THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

JANUARY-FEBRUARY 1976 VOL. 70 NO. 1

National Prices Commission Inquiry into Solicitors' Remuneration

At its meeting on 26th February, 1976, the Council of the Society considered the letter from the Prices Commission Consultant, Professor D. Lees, University of Nottingham, in which he sought the co-operation of the Profession in the compilation of certain further statistical information on solicitors' receipts and expenditure. (The recent newsletter carried a copy of this letter.) **The Council urged those firms which are consulted by Professor Lees to supply him with as much of the desired information as is available.** So that the Society will be completely au fait with analysis of all the material furnished to Professor Lees, **the Council asks that a copy of whatever information is furnished should be forwarded at the same time to the Society's auditors, Messrs. Coopers & Lybrand, Fitzwilton House, Wilton Place, Dublin 2.** In due course that firm will process the information and furnish the Society with whatever conclusions emerge.

Land Registry

THE third in a series of meetings being held periodically between the Department of Justice and the Society to discuss Land Registry matters was held on 5th February, 1976. The following is a summary of the matters agreed or requiring attention:-

(a) Arranging of priority for First Registration of house purchase cases;

(b) Clarification of the Land Registry position about solicitors' and counsel's certificates under the Land Registration Rules: Mr. Griffith promised to let Mr. Ivers have a note about this for publication in the GAZETTE. (This appears on page 22)

(c) Deferment until 1st September 1976 of the Land Registry's insistence on the lodgment of Ordnance Survey maps with applications for transfers of part;

(d) In the meantime, a meeting would be sought with the Ordnance Survey Office (at which the Law Society and the Department of Justice would be represented) to follow up the question of the service which will be needed from the Ordnance Survey Office by 1st September 1976 in connection with (c)—the meeting to be arranged by the Department of Justice;

(e) The County and City Managers Association to be informed—by the Registrar — of the Land Registry's requirements insofar as the lodgement of Ordnance Survey maps is concerned [(c) above];

(f) Delays (e.g. in processing dealings) would be kept as consistent as possible throughout the country i.e. there would not be inordinate delays in any one area;

(g) Any criticisms (e.g. where inordinate delays occurred in any one area) would be transmitted to the Registrar periodically;

(h) Where warranted, an effort would be made to improve the presentation of applications by solicitors;

(i) All the staff and documents dealing with Co. Dublin registrations would be housed in one building if possible;

(j) It would be inappropriate for the Land Registry to be involved in the setting up of a panel of architects and engineers who would prepare and certify maps in subdivision cases;

(k) Consideration of having duplicates of maps made available at local offices would be deferred until the reconstruction of maps in the central office is completed;

(l) The possibility of accepting documents by post in the Registry of Deeds would be considered by the Registrar; and

(m) A further meeting would be held towards the end of October 1976, if possible.

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get, in a year of floating currency fluctuations, falling stock prices and many other uncertainties.

Guinness + Mahon Ltd. were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Peter Tuite, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking probably lies in the flexibility and innovativeness which merchant bankers can bring to the business of banking. Each transaction can be treated on its individual merits, and no run-of-the-mill solutions, which may not truly mirror the requirements of the transaction, need be forced on it.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS + MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205
or Peter Tuite at Cork 54277
67 South Mall, Cork. Telex 8469

ANNUAL GENERAL MEETING

THE President, Mr. William A. Osborne, took the Chair at 2.30 p.m. on Thursday, 27th November, 1975, in the Library of Solicitors' Buildings, Four Courts.

The notice convening the meeting, and the minutes of the Ordinary General Meeting held in Westport in May, 1975, were taken as read, and were subsequently signed.

The President then requested that the accounts and balance sheets for 1974-75 be adopted. This motion was formally proposed by Mr. Peter D. M. Prentice, seconded by Mr. John Nash, and was passed unanimously. Mr. Gerald Hickey then proposed, and Mr. Robert McD. Taylor seconded, the motion that Messrs. Coopers & Lybrand be appointed Auditors for the coming year.

Report of the Scrutineers relating to Ballot for the Council 1975/76

A meeting of the scrutineers appointed at the Ordinary General Meeting of the Society held in May, 1974, together with the ex-officio scrutineers was held on 20th November, 1975. Nominations for ordinary membership of the Council were received from 38 candidates all of which were declared valid and the scrutineers directed that their names be placed on the ballot paper.

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

Ulster—Peter Murphy,
Munster—Dermot G. O'Donovan,
Leinster—Christopher Hogan,
Connaught—Patrick J. McEllin.

A meeting of the scrutineers was held on Thursday, 20th November, 1975. The poll was conducted from 10.00 a.m. until 4.00 p.m. and the scrutiny was subsequently held The result of the ballot was as follows:

The valid poll was 709. The following candidates received the number of votes placed after their names, and were elected:

William A. Osborne 652, John F. Buckley 631, Mrs. Moya Quinlan 631, John Carrigan 598, Walter Beatty 595, Joseph L. Dundon 591, Patrick C. Moore 588, Thomas D. Shaw 585, Bruce St.J. Blake 570, Patrick Noonan 546, Anthony E. Collins 526, Maurice R. Curran 520, John Maher 513, Patrick F. O'Donnell 511, John B. Jermyn 505, William D. McEvoy 503, Robert McD. Taylor 500, Peter D. M. Prentice 493, Francis J. Lanigan 491, Laurence Cullen 480, John J. Nash 476, James W. O'Donovan 471, Donal G. Binchy 465, Michael P. Houlihan 464, David R. Pigot 464, Brendan A. McGrath 461, Gerald Hickey 460, William B. Allen 436, Adrian P. Bourke 432, Ernest J. Margetson 429, Miss Carmel Killeen 421.

The foregoing candidates were returned as ordinary members of the Council for the year 1975/76. The following members also received the number of votes placed after their names: Gerard M. Doyle 413, Raymond T. Monaghan 404, Brian J. O'Connor 377, Eamonn P. King 362, Philip E. McCourt 333, Patrick J. Bergin 262, and Patrick J. O'Donovan 188. The President declared the result in accordance with the ballot.

Report of the Council

The President stated that, as last year, the Annual Report had been printed in the Gazette, and each Report had been prepared by the Chairman of the Committee concerned.

The President proposed the adoption of the **President's** and **Council's** Reports, which were on the same lines as last year. He wished to thank members of the Council, and particularly ordinary members who had been assigned to the Committees for the magnificent work they had undertaken during the year. The general motion "That the Report of the Council for 1975-76 be adopted" was moved by the President, seconded by Mr. P. Prentice and passed unanimously.

The Report of each Committee was then taken separately. The adoption of the Report of the **Registrar's Committee** was proposed by Mr. Frank O'Donnell, who thanked all the members for their exceptional hard work due to adverse publicity. Mr. Quentin Crivon mentioned the fact that in many cases Solicitors' Accountant Certificates were in arrears in 1974 and 1975. If these were in order in 1973, surely it could be presumed that they were also in order in 1974 and in 1975, until the contrary was proved. The President said that meetings of the Committee had been held regularly, but the position was unsatisfactory. From January, 1976, the Regulations would have to be strictly enforced, and an up-to-date Accountant's Certificate would have to be presented before the licences would issue. In reply to Mr. Crivon, the President stated that an Indemnity Policy would not be required. In England, due to high premiums, the compulsory insurance scheme had not been a success. Mr. Crivon felt that the situation should be examined, as there appeared to be no difficulty in obtaining the statutory proofs. Mr. Anthony O hUadhaigh said he remembered that the attempt to include compulsory insurance when the Solicitors' Act 1954 was passed had been resisted by then then Government. Mr. Brendan O'Maoileoin was very concerned about press chicanery in its recent attacks upon the profession. He felt that the Profession should only entertain complaints by individuals, and seek redress against the Press through the Courts. The President said that they had ignored this unjustified publicity, and that the profession was generally now held in higher esteem. Mr. Patrick Noonan said that the President had acted in a masterly way in replying to criticism on Television. The Report was then adopted.

The adoption of the **Compensation Fund Committee's** report was then proposed by Mr. Frank O'Donnell, and adopted unanimously.

The adoption of the Report of the **Privileges Committee** was proposed by Mr. Michael Houlihan, who expressed the hope that the policies of members would be expanded. It was adopted unanimously.

The adoption of the Report of the **Parliamentary Committee** was proposed by Mr. Peter Prentice, who thanked the members for their great assistance. This had been a year of great parliamentary activity particularly in regard to tax law. This Report was passed.

The adoption of the Report of the **Finance Committee was** proposed by Mr. Gerald Hickey, who paid a special tribute to Mr. Healy for looking after the investments of the Society so carefully. Mr. Crivon, in referring to Blackhall Place, stated that an undertaking had been given to the members that its upkeep would not cost them one penny. The Report now mentioned a subscription of £20. The members were

entitled to a clear indication of the position. The President stated that this matter had been fully discussed at the Westport meeting. It was essential to find accommodation for the numerous apprentices, and it was impossible to hazard guesses as regards the cost. Mr. James O'Donovan, who as President had given this undertaking, stated that at the time it was thought that, if we were going to keep the King's Hospital, it would not be necessary to impose any expenses on our members towards reconstruction or maintenance. As a result of the numerous apprentices, it became essential to make full provision for them, and the Council was compelled to change its mind. Mr. Peter Prentice reminded the members that he had stated in 1974 that the King's Hospital would cost the Society plenty of money, but the new set of circumstances made such expenditure inevitable. The Report was adopted.

The Report of the **Court Offices and Costs Committee** was proposed by the President and adopted unanimously.

The adoption of the Report of the **Court of Examiners** was proposed by Mr. John Buckley, who praised in particular the work undertaken by the Education Sub-Committee. Mr. John Carrigan congratulated Mr. Buckley upon the achievements of the Court of Examiners in the past year. The Report was adopted.

The adoption of the Report of the **Public Relations Committee** was proposed by Mr. Walter Beatty, who thanked the Public Relations Officer, Maxwell Sweeney, for his services. Mr. Brendan O'Maoileoin, in referring to the new tax legislation, stated that it would be necessary to cater for an informed public. When he referred to the unconstitutionality of the Criminal Law Jurisdiction Bill, Mr. Carrigan proposed that this Bill be referred back for further consideration. The Report was adopted.

The adoption of the Report of the **Blackhall Place Committee** was moved by Mrs. Quinlan, and adopted unanimously.

The adoption of the Report of the **Disciplinary Committee** was moved by the President and adopted unanimously.

The Report of the **E.E.C. Committee** was moved by Mr. Anthony Collins. To an inquiry by Mr. Ó hUadhaigh whether the Society could provide a post-graduate course in Community Law for the older members, Mr. Collins stated that this would be difficult to arrange, but he referred to the special courses available in Edinburgh, Amsterdam and Luxembourg. Mr. T. C. G. O'Mahony stated that it was difficult to assimilate Community legislation, and that it would be impossible to read all the Community literature issued. Mr. Collins stated the Committee was trying to gauge the amount of this legislation which would affect Ireland, but it was a difficult problem. Mr. O'Mahony said that, although we had entered the Community with our eyes open, it would be difficult to test the constitutionality of Community legislation. The Report was adopted.

The Report of the **Company Law Committee** was moved by the President, who explained that this was an independent Committee dealing with mergers and monopolies, and that it had been complimented by the Minister for Industry and Commerce. The Report was adopted.

The President moved the adoption of the **Library** Report which was passed.

Mr. John Moloney moved the adoption of the **Costs Committee** Report. The President, in reply to questions, stated that the application for the 150% increase in costs had been submitted to the Prices Commission. Professor Lees would comment on this application and report to the Prices Commission. Mr. O'Maoileoin commented that, in view of current inflation, there should be a 700% increase and not merely one of 150%. The President replied that unfortunately Professor Lees was not prepared to recommend any further increase, but that he strongly advised any member who wished to put forward his views in requiring substantial increases to do so as soon as possible. Mr. O'Mahony, having mentioned that a management consultant was paid £160.00 per day, asked whether the Society could have regard to the work solicitors were performing. The President in reply stated that he had received a full memorandum on the subject from the Dublin Solicitors' Bar Association and other Bar Associations. Meetings had also been arranged throughout the country with Professor Lees who had definitely been impressed with the position, and it would be for him to report direct to the Prices Commission. It was then likely that the Prices Commission would publish an Occasional Paper on the subject. The Costs Committee would be prepared to meet all experts. A questionnaire had been sent to all firms, but unfortunately only 10% replied. The first *interim* Report of Professor Lees is likely to be published in January, 1976. Interim increases will be sought if there is likely to be any delay. The Report was adopted.

The President proposed the adoption of the **Law Clerks Joint Labour Committee** Report and commended the work of Mr. Gerard Doyle and Mr. Ray Monahan. The Report was adopted.

Mr. Walter Beatty then proposed the following resolution:

> "That the Government be requested to give priority to the introduction of the necessary legislation to remove the liability for the payment by borrowers of the lending institutions legal fees in respect of loans for residential house purchase."

The Council had already sent a similar resolution to the Department of Justice. Mr. Frank Lanigan seconded it. Mr. O'Maoileoin, in opposing the resolution, said that lending institutions did not make vast profits. Messrs. Russell and McCarron also opposed the resolution. Mr. Maurice Curran, in supporting the resolution said that, apart from building societies, lending institutions included banks and insurance companies. Mr. Robert Taylor also supported it. It was essential for the Society not to get a bad reputation from the public. Mr. Crivon thought that the public should not be asked to pay the costs of borrowing.

Mr. P. C. Moore said that although the resolution was discriminatory against building societies, he supported it on the basis that the proposal should change completely the conditions under which borrowers were to pay lenders' costs; the law of mortgages required to be altered completely. As a result of this discussion, Mr. M. Curran proposed and Mr. W. Beatty seconded the proposal that this resolution be placed on the Agenda of the Ordinary General Meeting in May, and that it be meanwhile considered by the Council. The proposal was agreed to.

Mr. O'Maoileoin proposed and Mr. O'Mahony seconded the proposal that Mr. Gavan Duffy be congratulated by the members of the Society upon having completed 25 years as Librarian of the Society, and that he be thanked for the services which he had pro-

Patrick C. Moore, the President for 1975-76, was educated at Newbridge College and University College, Dublin. He was admitted as a solicitor in 1930, and became a member of the Council since 1965. He has practised successively at No. 35 and more recently at No. 17, South Great George's Street, Dublin 2. He is a founder member and solicitor to the Educational Building Society, and director of other companies.

Gerald Hickey, the Junior Vice-President for 1975-76, is a son of the late James Hickey, Solicitor. Aged 49 years. Educated at Xavier School, and Trinity College, Dublin, he was admitted in 1948. He was elected as a member of the Council since 1967 and has been a partner of the firm of Messrs. Hickey & O'Reilly (now Hickey, Kirwan, Beauchamp & O'Reilly), Dollard House, Wellington Quay, Dublin 2, since 1950. Director of several companies.

Bruce St. John Blake, the Senior Vice-President for 1975-76. Son of the late Henry St. John Blake, solicitor, Galway. Aged 39 years. Educated at Glenstal Abbey and obtained a B.A. Degree (Honours) in University College Galway, in 1958, and an LL.B. Degree in 1960. Admitted a solicitor in 1962, and elected a member of the Council since 1966. Married in 1964 to Mary Grace Hanna, B.C.L., LL.B., solicitor. Practises at 93, Lower Bagot Street, Dublin, specialising in Labour Law. Founder member of the Society of Young Solicitors in 1965.

ADDITIONAL MEMBERS OF THE COUNCIL FOR 1976

(1) **New Ordinary Members elected to Full Council:**

Miss Carmel Killeen, Dublin Co Council, 11, Parnell Square, Dublin 2.
Mr. Donal Binchy, Clonmel, Co. Tipperary.
Mr. Adrian Bourke, Ballina, Co. Mayo.

(2) **Dublin Solicitors' Bar Association:**

Mr. Gerard Doyle, 50, Lower O'Connell Street, Dublin.
Mr. Thomas Jackson, 28-30, Burlington Road. Dublin.
Mr. Rory O'Donnell, 71 Wellington Road, Dublin.

(3) **Southern Law Association:**

Mr. John Moloney, 7 George's Quay, Cork.
Mr. Nicholas Hughes, 9, South Mall, Cork.
Mr. Brian Russell, 59, South Mall, Cork.
Mr. Frank Daly, 19, South Mall, Cork.
Mr. Nicholas Comyn, 12, South Mall, Cork.

(4) **Provincial Delegates:**

Ulster
Mr. Peter Murphy, Ballybofey, Co. Donegal.

Munster
Mr. Dermot C. O'Donovan, Limerick.

Leinster
Mr. Christopher Hogan, Kilkenny.

Connaught
Mr. Patrick McEllin, Claremorris, Co. Mayo.

(5) **Northern Ireland Representatives:**

Messrs. W. B. Cumming (Ballymena), L. H. Boyd (Limavady), G. L. Cotton (Belfast), H. E. Pierce (Belfast), and J. A. Young (Law Agent, Belfast Corporation).

Dates of Council Meetings:

The following dates were agreed provisionally for 1976: January 22, February 26, April 1, May 7 (in Tralee), June 17, July 29, September 16, October 21, November 25 (A.G.M.), December 16.

Annual General Meeting

(continued from page 4)

vided. The resolution was passed unanimously.

Mr. T. D. McLoughlin proposed that Mr. P. C. Moore, Senior Vice-President, take the Chair. Mr. McLoughlin and Mr. Moore then thanked the President for the valuable services which he had rendered the Society during the year. The President, in responding, thanked the Council, Director General and staff. A resolution of thanks to the President was passed by all with acclamation.

The Meeting then terminated at 4.15 p.m.

COMMITTEES OF THE COUNCIL, 1975-76

NOTE—The President and Vice-Presidents are automatically on all Committees.

1 & 2. **Registrars and Compensation Fund**

Messrs. D. R. Pigot (Chairman), D. Binchy, G. M. Doyle, W. Beatty, M. R. Curran, W. A. Osborne, T. D. Shaw, P. F. O'Donnell, Mrs. M. Quinlan and Miss C Killeen.

3. **Finance**

Messrs. W. A. Osborne (Chairman), W. Beatty, P. F. O'Donnell, P. D. M. Prentice, and P. Murphy.

4. **Parliamentary**

Messrs. W. A. Osborne (Chairman), J. J. Nash, A. Bourke, J. Dundon, D. Binchy, J. W. O'Donovan, and W. B. Allen.

5. **Privileges**

Messrs. M. P. Houlihan (Chairman), W. B. Allen, J. Carrigan, T. Jackson,. J. B. Jermyn, J. Maher, G. Doyle, B. Russell, T. Shaw, N. Comyn and Miss C. Killeen.

6. **Court Offices and Costs**

Messrs. E. G. Margetson (Chairman), P. Murphy, F. Daly, C. Hogan, N. Hughes, P. McEllin, W. D. McEvoy, D. G. O'Donovan, R. McD. Taylor, F. Lanigan, W. A. Osborne, L. Cullen, P. Noonan, and J. J. Nash.

7. **Public Relations**

Messrs. W. Beatty (Chairman), Rory O'Donnell, T. Shaw, W. D. McEvoy, M. P. Houlihan, B. A. McGrath, P. Murphy, and Mrs. M. Quinlan.

8. **Premises Committee**

Mrs. M. Quinlan (Chairman), Messrs. T. Jackson, E. J. Margetson, J. Dundon, P. D. M. Prentice, R. F. O'Donnell, and W. D. McEvoy.

9. **E.E.C. and International Affairs**

Messrs. A. E. Collins (Chairman), J. G. Moloney, J. B. Jermyn, J. Buckley, J. Fish, B. A. McGrath, and A. Bourke.

10. **Policy**

Messrs. J. Carrigan, P. D. M. Prentice, F. Lanigan, J. Maher, B. A. McGrath, J. J. Nash, P. Noonan, J. W. O'Donovan, R. McD. Taylor, W. A. Osborne, J. L. Dundon, P. C. Moore, G. Hickey and B. St. John Blake; plus Chairmen of Standing Committees.

11. **Education**

Messrs. J. Buckley (Chairman), J. Dundon, J. W. O'Donovan, M. Curran, Rory O'Donnell, and A. Bourke.

12. **Company Law Committee**

Messrs. B. O'Connor (Chairman), P. Kilroy, W. Beatty, M. G. Dickson, F. Daly, D. J. Bergin, L. Shelds, H. Fry, A. Collins, and Miss Mary Finlay.

THE BUILDING SOCIETIES BILL 1975 Part II

by The President (Mr. P. C. Moore)

Management and Administration of Societies

The provisions in this regard may be summarised as follows:

Every Officer of a Society having the receipt or charge of any moneys belonging to a Society, shall provide a Bond in such sum as may be required by the Society to secure the Society against loss caused by such Officer's fraud or embezzlement and the Bond must be in such form as may be approved of by the Registrar and there must be at least one sufficient surety in the Bond. Alternatively a Fidelity Guarantee Insurance from an authorised or licensed Insurer will be acceptable (Section 39).

A Society shall not have less than three Directors and a Society shall not have as a Director a Body Corporate (Section 40).

A Director must disclose any interest he may have directly or indirectly in any Contract or proposed Contract with the Society and a Declaration of such interest shall be recorded in a special Book or Register kept by the Society for this purpose.

The Annual Returns submitted to the Registrar must also contain a record of and details of loans made to a Director or a member of the family of an Officer or to a Body Coporate where an Officer or a member of his family held Shares of a nominal value exceeding 20 per cent of the Shares of such Body Corporate.

It is further provided that where the Society approved a loan to a member of the family of an Officer, the terms, including the rate of interest and period of loan shall not be more favourable than those applicable when other loans are made by the Society.

It appears that a Director may get special terms in respect of a loan as to rate of interest but a member of his family cannot get any special terms.

The Accounts must also show payments made to a Director under the heading of "Emoluments" which is defined as including amounts paid to, or received by a Director for his services as a Director of the Society, or in respect of his services while Director of a Society in connection with the management of the Society's affairs and all other benefits, such as contributions under a Pension Scheme or compensation for loss of office.

The Bill also prohibits the payment of tax free remuneration to Directors (see Section 45).

The Bill than has detailed provisions dealing with disputes and the determination of disputes:

(a) By arbitration;
(b) By the Registrar;
(c) By the Circuit Court.

The Notice of Meetings, the right to attend Meetings and voting is also provided for and the only persons entitled to vote at a Meeting of a Society shall be all members, who at the end of the last financial year before the date of the Meeting, held Shares to which such voting rights attached which were issued by the Society, to a value of not less than £25.00. The voting table provided in the Bill is an interesting innovation, namely:

	No. of votes
Not less than £25. and not exceeding £100	1
Exceeding £100 and not exceeding £500	2
Exceeding £500 and not exceeding £1,000	3
Exceeding £1,000 and not exceeding £3,000	4
Erceeding £3,000	5

(see Section 53).

The Bill further provides for proxies, the right to demand a poll, and also sets forth the procedures dealing with the passing of a Special Resolution.

The other provisions deal with the Annual General Meeting, the keeping of Books of Account, Directors' Report, Balance Sheet and filing of annual returns (see Sections 51 to 65 inclusive).

The further provisions in this part of the Bill are the appointment of an Auditor and his removal from office, qualifications for the appointment of an Auditor and his submission of the annual and other returns.

The Bill makes provision for the keeping of a Register of members and under Section 73 (6) a member of a Society has a right to inspect the Register if the Secretary of the Society is satisfied that the application is bona fide and having regard to the interests of the members as a whole and any other relevant circumstances shall afford a member a reasonable facility for inspecting the Register and taking a copy of any names and addresses in the Register (Section 73).

The Society must also keep a Register of Directors and this Register also shall be open for inspection by a member free of charge and by any other person on payment of the prescribed fee.

Special provision is made in the Bill (Section 75) to the effect that a Society shall not give any commission in connection with the introduction of Mortgage business to the Society or in consideration of or in connection with an Undertaking to introduce such business.

There is a special provision in Section 75 to the effect that an Officer, Solicitor, or Surveyor of a Society shall not accept in addition to the remuneration authorised by the Rules of the Society, any commission, for or in connection with any loan made or proposed to be made by the Society. Auctioneers are also placed in a similar position.

Ministerial Control

Special provision is made under Section 76 of the Bill vesting Authority in the Minister after consultation with the Minister for Finance to make Regulations relating to the management of Societies, as he considers necessary or expedient for the purpose of securing their proper and efficient management or for the purpose of promoting the orderly and proper Regulations of Building Societies' business. This Section is likely to be controversial, as it vests very wide powers in the Minister to regulate the expenditure of Societies, arising from its operation and management and also for a code of practice relating to Building Societies. Under Part 6 of the Act, Section 77, the Minister also has power when he considers it expedient, in the interests of the orderly and proper regulation of Building Society business and

having regard to the demand for loans for house purchase and the financial needs of the housing programme, he may subject to the consent of the Minister for Finance make Regulations in relation to the purposes and amounts of loans by Societies and the conditions subject to which such loans may be made. This Section is also likely to be controversial delimiting as it does the powers of the Societies in the conduct of their business.

