, Angela E. Crowley, Mary E. A. Crowley, Brian D. Cusack, Paula Desmond, B.C.L., Orlean Joan Dyar, Ciaran Earley, William Earley, B.A., David Ensor, B.A. (Econ), John W. T. Finn, Nessa Fitzsimons.

Eamon P. D. Gallagher, Brian Glen, George J. Gill, B.C.L., Michael Hayes, Louis A. Healy, B.A., Ester A. Hogan, B.A., Henry P. Hunt, Patrick Hurley, Michael G Irvine, B.B.S., B.A., Damien J. Kelly, Sean T. Kennedy, Rosalind Kiely, B.C.L., Laurence P. Kirwan, Ronald J. M. Lynam.

Stephen O'Connell Miley, Michael E. Molloy, Patrick C. Moriarty, B.C.L., Brendan T. Muldowney, Alan D. McCrea, B.A. (Mod.), Brian McLoughlin, Joan Nagle, James P. O'Boyle, B.C.L., Hugh O'Donnell, Nancy O'Driscoll, B.C.L., John M. O'Dwyer, Michael H. O'Neill, Michael O'Shaughnessy.

Michael T. Quigley, B.C.L., Mary J. Regan, Odran J. Rochford, Aideen A. Rooney, Ambrose J. Steen, Michael H. Traynor, B.C.L., Francis A. Wall.

74 candidates attended; 56 passed.

Third Law Examination

At the Third Law Examination for apprentices to Solicitors held from the 4th to the 11th September, 1972 the following candidates passed:

Passed with merit: George D. R. Mills B.C.L.

Passed: David K. Anderson, Maurice Bannon, James F. Cahill, Maurice J. P. Cassidy, B.C.L., John J. Coffey, B.A., Edward A. Coonan, Niall B. Clancy, B.C.L., LL.B., David S. Cresswell, Finbarr J. Crowley, B.C.L., Hugh A. Cunniam, B.C.L., Patrick Curran, John J. Daly, Andrew Dillon, Patrick J. M. Durcan, B.C.L., John P. Feran, Mary E. Finlay, B.A., John P. Flanagan, B.C.L., Bertrand G. French, Declan J. Gallagher, Bernard L. Gaughran, B.C.L., John Glackin, B.C.L.

Karl E. Hayes, B.C.L., Rory Harman, B.C.L., William Harnett, Geraldine Heffernan, B.C.L., Marie G. Hickey, B.C.L., Brendan E. Hill, John F. Kearney, B.C.L., Ciaran Keys, B.A., Cyril J. Lavelle, Cyril Lynch, B.A., David A. Molony, B.C.L., Raymond G. Moran, Paul Morris, B.C.L., Declan Moylan, B.C.L., Thomas J. E. McDwyer, John C. McKeown, Ellen McPhillips, B.C.L., Dip. Eur. Law.

Patrick C. J. Neligan, B.C.L., LL.B., Michael F. Nolan, B.C.L., Brian D. O'Briain, Eamon P. O'Brien, B.C.L., Michael M. O'Connell, B.C.L., Declan P. O'Connor, B.C.L., Patrick J. O'Connor, B.C.L., Sean M. O'Floinn, Anne P. O'Grady, B.C.L., Mary H. O'Meara, B.C.L., Charles F. O'Neill, B.C.L., Finbar O'Neill, Felim H. O'Reilly, Vincent M. O'Reilly, Andrew G. M. O'Rorke, B.C.L., James Osborne, B.A., Mod., John O'Seha, M.D., M.Ch.

Michael C. Powell, John J. M. Power, Richard Grattan D'Esterre Roberts, B.C.L., Elizabeth A. Ryan, B.C.L., John J. Seery, Noel M. Smyth, Roger Sweetman, Mary C. Tracey, B.A., Patrick J. Twomey, Francis A. Wall, B.C.L., LL.B.