Sections 76 and 77 in conjunction with Section 5 vest in the Minister virtual control of the Building Societies and their activity and, unlike the English Building Societies Act of 1962 which spells out the Statutory limitations in detail, these Sections, as contemplated by the Bill, will enable the Minister to control the affairs and activities of Building Societies, their lending policy, the rates of interest on loans, the amount of advances and also all other matters relevent to national housing policy.

As to how these Sections will in fact operate would be mere speculation and the future of the Building Society movement will in the final analysis depend on the confidence shown in it by the people as an attractive investment, giving a realistic return with security and ease of withdrawal.

The Bill provides certain criteria which must be observed as security for loans on freehold and leasehold Estates and the valuation of the security for loans. Provision is made in the Bill to continue the prohibition of Building Societies from making advances on the security of freehold or leasehold Estate which is subject to a prior Mortgage unless the prior Mortgage is in favour of the Society making the loan (Section 80).

There is an interesting provision in the Bill at Section 82 which lays down strict Rules for Societies to account to the Mortgagor after the realisation of a Mortgage within twenty-one days from the completion of the sale. Strangely enough no mention is made of puisne incumbrancers in the Section and the liability of the Societies to account to second and subsequent Mortgagees who may be entitled to the surplus rather than the Mortgagor. This particular Section appears to be based on Section 36 of the English Building Societies Act, 1962, and there is a Sub-section in the English Act which would appear to give some authority to Building Societies to account as Mortgagees in possession realising the property to see that the rights of puisne incumbrancers are protected.

There appears to be no specific provision in the Section or in the English Section enabling Societies to lodge the proceeds of sale in Court under the provisions of the Trustee Act. It may well be that this right exists and express power to a Building Society would be very helpful to Societies, where difficult problems between contending puisne incumbrancers arise and in cases where liability is challenged by the Mortgagor.

The Societies are bound to keep a record of all loans and all other relevant details in connection with the making of advances (Section 83).

Section 84 provides for the operation of a receipt under the seal of the Society in lieu of a re-Conveyance both in registered and in unregistered land in like manner, as heretofore operated, under the provisions of Section 42 of the 1874 Act (Section 84).

By way of general comment a number of provisions in the Bill bring Building Societies into line with the relevant provisions in the Companies' Act, 1963, and in this connection reference should be made to the explanatory memorandum published with the Bill.

We now pass to Part 7 of the Bill which is the final or tidying up part of the Bill dealing with miscellaneous items. This part of the Bill provides that the Registrar of Friendly Societies shall for the purposes of the Act be the Registrar of Building Societies as well (Section 85). Further provision is made to enable the Minister for Finance to make moneys available to Building Societies by borrowing on foot of a Guarantee by that Minister of such borrowings, so that the total amount outstanding of any moneys, the repayment of which is guaranteed under the relevant Section, does not exceed twenty million pounds. Further provision is made that any moneys advanced under such a Guarantee must be paid within a two-year period.

Section 87 : Provision is made that the financial year for the Building Societies shall be ended on the 31st December, and that all existing accounting dates be brought into line within a period of eighteen months.

Section 88 : The usual provision is made that a Certificate of Incorporation or registration or other document relating to a Society purporting to be signed by the Registrar shall in the absence of any evidence to the contrary be deemed to have been signed by the Registrar and shall be received in evidence accordingly and also that a printed document purporting to be a copy of the Rules of the Society and certified by an Officer of the Society, to be a true copy of its registered Rules, shall, in the absence of any evidence to the contrary, be deemed to be a true copy of its Rules and shall be received in evidence accordingly.

Section 91 of the Bill makes provision for the exemption from stamp duties but this does not apply of course to Mortgages in excess of the £10,000,00 limit at the present time. Further provision is made in this part of the Bill for the punishment of offences and the breach of the Act and also provision in relation to Judgments against the Societies, the suspension and cancellation of registrations and the winding-up thereof, based on the provisions applicable under the Comapnies Act, 1963.

The final Section in the Bill is Section 96 which is a saving Section in respect of all things done and Instruments created under the repealed Legislation set out in the Schedule to the Act.

Generally speaking, the Legislation proposed by the Bill is welcome and timely. The protection of the public who invested money in Building Societies was a major concern of all interested in the movement and the service thereby for Members and Borrowers from the Society is self evident. There are some controversial proposals envisaged by the Bill particularly the powers vested in the Minister for Local Government and the Minister for Finance enabling the Ministers in certain circumstances whenever the Ministers consider it expedient, in the interests of the orderly and proper regulation of Building Society business and having regard to the demand for loans for home purchase and the financial needs of the national housing programme.

The affects of the Section in the Bill would appear to give to the Minister virtual control of the Building Society movement and its activities if and when the Minister in conjunction with the Minister for Finance considers it expedient to do so. As to whether this is in the best interests of the Building Society movement one must await developments and the operation of the Section and the Regulations made thereunder.

The question as to whether borrowing members, or as they are usually called advanced members, of a Society should in fact be given membership status appears to be a matter entirely for the Rules of each individual Society, and in any event advanced members even though they may have a right under the Rules to attend General Meetings they would appear at most to have a voice only but no vote.

There appears to be no particular advantage so far as advanced members are concerned in being members of the Society as all their rights and obligations are merged in the Mortgage Contract itself, coupled with the Rules of the Society relevant to such Mortgage Contract, insofar as such Rules are referred to and incorporated in the Mortgage Contract.

There is one final problem, namely the inspection of Mortgage Contracts in respect of completed premises for audit purposes at the end of each financial year, and it appears to be a formidable if not an impossible task from the point of view of Auditors having regard to the non-availability of such Contracts in Land Registry cases which now constitute a very big percentage of Building Society lending.

Another provision of some consequence is the application of Section 45, Land Act 1965, which for some reason does not constitute Building Societies qualified persons like Banks and other Institutions referred to in that Section, thereby eliminating the expense and trouble of making Returns to the Land Commission under that particular Section on the usual quarterly basis in pursuance of general consents and administrative costs thereby involved.

The above is a general summary of the main provisions of the Bill and for further detail, reference should be made to the Bill itself and in particular to the very full and detailed explanatory Memorandum published along with the Bill.

DEBT COLLECTION COSTS

The Council of the Law Society has recommended the following scale of costs in relation to debt collections:—

10%	up to £500
5%	£500—£2,500
By negotiation	£2,500—upwards

The necessity of making the arrangement in advance is emphasised.

BUILDING SOCIETY UNDERTAKINGS—

Indemnity re Registered Land

In Requisitions on Title to a member, a Building Society Solicitor included the following: an Undertaking was required from the purchaser that he would indemnify the mortgagee (The Building Society) and their solicitors against the consequences of non-registration, should registration be refused by the Land Registry for any reason whatsoever. Member, who was acting for the purchaser, objected to this requisition, and sought advice from the Council.

In another case, a member, solicitor for the purchaser was required by a Building Society Solicitor to complete all the relevant Land Registry transactions relating to the title within 40 days.

The Council disapproves of both of these practices.

PROFESSIONAL FEES FOR R.T.A. PROCEEDINGS ARISING OUT OF ROAD ACCIDENTS

as agreed with the Accident Offices Association

1. In the opinion of the Society £10.50 is the **minimum proper** fee which should be accepted by a member of the Society where written instructions are given for either:
   (a) attending at a coroner's inquest, or
   (b) attending a court of summary jurisdiction to defend any proceedings under Sections 52 or 53 of the Road Traffic Act 1961 as amended by Sections 50 and 51 of the Road Traffic Act 1968, or
   (c) attending to observe such proceedings provided that where proceedings are conducted in a town other than the town where the Solicitor has his principal office, there should be a reasonable addition for time and travelling expenses.
2. Where a report of the proceedings is required the minimum fee for the report should be £15.75. A report should contain the names of witnesses, a summary of the evidence of each, the decision of the Court and an appreciation of the effect of the evidence on the question of civil liability for damages.
3. The minimum fee does not apply in cases of exceptional difficulty or responsibility. Reasonable additional fees should be paid in such cases.

EUROPEAN SECTION

Patent and Trade Mark Rights and Licences in Community Law

by John Temple Lang

Introduction

This article is a short summary of a lecture given by John Temple Lang in Stockholm at a conference organised by the Federation of Swedish Industries and the University of Uppsala.

The law of the EEC has greatly altered the position under patent, trade mark and knowhow law of many Irish companies, giving them new opportunities for exporting their patented and trade marked goods, and exposing them to new competition. It has also made illegal certain types of clauses restricting competition, which occur frequently in patent and similar licences, and therefore exposed companies to the risk of fines. This is a risk which should now be covered in a thorough audit. EEC law also offers companies a way of escaping from certain contractual restrictions on their growth which they may have agreed to in the past.

The full text of the lecture is being published by the conference organisers.

Defined rights to exercise patents and trade marks

Many of the problems of reconciling the need for a unified Common Market with the national character of patent and trade mark laws have now been resolved. First, in a series of cases the Court of Justice of the European Communities has ruled on how far owners of patents and trade marks may exercise their rights to prevent goods made and marketed in the Community from being imported into a given Member State. Secondly, the application of EEC law on restrictive practices to patent licences is now becoming clearer.

Apart from the classical arguments for competition and for antitrust laws to ensure that competition continues, free competition was essential to create a single market out of first six, then nine, national markets. The benefits of competition in a larger market would not be obtained if companies could keep national frontiers in existence through market-sharing agreements or by using national patent or trade mark rights. Community rules on freedom to use patent and similar rights were not only an essential element in EEC antitrust law, but an essential element in the uniting of Europe. Free competition to unify the Common Market is a means, not an ideology. Any method of maintaining national frontiers as barriers to trade is therefore looked at very critically by the EEC Commission and the Court.

Article 36 EEC Treaty allows import restrictions insofar as necessary to protect industrial and commercial property, provided they do not form a disguised restriction on trade between Member States. Under the decision of the Court in the Centrafarm case, this means that national patent rights may be used to prevent importation of goods only in order to protect the patentee's exclusive right to use the invention and to put the resulting goods on the market for the first time either himself or by a licensee, and the corresponding right to prevent infringements. Similarly national trade mark rights may be used to exclude goods from a national market if this is necessary to protect the trade mark owners' exclusive right to sell the trademarked goods for the first time.

Territorial protection

Territorial protection is therefore justified against goods imported from a member state where the invention in question is not patentable if the goods were manufactured there without the patentee's consent, express or implied (the Parke Davis case). It is justified against goods infringing the patent or trademark imported from outside the EEC or from another Member State, which have been produced and sold without the patentee's consent and in violation of his patent rights. And it seems fairly likely from statements made by the Court in the Centrafarm and Café Hag cases (although the point has not yet been directly decided), that territorial protection is permitted against goods produced under a similar patent or trade mark in another Member State where the original owners of the patents or marks were legally and economically independent: the case of similar patents and trade marks not having a common origin. In other words, unilateral exercise of rights not having a common origin with those rights, if any, under which the goods were produced elsewhere in the EEC, is permitted. On the other hand, national patent or trade mark rights cannot be used to prevent imports from another Member State of goods which have been legally marketed there by the patentee or trade mark owner or its licensee, or otherwise with its consent (e.g. by an associate company). In such a case the owner's exclusive right to the first sale has been satisfied, and the owner therefore has no right to divide up the Common Market.

If this was not the law, the owners of patents or trade marks could partition off national markets and so prevent the unifying of the Common Market, though this would not be justified to protect the essence of the owner's rights.

It follows that there are now **considerable opportunities for companies to buy patented or trade marked goods from the patentee or trade mark owner or his licensee** (or after they have been sold for the first time) **and to export them to other EEC Member States where the prices being charged by the local licensee are higher.** This was what the Centrafarm company was doing.

As a result of the Café Hag Case, the same rule applies (i e. territorial protection is not obtainable) where the consent was given by the previous owner of a trade mark, as well as by the present owner. Also, the person entitled to use the trade mark in one Member State may sell directly into any other Member State where a trade mark with the same origin exists. It is not yet clear that these two consequences of the Café Hag case apply also to patents.

Owners in different Member States of "parallel" trade marks having the same origin may therefore need to differentiate their goods from those of the other owners by adding to the trade mark which is common to both.

It is probable but not yet certain that these rules do not apply to the relatively unusual cases where two similar patents or trade marks were originally obtained by coincidence in different Member States by owners unconnected with one another (no common origin).

Nor is it settled that the owner of a patent in say Ireland can use his Irish rights to prevent the import of goods manufactured in say Italy by a company unconnected with him if he never sought an Italian patent, or has allowed the relevant Italian patent to lapse.

Clearly he could not do so if he had agreed to the manufacture in Italy, but he probably could obtain

territorial protection if the Italian patent had run out. This means that **to be safe an inventor should obtain patent protection in all the EEC Member States.**

There are still differences of opinion over whether e g. a British company which has been given a licence of a UK patent may sell directly into the territory of the Irish patentee. It is clear that a company which buys from the licensee may export the goods to Ireland, so that the patentee has no absolute territorial protection, but only a margin of protection equal to the minimum profit margin which the potential exporter would accept, plus royalty and transport costs. In the case of a direct export by the licensee the patentee has agreed to the sale and obtains his royalty, but he did not agree to the licensee selling in Ireland. Territorial protection against one's own licensee is not, however, part of the "specific subject matter" of the patent, as described by the Court: the right to confine a licensee to a part of the Common Market is not comparable to the right to prevent infringements by unauthorised imitators. The more conservative view is that the principles stated by the Court apply to patented goods only after they have been sold initially: this is based on the view that Community law merely extends the principle of exhaustion of patent rights to sales of goods in other member states.

The view which in the long run seems likely to be adopted is that **the patentee cannot use his rights under national law to prevent direct sales by his licensee outside the territory licensed.** If the patentee needs territorial protection against his licensee, the appropriate contractual export prohibition would have to be approved by the Commission under Art. 85 (3). This view seems more consistent with the Court's decisions.

It is accepted that licensees cannot use national patent rights to prevent direct sales in their territories by the patentee (or by other licensees). This is because the protection of the territorial rights of a licensee against intra-brand competition can hardly be regarded as part of the essence of a patent. It would therefore be unfair if licensees had not corresponding rights to sell in the territory of the patentee, and it would be unfair if companies in Member States which are not importers of technology were not free to export to the more highly industrialised Member States if companies in the latter could export into the technology-importing States.

To allow licensors automatic territorial protection would involve several inconsistencies. First, this would treat differently patents and unpatented knowhow (for which territorial protection can only be by contract, which would not normally be permissable). This would not always correspond to a difference of substance. Secondly, since a patent licence fixing the price at which the licensee could sell in the licensor's territory would be illegal ,it would be illogical automatically to permit the licensee to be prohibited from selling there. Thirdly, automatic territorial protection could only apply to simple patent licences and not to cross licences. But this distinction would be hard to maintain or apply, especially when grant-back occurs.

If there was automatic territorial protection for licensors, the Commission could not prevent the Common Market being divided, because the Commission cannot determine and has no power to challenge the validity of national patents. Companies therefore could use invalid patents to divide up the market.

Even if territorial protection for patent licensors is not automatic under EEC law, territorial protection could be obtained by contract where it is genuinely indispensable, for the benefit of licensor or licensee. This would require the approval of the Commission under Art. 85 (3). This should be clearly understood, so that potential parties to licence agreements are not wrongly deterred from signing by the fear of competition from the other parties.

To sum up, I personally consider that all patented or trade marked goods, or goods made with secret knowhow, sold or to be sold in any part of the EEC with the consent express or implied of the present or former owner of the patent or trade mark, may be sold directly anywhere in the Common Market without territorial restrictions unless these are embodied in a contract approved by the Commission. Consent is express when embodied in a licence. It is implied inter alia where the user is a company associated with the owner of the patent, trade mark or knowhow. But it is possible that the law may not go as far as this.

Clauses in patent and knowhow licences

The use of patent or trade mark rights to exclude goods produced and sold elsewhere in the EEC may now be unsuccessful, but it involves no risk of fines. Illegal clauses in a patent licence, however, such as most export prohibitions within the EEC, may involve the parties in fines under Art. 85 EEC Treaty.

Broadly, partial or incomplete licences of a patent, and licensee restrictions which are within the scope of the patent, are permissable. However, this is merely a rule of thumb: a patentee is normally free not to use his patent, but if he agrees with a competitor never to use it, that agreement is an illegal restriction on competition even though the restriction is within the scope of the patent. But in every case all the surrounding circumstances must be considered.

Most licences (except those given by one competitor to another) tend to encourage competition. Licences

which have no effect on trade between EEC Member States are not subject to the Treaty. Licences limited to only the use or the manufacture or the sale of the patented product, or to a specified field of use (provided it is objectively real and so causes specialisation rather than market sharing) and licences to manufacture only in a given Member State, would normally be valid. Clauses requiring payment of royalties, including minimum royalties, are of course valid unless they outlast the life of the patent or, in the case of differential royalties, are disguised export restrictions. Limits on the duration of a licence, if shorter than or equal to the life of the patents, are permissable. Clauses prohibiting sub-licensing or assignment, or requiring minimum production levels or necessary quality standards, or requiring goods to be marked, do not restrict competition. If proper quality can only be ensured if the licensee uses the patentee's raw materials or components, a "tying" clause binding him to do so is legitimate. Secrecy obligations, arbitration clauses and most-favoured-licensee clauses are valid, and so are clauses requiring the parties to grant new technology to one another, provided they are reciprocal and non-exclusive. These remarks relate to simple patent licences: it is difficult to make general statements about patent pools, cross-licensing, joint ventures and agreements for future patents.

In several recent decisions the Commission has made it clear that sole or exclusive licences, in which the patentee binds himself not to grant any other licences and not to use the technology himself, fall within Art. 85 if trade between Member States is affected. They should therefore be notified to the EEC Commission. This is because the licence restricts the freedom of the patentee to exploit his invention, and deprives all other potential licensees of access to the technology. However, if it is really "indispensable" that the licence is exclusive, it would normally be approved by the Commission under Art. 85 (3), EEC Treaty.

Clauses remaining in force longer than the life of the patent or the knowhow normally restrict competition, and are illegal unless approved. So are prohibitions on dealing in competing products, and clauses requiring the licensee to include specified conditions in his contracts with buyers. Exclusive or non-reciprocal grant-back obligations, and clauses requiring royalties to be paid on goods not made by the process or not incorporating the knowhow or invention licensed, are normally illegal. Contractual territorial restrictions on direct sales, and clauses preventing the licensee from contesting the validity of patents licensed, would require strong justification to obtain exemption. Quantity restrictions are normally not permitted. Neither are restrictions on the exact place of manufacture or on the way the licensee may sell (e.g. in bulk, wholesale or only to certain customers). If the licensee is given a veto on the granting of further licences, the licence would be treated as a sole or exclusive licence.

Any clause which would otherwise be illegal may nevertheless be approved by the Commission under Art. 85 (3) provided that it improves production or distribution or promotes technical or economic progress, while giving consumers a fair share of the benefit. Also the restriction on competition must be no more than is indispensable to obtain the benefit, and competition in respect of a substantial part of the products involved must not be eliminated or capable of being eliminated by the parties.

COURSES IN EUROPEAN LAW

EUOROPA INSTITUTE — UNIVERSITY OF AMSTERDAM

Courses in European Integration

A General Course, as well as a Specialised Follow-Up Course, in the Legal Aspects of European Integration will be held in the Europa Institute of the University of Amsterdam, 508 Herengracht, Amsterdam, from 16th to 27th August, 1976. The course will be in English, and the Tuition Fee is 750 Dutch Guilders (about £150 at current exchange rate). The lecturers for the General Course are the authors of **Leading cases and materials on the Law of the European Communities,** Drs. Volker, Schermers, Winter and Gijlstra. The Specialist Follow-Up Course which is separate from the General Course, will comprise lectures on the Judicial Remedies by Dr. Schermers, The Relationship between National Law and Community Law by Professor Baardman, Company Law and the Right of Establishment by Professor Schrans and Industrial property by Professor Van Gerven. Of the total fee of £150, £25 must be paid before 15th July and is not refundable. The balance may be paid on registration. Participants are expected to arrange their own accommodation. Application Forms are available from the Netherlands Universities Foundation for International Co-operation (NUFFIC), 27 Molenstraat, The Hague, Netherlands, and should be returned before 1st July, 1976.

BRUSSELS UNIVERSITY

Course in European Law

Under the auspices of the Wiener-Ansbach Foundation, a Course entitled "Introduction to Civil Law and to the Law of the European Communities" will be held in the Faculty of Law of the Free University of Brussels, 39 Avenue F. D. Roosevelt, Brussels 1050, from July 26 to August 27, 1976. The term "Civil Law" includes Commercial Law, Law of Contract, Civil and Administrative Procedure, and even Criminal Law. The term "Law of the European Communities" includes Community Institutions, The Sources and Applicability of Community Law, Competition, Establishment, Social Law, Tax Law, and the Law of the Environment. As the course will be given in French, by eminent Belgian and French professors, it is essential for applicants to have a sufficient knowledge of French to follow a lecture and to participate in a discussion. The Foundation has appointed various Professors in Britain and Ireland to screen applications in the first instance. National University graduates should first get in touch with Professor Niall Osborough, Dean of the Faculty of Law, University College, Belfield, Dublin 4, enclosing a relevant Curriculum Vitae. Graduates of the University of Dublin should get in touch with Professor Mary Robinson, Faculty of Law, Trinity College, Dublin 2. A number of scholarships amounting on an average to £275 to cover fees, fares and maintenance expenses will be awarded. The admission fee to the course is £25 (2,000 Belgian Francs) and the latest date for receipt of applications in Brussels is 15th April, 1976.

SYMPOSIUM OF BOOK REVIEWS ON IRISH LAND LAW

The publication of any book on Irish Land Law is an event, and the publication of John Wylie's learned work is an outstanding event. In order to emphasise its importance, it has been decided that a Symposium of Reviews should be published in this issue. The contributors include the Hon. Mr. Justice Henchy of the Supreme Court, a former Professor of Jurisprudence; Mr. Ronan Keane, a leading Senior Counsel and University Extern Examiner in Irish Land Law; Mr. Maurice Curran, a member and Mr. Hugh Fitzpatrick, a recently qualified solicitor who represents the students' point of view.

WYLIE, J. C. W. Irish Land Law (Consultant Editor for the Republic—Mr. Justice Kenny). Professional Books Ltd., Abingdon, England, 1975, 25cm. cxii, 914p. £16.50 (including V.A.T. £18.15). Available from the Society to members @ £17.00 while stocks last.

Hon. Mr. Justice Henchy

Irish land law is to a large degree a blurred reflection of the history of English law in Ireland. The protracted English conquest of Ireland was in reality a drawn-out war for the ownership of the land of Ireland. From the Pale, in now swelling, now ebbing waves of penetration, the feudal land laws of medieval England spread outwards until by the beginning of the seventeenth century the King's writ ran throughout the island and every piece of land was owned and fell to be transmitted according to English law, or more properly, according to English law as it found expression in Ireland. What followed since then has been a series of accretions from judicial decisions, from devolved Irish parliaments, from the Westminster parliament and, finally, from the Acts of the Oireachtas.

The result is a strange amalgam of medieval and modern. Statutes of the middle ages, doctrines evolved in the Court of Chancery in the eighteenth century, rules directed at the landed gentry of Victorian times, modern Irish statutes regulating the ownership, use and devolution of land, all combine to make up the corpus of land law in this State. It is a cumbersome body of law which cries out for modernization and rationalization, if not codification.

Wylie's *Irish Land Law* is, by any standards, a work of remarkable achievement. It tackles the whole span of this unwieldly subject, putting it in its historical perspective, tracing its doctrines and rules from their origins in statute or court promulgation down to their most recent judicial exposition, and taking into account the bifurcation that resulted from the establishment of two jurisdictions in Ireland consequent on the Anglo-Irish Treaty of 1921. The result is that for the first time one can look up in a single book the relevant law on almost any aspect of land law in Ireland and find an answer that will meet the problem on hand, whether it be a problem from the Republic of Ireland or one from Northern Ireland. At least it can be said, if this book will not provide the answer, it will in all probability direct one to where the answer can be got. And, as most practitioners will ruefully agree, that is a service that is lacking in almost every other branch of law in this State today.

An idea of the scope and comprehensiveness of this book may be conveyed by giving some facts and figures. In giving a historical conspectus and an up-to-date analysis of the land law of this State, Mr. Wylie refers to over 260 statutes—and that is exclusive of Northern Ireland statutes and British statutes since 1922. Over 5,500 judicial decisions are referred to or quoted from, including many important nineteenth-century Irish decisions which had fallen into obscurity because practitioners are in the habit of tracing Irish judicial authorities no further back than through Maxwell's Digest for 1894-1918. Practically every modern reported and unreported Irish decision bearing on the topics dealt with in the book is referred to, a feat which in itself will commend the book to those who labour in this field of law and have had to rely on English textbooks, which are apt to mislead because the statutes are different, or on Irish textbooks, which are also in many cases undependable because they have not been kept up to date by new editions or supplements. The author's treatment of each topic is supplemented by references in the footnotes to the main textbooks dealing with the topic, as well as to specialist articles in legal journals. The result is that the book is not merely a detailed study of different aspects of land law in Ireland: it is also a comprehensive guide for those who wish to pursue into its wider context any of the topics discussed.

The book commences with a valuable historical résumé of land law in Ireland from the period of ancient Irish law to the present day. The pre-twelfth century era of ancient Irish or brehon law is disposed of in three pages. Such a compression obviously defeats the possibility of giving any full picture of the nature and scope of land law under native Irish law, but unfortunately the treatment of the topic is otherwise below the high standard set elsewhere by Mr. Wylie. For example, *fuidir* is misspelled *fiudir*, and to equate the *tuath* with the clan or tribe is less than accurate. However, when Mr. Wylie passes on to deal with the introduction of the English common law to Ireland, the sureness of his touch returns, and in dealing with the historical aspects of land law under the common law in Ireland he shows sound scholarship on his own part as well as drawing on the most up-to-date research of legal historians.

To set out the headings under which Mr. Wylie covers his subject—Estates and Interests; Co-Ownership; Settlements, Trusts and Powers; Mortgages; Succession; Landlord and Tenant; Covenants, Licences and Similar Interests; Registration; Extinguishment of Interests; Disabilities—falls short of indicating the full scope of the book. Having been sponsored by the Arthur Cox Foundation, the author does not seem to have been completely restricted to the narrow confines of his subject by the usual inhibitions of publishing costs. Consequently, the fruits of his learning and research spill over into areas not normally associated with land law. For example, in dealing with the injunction as one of the remedies evolved by Equity, he makes reference to most of the modern leading Irish decisions on injunctions in trade union cases. On the other hand, there are, surprisingly, only passing references to the constitutional limitations in the Republic of Ireland in regard to property, or to planning legislation, or to the Housing Acts (for example, no reference to the important extended powers

of compulsory acquisition of land given to housing authorities by the Housing Act, 1966), or to the distinctive rating and valuation law in the Republic, which is an aspect of land law that calls for textbook treatment. However, those are lacunae that could be filled in by a supplement or in a future edition, as the author acknowledges in the preface.

I have no hesitation in recommending practising solicitors to purchase this book. If the price seems high, it should be borne in mind that it does duty for, or brings up to date, much that is to be found in textbooks such as Kiely's *Equity*, Strahan and Baxter's *Real Property*, Deale's *Landlord and Tenant*, Cherry's *Land Acts*, Browning and Glover's *Registration of Title*, Madden's *Registration of Deeds*, as well as covering much ground not deal with, or not dealt with satisfactorily, in any other textbook. Apart from any claims it may have on the solicitors' profession because it was commissioned by the Incorporated Law Society of Ireland and sponsored by the Arthur Cox Foundation, on its own merits this book deserves a place on the shelves of every solicitor's office in this country.

Ronan Keane, Senior Counsel

For many years the Irish Lawyer when confronted with a difficult problem in Conveyancing or Real Property Law has reached for one of the distinguished English text books. If he chose an elderly edition of Williams, he found himself faced with a dismal thicket of unattractive chapter headings ("Of the nature of an estate tail . . .") which gave all too accurate an indication of the heartbreaking task ahead of finding a succinct and relevant answer to his problems. If he sought guidance in something more recent, such as Cheshire, he was likely to find himself even more frustrated by the formidable array of property legislation in England in the last 50 years which has no counterpart in the Republic of Ireland.

It is, of course, not only a practitioners' problem: it is one for students as well. And the appearance of Mr. Wylie's book will on that account be doubly welcome to the legal profession in this country. Here at least is a comprehensive survey of the whole of *Irish Land Law*, based on a refreshing modern approach which is immediately emphasised by the Author's abandonment of the irritating and misleading title, "Real Property". Mr. Wylie's remarkable industry has produced a work which deals with the entire corpus of statute and common law on this topic both in Northern Ireland and the Republic; but the lawyer in this jurisdiction will find that the value of the book to him is not in the slightest degree diminished by the fact that it also deals with the law in Northern Ireland. As Mr. Wylie demonstrates in his fascinating historical introduction, the development of the law of property in Ireland was closely interwoven with the political and social history of the island, and while the statute law North and South of the border has diverged in some important respects since 1921, the similarities based on a common historical origin are still far more important than the differences. Mr. Wylie, moreover, is invariably at pains to indicate where the law in the two jurisdictions has diverged, so that his book in this respect contains no pitfalls for lawyers in either jurisdiction.

From the practitioners' point of view, the outstanding advantage of the book is a rather mundane one: the enormous number of references to authorities assembled here for the first time in one volume, an achievement all the more valuable because it extends to decisions in all three relevant jurisdictions, the Republic, Northern Ireland and England. To which one must add a wealth of references to other text books and articles in learned journals.

The practical fruits of Mr. Wylie's scholarship can also be illustrated by referring to his treatment of two topics. Chapter 3, under the general heading "Equity", contains a marvellous lucid account of the difficult doctrine of notice and priorities. And Part 5, dealing with mortgages, has compressed into 60 illuminating pages the fundamental principles of this vitally important subject.

Some indication has already been given of the scope of the work: its range extends to subjects as diverse as interference with easements and the rights of disinherited spouses under the Succession Act, 1965. Both systems of registration are carefully analysed and the author never loses sight of the impact of the system of registration of title on every aspect of *Irish Land Law*.

While Wylie on Land Law will therefore become an indispensable part of every Irish Lawyer's library and as necessary a reference work in this area, as its distinguished namesake has been for many years in the field of practice and procedure, it also demonstrates by its very wealth of learning and penetrating analysis of the imperfections and anomalies with which our Land Law bristles, the compelling need for reform in this area. Derived from so many different sources and reflecting such a bewildering spectrum of different, and sometimes conflicting, social needs, it surely demands the attention of the legislator on a more comprehensive and less piecemeal basis than it has hitherto received. Obviously, there are other aspects of the Law which present graver and more immediate problems and will therefore probably attain a higher priority on the formidable agenda facing the Law Reform Commission. Moreover, the ultimate nature of Land Law Reform in this jurisdiction has probably already been defined by the extension of compulsory registration of title under the Registration of Title Act, 1964. The designation of compulsory registration areas, a process which began in 1970, and the requirement in the 1964 Act that all land compulsorily acquired by a statutory authority should be registered, were significant advances in this direction. It will be inevitably a slow process and the existence of so many "pyramid" titles with a multiplicity of sub-interests (of which Mr. Wylie offers a chilling example worked out in practice) will make the task a daunting one, particularly in Dublin and Cork.

In the meantime, however, there are surely reforms which could be introduced without too much legislative labour (particularly as there are frequently models in Northern Ireland and England). One obvious example is the Rule against Perpetuities. It is quite absurd that ten years after the law has been reformed in Northern Ireland, lawyers in the Republic, who are so frequently required nowadays to draft complicated discretionary trusts for fiscal reasons, have to struggle with the implications of the Rule and frequently fall back on the clumsy formula of the "Royal Lives" clause. Mr. Wylie leaves the irony of this situation speak for itself, contenting himself with an eloquent exclamation mark.

It only remains to be said that the quality of the book's production reflects the highest credit, not only on the publishers, but on the Arthur Cox Foundation whose imaginative sponsorship of the work deserves nothing but praise.

Maurice Curran, solicitor

This book is the first comprehensive Treatise on Land Law in Ireland and will be welcomed with delight by practitioners and law teachers concerned with this branch of the law and by every student. One might imagine the differences between Irish Land Law and English Land Law (with the large exception of the 1925 Property Legislation in the United Kingdom) were not too great and that, by careful use of the Split mind that all Irish Students learn to develop when using English Text Books, one could be fairly confident that one had a fair grasp of Irish Land Law. Having read Mr. Wylie's great work, this illusion is shattered. There are enormous areas, the Land Acts, Registration of Deeds and the Law of Landlord and Tenants spring immediately to mind, where Irish Law is substantially, and indeed at times in its basic nature, quite different from that of our near neighbours.

Not only is this a useful book for the Student of Land Law but will be exceptionally useful to students of Equity and Succession—two areas in which one was most unhappy endeavouring to rely on English Text Books because of the 1925 legislation in England and the Succession Act in Ireland.

The author has not restricted his researches to Ireland and the U.K.: there are references to Australian Law and in particular one was interested to learn that some Sections of our 1961 Charities Act are based very closely on Australian precedents. The Table of Periodicals includes *American Law Journals, Historical Reviews, The South African Law Journal,* the *Sydney Law Journal, The Irish Ecclesiastical Record* and *The University of Malaya Law Review* amongst others.

Turning to the contents, the first Chapter is a brilliant sketch in less than 50 pages of the history of Irish Land Law. There is copious citation of sources and a teacher of Legal History using these sources and this Chapter will not be found wanting by his students. It is interesting to learn that the ancient Irish Patron/Client relationship was terminable at will and based on contract not tenure (as it was of course in the feudal system) which was an early indication, perhaps, of the approach adopted in Deasy's Act many centuries later in which the relationship of Landlord and Tenant is also based on contract (page 8).

The Chapter dealing with Fee Farm Grants and leases for lives is excellent. This Reviewer was unfamiliar with the Tenantry Act (Ireland) 1779 dealing with leases for lives with covenants for perpetual renewal, which confirmed the views of the Courts that the estate granted to the tenant was intended to be perpetual. This Act is still in force. The text does not appear to state whether this right to renew, which would now presumably produce on renewal a Fee Farm Conversion Grant, is an equitable right to a Fee Farm Grant or a mere equity.

The distinction between a mere equity and an equitable interest, which is very much an Irish development and rates very little comment in Megarry & Wade on the Law of Property, is discussed in detail on page 106. The writer appears unhappy, in this reviewer's opinion quite rightly, at the extension of the of the doctrine of mere equities in Ireland, which often means that an interest which in England would be treated as an equitable interest in land is here treated as a mere equity. This question arises mostly in connection with priorities and the writer makes strenuous efforts in the chapters on priorities, both as regards the doctrine of notice and as regards the Registration of Title and Registration of Deeds Acts, to reconcile Irish Court decisions with the equitable principles and maxims. The decision in *Tench v. Molyneux*—(1914) 48 ILTR—is discussed and one gets the impression that the author is not entirely happy with the line of decisions that followed from it, including *Devoy v. Hanlon*—(1929) I.R.—and *Re Strong*—(1940) I.R.

In this connection it is good to be reminded of Section 75 Sub-section (2) of the Registration of Title Act 1964 which provides "where a registered Charge is expressed to be created on any land for the purpose of securing future advances (whether with or without present advances), the Registered Owner of the Charge shall be entitled in priority to any subsequent Charge for the payment of any sum to him in respect of such future advances which may have been made after the date of, and with express notice in writing of, the subsequent Charge". McAllister in his book on Registration of Title comments on this Section as follows:— "It appears that the fact that the registration of a subsequent Charge is not notice within the meaning of Section 75 (1) of the Act. (In McAllister the reference is to Section 76 (1) but this is clearly a typographical error). The entry of a Caution or Inhibition in the Register of the lands affected to protect the interest of the owner of such subsequent Charge would appear not to be notice. The owner of such Charge for future advances can safely continue to lend money on the security of the Charge in priority to any subsequent registered Charge: Section 74 of the Act. The only notice that he would appear to be affected by would be express notice in writing of the creation of a subsequent Charge; so that advances could be safely made on the security of his Charge until such notice was received by him".

With regard to unregistered land, the Author states (at page 647) that no further advances will secure priority over a subsequent mortgage if the person making the further advance has notice of the intervening mortgages at the time of making that further advance and "in the case of an obligation to make further advances, where notice would deprive the person under the obligation of priority, it seems that he is protected by being deemed to be no longer subject to that obligation once the mortgagor creates the intervening mortgage". He goes on to say that "it was held in *Re O'Byrne's Estate*—(1885) 15LR Ir.—that even where the successive mortgages are all registered in the Registry of Deeds, a prior mortgagee can still tack further advances so as to squeeze out of priority an intervening mortgagee, provided he had no notice of the intervening mortgagee when he made his further advance". This ruling results from the earlier decisions of the Irish Courts that mere registration in the Registry of Deeds is not notice for these purposes. If the intervening registered mortgagee wishes to protect himself, he must give express notice to the prior mortgagee whose mortgage is expressed to secure further advances.

In the discussion on party walls (at page 375), there is reference to the Boundaries Act (Ireland) 1721 and the Dublin Corporation Act 1890. The former Act enables one owner to build a fence or wall on the boundary line in respect of which there has been no dispute for three years and to charge half the cost to his adjoining neighbour. The cost is recoverable as a debt owed. The latter Act deals with the repair of party structures and gives an owner the right to enter on the property of an adjoining owner to carry out repairs and other works. These Acts do not appear to have been much used, probably because most people are not aware of their existence.

The Chapters on Settlements and Administration of Trusts are very important for practitioners and should be read by any Solicitor (and that means every Solicitor) who has ever to make a Will.

Both for the student and practitioner, the Chapter on Mortgages is one of the most important, as our law particularly in relation to priorities and to the practice as to enforcement of remedies, is quite different from England.

The Section on Judgment Mortgages is comprehensive and, in relation to Searches, the comment on page 847 should be noted that it is essential that the description of the land in a Requisition for Search should include all descriptions by which the land has been known at any time, as failure to do this in a recent case lead to a purchaser acquiring land without notice of a judgment mortgage to which the land was subject (*Dardis and Dunne's Seeds Limited v. Hickey*, Unreported)—Kenny J—11 April 1974.

The only criticism this reviewer has are first, that Flats are mentioned on page 1 and nowhere else in the Text. One would have thought that with the developing importance of both leasehold and freehold flats, this subject would have merited more extensive discussion.

Secondly, that throughout the book, where discussing words of limitation in respect of property, no mention is made of Section 123 of the Registration of Title Act 1964 which provides that an instrument of Transfer of freehold registered land without words of limitation should pass the fee simple or other the whole interest unless a contrary intention appears in the instrument and that a transfer of freehold registered land to a Corporation Sole by his Corporate designation without the word "successors" should pass the fee simple or other the whole interest unless a contrary intention appears in the instrument.

Thirdly, the discussion on merger, particularly in relation to pyramid titles in cities and the buying out of the freeholds under the Ground Rents Acts, was disappointing. It seemed to this reviewer that the central problem of endeavouring to merge part of a lease in the reversion could have been dealt with more authoritively. One was surprised to see no reference to Section 12 of the Conveyancing Act 1881 in the discussion.

Fourthly, the discussion on the Concept of Family Assets and the Spouse's Equity in the Matrimonial Home was also disappointing. Whilst the text states that the British Authorities and the Northern Ireland Authority of *McFarlane v. McFarlane*—(1972) N.I.—had been considered by Mr. Justice Kenny in the case of *Heavey v. Heavey*, unreported—20 December 1974 — it was not clear as to the view he took as to the rights of a spouse who would not be entitled under the usual doctrines of Property Law such as the presumptions of a resulting trust or advancement.

Obviously these are very minor criticisms to make about this tremendous addition to Irish Legal literature, which every Solicitor in practice should acquire. It is to be hoped that the Law Commission will use this work and "The Survey of Northern Ireland Land Law" as a basis for the rapid attention to the reform of Land Law which is urgently needed.

Hugh M. Fitzpatrick

The learned author of this comprehensive work is Senior Lecturer in Law at University College, Cardiff, and Editor of the *Northern Ireland Legal Quarterly*. His decision to write the book is a major event in Irish legal writing. It is almost fifty years since the last text book on the Land Law of Ireland was published. The ice has been broken. It is hoped that other academic lawyers in Ireland will now undertake works on other vital subjects such as Conveyancing, Family Law and Tort.

Irish Land Law was commissioned by the Incorporated Law Society of Ireland and sponsored by the Arthur Cox Foundation. Jurists in both parts of Ireland owe a great debt to the Law Society and to the Foundation. The Chairman of the Foundation, Mr. Justice Kenny acted as Consultant Editor for the Law in the Republic of Ireland.

Previously students of Irish Land Law were forced to read Megarry's *Manual of the Law of Real Property*, Megarry and Wade's *The Law of Real Property* and Cheshire's *The Modern Law of Real Property* (the leading student text books on this area in England). Now they can turn with an easy mind to Mr. Wylie's book. The law of both the Republic of Ireland and Northern Ireland is covered. In some chapters separate treatment has been given to the two jurisdictions. However, integrated discussion occurs wherever possible. The book states the law as on 1st May 1975. Paragraph numbers (usually corresponding to paragraphs of the text) have been inserted throughout the book on a chapter by chapter basis. In a book of this size and scope this ensures tidiness of presentation.

The author wrote this book with both practitioners and students in mind. The book, which has a comprehensive citation of authorities (and especially Irish authorities) in the foot-notes, will be a convenient reference work for practitioners. They will be interested in the author's lengthy and learned treatment of mortgages. They will find the section on Powers of Attorney particularly useful as there is not much readily available written material on this kind of power in the Republic of Ireland. The optional pratice of filing an instrument (whose execution is verified) creating a power of attorney in the proper office of the Supreme Court is referred to. In Northern Ireland this practice has been abolished because it was expensive and cumbersome and did not secure any protection for interested parties. However the author states that the right to search the file and to obtain an office copy of an instrument already deposited is preserved.

The book also caters for the student in that the law is explained in a straightforward manner. As much of the language of this area is technical, the author usually does not leave unexplained any word or phrase which might cause difficulty. The reader is gradually introduced to each topic by means of an interesting and quite substantial introduction. At the beginning of the first chapter the author discusses a typical land transaction and includes references to further parts of the book which deal with the complexities discussed. The reader is assisted throughout by examples which the author uses to illustrate certain points. There are appropriate foot-notes with erudite references to further reading in articles, standard text books and monographs. The law student might well be advised to read the main body of the work on the topic he is studying and to achieve an understanding of that topic before looking at any of the foot-notes.

In his deep research the author discovered the existence of an abundance of Irish material. However, important recent English case law is not ignored. For example, *Re Baden's Deed Trusts, McPhail v. Doulton* (1971) A.C. 424, a decision of the House of Lords, is discussed within the context of powers of appointment. The doctrine of secret trusts has been the subject of controversy over the years. Irish judges have not always

seen eye to eye with their English brethren on certain aspects of this doctrine. It is a pity that the author did not give more extensive treatment to the important Irish case of *Re Browne* (1944) I.R. 90.

The book is divided into eleven parts and is over nine hundred pages in length. The book has a wider scope than the title might suggest and it covers the following as traditionally defined by law school curricula in Ireland: Legal History, Real Property, Equity, Trusts, Succession, Statutory Land Law, and Conveyancing and Registration of Title. This book will prove useful to a law student throughout his University career and, therefore, a first year student cannot afford to be without his own copy. An added attraction is that the book will be kept up to date by regular Supplements.

Part I is an extensive introduction to the history of Irish Land Law a knowledge of which is so essential for the student and practitioner alike. The first ninety pages should be read by a student of Irish Legal History before attempting Simpson's *An Introduction to the History of Land Law* (1961). Part II examines the fee simple, fee tail, life estate, future interests, easements and profits. Co-ownership forms the subject-matter of Part III. Part IV covers settlements, trusts and powers and includes treatment of the Trustee Act 1893.

Part V relates to mortgages. First, the author gives a historical background. Next, he discusses the two main aspects to be considered with respect to a mortgage — the financial aspect and the conveyancing aspect. The former is of more concern to the client but by tradition it is the latter which is of primary concern to the lawyer, yet in recent years it would seem that solicitors have become prepared to give their clients advice on financial matters. Appropriately, therefore, the author examines building society mortgages and the mortgage created by deposit of title deeds. The author also compares briefly with mortgages the following similar concepts: Lien, Pledge, Charge, Judgement-Mortgage, Welsh Mortgage.

Part VI deals with Succession and includes chapters on Wills, Intestacies and Administration of Estates. It should be noted that there has been a seventh edition of Bailey, *Law of Wills* since 1973 although the author merely cites the sixth edition (page 659). Also, it is unfortunate that the author makes no reference to Mr. McGuire's excellent commentary on *The Succession Act* 1965 published by the Incorporated Law Society of Ireland. In Ireland, Parts IX and X of the Succession Act 1965 restrict a testator's power to dispose of his property as he pleases. The provisions which curtail a testator's testamentary freedom (i.e. legal right of surviving spouse; provision for children; unworthiness to succeed; disinheritance) are dealt with in turn. Recent Irish case law in this area is referred to including the interesting case of *In b.G.M.* (1972) 106 I.L.T.R. 82 where it was held that the question of whether a moral duty to make provision for a child exists must be judged according to the facts existing at the date of the testator's death.

There is also a clear explanation of the subject of *commorientes* i.e. where two or more people die together. Section 5 of the Succession Act 1965 confirms the Common Law presumption of simultaneous death in cases of uncertainty of survivorship. In the absence of proof of survivorship, none of the persons involved in a disaster can have a claim under the estate of other persons involved in the same disaster.

The complex history and the present law of succession to property on intestacy is outlined in chapter 15. The subject of intestate succession has been rationalised by the Succession Act 1965 which makes detailed provisions for distribution of the intestate's estate. The author's treatment of administration of estates in Chapter 16 will appeal to the student rather than the practitioner.

It is a pity that the learned author has decided to confine his discussion of the important subject of landlord and tenant law to two chapters. In the preface, he gives as his reason that this topic has been the subject of numerous books even down to comparatively modern times and he refers to Deale's *Law of Landlord and Tenant in the Republic of Ireland* as an example. Deale's recent work was published in 1968 but it is not suitable for law students as it is intended primarily for practitioners. It is hoped that Mr. Wylie will give a much fuller treatment to landlord and tenant law in subsequent editions of this book.

Chapter 17 centres around the Landlord and Tenant Law Amendment Act, Ireland, 1860 (Deasy's Act) which is the basis of Irish landlord and tenant law. In Chapter 18 the author summarises the legislation dealing with statutory control of tenancies in divergent operation in both parts of Ireland. Part VIII deals with Restrictive Covenants, Licences and similar interests. Estoppel is considered and there is a full discussion of the Irish case of *Cullen v. Cullen* (1962) I.R. 268. Reference is also made to the recent Irish case of *Revenue Commissioners v. Moroney* 1972 I.R. 372.

Part IX deals with Registration of Title (Chapter 21) and Registration of Deeds (Chapter 22). The author carefully disttinguishes between these two systems of registration. The Registration of Deeds system was introduced in 1707 and the Registration of Title system only came into force in 1865. Careful study of these two chapters by students will yield greater dividends, at first, than an attempt to grapple with McAllister's recent work on *Registration of Title in Ireland* (1973) and Madden's leading work on *Registration of Deeds, Conveyances and Judgement Mortgages* (2nd ed. 1901).

Part X deals with extinguishment of interests. Chapter 23 covers the controversial doctrine of "adverse possession". The modern doctrine of adverse possession finds expression in this country in the Statute of Limitations 1957 as applied to land. The recent unreported Supreme Court decision of *Perry v. Woodfarm Homes Ltd.* (1974) (Walsh and Griffin JJ., Henchy J. dissenting) is fully discussed. Chapter 24 deals briefly with Merger.

In Part XI the author considers the various persons who are subject to disabilities under law in relation to land. In his discussion of married women it is surprising that the author in a foot-note of further reading on this matter (page 876) does not refer to Mr. Gavan Duffy's useful booklet on *The Married Women's Status Act, 1957*, published by the Society.

Although his work is a statement of the law as it *is* rather than it *ought* to be the learned author makes reference throughout to the *Survey of the Land Law of Northern Ireland* (1971) (of which he was a co-author) and he states that many of the recommendations for reform contained in the Survey are equally applicable in the Republic of Ireland. Mr. Wylie's book should undoubtedly be the basis of a discussion of the necessary reform of land law in the Republic of Ireland by the Law Reform Commission. This refreshing look at the land law of Ireland will be welcomed by students who will find this difficult subject made more interesting due to the abundance of Irish case law referred to in the text and easier to understand because of the historical summaries which appear throught the text. The book will also be widely read by practising lawyers in Ireland. This may lead to the more frequent citation of Irish authorities in Court.

ABUSE OF HIS STATUTORY POWERS BY THE TENANT FOR LIFE

by J. M. G. Sweeney, solicitor,
Acting Professor of Law, University College, Galway.