78 candidates attended; 66 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:

Dàvid Anderson, Maurice Bannon, Gerard D. Diamond, John P. Feran, Patrick C. J. Neligan, B.C.L., LL.B., John O'Shea, M.D., M.Ch.

The list of candidates who passed in Paper 8 as part of the Second Law Examination will be published separately.

Second Irish Examination

At the examination held on the 25th Sepember, 1972 the following candidates passed:

John P. Feran, Stephen C. Hamilton, Paul M. Hanby, Patrick Hurley, B.C.L., Cyril Lavelle, Kevin Matthews, Deirdre Nic Fhionnlaoigh, Hugh J. O'Donnell, Donal O'hUadhaigh.

12 candidates attended; 9 passed.

Book-keeping Examination

At the Book-keeping examination for apprentices to Solicitors held on the 27th September the following passed:

Passed with merit: Daire Hogan.

Passed: Rosemary P. Bolger, Francis .. Burke, B.A., Donal Corrigan, Angela E. Crowley, Finbar J. Crowley, B.C.L., Mary E. A. Crowley, Paula Desmond, B.C.L., Peter M. Douglas, B.C.L., Patrick J. M. Durcan, B.C.L., Ciaran Earley, John Flanagan, B.C.L., Eamon P. D. Gallagher, Denis A. E. Gleeson, William G. J. Hamill, Marie G. Hickey, B.C.L., Patrick Hurley, B.C.L., Laurence P. Kirwan, B.C.L., Mary E. Lawlor. Paul Morris, B.C.L., John L. Mulvey, Brian R. McLoughlin, B.A., Michael F. Nolan, Michael O'Connell, B.C.L., Kieran O'Gorman, B.C.L., Margaret M. O'Kane, Felim H. O'Reilly, Aideen A. Rooney, Noel M. Smyth, Patrick J. Sweeney, Roger Sweetman.

45 candidates attended; 31 passed.

Eric A. Plunkett (*Secretary*).

Solicitors Buildings,
Four Courts,
Dublin 7.

THE REGISTER

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 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 December 1972.

D. L. McALLISTER

Registrar of Titles.

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

Schedule

(1) Registered Owner: Michael J. Keane; Folio No.: 409L; County: Dublin; Lands: The leasehold estate in the dwelling-house and premises known as No. 191 Griffith Avenue situate on the North side of the said Avenue in Drumcondra, Parish of Clonturk and City of Dublin, measuring in front to the said avenue 34 feet 11 inches, in the rere 35 feet 2 inches and in depth from front to rere on the east 196 feet 11 inches and on the west 197 feet 6 inches.

(2) Registered Owner: John Lyons; Folio No.: 36915; Lands: Knocknagoul and Currahaly; County: Cork; Area: 79a. 1r. 30p., 33a. 1r. 22p.

(3) Registered Owner: John R. McManus; Folio No.: 54285; Lands: Gortnalecka; County: Galway; Area: 0a. 3r. 35p.

(4) Registered Owner: Cornelius O'Hanlon; Folio No.: 3817; Lands: Shanavoher; County: Cork; Area: 36a. 0r. 11p.

(5) Registered Owner: Michael Goode; Folio No.: 34738; Lands: Derrylahan, Derrylahan & Coolumber; County: Roscommon; Areas: 46a. 1r. 19p., 3a. 3r. 6p. and 1a. 2r. 36p.

(6) Registered Owner: Timothy Cahill; Folio No.: 13726; Lands: Maulmane; County: Cork; Area: 35a. 0r. 30p.

(7) Registered Owner: Patrick Kenny; Folio No.: 12634; Lands: Oughter; County: Kings; Area: 0a. 0r. 38p.

(8) Registered Owner: Mary Anne Tweedy; Folio No.: 8387; Lands: Churchtown; County: Wexford; Area: 9a. 1r. 0p.