The exercise by the tenant for life of his powers under the Settled Land Acts has not resulted in any excessive litigation in view of their revolutionary character.[1] One thinks, for example, of the power to sell the settled land which might well be expected to be a perennial source of litigation between the tenant for life and his successors. Whilst, on the one hand, the Act of 1882 confers on the tenant for life "virtually the status of absolute owner",[2] on the other hand he is "deemed to be in the position and to have the duties and liabilities of a trustee" for "all parties entitled under the settlement".[3]

In this situation of potential conflict between interest and duty, to what extent may this "highly interested"[4] trustee, the tenant for life, be restrained from the selfish exercise of his statutory powers? The judicial dicta to be found in the textbooks seem often to be contradictory[5] so that an examination of some of the leading cases is necessary before an attempt can be made to extract some workable principles.

In *Wheelwright v. Walker* (No. 1),[6] the tenant for life was aged about 70 and the land was settled on his daughter after his death on trust for sale. The daughter sold her remainder to the plaintiff. After the Act of 1882 came into operation, John Walker, the tenant for life and defendant, contracted to sell the settled land. The plaintiff sought an injunction to restrain this sale on the grounds that he wanted to occupy the estate on the defendant's death and that no trustees for the purposes of the Act had been appointed.

Pearson, J. granted the injunction but only until such time as trustees for the purposes of the Act were appointed, saying[7]:—

> So far as I can see, there is no restriction whatever in the Act on the power of a tenant for life to sell. There is nothing that I can see in the Act to enable the Court to restrain him from selling, whether he desires to sell because he is in debt, and wishes to increase his income; or whether, without being in debt, he thinks he can increase his income; or whether he desires to sell from mere unwillingness to take the trouble involved in the management of landed property; or whether he acts from worse motives, as from mere caprice or whim, or because he is desirous of doing that which he knows would be very disagreeable to those who expect to succeed him at his death. There is not, so far as I can see, any power either in the Court or in trustees to interfere with his power of sale.

In a subsequent action by remaindermen to have a sale at the request and by the direction of the tenant for life restrained,[8] evidence was adduced that a sale of the estate was quite unnecessary and would be very prejudicial to the remaindermen. Of course, there was evidence to the contrary as well, but it is significant that the tenant for life admitted that, if the estate were his own absolutely, he would not sell it. However, Bacon V. C.'s rejection of the remaindermen's claim was chiefly due to his conclusion that under the settlement and, even more so, under the Act of 1882, the Court had no jurisdiction to interfere with the exercise of his powers by the tenant for life:—

> It is his right to derive any benefit he can from his tenancy for life, and if he is satisfied that he will derive a larger benefit from the sale of the estate than from its enjoyment in its present condition he has a right to have it sold.[9]

And, in *Cardigan v. Curzon-Howe*,[10] Chitty, J. spoke of the tenant for life's "absolute right to sell" in language too similar to that of Pearson, J.,[11] to be worth repeating here.

Other cases, however, reveal a much closer supervision by the Court of the tenant for life in the exercise of his statutory powers. It was not only by conferring on him powers such as the power to sell the settled land that the Legislature showed its confidence in the tenant for life. The Act of 1882, by s.22(2), requires the investment or other application of capital money to be made according to the direction of the tenant for life who has already directed payment of the capital money to the trustees of the settlement, instead of into Court, in exercise of the option conferred on him by s.22(1). In *Re Hunt Settled Estates*,[12] Farwell, J. indicated that the exercise of this power was reviewable:—

> It is contended, however, by the tenant for life that, if the tenant for life chooses property which is leasehold with the right number of years unexpired and there is no mala fides, the court cannot interfere with him in any case. I dissent altogether from that proposition. The tenant for life is a trustee under s.53, and his liability follows from his position as trustee; he is neither in a better or a worse position than an ordinary trustee who has a discretionary power to invest in leaseholds.

Of course, there are certain cases in which the Courts have interfered with the exercise by the tenant for life as a statutory power but which do not raise any difficult questions of principle. In *Wheelwright v. Walker (No. 2)*,[13] for example, the court restrained the tenant for life from selling to a third party for less than the price offered by a beneficiary, or from selling at all without informing the beneficiary of the proposed price and giving him two days in which to increase his offer. Even if s.4(1) of the Act of 1882 did not require every sale to be made at the best price that can reasonably be obtained, the proposed sale for the lower price was clearly a breach of the trust imposed on the tenant for life by s.53.

Not altogether so clearly within the category of those cases where the exercise of the tenant for life's powers is vitiated by something akin to fraud in *Middlemas v. Stevens*.[14] There the defendant was entitled to a house during widowhood and, being about to remarry, proposed a grant to lease to her prospective husband so as to continue in occupation. S.7(2) of the Act of 1882 requires that the lease shall reserve the best rent that can reasonably be obtained. However, it is not clear from the report whether the adequacy of the rent was seriously in question and certainly Joyce J.'s brief judgment makes no mention of it. If the adequacy of the rent were beyond dispute, why should not such a lease be valid even if granted with an ulterior motive? At any rate, if selfish motives were sufficient to invalidate the transactions of this "selfish trustee", the tenant for life, then cases such as *Wheelwright* v. *Walker (No. 1)* would have been decided differently.

However, Joyce J.'s judgment[15] seems to suggest that he would be prepared to go further in scrutinizing the exercise by the tenant for life of his statutory powers than at least some of the other judges:—

> Apart from any question as to her relationship to the gentleman who is the intended lessee, if I found a person, whose interest in the settled property would come to an end to-morrow, persisting in

> granting a lease which was objected to by all those entitled to in remainder, I should regard the case with considerable suspicion. It is clear from the correspondence that the real object of the lady in granting the lease is that she may herself continue in occupation of the premises. That, in my opinion, is not a bona fide exercise of her powers as tenant for life.

Also amongst those decisions which have emphasised the fiduciary character of the tenant for life's powers is *Re Earl of Radnor's Will Trusts*[16] which deals with the power to sell settled chattels conferred on the tenant for life by s.37 of the Act of 1882. This power to sell "heirlooms" does not differ in principle from, *e.g.*, the power to sell the settled land. It, also, is subject to the statutory trust imposed by s.53 but, unlike the power to sell or lease the settled land, it cannot be exercised without an order of the Court.

In the present case, Chitty J. observed[17] that the Act appeared to treat the tenant for life as the head of the family whose state of mind, as he exercised his statutory powers, was not as irrelevant as other judges had suggested[18]:—

> When a tenant for life, in proposing to sell heirlooms, is attempting to use his power maliciously, or to spite his successor . . ., or where he is acting wantonly or capriciously, the Court would undoubtedly decline to sanction the sale.

On appeal against Chitty's order authorizing the sale, Lord Esher, M.R., stated the duties of the tenant for life in terms which have been adopted, subject to qualifications, by Cheshire[19] as of general application to the exercise by the tenant for life of his statutory powers:—

> He must take all the circumstances of the family, and of each member of the family who may be affected by what he is about to do; he must consider them all carefully, and must consider them in the way that an honest outside trustee would consider them; then he must come to what, in his judgment, is the right thing to do under the circumstances — not the best thing, but the right thing to do.[20]

Lord Esher went on to explain that by distinguishing the "right" from the "best" thing, he meant to convey that the Court would not lightly differ from the tenant for life exercising his honest discretion as "head of the family". But this discretion is not entirely untrammelled since, Lord Esher suggests, there should be a bias against the exercise of the power:—

> I should think that a fair and honest trustee would lean against selling the heirlooms; for I agree . . . that *prima facie*, unless something in the circumstances justifies it, an honest trustee would be inclined to keep the heirlooms where the person who has settled them desired that they should be kept; therefore the leaning would be against a sale.[21]

Is it possible to reconcile these paradoxical judicial pronouncements on the duty of the tenant for life in exercising his statutory powers? Can any consistency be established between those decisions which require only pecuniary accountability and those others which require the tenant for life to consider all the interests of the parties entitled under the settlement "in the widest sense — not merely pecuniary interests, but wishes and sentimental feelings, and so on"?[22]

It is submitted that whether the fiduciary character of the power is expanded or not depends, in general, on the kind of settled property involved and what is thought to be the policy of the Settled Land Acts in respect of such property. It has been said that the Act of 1882 "incorporated a new idea, of complete equality in value between land and money"[23] and that the object of the Act was "to render land a marketable article, notwithstanding the settlement".[24] Hence, if a beneficiary's interest in the settled land is converted into cash, without his consent or, perhaps, even knowledge, he is unlikely to have any redress. Of course, the tenant for life must obtain the best price or rent but that does not mean that the Court will interfere, on this score, unless the price or rent is "infinitely below"[25] the real value of the property, or at least the inadequacy is substantial[26] (presumably because marketability would be impeded if the adequacy of the price or rent could be questioned too freely).

The judges have clearly recognized that the object of the Act of 1882 was

> to enable the tenant for life of real estate comprised in a settlement to take it out of the settlement, and to substitute for it, *ex mero motu*, the value of it in pounds, shillings, and pence.[27]

But they have not accepted that the convertibility of the settled property *other than land* was intended by the legislation and this explains, it is suggested, their conservative interpretation of s.55 in relation to, *e.g.*, sales of the settled chattels. And when the power, the exercise of which is being questioned, is a power not directly connected with the marketability of the settled land, such as the power to direct investments,[28] then the exercise of that power is also closely supervised.

Since it can be explained as a fraud on a power, the difficulties (if any) of squaring *Middlemas* v. *Stevens* with this *rationale* of the various decisions are theoretical (even on the supposition that the proposed rent was adequate[29]). Despite previous comments,[30] a distinction *can* be drawn between the conduct of the selfish, or even malicious, tenant for life who "sells land that will obviously be of far greater value in a few years' time"[31] and that of the widow who attempts to frustrate her husband's will. The former is a commercial transaction whilst the latter is not, because it lacks, *inter alia*, that element essential to commerce which, in a somewhat similar case,[32] Romer, J. described as "real bargaining". Morally, the widow's conduct does not compare unfavourably with that of the other tenant for life, but the latter enjoys the blessing of the Settled Land Acts.

1. (The Act of 1882) "is much more revolutionary in its principles than any of the Acts of 1925": Hanbury's *Modern Equity*, 9th ed., p. 513.
2. Cheshire's *Modern Law of Real Property*, 11th ed., p. 163.
3. S.53 of the Act of 1882, re-enacted almost verbatim for England and Wales by s.107(1) of the Settled Land Act, 1925.
4. *Per* Younger, J. in Re *Earl of Stamford and Warrington* (1916), 1 Ch. 404, 420.
5. See, *e.g.*, Cheshire, *op. cit.*, pp. 162-163.
6. (1883) 23 Ch.D. 752.
7. at pp. 758, 759.
8. *Thomas* v. *Williams* (1883) 24 Ch.D. 558.
9. at p. 566.
10. (1885) 30 Ch.D. 531 at p. 539.
11. *Supra.*
12. (1905) 2 Ch. 418; (1904-7) All E.R. Rep. 736.
13. (1883) 31 W.R. 912. See also *Chandler* v. *Bradley* (1897) 1 Ch. 315, where the tenant for life was restrained from granting a lease at a reduced rent for a bribe and *Re Earl Somers* (1895) 11 T.L.R. 567 where a teetotal tenant for life was restrained from letting a public house on terms that no intoxicating liquor be sold.
14. (1901) 1 Ch. 574.
15. at p. 577.
16. (1890) 45 Ch.D. 402.
17. at p. 413.
18. See *supra.*

19. *op. cit.*, p. 162. See Megarry and Wade, *The Law of Real Property*, 4th ed., p. 291, where a similar dictum from the same page in Lord Esher's judgment has been adopted as of general application.
20. (1890) 45 Ch.D. 402, at p. 417.
21. at p. 419.
22. *In re Marquis of Ailesbury's Settled Estates* (1892) 1 Ch. 506, at p. 536 *per* Lindley, L. J.
23. Hanbury's *Modern Equity*, 9th ed., p. 513.
24. *Re Mundy and Roper's Contract* (1899) 1 Ch. 275, at p. 288.
25. *Wheelwright* v. *Walker* (*No. 1*) (1883) 23 Ch.D. 752 at p. 762, *per* Pearson, J.
26. *Dowager Duchess of Sutherland* v. *Duke of Sutherland* (1893) 3 Ch. 169, at p. 195, *per* Romer, J.
27. *Wheelwright* v. *Walker* (*No. 1*), *supra*, at p. 761.
28. As in *Re Hunt Settled Estates*, *supra*.
29. A lease may be granted by a tenant for life to his wife: *Gilbey* v. *Rush* (1906) 1 Ch. 11.
30. *Supra*.
31. Cheshire, *op. cit.*, at p. 163.
32. *Dowager Duchess of Sutherland* v. *Duke of Sutherland*, *supra*, at p. 181.

LAND REGISTRY

Land Registry, Central Office,
Chancery Street,
Dublin 7.
25th February, 1976.

Dear Mr. Ivers,

I enclose herewith as promised the lists of common omissions and errors of Solicitors in lodging applications for registration. If the profession could note these points and act on them, registration would proceed much more efficiently. The fact that in so many cases the dealings as presented, or the replies to queries raised by the Registry, do not comply with provisions of the Registration of Title Act 1964 or the Land Registration Rules 1972, is a big factor in delaying registration.

I hope you will be able to give your members many a reminder in the next six months that from 1st September next the preliminary quality check of maps when lodged, will be strictly enforced, as agreed at the meeting in the Department on 5th instant.

Solicitors when preparing dealings now which deal with part of registered lands should see that the plans are drawn on a Land Registry Copy Map (where suitable) or on the current largest scale map published by the Ordnance Survey (Rule 56). The suspension of the check instituted on 1st January last is to enable solicitors to dispose of cases already in the pipeline.

Reference was made at the meeting to a proposal to have the "certificate cases" (those under Rule 19(3)) dealt with speedily. The Rule applies where the property has been purchased for not more than £20,000 (1975 amendment). It is assumed that the sale has been a recent one. There should not be a long interval between the date of the deed of transfer and the date of the certificate (Form 3). It is assumed that the solicitor in signing the certificate has regard to the period since the execution of the deed and that his certificate speaks from the date thereof. This should be at the last moment before lodging the application in this office.

I feel that many solicitors are not yet aware of the raising of the £8,000 limited in Rules 19 and 35 to £20,000 last November. If a reminder could be inserted in the Gazette or one of your circulars, it might be helpful to them and their clients.

Yours sincerely,
N. M. GRIFFITH,
Registrar.

SCHEDULE I.
Dealings with Registered Land.

1. Failure to lodge any fees, or sufficient fees.
2. Failure to lodge either, (i) the Land Certificate where appropriate or, (ii) consent to the user of a Land Certificate already lodged, where appropriate.
3. Omitting to complete Form 17 fully. See Rule 57.
4. In a great number of Transmissions cases where the registered owner died on or after 1st June, 1959, the Affidavit/Assent or Transfer does not **strictly** follow the precedent forms in the 1972 Rules [although there are "Notes" appended to the precedents as guide-lines].
5. Failure to furnish letter of consent to sub-division from the Land Commission or certificate of compliance with the conditions specified in such letters (cp. Section 12(1) of the Land Act, 1965).
6. Failure to state in transfers that the transferor is the registered owner. The insertion of the wrong folio number in deeds and documents (necessitating re-execution).
7. Where the Land Commission have entered a Section 6 Land Act 1946 Prohibition Note on a Folio the subject of a Transfer the failure to obtain and lodge consent from them to registration of such transfer.
8. Failure to lodge consents under Sections 88 and 90(6) Housing Act, 1966 where appropriate.
9. Deponent in Affidavit to register a Judgment Mortgage not being a competent person under the Judgment Mortgage Act, 1850, 1858.
10. Omossion of assent to registration of charge/burden/easement by the owner of the lands affected thereby. (See Form 66).
10. Omission of assent to registra- and description of, a person entitled to a charge incorporated in deeds of transfer.
12. Failure to set out in attestation clauses or in affidavits why a deed is signed by a mark (See Rule 54).
13. Failure to certify in marriage settlements that the marriage has taken place.
14. Failure to state the shares in which tenants-in-common are to hold the property in deeds creating a tenancy-in-common.
15. Omitting the necessary certificate under Section 45 of the Land Act. Certificates are required from all persons deriving interests under documents. This applies to assents by personal representatives.

(Schedule II will be published in the March GAZETTE).

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty eight days from the date of publication of this notice that the original certificate is in existence and 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, 1976.

N. M. GRIFFITH, Registrar of Titles,
Central Office, Land Registry,
Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Michael Keane. Folio No.: 3668. Lands: Killbree West. Area: 72a. 3r. 2p. County: Waterford.

(2) Registered Owner: Francis Hurley. Folio No.: 8436 Rev. Lands: Derrigra West. Area: 17a. 3r. 3p. County: Cork.

(3) Registered Owner: Michael Gerard O'Connell. Folio No.: 33811. Lands: Clieveragh (situate on the west side of Ballylongford Road in the Urban District of Listowel). Area: 0a. 1r. 15p. County: Kerry.

(4) Registered Owner: Sean P. Sherry. Folio No.: 19030. Lands: (1) Corraskea, (2) Annies, (3) Corcummins. Area: (1) 17a. 2r. 10p., (2) 8a. 0r. 20p., (3) 7a. 2r. 20p. County: Monaghan.

(5) Registered Owner: John Sheedy. Folio No. 27892. Lands: (1) Ballymalone, (2) Ballyvannan. Area: (1) 66a. 1r. 22p., (2) 13a. 1r. 20p. County: Clare. The lands in folio 2693 now forming the lands No. 1 on Folio 27892.

(6) Registered Owner: Dowth Hall Estate Limited. Folio No.: 172. Lands: Glebe. Area: 33a. 0r. 2p. County: Meath.

(7) Registered Owner: Thomas Forde. Folio No.: 16095. Lands: (1) Ballyfad, (2) Ballyfad, (3) Ballyfad. Area: (1) 40a. 0r. 27p., (2) 40a. 1r. 27p., (3) 3a. 0r. 30p. County: Wexford.

(8) Registered Owner: James Gerard McGarry. Folio No.: 28364. Lands: Carrowluggaun. Area.: 0a. 0r. 24.85p. County: Mayo.

(9) Registered Owner: Michael MacCabe. Folio No.: 5151. Lands: (1) Kilbride, (2) Rincoolagh (Part). Area: (1) 5a. 3r. 0p., (2) 0a. 2r. 0p. County: Longford.

(10) Registered Owner: Malachy Ryan (Bawn). Folio No.: 8451. Lands: Coolbaun. Area: 85a. 2r. 35p. County: Limerick.

(11) Registered Owner: James Butterly. Folio No.: 5895. Lands: Richardstown. Area: 60a. 1r. 30p. County: Dublin.

(12) Registered Owners: William and Ellen Lane. Folio No.: 21519. Lands: Mellefontstown. Area: 72a. 2r. 23p. County: Cork.

(13) Registered Owner: Patrick Kelly. Folio No.: 16930. Lands: Killark. Area: 7a. 1r. 28p. County: Monaghan.

(14) Registered Owner: William Hurley. Folio No.: 2823. Lands: Dromdeegy. Area: 146a. 0r. 37p. County: Cork.

(15) Registered Owner: Liam Merriman. Folio No.: 18494. Lands: (1) Irishtown Lower, (2) Longtown, (3) Longtown, (4) Richardstown. Area: (1) 5a. 0r. 32p.; (2) 14a. 0r. 9p.; (3) 24a. 2r. 28p.; (4) 7a. 3r. 25p. The Land Certificate in Folio 3131 now forming the land No. 1 on Folio 18494. County: Kildare.

(16) Registered Owner: Timothy Connolly. Folio No.: 9122. Lands: (1) Rathernan, (2) Rathernan. Area: (1) 2a. 2r. 35p; (2) 2a. 0r. 0p. County: Kildare.

(17) Registered Owner: Timothy Connolly. Folio No.: 4200. Lands: (1) Grangehiggin, (2) Russellstown, (2) Grangehiggin (an undivided 6th part of other part), (4) Grangehiggin. Area: (1) 16a. 0r. 17p.; (2) 0a. 1r. 10p.; (3) 5a. 3r. 37p.; (4) 0a. 1r. 31p. County: Kildare.

(18) Registered Owner: John Bail. Folio No.: 12339. Lands: Ballykelly. Area: 5a. 2r. 35p. County: Wexford.

(19) Registered Owner: James Butterly. Folio No.: 6631. Lands: Lanestown. Area: 87a. 2r. 22p. County: Dublin.

(20) Registered Owner: Consolidated Mogul Mines Limited. Folio No.: 37575. Lands: Derry Demesne. Area: 9a. 2r. 34p. County: Tipperary.

NOTICES

FINAL B.A. STUDENT, wishing to be articled, seeks a Master in Dublin. Reply to Box No. 123.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street.Dublin 1. Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

MARCH 1976 VOL. 70 NO. 2.

Society to Publish New Contract for Sale of Land

The Society is shortly to publish a revised version of its standard Contract for Sale and Auction conditions. The provision has been carried out by the Conveyancing Committee of the Society advised by E. Garrett Gill S.C. A specimen of the New Contract was introduced at the Society of Young Solicitors Seminar held in Killarney on the 3rd and 4th April and it is hoped that the final version will be available to the Profession very shortly.

The principal change in emphasis in the Contract is tha instead of certain clauses being prepared from the Vendors point of view the Society now seeks to hold an even balance between Vendor and Purchaser. Many of the old conditions have not been significantly amended but there are new clauses dealing with the obligation to pay a deposit being a condition precedent to the making of the Contract, clairfying the position where an agent signs a Contract in trust, introducing a right for the Purchaser of Leasehold property to be furnished with certain evidence of the Lessors Title, spelling out the Common Law Right of forfeitture of the deposit and providing for service of completion notices where time is not of the essence of the Contract.

Rules for the Government of Prisons 1976 (S.I. No. 30, 1976)

The Council of the Incorporated Law Society of Ireland has considered the provisions of the Rules for the Government of Prisons 1976 at a Meeting this week and has directed that the following Policy Statement be issued:—

1. The Council of the Incorporated Law Society of Ireland is fully conscious of the security problem which exists in relation to the running of prisons in the State. However, the Council also feel that comment should be now made on the new Prison Rules particularly in view of the stringent provisions they contain.
2. The Council have grave doubts as to the power of the Minister under the relevant Statute to make such regulations as the Prison Rules 1976. Even if such power was granted by Statute the Council doubts if such power could be reconciled with the Constitution or with the State's obligations under the European Convention on Human Rights and Fundamental Freedoms.
3. The Council is concerned that there should be no undue interference with the right of a prisoner to select and be advised by a legal advisor of his own own choice.
   The new Prison Rules in effect provide that any person (including a legal adviser) can be refused admission to a specified prison. There is no provision for a right of Appeal to a Court from a Ministerial direction or refusal under the Rules. While the Council have noted the assurances given by the Minister in Seanad Eireann the legal problem remains.
4. Apart from the important point relating to the function of the Courts there is no provision in the Rules indicating that they will be operative during a particular State of Emergency or for a limited period.

TWO SIDES TO A SALE

Causes of complaint which reach the media concerning solicitors not infrequently appear to have their base in situations where a solicitor has been acting for both Vendor and Purchaser, particularly in housing transactions.

Clients making complaints do not always indicate that the same solicitor has been acting for both parties, and this has only emerged during subsequent inquiries.

It has also been reported that builders or their agents have been known to make a suggestion to a prospective purchaser such as: "Our solicitor will look after your side of the business too; it'll be cheaper for you."

While there has been no suggestion of malpractice, there is the possibility of an opinion arising in the public mind that these transactions are an 'inside affair' which benefit solicitors more than their clients.

The Council has drawn attention in the past to the practice of Solicitors acting for both parties, and any potential cause for complaint against the profession should be avoided.

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get, in a year of floating currency fluctuations, falling stock prices and many other uncertainties.

Guinness + Mahon Ltd. were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Peter Tuite, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking probably lies in the flexibility and innovativeness which merchant bankers can bring to the business of banking. Each transaction can be treated on its individual merits, and no run-of-the-mill solutions, which may not truly mirror the requirements of the transaction, need be forced on it.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS + MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205
or Peter Tuite at Cork 54277
67 South Mall, Cork. Telex 8469

EUROPEAN SECTION

Dublin Meeting of the Commission Consultative

(November 1975)

by John G. Moloney

What is known familiarly as the Commission Consultative and more formally as the Commission Consultative des Barreaux des Pays de la Communauté Européenne is an offshoot of the Union Internationale des Avocats (UIA) which met for the first time on 3rd December 1960, and is composed of representatives of the National Bars and Ordres of the countries of the Common Market. It is composed of a President and Secretary-General and three representatives from each country with three substitutes or "suppléants" from each of the nine member countries and observers from Sweden, Norway and Switzerland. The present President is Maitre Albert Brunois of Paris and the Secretary-General is Maitre Jean-Regnier Thys of Brussels.

Up to recently the expenses of the Commission were met by equal subscriptions of the Member States and half that amount by Observer States but in November 1975 it was decided in Dublin that each Member State would pay a flat 20,000 Belgian Francs and the Observer States 10,000 Belgian francs each with the balance of the expenses divided into 105 parts of which Germany, France, Italy and the U.K. pay 18 each, Belgium and the Netherlands 10 each, Denmark and Ireland 6 each, Luxembourg 2 and the Observer States 3 each.

Meetings are held two or three times a year in different countries and in addition there are a number of meetings of a more or less permanent working committee and meetings of various ad hoc committees.

Each country names a person within that country who will be responsible for the dissemination of information to the various delegates and the sending of information from that country to the Secretary-General. The person in question is known as a Délégué aux Relations and in the case of Ireland is Mr. James J. Ivers, the Director-General of the Society.

By arrangement with the General Council of the Bar of Ireland the expenses of Ireland to the Commission Consultative are shared and usually Ireland is represented at a meeting by one member nominated by the Society and one by the Bar. Since 1973 the Law Society nomination has been bestowed upon Mr. G. J. Moloney, while the Bar, originally represented by Mr. (now Mr. Justice) Thomas A. Doyle has sent Mr. John D. Cooke to recent meetings.

The first meeting at which the Society was represented was at Bruges in October 1973 and since then, there have been meetings at Paris in March 1974, Rotterdam October 1974, Berlin April 1975, Dublin November 1975 and the next two meetings are due to take place in Stratford-upon-Avon in May 1976 and at Perugia in October 1976.

The meeting of the Commission in Dublin was organised jointly by the Society and the Bar Council who established a special committee for the purpose and also a Ladies' Committee to run a special programme for the wives of delegates attending. To judge by the expressions of appreciation and thanks after the meeting, the social programme was completely successful. It included a reception of delegates and wives by the President at Aras an Uachtarán followed by a buffet reception given by the Attorney-General in Iveagh House, the splendid reception rooms of the Ministry of Foreign Affairs, which was attended by the members of the Commission Consultative and by Ministers and Judges. On the following night there was a reception and dinner given jointly by the Bar and the Society in the magnificent dining hall of the King's Inn.

During the day the ladies attended a fashion show and went on a bus tour through south County Dublin and County Wicklow. On the Saturday and Sunday a number of delegates and their wives accompanied by Mr. Geoffrey Coyle went by bus through Limerick, where they stopped for tea, to dinner and to spend the night at the Aghadoe Heights Hotel in Killarney followed by a tour the following day of the Ring of Kerry finishing up at Acton's Hotel in Kinsale where they were joined by the President and Vice-President and two other members of the Council of the Southern Law Association. They then left by air from Cork the following morning.

Ireland was represented at the meeting in Dublin by Messrs Moloney, Jermyn, Fish, Blaney and Cooke while twenty-three delegates turned up from the eight other member countries and in addition there was an observer each from Switzerland, Norway and Sweden and Mr. Stanley Crossick represented the UIA. Mr. Colum Gavan Duffy was specially allowed as Editor of the *Gazette,* to attend the meetings. The conference was held in the Shelbourne Hotel for two and a half days. The full agenda included a meeting of the Working Committee, a welcome to Ireland by the President, Mr. Osborne, an address by the President of the Commission Consultative on the occasion of the fifteenth anniversary, discussions on the subscription and budget for the coming year, the problem of youth, legal defence insurance, the election of President, a resume by Me. Ehlers of Denmark in relation to Notaries, EEC Criminal Law and the following two subjects which were dealt with in more depth and at greater length.

1. Deontology

The first of these was a Report on Deontology by Mr. David Edward a Scottish QC. One of the matters which receives considerable attention from the Commission Consultative is what is known generally on the Continent as Deontology which comes from a Greek word meaning obligation. It seems to cover what is known in Ireland both as ethics and etiquette and gives rise to considerable problems from time to time. It is likely in the future, as contact between lawyers within the EEC increases, to give further difficulty unless it can be dealt with and regulated properly. Mr. Edward's Report has been the first examination in depth in the Commission Consultative and he found that to a very large extent the basic principles are similar in all countries, although there are considerable differences, some of them of considerable importance, in some aspects. He had thought as a first step that the Resolutions which he proposed in his Report ought to be passed and that other aspects of the problem should be left for further study. This was, in fact, agreed to at Dublin and the Resolutions, which were passed, will be published subsequently.

2. Draft Directive on Freedom to Provide Services

One of the reasons for the coming into being of Commission Consultative was Article 55 of the Treaty of Rome. Since then, of course, there have been the developments of the draft Directive and the two decisions of the European Court at Luxembourg concerning **Reyners and van Binsbergen.** The draft Directive and

Address by the President, P. J. De Brauw, at the occasion of the 15th anniversary of the Commission Consultative

In a few days it will be fifteen years since the Commission Consultative held its first meeting. I felt this was an occasion to which we should give some attention and I will ask your permission to say a few words on the period behind us, which is long enough to distinguish the first signs of perspective.

I also felt that perhaps it would be a good thing if your President, at the end of his term, gives his personal view on the position of the Commission Consultative and what he expects of its future.

I feel that we can see a clear development in two different ways. First of all in the composition of the Commission Consultative. Created thanks to the initiative of the Union Internationale des Avocats, for which we cannot be too grateful, the delegations reflected strongly the representatives of the Union in the six countries of the Community. In many delegations one found advocates who were experienced in international matters — the resolutions were marked by a very general approach in matters concerning advocacy and, also, by a thorough, though theoretical study of the Treaty of Rome.

This situation changed in my opinion when the Bars were confronted with a first draft for a Directive and they became aware of the practical consequences of coordination and harmonisation. Meanwhile the Commission Consultative functioned as an organ of the combined Bars; its resolutions got quasi-political significance. Meanwhile also, the composition of most of the delegations had obtained a more official character. The members were appointed by the professional organisations, they felt themselves representatives of their organisation rather than pioneers of a European Bar. Positions were not abandoned except under the utmost reservations. Not the greatest common divisor, but the lowest common denominator became the contents of the resolutions.

Nevertheless a positive development can be distinguished. On several points there is always a common opinion, points which are, especially now, of paramount importance. It has always been *communis opinio* that the autonomy of each Bar, on each level, should be maintained as a principle, in so far as admitted by the superior organisations also, that, if at all possible, a double discipline should be accepted as a principle in cases where one was in practice outside one's own country. Not the least part of the studies which were made under the auspices of the Commission Consultative has been directed to the elaboration of these principles.

It is clear that we have not chosen the easiest way, but in any event it seems to me to be the best way. On the one hand it is better that national views are defended and not givetn up before that has been proved unavoidable, on the other hand it is necessary that certain safeguards for the most essential characteristic

(continued on opposite page)

the implications of these decisions have been considered on more than one occasion by the Commission Consultative as a result of which they had a meeting with an official M. Massoth of the EEC Commission in Berlin. M. Massoth is the "Chef de Division à la Direction Generale XII" of the EEC Commission. Views were expressed in considerable detail on the text of the draft Directive as it then stood. M. Massoth took note of these, but unfortunately there was a subsequent change in the terms of the draft Directive which only came to light before the meeting in Dublin.

One of the most important matters was whether or not a lawyer providing services in a country of the EEC Community other than his own was to be subject to the "deontology" of both his home and the foreign country. The draft Directive envisages that he will be subject to "double deontology" in relation to Court appearances but not in relation to anything else. Italy through their representatives Maitres Biamonti and Baldi, supported vigorously by Belgium and Luxembourg, took the view that the visiting laywer must be controlled in all respects by the host country. While Britain, supported by Germany and the Netherlands were prepared to accept the principle of double deonthology, they firmly drew the line at anything which involved the limitation of "capacité" or what a lawyer is permitted to do, and took the view that if he were permitted to perform a function in his home country, he should be permitted to do it in the host country. An instance of what they had in mind was the question of whether an English solicitor who is entitled to act both as a solicitor and as a managing director of a company in England would not be entitled to do that, if he were to be considered an avocat, and subject to the control of the deontology applicable in some Continental countries to avocats. The English solicitor could negotiate fees for the provision of mortgages. This was not available to some of the Continental lawyers, and a Scottish solicitor is even entitled to act as an estate agent. As a compromise, it might be possible to establish a Regional Convention.

After a very considerable discussion in Dublin and a considerable amount of behind the scenes negotiation the terms of a Resolution which would be acceptable to all was worked out. This Resolution was passed with a request that the President's letter to the EEC Commission forwarding this Resolution should express regret at the change which had been made by the EEC Commission from the text commented on in Berlin, without any consultation with the Commission Consultative. At the request of the British delegation, a reminder was also sent that at least one delegation had had reservations on the "Berlin Text".

Since the November meeting in Dublin the draft Directive has been considered by the Economic & Social Committee and a vote by the European Parliament relating to this is likely by the time this article appears.

One anxiety of the Commission Consultative in relation to this intricate matter is that it is of primary importance that lawyers who are the only ones really capable of understanding the problems involved should have both the opportunity and the means of controlling the practice of lawyers within the EEC.

Closely associated with the draft Directive is the question of Bilateral Agreements between Bars of two or more different countries regulating the activities of lawyers belonging to such Bars in the area of the other Bars as well as a system for arbitration and advice which the Commission Consultative set up last year. It is hoped to publish further articles on these two subjects subsequently.

of our profession, independance, be given priority.

It is certainly not my intention to recommend a change of direction in the way in which the Commission works. You all know by my main objection: we work too slowly and we run after the facts. But it appears that this sacrifice has to be made if this body is to consist of the summit of our profession.

Looking ahead along the line of the prospects the question arises whether the task, which the Commission has taken on its shoulders, can be accomplished in the future *and* whether it can satisfy the needs which will arise.

In the Gazette du Palais (Paris) of Thursday 14th August Me Jacques Mauro has paid attention to what he calls "la collectivité européenne d'avocats", which, in his view, already exists and which, as he concludes, can almost be regarded "à l'état de devenir certes mais irrésistible" as "un barreau européen qui réunit tous les avocats du Marché Commun".

In my position I am bound to look upon the European future of our profession with optimism. The view of Me Mauro cannot be qualified as optimism, though progressive as it may seem at first sight.

I do not believe that the European ideal will consist of a merger in one Bar and the uniformity of all advocates. In the first place we should realize that the Bar — although it has to adapt itself to developments of society — exists owing to the traditions, which differ from country to country and even from district to district. Many traditions are abandoned due to modern developments, others will lose significance as a consequence of the transnational practice and may not be maintained, but there is no reason why their value cannot be recognized on the local level. This implies that an important part of the autonomy of the local Bar should be maintained, also within the scope of a possible European form of organisation.

In addition the development of our profession in our countries appears to be very different. Again and again one can conclude that the very nature of our profession, its moral constitution, is equal for all of us. One can discover thereafter that lower level differences of application can be found, which cannot be bridged in one day despite all our good intentions.

In the third place the substance with which we work consists of national legislation: one cannot think of a unification of all national legislation on a European scale anymore than one can think of one uniform, integrated Bar.

Thus, I do not believe — as Me Mauro does — in a future, uniform body consisting of a "représentation européene d'avocats élue . . .", at least not in the lifetime of the present generation. I also do not agree with him that the task which that body in his opinion should have, could be accomplished by others, partly by the national Bars, which I regard as indispensable for the construction of a European consolidation, partly by the Commission Consultative. In that case the delegations would consider themselves not only as members of a representative body, which national interests should defend, but as the body that finds ways for the coordination and harmonisation — a purpose for which the Conseil d'Avis et d'Arbitrage is created.

A distribution of the tasks among the national organisations and the Commission Consultative can satisfy all needs excepting myself. The mission, which the Commission has accepted, to make an all embracing study of what divides us and what unifies us in legislation, professional rules and practice is too heavy. We are chosen from among the top of our profession, from among those who know to place the significance of our profession in their national communities; but those are the member advocates who have a full day's work, who have little time to engage in a study of the size which I described. Yet the accomplishment of that study is of paramount importance, if we want to resolve the problems which will arise as a consequence of further harmonisation. I may remind you of examples as the necessity of a protection of the professional privileges in all countries of the Community and of a complete revision of professional and deontological rules. The Bars will not be able to finance such a venture, but we have to make every effort that it comes into being.

It is everyone's responsibility, both of the Commission Consultative and of our professional organisations to ensure that such study will be set up without delay. That is impossible for full time advocates, as it requires the full dedication of a few persons, who know our profession and who have been freed from other duties. We will have to consider the institution of an "Institut Européen des Barreaux". Less than ever can our society, which will not become less complicated in the process of a European integration, do without assistance to have itself integrated. The Commission Consultative will have to, and can contribute its important share to that as well, provided it disposes of the necessary information. A very important advance in that direction has been made by the Commission Consultative in the past years. We have now reached the stage that we urgently need information which is in accordance with reality. Let us therefore create the necessary conditions.

I have tried to give an objective view on what I see as the future of the Commission Consultative. A further condition is — but I scarcely need say so — that our cooperation takes place in an atmosphere of "confraternalité" and friendship, which has always prevailed here, despite our differences of opinion. It seems superflous to express my wish and conviction that this may always remain the same.

MEDIA SERVICE DEVELOPMENT

To facilitate the media, and to present the views of the Society to the public where this appears desirable, a panel of solicitors who are specialists on the various aspects of legal affairs has been organised.

Members of the panel will be available for information and/or comment where this is sought by the media.

This arrangement has been considered desirable in order that there should be no confusion over spokesmen for the Society, and the presentation of the Society's viewpoint.

The media — Press, Television and Radio — have been advised of this arrangement and assured that guidance to the appropriate source of information on a specific topic will be available from the Director-General's Office.

To ensure that there is no overlapping, solicitors who are contacted directly by representatives of the media on what might be considered a policy matter are asked to contact either the Chairman of the Public Relations Committee or the Director-General.

Developments in Community Legislation (6th Report, December 1975)

FREE MOVEMENT OF PERSONS AND SERVICES

Free Movement of Workers

6.1. On 15 October 1968 the Council adopted Regulation 1612/68 on freedom of movement for workers. At the time the Commission had proposed to include, within the heading of the exercise of employment and equality of treatment, the exercise of trade union rights and the right to take part in the management and administration of a trade union. Due to the fact that trade union law in France restricted the exercise in France of such rights to French nationals, agreement could not be reached on this proposal. Since then the Court of Justice of the European Communities has handed down its judgments in the Reyners and Van Binsbergen cases in which it held that restrictions based on nationality and residence have been null and void since the end of the transition period. Despite the fact that Article 48 of the EEC Treaty has thus been adjudged to be directly applicable, the Commission considered it necessary to assure legal certainty for those affected and accordingly decided to amend Regulation 1612/68 so as to put an end to the ambiguous situation resulting from its present wording. The Commission has forwarded to the Council a draft regulation ensuring that migrant workers from other member States will be entitled to equality of treatment with nationals of the member State in which they are working with regard to eligibility for the administrative or management posts of a trade union. It is expected that the proposed draft regulation will be considered by the Council at a meeting in December 1975.

Lawyers

6.6. As requested by the Council (Ministers for Justice) at its meeting on 26 November 1974 the Commission forwarded to the Council on 19 August 1975 an amended draft directive to facilitate the effective exercise by lawyers of freedom to provide services. The Commission had submitted its original proposal on 17 April 1969. Discussions on this proposal which began in 1972 revealed differences of opinion regarding the interpretation of the reference in Article 55 of the EEC Treaty to the exercise of official authority, the Courts before which advocacy might be permitted and the extent and form of collaboration between the visiting lawyer and the lawyer of the host State. Furthermore, the judgments of the Court of Justice in the Reyners and Van Binsbergen cases meant that the provisions of the original draft relating to the abolition of discrimination on the basis of nationality and residence were no longer necessary. While the Commission withdrew most of its proposals relating to freedom of establishment and freedom to provide services consequent on these judgments, the Commission submitted in this case an amended proposal on lawyers instead of withdrawing the original proposal because the draft directive on lawyers' activities contains certain provisions which are peculiar to these activities. The revised draft directive, which the Commission has now forwarded to the Council, takes into account the deliberations of the Council working group, the judgments in the Reyners and Van Binsbergen cases and the characteristics of the profession in the new Member States with Common Law systems. It applies to all the activities of lawyers carried on by way of provision of services. However, it allows a Member State to require that a foreign lawyer who wishes to appear before its Courts must work in conjunction with a lawyer who is a member of the competent Bar of that State and who will be, if necessary, responsible to the Court in question.

COMPANY LAW

17.12. Consideration is being given to the question of amending the European Communities (Companies) Regulations 1973 made to implement the First Directive on Company Law in the light of the observations given on these Regulations by the Joint Committee of the Houses of the Oireachtas on Secondary Legislation of the European Communities and by the Commission.

17.13. The Commission had presented to the Council a draft Fifth Directive on Company Law which dealt with the structure of limited liability companies and in particular employee participation in the management of enterprises. On 12 November 1975 the Commission published a document entitled "Employee Participation and Company Structure in the European Community". In this document the Commission reviews the question of employee participation and the structure of companies in the Member States and considers the approaches the Community could adopt towards harmonising and extending, where necessary, these provisions. The Commission considers the question of employee participation under four headings:

—negotiation of collective agreements;
—institutions within companies representative in whole or in part of employees;
—participation by employees in decision making bodies of companies and
—participation by employees in the company's capital.

The Commission will amend its draft Fifth Directive on Company Law in the light of the observations it receives on this document from all interested parties.

Conventions

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

17.14. The Council working party which is considering the adjustments which may be necessary to this Convention in order to meet the requirements of the new Member States is continuing with its work. It held meetings in July and October 1975. The principal items dealt with at those meetings were jurisdiction in matters relating to insurance and maritime jurisdiction.

Draft Convention: Bankruptcy, Winding-up, Arrangements, Compositions and Similar Proceedings

17.15. This draft Convention proposes that where a bankruptcy or winding-up occurs in any Member State it shall be recognised and be enforceable throughout the Community and shall preclude the opening of corresponding proceedings in the other Member States. The draft is being considered at Commission level by a Committee of Experts from the Member States. The Committee met in July and October 1975. Among the matters considered at those meetings were:

(a) the adjudication in bankruptcy of directors and managers whose actions have contributed to the liquidation of their companies;
(b) the exclusion of banks from the scope of the draft Convention and
(c) its application in maritime and aviation matters.

Draft Convention on Private International Law

17.16. A meeting of the Commission Committee of Experts on the harmonisation of the rules of Private

(concluded on opposite page)

European Case

Freedom to provide services.

Robert Coenen, of Netherlands nationality, having resided in the Netherlands until 9 September 1973 but residing since that date in Belgium, works as an insurance broker, both on his own account and in the name of two insurance companies established in the Netherlands and actually managed by him in his capacity as salaried director.

According to Netherlands law on insurance broking the exercise of this occupation is subject to entry in a register. The law also provides that registration can only be effected where it is shown that the applicant has *a fixed abode in the country.*

Having ascertained that Mr. Coenen was resident in Belgium, the Sociaal Economische Raad notified the latter that his name would be removed from the register and notified the two insurance companies managed by Mr. Coenen that their registration also would have to be cancelled by reason of Mr. Coenen's place of residence.

An action was brought against this decision before the College van Beroep voor het Bedrijfsleven, which referred to the Court of Justice the question whether the provisions of the Treaty establishing the European Economic Community, in particular Articles 59 and 60, must be understood as meaning that a requirement such as that contained in the law on insurance broking, according to which a natural person who wishes to act as broker within the meaning of that law must reside in the Netherlands, is not compatible with those provisions. The Court of Justice, interpreting the spirit of the Treaty in the matter of freedom to provide services within the Community, has ruled that the requirement that the provider of a service must be permanently resident within the territory of the State where the service is to be provided may, according to the circumstances, render Article 59 nugatory, since the precise object of that article is to eliminate restrictions on freedom to provide services on the part of persons who do not reside in the State on the territory of which those services are to be provided. In the present case, the additional requirement that the provider of the service be personally resident within the territory of the Netherlands appears to be a restriction on the freedom to provide services which is incompatible with the provisions of the Treaty.

The Court has ruled that the provisions of the EEC Treaty, in particular Articles 50, 60 and 65, must be interpreted as meaning that national legislation cannot, by requiring residence within the territory of that State, render it impossible for persons residing in another Member State to provide services where less restrictive measures (than the requirement of permanent residence) would make it possible to ensure that the rules of conduct to which the provision of such services is subject on that territory were observed.

Case 39/75 — Coenen v. Sociaal Economische Raad — (26.11.75) — Preliminary ruling.

(*continued from page 30*)

International Law was held in September 1975 at which examination was begun of a preliminary draft Convention on Contractual and Non-contractual Obligations in the light of comments and observations submitted by the Danish, German and Irish delegations. This examination will be continued at the next meeting of the Committee in December.

European Community Patent Convention

17.17. A Conference attended by the nine Member States and the Commission to finalise a European Community Patent Convention opened in Luxembourg on 17 November 1975. The Convention which is expected to be signed at the conclusion of the Conference on 15 December 1975 follows on the European Patent Convention, concluded by sixteen countries including EEC member States at Munich in 1973, and represents a second step in the development of an EEC patent system, creating as it does a unitary system of law for European patents granted for the EEC countries. The system will co-exist with national patent systems. The draft Convention contains a provision which gives applicants the right, for a transitional period, to decide between a European patent for one or more EEC States and a full Community patent. The Commission, in an opinion issued on 26 September 1975, expressed opposition to proposals to defer the operation of the "economic clauses" dealing with "exhaustion of rights" attached to patents. On 30 November 1975 it was not clear whether the operation of the "economic clauses" would be deferred or not.

INTERNATIONAL BAR ASSOCIATION

Progress report for the year 1975

1. Section on General Practice

This Section was formed in 1974 and membership is open to all lawyers, being members of the International Bar Association, who practise in the non-commercial fields e.g. Real Property, Town and Country Planning, Wills and Administration of Foreign Estates, Trusts and Trusteeship, Family Law, Estate Duty and Tax Planning, Criminal Law, Legal Education and Continuing Legal Education, Organisation and Development of the Legal Profession, Civil Procedures and "No Fault" Insurance. Over the past year fourteen committees of the Section have been set up, chairmen appointed and the membership now stands at about 350. The first meeting of the Section Council and committee chairmen was held in Paris on 31 October 1975.

2. Section on Business Law

Section membership is now approaching 2,500 and its second Conference took place in Paris on October 30 and 31 attended by 981 members and guests. Twenty committees met, some holding joint meetings with other committees. The Section journal, *The International Business Lawyer,* is now published quarterly and the January 1976 issue will contain reports on all the committee meetings. Bar Associations and Law Societies may subscribe to the journal at an annual subscription of US $25.

3. Seminars

The first International Bar Association Seminar on "World Energy Laws" was organised in Stavanger, Norway, on 5 to 8 May 1975 in co-operation with the Norwegian Bar Association and the German Bar Association. The standard of speakers was extremely high and the papers have been published. Copies may be obtained from the Director-General at US $50 per copy. The International Bar Association plans to organise further Seminars on subjects of international interest outside the normal scope of Bar Associations' Continuing Education programmes.

4. Stockholm Conference 1976

The working and social programmes for this conference are now complete and details have been sent to all members, patrons and associate members.

5. Preliminary arrangements have been made for the 1978 conference to be in Sydney, Australia in mid-September.

6. Council Meeting

A meeting of the Council was held in Nairobi, Kenya, on May 23 and 24, 1975, when the main topic considered was the programme and arrangements for the Stockholm Conference.

7. International Code of Professional Ethics

Work has continued on revision of Rules 1, 6, 10, 13, 14, 17 and 19 of the Code which were proposed at the 1974 International Bar Association Conference in Vancouver. The revised code will be submitted for approval by the General Meeting at the Stockholm Conference.

8. Revision of International Bar Association Constitution and By-Laws

During the past year a committee of Council members has been considering amendments to the Constitution and By-Laws to provide for a more active participation in the affairs of the Association by individual lawyers. These amendments will be put before the General Meeting in Stockholm.

9. Ombudsman

The International Bar Association Committee on Ombudsman has been extremely active. It publishes a monthly newsletter on developments and has appointed an Academic Advisory Board to assist the Committee in its work. An open meeting of Ombudsman is planned during the Stockholm Conference.

10. Draft Treaty on International Powers of Attorney

Negotiations are continuing to find a government or governments to sponsor this draft treaty before the United Nations. The treaty was prepared by a special committee of the International Bar Association.

11. Discussions with the Union Internationale des Avocats

The Joint Committee of Members of the International Bar Association and U.I.A. has met twice during the past year. The International Bar Association has again proposed to the U.I.A. that fusion should be the long-term objective of the two associations and that in the short term U.I.A. members be invited to attend the International Bar Association's Conference in Stockholm, International Bar Association members to be invited to the U.I.A. 1977 Conference and that a joint conference of both Associations be held.

12. Standing Committees

As a non-governmental organisation in consultative status with the United Nations and the Council of Europe, many communications have been received and referred to the respective chairman of the United Nations Affairs Committee and the European Affairs Committee. Both the United Nations and the Council of Europe are in the process of establishing a permanent Standing Committee of non-governmental organisations to play an active part in the formation of policies.