(9) Registered Owner: Brendan Carolan; Folio No.: 6974; Lands: (Baltrasna); County: Meath; Area: 4a. 0r. 9p.

(10) Registered Owner: Samuel Wiggins; Folio No.: 3465; Lands: Tirardaun; County: Monaghan; Area: 17a. 2r. 28p.

NOTICES

Prospective apprentice requires master, preferably in the West. Reply with details to Box No. C201.

Recently qualified Solicitor, Graduate, seeks position in the Provinces—Probate and Conveyancing Preferred. Reply to Box No. B300.

Books Wanted: Bailey on the Law of Wills, any edition, and Haccius on Death Duties. Anyone willing to sell, reply to Box No. C200.

Law Books Wanted: (1) Crotty—Practice and Procedure of the District Court; (2) 3rd Edition of Butterworth's Encyclopaedia of Forms and Precedents; (3) 1st, 2nd or 3rd edition of Halsbury's Laws of England; (4) Nelson on Probate—any edition; (5) Madden on Registration of Deeds. Reply to Joseph Mangan, Solicitor, 64 Catherine Street, Limerick. Tel.: Limerick 47233.

Lost Will: Sarah Mary Kelly born in Portlaoise 1897, and formerly of Pontypridd, Wales, and Dublin, died in retirement at Malta on the 14th September 1972. It is believed she may have made a will with a solicitor in Dublin about 1964 or 1965. Any Solicitor having knowledge of such a will, please communicate with Fitzsimons & Ryan, Abbeyleix, Solicitors for the next of kin.

Lost Will: Mary Margaret Brinkworth, deceased. Any person holding or having any knowledge if a will of the above deceased formerly of Clonmel and latterly of 73 Kimmage Road West, Dublin and 11 Clonard Avenue, Salthill, Galway who died at Galway Regional Hospital on 25th August 1972, is requested to communicate with the undersigned: J. J. O'Shee Murphy & Co., Solicitors, Clonmel, Co. Tipperary.

OBITUARY

Mr. Charles Cuffe: former Director-General of the Federated Union of Employers, died on 10th November 1972 in Sir Patrick Dun's Hospital. Mr. Cuffe was admitted in Michaelmas Term 1940, and practised in Kildare Street and subsequently in Fitzwilliam Square, Dublin 2, until February 1972, when he had to retire on account of ill-health.

Mr. William James Walsh: died on 30th October 1972. Mr. Walsh was admitted in Trinity Term 1941, and practised as senior partner in Messrs. Moore Keily & Lloyd, 31 Molesworth Street, Dublin 2.

Mr. Patrick F. Verrington, B.A.: died on 2nd September 1972 in Waterford City Infirmary. Mr. Verrington was admitted in Trinity Term 1920, and had practised successively in Dungarvan, Tipperary, and Carrick-on-Suir, Co. Tipperary.

District Justice Philip Lavery: The death took place in Our Lady's Manor, Dalkey, Co. Dubulin, of former District Justice Philip Lavery, late of Gurteen, Knapton Road, Monkstown. Mr. Lavery, who was 79, was a brother of the late Mr. Justice Cecil Lavery, Justice of the Supreme Court, and the late Mr. Hugh Lavery, solicitor, Belfast. Mr. Lavery, who was the eldest son of Mr. Patrick Lavery, solicitor, Armagh, was educated in Castleknock College, Dublin, and University College, Dublin, and qualified as a solicitor in 1915. He was registrar to the Judges of the High Court until the establishment of the Irish Free State in 1922 when he was one of the first group of district court justices appointed by the new Government. He served in this capacity for 40 years in Roscommon, and later Cavan and Monaghan until his retirement 10 years ago.

Mr. John R. Lawson: died on the 6th December 1972. Mr. Lawson was admitted in Hilary Term 1924 and practised as senior partner of the firm of Messrs. Montgomery & Chaytor, first at Molesworth Street, and subsequently at Ely Place, Dublin.

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