13. Publications

A complete record of the 1974 Vancouver Conference was published in the November 1974 issue of the *International Bar Journal.* This journal is published bi-annually in May and November.

Pamphlets on Summary of Labor Law Practices and Procedures, The Regulations of Trading by Insiders in the United States, England, France and West Germany and New Types of Instruments on the International Money Market with special emphasis on Participation Agreements have been published by the section on Business Law. The International Business Lawyer is published in January, April, July and October.

Directories of the members, patrons and associate members of the International Bar Association and of the members of the section of Business Law were published in May and July 1975.

14. New Members

During the year the Bahamas Bar Association, the Barbados Bar Association, the Bar Association of India and the Bar Council (States of Malaya) were elected members and the following have notified their intention of applying for membership: Consiglio dell-Ordine Avvocati Procuratori di Milano (Milan), Association of Legal Practitioners (Guyana), and l'Union des Barreaux de Turquie (Turkey).

The Law Society of New South Wales (Australia), the Society of Advocates of Natal (South Africa), the Organisation of Commonwealth Carribean Law Societies and the Society of Writers to H. M. Signet (Scotland) have been elected sustaining members.

T. C. G. Lund (Director-General)

SOCIETY OF YOUNG SOLICITORS

The 21st Seminar of the Society of Young Solicitors was held in the Great Southern Hotel, Galway, on Saturday 15th and Sunday 16th November 1975 and attracted an attendance of 230 members.

The first paper was given on Saturday morning by **Mr. Bryan McMahon,** LL.M., Lecturer in Law, University College, Cork, on **The Right of Establishment in the European Community.** It is hoped to publish a summary later.

The second lecture on Saturday was delivered by **Mr. Michael O'Mahony,** LL.M., Solicitor, on **The Drafting of Separation Agreements.** The lecturer emphasised that a separation agreement was essentially one between a husband and wife to live separate and apart from one another. The House of Lords decided in **Wilson v. Wilson** (1848) that an agreement for separation between spouses was not illegal and since then, separation agreements are not uncommon. **McMahon v. McMahon** (1913) 1 I.R. 432, per Palles C.B., held that an agreement entered into between a husband and wife, while living separate and apart, providing for their resumed cohabitation, and that, in the event of a future separation, provision should be made for the wife, was valid and enforceable. **Galloway v. Galloway** (1914) 30 T.L.R., held that a separation agreement entered into on the assumption that the parties were validly married when in fact the marriage was (unknown to each party) bigamous, was itself void for mistake.

As regards the common terms in Separation Agreements, apart from the respective names of husband and wife, it is essential to state the date and place of the marriage. The following term is then essential:— Unhappy differences have arisen between the husband and the wife, and they have agreed to live apart from each other. The husband has agreed to make provision for the wife on the terms and conditions herein contained. If there are children, their names and dates of birth should be given. By the non-molestation clause, the parties contract to live separate and apart from the marital control of the other, and neither of them shall molest, disturb or interfere with the other or his or her relations, friends or acquaintances, or in his or her profession or business. There is also a maintenance clause for the payment of a stated amount to the wife. The wording setting out the extent of the husband's liability for maintenance is vital. If the covenant can be construed as an independent undertaking, then maintenance payments could be continued even after the husband's death. The maintenance agreement is one normally to last during the wife's life, and would be enforceable against the husband's personal representatives if he should predecease her. There are sometimes clauses affecting either a change in the husband's income, or further payments due to inflation. Normally the maintenance agreement will cease in the event of a judicial separation between husband and wife. It is also possible to insert a "*Dum casta*" clause by which maintenance payments will be terminated if the wife openly and notoriously cohabits with another man as husband and wife.

As regards clauses relating to the custody and maintenance of children, S. 18 (2) of the Guardianship of Infants Act, 1964, provides that either the father or the mother may give up the custody and control of the infant to the other. If the wife is given custody of the children, it is usual to provide that the husband should have access to them, and that he should pay periodical sums to the wife by way of maintenance for them. In consideration of this, it is common for the wife to undertake to be fully liable for educating and maintaining them up to 18 years of age. If the covenant to maintain the children is not carefully framed, the husband may find himself liable on the covenant, notwithstanding a subsequent resumption of co-habitation, or that the children have attained their majority. The husband should also ensure that in consideration of the maintenance agreement, he should receive an indemnity from the wife against debts incurred or to be incurred by her on her own or the children's behalf. The husband's right to access should also be defined in accurate detail (precedent supplied in lecture).

As regards property, if the husband and wife own the matrimonial home as joint tenants, and, as is most usual, the wife and young children are remaining in the home and the husband is leaving, it is usual for the husband to bind himself to continue the mortgage repayments, rates, ground rent, and insurance over and above the maintenance payable. The wife should ensure that, in the event of the husband being sole owner, the mortgagee should notify the wife of repayments made so that he cannot enforce an order of sale of the matrimonial home without her knowledge. It is sometimes advantageous to sell a large rambling house, and acquire a modern one, even if the property is in the joint names of husband and wife. Disputes often arise between the parties as to whether the furniture and other moveables belong to the husband or wife, but S. 20 of the Family Law Bill, 1975, intends to provide that any property acquired out of a household allowance, will, the absence of agreement to the contrary, belong to husband and wife jointly. It is a common practice, since the Succession Act, 1965, came into force in 1967, for all separation agreements to contain a mutual renunciation of each spouse's right under S.

(1), either as to one half, if there are no children, or as to one third if there are children, of the estate of the other; this does not affect the moral duty of either spouse under S. 117 to make provision for the children according to their means.

The discharge of separation agreements is governed by the law relating to discharge of contracts.

(1) It may be effectively discharged in accordance with its terms (Newsome, 2 Prob. & Div., 1871).

(2) Separation agreements may be discharged by breach of contract. **Pardy v. Pardy** (1939) 3 All ER, held that the innocent party is not bound to inform the spouse in breach that he or she has accepted the repudiation.

In most cases, where solicitors are called upon to prepare Separation Agreements, these agreements have been preceded by litigation, whether by way (1) of a Petition for a Divorce, *a mensa et thoro,* or (2) proceedings under the Guardianship of Infants Act, 1964, or (3) Proceedings in the District Court under the Maintenance in case of Desertion Act, 1886. Emotions are necessarily running high when either the husband or wife meet their solicitor for the first time, and it is necessary for the solicitor to keep his cool, in fact a cooling-off period of a few days is most desirable. Even so there will be inevitable blood letting, in which each party makes accusations and counter-accusations against the other. In applying for alimony *pendente lite,* the wife will allege that the husband is a millionaire, while he will reply that he is penniless. In Guardianship cases, each party will file affidavits to show how unfit the other is to have custody of the children. The President of the High Court has given a direction that Guardianship cases are to be heard urgently. Public policy ensures that any agreement ousting the jurisdiction of the Courts after a separation deed has been concluded will be void. S. 120 of the Succession Act, 1965, foreshadows cases of constructive desertion, where the wife can claim after the husband's death if he has consistently kept her short of maintenance. Damages can be awarded for arrears of maintenance, or for failure to perform specified covenants. Specific performance is practically limited to the refusal of either party to execute the deed after agreeing to separate. An injunction is available for the breach of a negative covenant, such as a non-molestation clause. The various tax problems arising from the wording of the different maintenance agreements are considered in detail. Briefly it seems that the husband is liable for the full amount without deduction of income tax. As the events leading to a marriage are often steeped in emotion, so is also the breaking down of a marriage. It follows that a solicitor taking on a matrimonial case should be guided by compassion and charity, and should ensure that any action he takes does not result in an irretrievable breakdown of the marriage, but in arranging an amicable settlement of the differences as quickly as possible.

Mr. Kevin Feeney, Barrister, delivered a lecture on **"Changes in the Family Law (Maintenance of Spouses and Children) Bill 1975"** on Saturday. He emphasised that since the enactment of S. 18 of the Courts Act, 1971, the number of maintenance applications in the District Court had doubled between 1971 and 1973, particularly in urban areas.

At Common Law, a husband was obliged to maintain his wife for her bare necessities. Under the Vagrancy Act, 1824, so that the wife could not be a charge on local authorities, a husband could be prosecuted as a disorderly person for failing to maintain his wife and children. The Matrimonial Causes (Ireland) Act, 1870, provided for an action for restitution of conjugal rights in the High Court which was rarely availed of. The basic law under which a wife can claim maintenance in the present District Court is the Married Women (Maintenance in case of Desertion) Act, 1886. The magistrates could then award to a wife who had been deserted a sum of up to £2.00 per week for the support of herself and her family. The Enforcement of Court Orders Act, 1940, extended the payment from £2.00 to £4.00 per week. S. 18 of the Courts Act, 1971, allows Justices to award up to £15.00 per week for the support of any child fully maintained by the wife until 17 years, and gave the High Court for the first time concurrent jurisdiction with the District Court to hear applications under the 1886 Act. Adopted and illegitimate children henceforth come under the definition of "child". The proofs that the wife had to give to sustain a maintenance order under the 1886 Act were unchanged by subsequent legislation. In July 1973 the then Minister for Justice, Mr. O'Malley, requested the Committee on Court Practice and Procedure to examine and make recommendations on the law as to the desertion of wives, the attachment of wages, and the desirability of establishing special family tribunals. The Committee made various recommendations in February 1974.

The following requirements had to be established under the 1886 Act in order to obtain maintenance:

(1) That the applicant is married to the respondent.

(2) That the applicant had been deserted by her husband.

(3) That the husband is capable of maintaining his wife wholly or partially.

Desertion is defined in Halsbury as "the intentional permanent abandonment of one spouse by the other without the other's consent and without reasonable cause". The English doctrine of *constructive desertion* has been applied. By this doctrine, if one spouse induces the other to leave the home as a result of his conduct, he is guilty of constructive desertion. If the parties live as two separate households under the same roof, the doctrine also applies. District Justices in Dublin have accepted this.

It is a necessary precondition of desertion that there must be oral or written agreement in advance to separate. If there is wilful refusal and neglect to maintain, which includes some element of misconduct and wrongful default by the husband, the wife may apply for maintenance. But no maintenance will ever be ordered if the wife had ever committed adultery, unless such adultery was condoned.

By S. 22 of the Social Welfare Act, 1970, a wife was allowed under strict limitations to apply for a deserted wife's allowance if her husband failed to support her; more than 3,000 women have availed of this. Some applications for Home Assistance may also be made to the local Health Board.

Let us now consider the Family Law (Maintenance of Spouses and Children) Bill, 1975, which was passed in the Dail on 25 February 1976 and will hopefully come into force about 1 May 1976. For convenience, the lecturer's remarks on the sections have been updated, where the sections were amended. In the interpretation of S. 3 the word *"antecedent order"* has been extended to include a maintenance order, and a variation and interim order, as well as orders under the Illegitimate Children (Affiliation Orders) Act, 1930, Section 1 of the Guardianship of Infants Act, 1964, an order under the Maintenance Orders Act, 1947, and an order for *alimony pendente lite.* If children are receiving full-time educa-

tion, maintenance for them can be continued from 16 to 21 years. Desertion includes constructive desertion. Periodical payments are to be made from the date the order is made (S. 4). Under S. 5, for the first time, a husband may apply for maintenance against his wife if she is the breadwinner and circumstances warrant it. The Court may grant or refuse the discretionary order. Under the 1886 Act the Court could only award weekly payments, but S. 5 allows the Court more flexibility, as henceforth payments are to be made for such period as the Court thinks proper; this power of limiting payments is important, particularly in cases where the marriage breaks up within the first few months. Any person who is looking after a dependent child of parents will be entitled to seek maintenance in respect of it. Henceforth the conduct of a spouse will have no effect on the child's right to maintenance. Under the 1886 Act, a wife was not entitled to maintenance unless she had been deserted. Henceforth, even if adultery is established, it is still open to the Court to make an allowance if it thinks it proper having regard to all the circumstances, including the income, earning capacity and property of the spouses, and the financial responsibilities of the spouses towards each other and towards their dependants. A maintenance debtor may apply to the Court for the discharge of the order at any time after one year from the making of it (S. 6). S. 7 enables a Justice for the first time to make interim maintenance orders subject to a report by the Probation Officer. Section 8 states that certain marital agreements made after the date of the coming into force of the Act whereby one spouse undertakes to make periodical payments towards the maintenance of the other or of dependent children, may be varied by an application to the High Court or Circuit Court; the Court, if satisfied that the agreement is fair and reasonable, may make an order which shall be deemed to be a maintenance order. By S. 9, irrespective of what Court made the order, payments to be made by the maintenance debtor, are payable to the District Court Clerk, unless the creditor requests otherwise; the clerk is to pay the payments to the creditor.

Part III (Sections 10 to 20) deals with attachment of earnings. Application can be made for an attachment of earnings order either to the High Court, Circuit Court or District Court. This is in substitution for what is termed an "anticedent order".

Where an attachment of earnings order is served on an employer, he is bound to comply with it, but must give the maintenance debtor full particulars each time he makes a deduction. The maintenance debtor may, however, make payments to the District Court Clerk in lieu. Apart from that, the Court may order the maintenance debtor to make an accurate statement as to his earnings. While the order is in force, the maintenance debtor must notify the Court of all changes in employment and in earnings. If there is doubt as to whether specified payments are earnings, the employer or the maintenance debtor may apply to the Court to construe the matter. Various penalties are provided for non-compliance.

Part IV of the Bill, headed Miscellaneous, contains useful reforms. Following **Rimmer v. Rimmer** (1953) 1 Q.B., S. 21 declares that any allowance made by one spouse to another for the purpose of meeting household expenses shall belong to the spouses as joint owners, unless there is an agreement to the contrary. By S. 22, on the application to the relevant Court by a wife on the ground that she and her family require it, the Court may order the husband to leave the residence, and prohibit him from entering it. An Order made by a District Court or a Circuit Court shall expire three months after the date from its making, but may be renewed for further periods of three months; the jurisdiction of the Circuit Court is limited to premises where the Poor Law Valuation does not exceed £100. Normally the District Court, and on appeal the Circuit Court, may make maintenance orders of up to £40 per week in respect of the wife, and of £10 per week in respect of each child. This extension of the power of the District Court will greatly increase the number of cases brought before it. Payments made under the Bill are to be made without any deduction of income tax. All proceedings under this Act, regardless where made, are to be held *in camera,* and all costs under the Act are at the discretion of the Court. By S. 28, proceedings under the Illegitimate Children (Affiliation Orders) Act, 1930, are henceforth to be held *in camera,* and payments may be continued until the age of 21 if the child concerned is receiving full education. The maximum sum payable under the Act has been increased from £50 to £200, and the names of the parties concerned cannot be published. Payments of periodical sums shall continue to be paid by the putative father, unless these sums are compounded into a lump sum, or the child dies, or the child attains 16 years or 21 years as the case may be. All the former law in regard to payments previous to this Act is repealed.

The procedure under the Maintenance Orders Act, 1974, is as follows: A summons is issued as under the 1886 Act. Specified documents are then sent to the Master of the High Court. The solicitor should supply the substance of the complaint, the address in Britain of the respondent, means to identify him. The Master passes these documents to the relevant authority in Britain. The proceedings are then served on the respondent, and the British authorities notify the Irish authorities of the service. The Court may then hear the case

as a maintenance application, or may request the Master to transmit to the British authorities power to take evidence. Alternately the Court can make a maintenance order which will be transmitted to Britain for enforcement. It will be appreciated that there will be unavoidable difficulties under these proceedings.

The Hon. Mr. Justice Liam Hamilton delivered a lecture on **"Recent Decisions relating to the Guardianship of Infants Act 1964"** on Sunday morning. He first of all quoted the text of Article 41 (relating to the Family) and Article 42 (relating to Education) of the Constitution. He recalled that the Guardianship of Infants Act, 1886, and the Custody of Children Act, 1891, had been repealed by the 1964 Act. Following the judgment of James Murnaghan J. delivering the majority judgment of the Supreme Court in **Re Tilson** (1951) I.R. 1 at p. 34—in which he stated that the parents, father and mother, have a joint power and duty in respect of the religious education of the children. S. 6 (1) of the 1964 Act provides that "the father and mother of an infant shall be guardians of the infant jointly", thus shedding the old concept of paternal power. If a deceased parent does not by deed or will appoint a testamentary guardian of the infant(s) the surviving parent will be the sole guardian of the infant(s) unless a Court otherwise directs. If no guardian has been appointed, or if a guardian refuses to act, the Court may appoint one (S. 8). Unless the terms of his appointment provide otherwise, every guardian appointed shall be guardian of the estate as well as of the person (S. 10). Upon application to the Court, every guardian may apply for directions regarding custody or right of access (S. 11). These applications are rare. Part 3 of the Act deals with the enforcement of custody, which is enforced exclusively by the High Court. If a parent applies for production of its infant, if any costs have been incurred by a Health Authority or by another person in providing maintenance for such infant, the parent will be directed to pay such costs. If an infant has been abandoned or deserted, the Court will not grant custody of the infant to the parent, unless it is satisfied that such parent will be a fit and proper person. The Court, if it is of opinion that a relative will not follow the religion or ethics of the parent may make an Order that such child will be delivered to a person who has the legal right to ensure that the proper religion will be taught. The principles applicable may be stated thus:

1. Under S. 6 (1), irrespective of who is awarded custody of the infant, the father and mother shall remain guardians of the infant. As Article 42 of the Constitution states that "The State guarantees to respect the inalienable right and duty of parents to provide for the religious and moral, intellectual, physical and social education of their children", Section 3 of the Act defines as the paramount consideration and welfare specifically the religious and moral, intellectual, physical and social welfare of the child.
2. Furthermore, the parent deprived of custody can continue to exercise the rights of a guardian, and must be consulted in all matters affecting the welfare of his children. Dicta of Walsh J. in **Butler v. Butler** (Supreme Court, 24 April 1970, unreported) are quoted in support of this proposition.
3. Any Order as to the custody or welfare of an Infant under S. 11 is only interlocutory in character because circumstances may change from time to time.
4. In normal circumstances, where a husband and wife have parted, but are equally suitable to have custody of children, the children of tender years will normally be left in the custody of the mother. As time passes, the father is called upon increasingly with the day to day problems of his son or daughter.
5. It is only if the mother is found greatly wanting in her duty to her children, that the removal of very young children from her custody would be warranted.
6. Insofar as the behaviour of the parents which contributed to the breakdown of the marriage is relevant to decide in whose custody the welfare of the child would be best served, this would be relevant evidence.
7. In considering the welfare of the infant, all the ingredients specified in S. 3, namely the religious, moral, intellectual, physical and social welfare of the child must be considered globally. Dicta of Walsh J. in **O'Shea v. O'Shea** (Supreme Court, 5 April 1974, unreported) quoted in support.
8. The Order of the Court in respect of the custody of the children is interlocutory only in character. Consequently it is the duty of the parents to be concerned about the welfare and education of their children.
9. On an appeal from a decision of the High Court, the Supreme Court has power to hear further evidence.

The Court must not, however, be used as a forum in which to air the grievances of one parent against the other.

Mr. Justice Hamilton answered oral questions for more than one hour after his lecture.

German Academic Exchange Service

The British Institute of International and Comparative Law in conjunction with the London Branch of the German Academic Exchange Service have arranged the following International Summer Courses in Law for 1976, to be held at the London School of Economics and Political Science.

International Summer Course in Modern English Law
5 July to 30 July 1976
Director of Studies: Professor Clive M. Schmitthoff, (London)

Summer Course in Modern German Law
28 June to 9 July 1976
Director of Studies: Professor Hein Kötz, University of Konstanz

International Summer Course in European Community Law
5 July to 16 July 1976
Director of Studies: Professor Kenneth R. Simmonds, Queen Mary College, University of London, and Director of the British Institute of Internatinoal and Comparative Law

Summer Course in Advanced Modern German Law
5 July to 9 July 1976
Director of Studies: Professor Hein Kötz, University of Konstanz

The language of all courses will be English.

As the number of places on all summer courses is restricted, early application is recommended. Further information and application forms can be obtained from the Course Secretariat at the London Branch of the German Academic Exchange Service, 11-15 Arlington Street, London SW

RECENT ENGLISH CASES

Twelve months suspension of practice is sufficient penalty for solicitor who does not renew his practising certificate.

Appeal from the disciplinary committee of the English Law Society.

A solicitor, who had been fined by the Law Society for conduct unbefitting a solicitor, subsequently allowed his practising certificate to lapse. Because of his previous fine the Law Society required his application for renewal to be accompanied by letters from two solicitors vouching for his fitness to practise. He failed to renew his certificate despite repeated reminders from the Law Society and continued practising as a solicitor. In July 1975 he was found guilty by the Disciplinary Committee of the Law Society of practising without a current certificate and he was struck off the Solicitors' Roll. He appealed against the penalty imposed.

Lord Widgery CJ. said that the solicitor was embarrassed by the need to obtain letters from two solicitors and had been reluctant to disclose his past. The committee thought that he had shown such a degree of irresponsibility by his conduct that it was inappropriate that he should practise as a solicitor. The Court rarely interfered with the committee's discretion on matters of penalty but there were exceptions. If a solicitor was struck off for practising without a certificate there would be no suitable penalty left for the more serious offences concerning clients' money. The penalty was too severe and would be reduced to twelve months' suspension.

Kilner Brown and **Watkins JJ.** agreed. Appeal allowed.

In re A Solicitor — QBD — Lord Widgery CJ, Kilner Brown and Watkins JJ. — 4 February 1976.

Client awarded costs paid to solicitor who did not pursue action, and compensation for distress and continuous molestation.

In October 1972 the plaintiff, a woman, who wanted legal advice on how best to put an end to persistent pestering by a former man friend, went to a local solicitor's office with the object of having a letter written to the man requiring repayment of a debt of £40. She was seen by a young unqualified litigation clerk whom she believed to be a solicitor. He suggested that she might apply to the local County Court for an injunction against the man and that it would cost about £25 and take about three weeks. She did not then instruct the clerk to do more than write the letter about the £40; but the reply was so abusive of her and was followed by the man's coming to her house and threatening her that she instructed the clerk to apply for the suggested injunction and she paid the estimated £25.

During the next eleven months the clerk initiated proceedings in the High Court which, because of errors and omissions, proved wholly ineffective, for the plaintiff continued to be molested by the man. When she had paid £175 and was asked to pay a further £100 towards the costs totalling £446, she instructed the firm in February 1974 to drop the case.

In March 1974 she issued a plaint in the County Court, claiming £170 of the costs actually paid and £150 for "damages and expenses". She prepared and conducted her own case, being of opinion that it would be impossible to find other local solicitors who would put her case properly against fellow solicitors. The substance of her complaints was that she had been led to believe that the clerk was a solicitor; that, instead of County Court proceedings which would have been completed speedily at a low cost, High Court proceedings had been instituted without her knowledge and consent and had proved far more costly than she ever contemplated; and that the solicitors had not exercised due skill and care in the conduct of the action so that almost a year after it was begun she had only an interim injunction which had proved worthless as a protection against the man's molestation.

The County Court Judge found that most of her complaints were well founded and amounted to absence of reasonable care and skill and that she was entitled to damages. He awarded her as damages the £175 she had paid as costs, less £7 for the initial action over the £40 debt; but he said that she should not recover any further sum in respect of damages.

On appeal by the plaintiff in person :

Held, allowing the appeal, that the plaintiff was entitled to a total of £293 as damages in respect of the solicitors' breach of contract by their negligent conduct of the litigation on her behalf; that those damages should include (a) repayment of the costs paid which had been thrown away in the abortive proceedings for the injunction (per Lord Denning M.R., as money paid on a consideration which had wholly failed), and also (b) a sum to compensate her for the vexation, anxiety and distress and the continued molestation, which were the direct and foreseeable consequences of the solicitors' failure to obtain the relief which it was the sole purpose of the injunction proceedings to secure; but (c) that as the law stood she could not recover any damages as compensation for her own work and the strain involved in conducting an action against solicitors.

Heywood v. Wellers (a firm) — Court of Appeal — (Lord Denning M.R., James and Bridge L.JJ.). — (1976) 2.W.L.R. 101.

CORRESPONDENCE

The High Court (Probate Office),
Four Courts, Dublin 7.
11th March 1976.

James J. Ivers, Esq.,
Director-General.

Dear Sir,

The Probate Judge has given a direction in the following terms, viz. :

> "Where any application is made in the Probate Office or any District Probate Registry for a Grant of Administration with Will annexed or Intestate, in which an affidavit of market value is required in respect of a particular piece of property, such affidavit must show, to the satisfaction of the Probate Officer or District Probate Registrar, what the market value of such property would be as at the date of swearing the affidavit. This amount must be secured by the Bond of the Administrator and his or her sureties."

Yours sincerely,

P. Waldron (Probate Officer).

THE PUBLIC INTEREST LAW MOVEMENT IN THE U.S.

by Denis Linehan, LL.M., Lecturer in Law, University College Cork

PART I

Introduction

The Public Interest Law Movement in the United States involves the search by American Lawyers for new roles within society. Many American Lawyers have perceived their traditional role as professional craftsmen as too confining in view of the major issues — social, economic and political — facing modern society.

The Public Interest Law Movement represents an attempt by American Lawyers to fashion for themselves a new role which will enable them to penetrate the decision-making processes — Legislative, Judicial and Administrative — on behalf of hitherto unrecognised or under-represented interest groups in society. An underlying assumption of the movement is that accessibility to these decision-making processes is denied to legitimate interest groups and that, consequently, many decisions are made undemocratically. The Public Interest Lawyers aim at two distinct types of goals. Firstly, they seek to alter the procedures of decision-making in order to permit a wider range of input into these procedures. Secondly, they seek to influence the substance of relevant legal norms in favour of the Interest Groups which they represent.

Origins of the Movement

The Public Interest Law Movement originated in the turbulent 1960's. That decade saw the emergence of Interest Groups which previously had been under-represented in the decision-making processes. They included Environmentalists who addressed themselves to such issues as urban planning, strip mining and effluence. Included also were those who re-defined the "problem of corporate bigness" and who advocated new ways of making the big corporations conform to the public interest. It was a decade in which Associations organised along cultural, racial and sexist lines escalated their demands for new laws to combat discrimination in such areas as housing, education and employment. Others, inspired by the achievements of Ralph Nader, succeeded in developing a new consciousness about the interests of Consumers as a group.

The major question concerned the capability of governmental institutions to respond adequately to the new demands being made on them. An answer to this question could come only from a re-appraisal of America's institutions. Not surprisingly, the task of re-appraisal was undertaken primarily by Lawyers, the architects and technicians of the institutions. Many Lawyers, in re-appraising their institutions, have been compelled to redefine their own responsibilities to society. In particular, they have perceived a need to fashion for themselves a new role which will enable them to promote a more open government which will function with greater participation from the community at large. It is in the perceived need of these Lawyers for a new role in society that one finds the matrix of the American Public Interest Law Movement.

New role for Lawyers

Passivity, Conservatism and Neutrality are distinctive features of the Lawyer's traditional role. Passivity indicates that the lawyer exercises functions only in respect of demands that have already been articulated. The lawyer will, for example, process an objection to a proposed development plan presented to him by a client. He will not, however, on his own initiative monitor proposed development plans with a view to ensuring their regularity. Conservatism indicates that the lawyer's concern has been the implementation of existing legal norms rather than the formulation of new ones. A Commercial Lawyer, for example, will readily recognise his duty to be in a position to explain the requisite formalities of hire-purchase agreements to a client. He would not normally, however, recognise himself as under a duty to make representations to a governmental commission established to consider the adequacy of these formalities. Neutrality, as a feature of his traditional role, signifies that the lawyer customarily exercises his functions with primary regard to the interests of society as a whole where the two sets of interests are in opposition. Thus, for example, a lawyer will normally seek to arrange his client's affairs in order to exploit any loopholes in taxation legislation. The arrangement may be a device of "avoidance" rather than of "evasion". Query, however, whether the distinction between avoidance and evasion is always morally clear.

The role adopted by Public Interest Lawyers, in contrast to the traditional role of lawyers, is **active, reformist and value-oriented.** The Public Interest Lawyer does not see his task as being confined to the representation of previously articulated demands. He seeks on his own initiative to define under-represented groups or "Constituencies", to articulate demands on their behalf and, finally to represent these demands. Some Public Interest Lawyers adopt as constituents those who are caught up in the poverty syndrome, such as recipients of public welfare payments, slum-dwellers and habitual criminals. Others choose to champion the "unpopular client", such as the draft resister, the rapist, and the person charged with sedition. Other public interest lawyers define their Constituencies on an ethnic basis. Thus, public interest law projects have been organised on behalf of Indians, Eskimos and Blacks. Consumers and environmentalists are two other well established Constituencies of public interest lawyers. The spectrum of public interest law constituencies is so wide that indeed it is possible to exclude from it only Big Government, Big Business and Big Labour.

Reformist Role

The role of the public interest lawyers is also *reformist*. The new style lawyers are not content to represent their Constituencies through existing court or administrative procedures in conformity with existing norms. Representation of the public interest client indeed is often designed to effect a restructuring of the procedures, and a modification of the norms, in favour of the client. Certain strategies and techniques which have become associated with public interest law representation — including research and dissemination of information, test case litigation, organisation of the community base, monitoring of government agencies and political lobbying — will be discussed later. At this point, the celebrated case of **Office of Communication of the United Church of Christ and Others**

v. Federal Communications Commission can be taken to illustrate the reformist aspect of public interest law representation.[1]

The case arose from the granting of a renewal of a broadcasting licence to a company in respect of a station based in Jackson, Mississippi. The grant of renewal of the licence had been made by the Federal Communications Commission, which is the authority responsible for the regulation of broadcasting in the United States, despite allegations made by the petitioners of discriminatory broadcasting by the licencee. In particular, the petitioners alleged that the licencee had failed in the past to give a fair and balanced presentation of controversial issues, especially those concerning Negroes and the Catholic Church.

The petitioners had claimed the right to participate in a hearing by the Federal Communications Commission concerning the licence renewal. They had claimed standing to participate on the basis: (a) that they were the owners of television sets; and (b) that they represented "all other television viewers in the State of Mississippi". The Commission had denied them a hearing, stating that only persons alleging electrical interference or some economic injury had standing to contest applications for renewal of broadcasting licences.

The position taken by the Federal Communications Commission on the question of standing was in accord with the existing judicial rulings on the matter. The lawyers for the petitioners, however, resorted to the Courts because of their conviction that important issues of public interest were involved in the case. Their conviction was vindicated by the United States Court of Appeals for the District of Columbia. The Court held that the grant of renewal of the licence was erroneous and directed that the Commission hold a hearing on the renewal application at which the petitioners would be represented. It stated in part that "(some) mechanism must be developed so that the legitimate interests of listeners can be made a part of the record which the Commission evaluates", and that "in order to safeguard the public interest in broadcasting . . . we hold that some 'audience participation' must be allowed in licence renewal applications".[2]

Finally, the role of public interest lawyers is *value-oriented*. For most public interest lawyers, public interest work is a form of retreat from what they regard as the unemotionality and neutrality demanded of them in regular practice. They seek, through the practice of public interest law, to bridge the "(sharp) dichotomy between the lawyer's professional work and his personal values".

The lawyers engaged in public interest law select clients who are pursuing goals with which they can identify. The tendency has been for them to adopt specialised goals — such as, the monitoring of government agencies, the advancement of tenants' rights or the representation of consumers — and to select clients who can further these goals. For that reason, the public interest law client is often referred to as "a client for a situation".

Public Interest Law and Pro Bono Concepts Distinguished

It follows from the *value-orientation* of public interest law work that the ability to pay for services required is not the sole, or even an important, criterion used by public interest lawyers in the selection of clients. Some public law constituents indeed, such as those caught up in the poverty syndrome, are such because they lack the means to command legal services in the private market. At this point, however, it is necessary to draw the important distinction between *pro bono* work and public interest law work.

Pro Bono is the term used to characterise legal services rendered gratuitously to indigent clients. Most lawyers in private practice make allowance for a certain amount of *pro bono* activity. In addition, schemes under which public funds are made available for the provision of legal services for indigents exist in the United States as they do in other developed legal systems. Finally, the provision of legal aid to the poor is the *raison d'être* of most Legal Aid Societies. The public interest law concept developed independently of the *pro bono* concept as that has been incorporated within the traditional role of the lawyer, and is clearly distinguishable from it. Firstly, as had previously been indicated, public interest law connotes a much greater range of activities than the provision of legal services to the poor. Secondly, while *pro bono* work is normally undertaken under an ill-defined sense of charity, public interest law work is undertaken under a definite sense of duty by the lawyer to utilise his skills for the benefit of society. Thirdly, whereas "success in the action" is the objective of *pro bono* advocacy, public interest law representation is commonly designed to bring major social issues into relief.

Methods of Public Interest Law Representation

The *reformist* aspect of most public interest law representation requires the selection of techniques and strategies that will give greatest visibility to the issues in question in order that public consciousness be evoked on these issues. Consequently, public interest law representation is characterised by a "search for greatest impact".

One public interest law firm has stated that its methods of representation are based on those of the large private Washington firms; "The successful private Washington firm has made it abundantly clear that full representation of a client's interests requires vigorous and usually simultaneous representation before four independent forums; the Courts, Administrative Agencies, the Legislature, and the public itself (principally through the press). The effective law firm is the one that can supply the appropriate orchestration to receive a result harmonious with its client's interest".[3]

Certain techniques and strategies which have become associated with the Public Interest Law Movement will now be considered. These include: research and dissemination of information, test case litigation, organisation of the community base, monitoring of government agencies and political lobbying.

1. Research and Dissemination of Information

In accordance with the precept that there is "no accountability without visibility", public interest lawyers attempt to collect and disseminate information necessary for intelligent policy decisions in their specialised fields. This information may be used to a variety of ends. It may, for example, be published in order to develop public consciousness about specific issues. Illustratively, the Friends of the Earth Society, which includes a number of public interest lawyers among its mentors, is a group of environmentalists committed to a programme of education through publication. Alternatively, the information may be used to provide expert advice and technical assistance to Courts and other decision-making bodies. Public interest lawyers have,

for example, participated with the Practising Law Institute, New York in the compilation of a three volume set of books entitled "Legal Rights of the Mentally Handicapped". This compilation was part of a mental health law programme organised "(In) response to the urgent need for the systematic involvement of lawyers and mental health professionals in improving the plight of the mentally handicapped".[4]

Public interest lawyers have made significant advancements in their quest to give visibility to the views of their clients. The case of **Friends of the Earth v Federal Communications Commission** may be taken by way of illustration.[5]

Plaintiffs in that case challenged the Federal Communications Commission's interpretation of the Fairness Doctrine as it applied to television advertisements for cars. The Fairness Doctrine is one of the few restraints on the Constitutional right of freedom of expression as enjoyed by broadcasters. The doctrine obliges broadcasting licences "(To) . . . operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance".[6]

The Commission had applied the Fairness Doctrine to product advertising only in relation to cigarette commercials, i.e., television stations carrying such commercials were obliged to broadcast information outlining the health hazards of cigarette smoking. Plaintiffs argued for an extended interpretation of the doctrine in relation to product advertising. In particular, they argued that television stations carrying advertisements promoting big cars with large horse power ratings should be obliged to broadcast information outlining the adverse effects of such cars on the environment. Their argument was upheld by the United States Court of Appeals for the District of Columbia.

2. Test Case Litigation

Public interest lawyers have fostered the "big case" approach as a technique of advocacy.[7] Many have recognised that changes in substantive legal norms and in the structures and practices of institutions can be achieved in the judicial as well as in the political forum.

Litigation can have advantages over both political lobbying and negotiation in achieving reforms. The adversary process enables issues, however complex, to be defined and adjudicated upon in a forum that is not dominated by special interest groups. Moreover, the public consciousness provoked by dramatic litigation can be used to prompt legislative initiative on social issues.

Exponents of test-case litigation emphasise its difficulties as well as its advantages and advocate its use only after more conventional methods of achieving reforms have failed. Test-case litigation requires consideration of several factors not relevant to regular litigation. The "hard" case has greater impact, and so it is sought to procure a plaintiff whose fact situation is appealing. The known proclivities of judges in alternative *fori*, differences in procedural rules and the rules of *stare decisis*, are factors which are considered in the selection of a *forum*. Finally, mention can be made of the precedent value of arguing a case on constitutional grounds.

The case of Wyatt v Stickney affords a good illustration of successful test-case litigation.[8]

Investigations into conditions in some of Alabama's mental institutions, conducted after an administrative decision to reduce staff in one of these institutions, revealed great inadequacies as regards facilities and staffing. The Wyatt case was brought on foot of the investigations. It was framed as a class action on behalf of patients involuntarily confined for mental treatment purposes in Alabama's mental institutions. The Principal defendant in the case was the Commissioner of Mental Health and the State of Alabama Mental Health Officer.

Plaintiffs alleged a deprivation of their right to rehabilitative treatment, a right which they argued was guaranteed them under the Due Process and Equal Protection clauses of the Federal Constitution. Their imposed minimum standards for adequate treatment of the mentally ill — was a novel one.

The Court, having found for the plaintiffs on the constitutional issue, held that the defendants' treatment programme fell short of the minimum standards required by the Constitution. In particular, it was held that the programme failed to provide: (1) a humane psychological and physical environment, (2) qualified staff in numbers treatment plans. Moreover, the court held that the defendants' non-compliance with the constitutional standards could not be justified by lack of resources.

The order of the court embodied the suggestions made by the plaintiffs' lawyers and by several *amici curiae* who had joined the litigation. It required defendant to comply with a detailed set of standards for treatment of the mentally ill laid down by the court. Implementation of the standards was to be supervised by Human Rights Committees appointed by the Court. In addition, defendants were obliged to submit to the Court within six months a report on the process made in implementing the order.

The assistance of Mr. Charles Halpen, Director of the Centre for Law and Social Policy, Washington, D.C., is most gratefully acknowledged.

FOOTNOTES

1. Office of Communication of the United Church of Christ and Others v. Federal Communications Commission, 359 Fed. Rep., 2d. 994)D.C. Cir. 1966).
2. Per Burger J., id. at p. 1005.
3. Berlin, Roisman and Kessler, "Public Interest Law", 38 Geo. Wash. L. Rev. 675., 679.
4. 3 B. Ennis and P. Friedman, "Legal Rights of the Mentally Handicapped", 1519 (1973).
5. Friends of the Earth v Federal Communications Commission, 449 F. 2d. 1164 (D. C. Cir. 1971).
6. 73 Stat. 557 (1959) 47 U.S.C. s. 315(a) 1964. The Federal Communications Commission, when promulgating the Fairness Doctrine in 1949, characterised it as "the foundation stone of the American system of broadcasting". Editorialising by Broadcast Licensees, 13 F. C. C. 1246, 1249 (1949).
7. For a good assessment of test-case litigation as a technique of public interest law representation see "The New Public Interest Lawyers", 79 Yale L.J., 1070, 1076-1078 (1970).
8. Wyatt v Stickney 344 F. Supp. 387 (M. D. Ala. 1972).

Solictors' Golfing Society Officers 1976

President : Patrick C. Moore.
Captain : Eugene Gillan.
Treasurer : David Bell.
Secretary : Henry N. Robinson.
Outings : President's Prize—Thursday, July 1st, at Milltown. Captain's Prize—Saturday, October 2nd, at Baltray .

INTER-VARSITY LAW CONGRESS

by Jacqueline Maloney

About forty law students from the University Colleges of Dublin, Cork and Galway and Queen's University, Belfast, attended an Inter-Varsity Law Congress which was held in the Talbot Hotel, Wexford, on Saturday 14th and Sunday 15th February 1976. The Congress was held in order to promote good relations and co-operation between law students from the various universities and it is hoped that the practice will be continued. The general title of the Congress was **"The Erosion of our Constitutional Rights"** which we felt to be an important and urgent topic in need of some examination. The first lecture was delivered by Mr. Brian Gallagher, solicitor, on **"Powers of Arrest and Detention and Police Discretion".**

The lecturer first quoted Art. 40 (4) (1) of the Constitution, "No citizen shall be deprived of his personal liberty, save in accordance with law." The phrase "in accordance with law" appears to mean "the law as it exists at the time when the legality of the detention arises for determination", but this can be tested again in the present Supreme Court, which only exists since 1961. Both Gardai and citizens alike have powers of *arrest.* Gardai can arrest when they see a felony being committed or on reasonable suspicion that one has been committed but arrest for one's own protection, as **Connors v. Pearson** — (1921) 2 IR — demonstrates, is illegal. Modern statutes have greatly increased Gardai powers of arrest but the fact remains that an illegal arrest may render the Gardai liable for an action in false imprisonment.

There are several constituents of a lawful arrest. *Firstly* the person or preferably the Garda must have a power of arrest either at Common Law or by statute. The speaker noted some Gardai powers of arrest under the Dublin Police Acts of the nineteenth century, some of which are ludicrous. *Secondly,* at the time of the arrest the person must be informed why he is being arrested unless he can be taken to know it. What is worrying is not the law, but the manner in which the law is being enforced, since, in many cases, Gardai do *not* inform the person why he is being arrested nor caution him. The trend in modern statutes such as the **Prohibition of Forcible Entry and Occupation Act, 1971** which gives the Gardai power to arrest persons "in occupation of property illegally" is for increased Gardai powers. This, coupled with the Supreme Court judgment in **People v. O'Brien,** 1965, makes the Gardai a very powerful body indeed. This case allowed the admissibility of evidence to be the product of an illegal search as long as there was no conscious and deliberate violation of constitutional rights or if greatly attenuating circumstances existed. (The articles were found in 118, Captain's Road, Crumlin, but the premises were described as 118, Cashel Road, Crumlin.) A Garda is only under a *duty* to arrest when a felony is committed in his presence but in *all* other circumstances powers are discretionary. In the law there is no power of detention except under the Offences against the State Act, 1939. Under the Criminal Justice Act, 1951, the person arrested must be brought before the District Justice immediately and if remanded or sentenced, brought to a proper place of detention, which does not include Garda Stations. This provision is often abused.

As regards police discretion, it is very wide indeed and it appears from the two English Brogden cases that ordinary citizens cannot get injunctions to compel the police to prosecute. The fact that some Garda stations will prosecute husbands who beat their wives and others absolutely refuse to do so, is police discretion at its worst. The speaker proposed and the persons present afterwards concurred in, the setting up of an Independent Complaints Board, similar to the Race Relations Board in England to review police action and investigate complaints.

The second lecture entitled **"The Criminal Law (Jurisdiction) Bill 1975"** was delivered by Mr. Brian Doolan, B.L. He first remarked that the Bill is the latest in a long line of repressive measures adopted by various governments since the foundation of the State. Internment, military tribunals and Special Criminal Courts had been used time and again displaying abuse of the rule of law and eagerness to disregard constitutional rights. The Bill greatly increases the jurisdiction of the Special Criminal Court to deal with a whole range of offences while the Court continues in operation and there is strong danger that the Bill will *institutionalise* the Special Criminal Court. The continued operation of a *non-jury* court trying a whole range of offences must be of great concern to the legal profession and to the public alike, especially at a time when the Supreme Court are ruling that the duty to serve on juries will be much more widespread. Some recent convictions in the Court have caused comment among the legal profession and sentences are often considered excessive.

The Court is becoming a secret court since (1) the oppressive atmosphere, (2) the screening of visitors to the public gallery including personal identification and body searching, coupled with the strong suspicion that a secret camera photographs visitors, has almost led to a secret code, and, should the press cease attending, this would be the result.

The speaker then noted a comparison between the rules of evidence applicable in the District Court and in the Special Criminal Court. Those in the District Court had the benefits of the Criminal Procedure Act, 1967. This provided for a preliminary hearing before a District Justice who could refuse to send the defendant forward for trial. The defendant could also call witnesses and have a sworn deposition taken. Thus the evidence could be challenged and the credibility of witnesses assessed. A person appearing before the Special Criminal Court could not avail of these important safeguards.

The third and final lecture was delivered by Mr. Louis McRedmond, Head of Information and Publications, R.T.E., on the topic **"Controls on Broadcasting —Cui Bono".** The speaker first explained that one of the main innovations of the Broadcasting Authority (Amendment) Bill, 1975, is that the R.T.E. Authority will be afforded some "security of tenure", whereas at the moment it is dismissible at the whim of the Government. He felt that the public's right to know should not be obstructed merely because it was felt that undesirable consequences could follow. The new Bill provides more comprehensive guidelines for the broadcaster. Mr. McRedmond pointed out that if too many requirements were written into law, the effect would be detrimental to the flexibility of broadcasting. If broadcasters felt insecure about certain types of coverage as to whether this would be in the public interest or not, this could be very detrimental to the individual. The speaker favoured leaving it to the broadcaster to work out how best to meet the fundamental requirements in a particular situation and develop broadcasting potentiality.

The provision for the **Complaints Advisory Committee** in the Bill seems unnecessarily detailed and spells out in more detail than is helpful what the balance of the programmes should be.

LAND REGISTRY

Common Omissions and Errors in lodging applications for registration

(continued from Jan.-Feb. Gazette p.22)

SCHEDULE II.

A. First Registration Applications.
B. Applications under Section 49 of the Act.
C. Conversion of Title Applications (discharge of equities).
D. Applications under Rule 19(3).

A. **First Registration Applications.**

1. Not lodging statement of title with documentary titles (Rule 15(1)(a).
2. Not lodging a suitable map (Rule 15(1)(c).
3. Not lodging affidavit of discovery (Form 16) or incorporating it in the application (Forms 1 or 2). (Rule 47).
4. No original documents lodged (Rule 15(1)(b)). Lost documents: no proper searches and no proper evidence of how they were lost. Possessory cases: no proper efforts made to show freehold title against which title is claimed.
5. Where searches are directed, lodging searches with no explanation of the Acts returned thereon.
6. Replying to some but not all of the Rulings or the Searches directed (a direction for a Judgments Office Search is frequently overlooked).

B. **Applications under Section 49 of the Registration of Title Act, 1964.**

7. (i) Form 5 of the Rules not followed. Only the barest details given in Paragraph 2 thereof. The history of the occupation and possession must be clearly and succintly set out in this paragraph.
   (ii) In the history where deaths have occurred not proving same. Frequently no information is given as to whether deceased died testate or intestate, married or single whether leaving issue or not.
   (iii) In listing names of next of kin not averring that these were all the next of kin and that there were no others. Not made clear whether registered owner and wife were married once only. Next of kin of widow not specifically dealt with.
   (iv) Not sufficient accuracy in giving the dates, or approximate dates, of the final departure from the lands of persons who had had rights therein. Not furnishing the addresses for service of notices of such persons or the names and addresses for service of notices of such persons or the names and addresses of their successors.

C. **Conversion of Title Applications.**

8. (i) No attempt to show the title to the tenancy or other previous interest of the purchasing tenant in the lands prior to the Land Commission Vesting Order. It is not sufficient to merely refer to the Vesting Orderand consider that title has been shown. (In many cases the Land Commission is able to supply information as to the nature of the tenancy and names of tenants noted on assignments and Grants of Probate produced to them prior to vesting: also attested extracts from "Iris Oifigiuil" showing particulars of the holding and names of tenants prior to the acquisition and vest-in of the Landlords interest in the Land Commission).
   (ii) Exchanges. Title to the tenancy in the lands received in exchange is shown but not the title to the tenancy in the lands given.

D. **Application under Rule 19 (3).**

   (i) Certificate not signed by the solicitor.
   (ii) Certificates referring to conveyances subject to fee farm rent but copy fee farm grant not lodged.
   (iii) Certificates when freehold and leasehold titles are involved which deal only with the freehold title.

Gererally: Many of the faults listed in Schedule I are frequently committed in these applications as well.

OBITUARY

Mr. Justice Thomas A. Teevan of 3 Eglinton Road, Donnybrook, Dublin, died in hospital in Dublin on 19 February 1976, aged 73 years. Mr. Teevan (as he then was) was admitted as a solicitor in Easter Term 1925 and practised with Mr. John B. Hamill in Dundalk until 1935. He then decided to become a barrister, was called to the Bar in 1936, built up a good practice on the Eastern Circuit, and became a Senior Counsel in 1946, subsequently acting as Senior Revenue Counsel. He was appointed Attorney-General in the place of President O Dalaigh, who was, in July 1953, appointed a Judge of the Supreme Court. Upon the death of Mr. Justice O'Byrne, in January 1954, Mr. Justice Martin Maguire was elevated to the Supreme Court in February 1954 and Mr. Justice Teevan was appointed to the High Court; for many years he was a Judicial Commissioner of the Land Commission, and a Judge in Land Registry matters. He retired from the Bench for reasons of health in October 1971, being succeeded by Mr. Justice Griffin.

Mr. James F. Kent, aged 63 years, was killed when, while driving his car, he struck a pole near Clonskea Fever Hospital, on 22 February 1976. Mr. Kent was admitted in Easter Term 1935 and practised on his own account at 18 St. Andrew Street, Dublin 2.

Dr. John O'Shea, F.R.C.S.I., former County Surgeon for Co. Longford, retired in 1968. As he stated himself, Dr. O'Shea took up the study of law to provide himself with an interesting occupation, and having passed all the requisite examinations, duly qualified and was by far the oldest candidate who ever received a certificate to practise from the then President, Mr. T. V. O'Connor, on 7 December 1972. Dr. O'Shea died at his residence, 17 Bushy Park Road, Dublin 6, on 6 February 1976.

Mr. Patrick Clement L. Halpenny, B.A., LL.B. (T.C.D.), of 96 Upper George's Street, Dun Laoghaire, Co. Dublin, died on 1 March 1976. Mr. Halpenny was admitted in Trinity Term 1929 and practised with his son Michael Halpenny under the style of P. C. L. Halpenny & Son at 96 Upper George's Street, Dun Laoghaire, Co. Dublin.

Mr. Edward Walshe died in February 1976. Mr. Walshe was admitted in Trinity Term 1923 and practised at Emmet Street, Birr, Co. Offaly, with branch offices at Banagher and Kilcormac.

The First Bayside Village Development Society Limited Residents Association

The Management Committee of the First Bayside Village Development Society Ltd. would like to draw solicitors' attention again to Item 19, 4th Schedule Lease of Bayside, which deals with transfer of shares of this Society.

Failure by solicitors to comply with this Item in the conveyancing of a number of sales in Bayside is viewed in a very serious light as it is the custom of the above Society to ensure that all monies owing to it are paid before any transfer is approved.

Any queries regarding the above should be sent to: Mrs. Deirdre Spendlove, Secretary, 42 Sutton Downs, Sutton, Co. Dublin.

BOOK REVIEWS

TEMPERLEY, R. The Merchant Shipping Act. 7th edition by Michael Thomas and David Steel. London: Stevens, 1976. ci, 1001p.

The 6th edition of this learned work was published 13 years ago, in 1963. Ever since Judge McNair helped Mr. Temperley with the 3rd edition in 1927, this work has acquired authority, as in Part it analyses with notes section by section the 742 sections of the Merchant Shipping Act 1894, with schedules still in force. After that, all the more modern Acts relating to shipping that apply in England from the Maritime Conventions Act 1911 and Pilotage Act 1913 to the Merchant Shipping Act 1974, are set out in similar fashion. In this connection it should be noted that the Irish Safety and Loan Lines Conventions Act of 1933 closely follows the British Act of 1932, The Irish Merchant Shipping (Amendment) Act 1939, dealt with miscellaneous matters, such as the power of the Minister to prescribe fees. The Irish Merchant Shipping Act 1947 corresponds to the British Act of 1948, and gives effect to the scheduled International Maritime Convention of Seattle. The Irish Merchant Shipping (Safety Convention) Act, 1952, gives effect to the International Convention for the Safety of Life at Sea of London (1948) and corresponds to the British Act of 1949. The Irish Mercantile Marine Act 1955 provides in modern form for the ownership and registry of Irish ships and for the mortgage sale and transfer of such ships; it repeals Part I of the 1894 Act. The Irish Pilotage (Amendment) Act 1962, makes a few changes to the 1913 Act. The Irish Merchant Shipping Act 1966 gives effect to an International Convention for the Safety of Life at Sea of London (1960), and corresponds to the British Act of 1964. The Merchant Shipping (Load Lines Convention) Act 1968 gives effect to the International Convention on Load Lines of London (1966) and corresponds to the British Act of 1967. It will thus be seen that this well known textbook, which has been so expertly brought up to date in this edition, will be of considerable use to Irish practitioners.

Annual Survey of Commonwealth Law, 1974. London: Butterworth, 1974. xcii, 777p.

This is the tenth volume of this famous series prepared under the auspices of the British Institute of International and Comparative Law, and of the Faculty of Law of Oxford University in the Bodleian Library, Oxford. As usual, no less than 21 topics are covered by different experts, including Family Law, Land Law, Torts, Contract, Commercial Law, Labour Law, Company Law and Criminal Law. In English Constitutional Law, the House of Lords decision in *British Railways Board v. Pockin* — (1974) 1 All E R — in which the Courts expressed concern that they should not invade parliamentary privilege is fully noted. In *Geelong Harbour Commissioners v. Gibbs Bright* — (1974) 2 All E R — the Privy Council held that the Australian High Court can decide cases for itself, without following decisions of the House of Lords. In India, the Supreme Court expectedly rejected the contention that detention under the Maintenance of Internal Security Act 1971 was unlawful (*Bhut Nath v. West Bengal*, A.I.R., 1974.) In *R. v. Holcomb* (1973) 6 N.B.R., the New Brunswick Supreme Court allowed bail in a murder case. In *Mridah v. State* (1973) 26 Dacca L.J., the High Court of Bangladesh held that, as arrest and detention on mere suspicion without any material to connect the persons arrested with the crimes suspected was beyond the powers given by the Scheduled Offences Order, 1972, which in any case could not claim any higher status than the Constitution itself and consequently the detention orders were set aside. The Supreme Court in India has quashed a detention order because inordinate and unexplained delay in considering the representation made by the detainee against his detention infringed his right to representation under the Indian Constitution. (*Samblin Kar v. West Bengal*, A.I.R., 1973.)

These examples will show the throughness with which the learned outhors in each chapter have unearthed even the most distant decisions. The value of such a readily available volume to the vital decisions in Commonwealth countries is incalculable. The authors have carried out their intricate research with their accustomed high standard, and the lay-out leaves nothing to be desired. This series is invaluable to all students of Comparative Law.

FROMMEL, S. N. and J. H. THOMPSON, eds. Company Law in Europe. London: Kluwer-Harrap Handbooks, 1975. xiii, 669p. Price £19.00.

The purpose of this book is to help English speaking readers to gain a better understanding of the Company Laws of Western Europe. Apart from Britain and Ireland, not only are the seven Continental Member States of the European Community covered, but also Austria, Liechtenstein, Spain, Sweden and Switzerland, which makes the volume really comprehensive. We are indebted to Mr. Damien Kelly, Solicitor, for a useful summary of Irish Law of 10 pages. Mr. Kelly has been unduly humble, as, unlike the other writers, he has not given us a full account of his previous achievements; admittedly, Mr. Thompson, in dealing with United Kingdom Company Law, had simplified his task. An expert has written each chapter in relation to his own country, and the headings like "Rights of Members" and "Management" are clearly set out. Company lawyers who transact business with their European colleagues will find this book indispensible.

CLERK, J. F. and W. H. B. LINDSELL, The Law of Torts. 14th edition under the general editorship of Sir Arthur L. Armitage and R. W. M. Dias. London: Sweet and Maxwell, 1975. ccssv, 1269p. Price £30.00.

When the original authors first published this work in 1896, it is doubtful whether they thought of the tremendous subsequent success which their work inspired. Sir Arthur Armitage had been the editor of the 13th edition in 1969, and it is remarkable that despite the subsequent English legislation and case law, the current edition is no longer than its predecessor. For instance the chapter on Principles of Liability in Tort by Dr. Dias has been rewritten. An interesting remark (p. 11) based on recent case law is that the Courts appear readier to countenance new invasions of the sanctity of one's body and physical property than purely pecuniary interests. In — *Lotus*

Ltd. v. British Soda Co. — (1972) Ch.D., the defendants, though not acting maliciously, were held liable, when they liquified the solid support beneath plaintiff's land, and then drew out the resulting liquid so as to cause subsidence.

The great advantage of this new edition is that each chapter is written separately by an expert, mostly by one of the six editors. This ensures that each separate topic, such as Negligence or Defamation, is treated expertly. A tort, which has relatively recently sprung into prominence, namely procuring a breach of contract, which leads to intimidation, is fully treated, as is that of negligence relating to foreseeability. There are even chapters at the end relating to franchises, copyright and patents. The authority of Clerk & Lindsell on any aspect of the law of Torts, already assured, has been heightened by the excellence of this edition. The publishers are to be congratulated on the lay-out, and, in the circumstances now prevailing, the high price is inevitable.

An Introduction to Business Law in the Middle East. Edited by Brian Russell, Oyez Publishing, 1975; vii+118, £5.00.

This little collection of essays with a grand title and a price to match it (the latter being a reflection of the times, as indeed the title also is) comprises brief discussions of areas of law and practice ranging from Islamic law through tax considerations and the legal environment for negotiatng contracts, to the role of governments in such matters. Each essay in a transcript of a lecture, followed by questions raised when the original lecture was given, and the answers.

The introductory essay (by David Suratgar, a director of Morgan Grenfell Ltd.) is devoted to the nature of Islamic law and the impact of the civil law on it. It could well serve as an introduction to a larger work on the subject. The theme running through the whole collection of lectures is pointed by the first question which follows. In the questioner's experience, Arab governments "do breach their contracts". The question was, "Is there an Islamic religious excuse for this?" The answer boils down to, "there is a considerable body of Islamic law on the subject of the binding nature of contracts".

The next essay deals with practical considerations of doing business in Arab countries, by Dr. Jamal Nasir, a former Minister of Justice of Jordan. The keynote of his lecture is set by his statement that they "are going to be dealing with people who are more or less their equals", and that Arab businessmen are "shrewd, know exactly what they want and precisely how much they would like to get out of the party who is going to do business with them!" Later, discussing finance, Dr. Nasir repeats, "the Arabs are shrewd". Commercial representatives are exhorted to "avoid at all times the temptation to meddle or take an active interest in political discussion". Indeed, in a later lecture we learn that persons in charge of foreign investment projects in Saudi Arabia are actually prohibited from concerning themselves in any way with the religious or political affairs of that country.

The reader is told that "in almost all cases, the law of the country concerned would require that any contract with a foreign company should be governed by local law. This is a question of prestige". While Dr. Nasir favours the inclusion of arbitration clauses, the previous writer, when referring to the Saudi Arabia/Aramco arbitral award (which was against Saudi Arabia), said that there "has been an increasing reluctance on the part of the Saudi Arabians to submit disputes to international arbitration again".

Dr. Nasir makes the important statement that a contract should be prepared *ab initio* both in English and an agreed Arab text. The latter governs the contract. Touching on the subject of agency, it appears that the law in some Arab states protects agents to a much greater extent than in Western systems; so that the contract of agency can be determined, usually, only at considerable loss to the principal. There is little elaboration of this topic.

The following lecture, on tax, mentions a most interesting and advanced aspect in Egypt — the requirement to distribute 25% of profits to employees. The contributor, Mr. Julian Lee, draws the important distinction between doing business *in* a Middle Eastern country (which gives rise to local taxation) and doing business *with* such a country (which does not). Take for example an EEEC company contracting to deliver and instal equipment in Jordan. The fact that it is installing the equipment (doing business *in* the country) renders the company liable to Jordanian tax.

There are numerous incentives for labour-intensive, export-orientated business in the tax area. However, Mr. Lee (an accountant who specialises in international taxation) concludes on the dispiriting note that, on the one hand few of the tax laws are really inviolable, and on the other "no foreigner can be really aware of the detailed provisions in these countries".

A peculiarity of Saudi company law is worth mentioning. Article 127 of its Companies Act states that the proportion of net profit to be distributed is to be stated in the Articles. Therefore, a company in Saudi Arabia does not declare a dividend, but decides whether to distribute or not. The only way of varying the amount of distribution is by amending the Articles. This is an esoteric development which must give rise to problems in practice, but it could also be envisaged as being a protection against oppression of a minority, and against defrauding creditors.

A novel role suggested by Nigel Spinks, solicitor and consultant in international trade, is that of the foreign lawyer being a commercial public relations figure. He ought to be responsible for the "cosmetic" preparation of plans and proposals to licensing authorities and planning boards of government authorities. This will not come as a surprise to practitioners who have dealt with semi-state agencies or departments of the EEC.

Mr. Samil El-Falahi's contibution (on the legal environment of the Middle East) commences by stating that attention must be paid to the "historical development of the area as a whole". Mr. El-Falahi was asked for information concerning the "Arab boycott rule". The answer given is simply that lists of companies boycotted are available. No mention is made anywhere of the regulation requiring a baptismal certificate as a prerequise for a non-Mohammedan to obtain a visa to enter almost all the Arab countries.

Were it not for the total omission of Israel one could say that this little book is a first step towards gaining an understanding of the legal environment in general in the Middle East.

G. M. Golding.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964
Issue of new Land Certificate

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

Dated this 30th day of April, 1976.

N. M. GRIFFITH
Registrar of Titles

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

Schedule

(1) Registered Owner: James Walsh. Folio No.: 1511. Lands: Bawnmore. Area: 9a. 1r. 33p. County: Waterford.

(2) Registered Owner: William Barry. Folio No.: 12358 (R). Lands: Lissanly. Area: 23a. 3r. 31p. County: Cork.

(3) Registered Owner: Patrick Pilkington. Folio No.: 3155. Lands: (1) Clonoghil Upper (part); (2) Clonoghil Lower (part). Area: (1) 16a. 2r. 5p.; (2) 22a. 1r. 5p. County: Offaly.

(4) Registered Owner: Patrick K. Pilkington. Folio No.: 10955. Lands: (1) Clonoghil Lower; (2) Clonoghil Lower. Area: (1) 5a. 0r. 0p.; (2) 4a. 1r. 5p. County: King's.

(5) Registered Owner: Mary Anne Byrne. Folio No.: 1907. Lands: Stickens. Area: 101a. 3r. 14p. County: Kildare.

(6) Registered Owner: Alice Rafferty. Folio No.: 15519. Lands: Knockyclovaun. Area: 0a. 0r. 14p. County: Clare.

(7) Registered Owner: Patrick McGrath. Folio No.: 4480. Lands: Kilconnell. Area: 21a. 0r. 13p. County: Tipperary.

(8) Registered Owner: John Joseph Casey. Folio No.: 1471. Lands: Graigue More. Area: 0a. 0r. 18p. County: Waterford.

(9) Registered Owner: Martin O'Brien. Folio No.: 3529. Lands: Ballyvelaghan. Area: 0a. 2r. 10p. County: Clare.

(10) Registered Owner: Denis Mahony. Folio No.: 3997. Lands: Liscahane. Area: 8a. 0r. 19p. County: Cork.

(11) Registered Owner: Sean Hurley. Folio No.: 2907. Lands: Liscormick. Area: 20a. 0r. 10p. County: Clare.

(12) Registered Owner: Mabel Butterly. Folio No.: 10686. Lands: Lanestown. Area: 16a. 0r. 34p. County: Dublin.

(13) Registered Owner: Mabel Pauline Joyce. Folio No.: 2626. Lands: Parkstown. Area: 188a. 1r. 5p. County: Meath.

(14) Registered Owner: Thomas Mollaghan. Folio No.: 615F. Lands: (1) Causetown, (2) Causetown, (3) Causetown. Area: (1) 14a. 0r. 10p., (2) 18a. 0r. 6p., (3) 17a. 1r. 10p. County: Meath.

(15) Registered Owner: Edward Hogan. Folio No. 605. Lands: (1) Huntstown, (2) Oldtown. Area: (1) 12a. 3r. 23p., (2) 129a. 3r. 30p. County: Kilkenny.

(16) Registered Owner: Terence O'Brien. Folio No. 12047. Lands: Carrickfad (part). Area: 11a. 3r. 27p. County: Leitrim. The Land Certificate in Folio 12047 now forming the lands No. 2 on Folio 239F.

(17) Registered Owners: Myles Cullen (tenant in common of an undivided moiety), Mary Chambers (tenant in common of an undivided moiety). Folio No. 2476. Lands: Blessington Demesne. Area: 10a. 0r. 13p. County: Wicklow.

(18) Registered Owner: Jeremiah Dolan. Folio No. 16212. Lands: A plot of ground with the dwellinghouse and premises thereon situate on the north side of Courtbrack Avenue in the Parish of St. Michael's and City of Limerick. County: Limerick.

(19) Registered Onwer: Michael Yorke. Folio No. 3781. Lands: Ballybranigan. Area: 0a. 1r. 22p. County: Longford.

NOTICES

Assistant Solicitor urgently required, preferably with at least two years experience. G. V. Maloney & Co., Solicitors, Cavan.

Hugh J. Fitzpatrick & Co., Solicitors, are, from 1st April, 1976, amalgamating their practice with that of FITZPATRICKS at Stephen Court, 18/21 St. Stephen's Green, Dublin 2, with whom Mr. Hugh J. Fitzpatrick will continue to practise.

LOST WILL

Josephine Clancy, deceased, late of "Caletta", 3 Bettystown Avenue, Howth Road, Raheny, Dublin 5. Would any solicitor or other person knowing the whereabouts of a Will made by the above deceased who died recently please get in touch with Messrs James J. Ryan & Son, Solicitors, Parnell Street, Thurles, Co. Tipperary.

Graduate (B.A.) seeks Master. Keenly interested. Tel. 500493.

Qualified Solicitor with three years experience seeks conveyancing position with Dublin firm. Replies to Box. No. 124.

ANNUAL RETREAT

The Annual Retreat for the members of the Legal Profession will be conducted by the Jesuit Fathers at Manresa House, Mount Prospect Avenue, Dollymount, Dublin 3, at the beginning of May. Members will assemble at 8.30 p.m. on Saturday evening, 1st May, and the retreat will conclude at about 9.00 p.m. on Sunday evening.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save eiderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street,Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

APRIL 1976 VOL. 70 NO. 3.

SOCIETY RETIREMENT PLAN

Mr. Gerald Hickey, Vice-President, presented the first report on the Society's Retirement Plan at the Summer Meeting of the Society in Tralee, 7th-9th May, 1976.

It was decided that, as between an insurance-linked fund, and a self-invested fund, the self-invested fund would be the more appropriate one for the members. There was a 12% satisfactory return on investment.

The contribution income of about £250,000 was igher than anticipated; this is expected to increase by 50% this year, and to double in 1978. From enquiries received, there are signs that there will be a further influx of members. Despite the fact that some members may have made previous personal arrangements, there is an undoubted tax advantage for all members who participate in the Scheme.

Practitioners familiar with claims under the Civil Liability Act 1961 for compensation for loss of income will not be surprised to learn that, if a man in his early thirties earning £5,000 per annum, dies leaving a wife and two children, his dependents would need a lump sum of £80,000 in order to maintain their standard of living; it follows that many self-employed persons were unable to make adequate financial provision for their dependents.

LIFE ASSURANCE PLAN

In order to overcome this at minimum cost, the Society has incorporated a most attractive Life Assurance plan, as part of the Retirement Trust scheme devised for the members. This Plan has two major advantages:—

(1) Because of the manner in which the Revenue Commissioners approve of the Plan, premiums are allowabe **in full** against Income Tax within the statuory limit of £500 per annum or 5% of your relevant earnings if less.

(2) Because the Plan is administered on a group basis, it enjoys the benefit of more competitive premium rates than would be available to an individual policy holder.

Example: Let us consider the cost of a life cover for £10,000 for a man aged 33. Under the Law Society scheme, this life cover could be provided in the event of death before 65 years for a gross annual premium of £45. If a man paid tax at the standard rate of 38½%, the net cost would be about £28 per annum. If he paid tax at the maximum rate of 77%, the net cost would be reduced to just over £10 a year, or about 20p per week.

It is not essential to contribute towards a Retirement Plan in order to be able to avail of the Life Assurance Plan only. As far as tax relief is concerned, the Retirement Plan and the Life Assurance Plan are two separate entities. Consequently, a member who is only interested in life assurance is quite free to join the Life Assurance Plan only, and will then qualify for the full tax reliefs on his premium within the statutory limits of £500 a year, or 5% of relevant earnings.

INSURANCE AGAINST ACCIDENT OR SICKNESS

The Company undertaking the Scheme reported that there had been a good response to the cover offered by the portion of the Plan, which provided a guaranteed income in the event of a member being incapable of following his normal occupation due to sickness or accident. One of the features is that if a solicitor should only be able, as a result of accident or sickness, to work only on a part-time basis as a solicitor, then he would nevertheless be entitled to a portion of the benefit.

Concluding, Mr. Hickey emphasised that participation in the Scheme and the amount of contributions was confidential between the member and the Trustee. The Society or its officers had no access to information of a personal nature in regard to the Scheme.

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get.

Guinness + Mahon were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Peter Tuite, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking lies in the flexibility and variety which merchant bankers can bring to the business of banking, and each transaction is treated on its individual merits.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS+MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205
or Peter Tuite at Cork 54277
67 South Mall, Cork. Telex 8469

EUROPEAN SECTION

The effect on Irish Law of recent developments in European Community Law affecting the Right of Establishment

This is a summary of a lecture which Mr. Bryan McMahon, LL.M., Ph.D., Solicitor, delivered to the 21st Seminar of the Society of Young Solicitors in Galway on 15th November, 1975. Dr. McMahon emphasised that the essence of the theory upon which the Community was founded is that free competition between Member States will stimulate economic activity within the Community as a whole, and will therefore improve its economic position vis-a-vis the rest of the world. In order to achieve this ultimate state of free competition, all tarriffs and quotas between Member States must be eliminated, currency restrictions must be abolished, and restrictive practices and economic policies must be co-ordinated. Equally important is the removal of restrictions on movement of persons within the Community, and on the right of nationals within the territory of other Member States, which are considered essential elements of the building of economic integration within the Community.

Freedom of establishment comprises:—

(a) Freedom to engage in non-wage earning activity,
(b) Free movement of workers, and
(c) Free supply of services.

The **Free Supply of Services** comprises giving expert advice, providing entertainment, expanding tourism, and transmitting films. Obviously these are not continuous activities.

The **Free Movement of Workers** covers activities for which a regular wage or salary is paid.

The category of **"non-wage earning persons"** comprises self-employed persons, and proprietors of all sorts of business and their partners, and includes broadly all industrial, commercial and professional activities. The idea of "establishment" presupposes some permanence, but not necessarily of long duration. Generally speaking, such persons are allowed to set themselves up, and to set up branches, agencies or subsidiaries in the territory of any other Member State; broadly speaking, no other formalities need be observed but agreements will have to be reached on the equivalence of professional and academic qualifications. In other words, foreigners are to be assimilated to nationals in exercising non-wage earning activities. Depending on whether a liberal or a restrictive trade participation policy predominates in a particular country, the requirement for entry into the retail trade need not be uniform throughout the Community, but may vary from one country to the next. For instance if licences are required for a trade activity by nationals, licences will also be required by foreigners from other Member States. However, it would not be legal for the Irish Government for instance to impose such severe restrictions in regulating entry to trades that their own nationals would be favoured, as it would conflict with Art. 54 (3) (a) of the Treaty.

Exceptions are provided whereby there are areas in the Member States in which integration is not yet desirable. Generally the exceptions only reserve for nationals those offices and trades which are fundamental to the safety of the State.

The first exception relates to Article 55—"Activities within a State which include, even incidentally, the exercise of public authority". This probably applies to public offices, governmental positions at central or local level and civil service posts, and clearly applies to judges. It follows that in due course a German would be permitted to become a solicitor in Ireland, but could not subsequently be appointed a Judge. The exception in Article 55 does not apply to State monopolies, or to semi-State bodies, like Aer Lingus, transport, or electricity. Most of these bodies are not exclusive, and do not discriminate against public enterprise.

The second exception relates to Article 56—Special administrative or legislative provision for foreigners shall be allowed if justified by reasons of public order, public safety and public health. The Directive regulating this has been issued to harmonise its meaning. In effect, it means that a Frenchman who wishes to establish himself in Ireland cannot be refused permission on temporary economic grounds such as high unemployment, but he could be excluded on the ground of being a spy or a dangerous criminal, or having a highly contagious disease. A Council Directive of February, 1964, clearly stated that neither a criminal record nor the expiration of an entry permit were enough to entitle National Courts to deport foreigners of other Members States.

The third exception relates to Article 223, which permits Member States to exclude foreigners from the production of, or trade in, arms, ammunition and war materials. These industries are considered essential for the safety of the State.

The Implementation of the Right of Establishment

In Article 53, a wide prohibition against all new restrictions was proclaimed. The direct and forceful language of Art. 53, by which "Members States shall not, subject to the provisions of the Treaty, introduce any new restrictions on the establishment in their territories, of nationals of other Members States", was intended to be self-executory, and to apply directly to the individual Member States without further action by the Community. This is reinforced by various decision of the European Court of Justice, such as *Van Gend* (1963) and *Da Costa v. ENEL* (1964).

It follows that a Belgian businessman who established himself in Ireland, can invoke the protection of the Irish Courts against discriminatory restrictions as a result of the passing of the requisite constitutional amendment, and of the European Communities Acts of 1972 and 1973. A General Programme of Implementation under Articles 52-58 was prepared, which spells out these Articles in greater detail, and created international obligations between the Member States. This General Programme promulgated a timetable for the progressive removal of restrictions in specific areas by the end of the transitional period; this has already been achieved to a certain extent. The General Programme was to be implemented, as regards its more detailed applications, by means of Directives. These Directives bind the Member States as to the goal to be attained, while leaving the means by which they

are to be carried out, to the discretion of the States. In order to find out whether a Directive is directly applicable, the European Court has held that 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. The means whereby a Member State is to implement the directives will depend largely on the exact content of that directive, and the state of the law in a particular country. Ireland complied with the draft Directive on Company Law by means of a Ministerial Order.

The diversity of laws amongst the several Member States made some sort of co-ordinating imperative for a full realisation of te establishment provisions; necessary uniformity was not aimed at, as it could not be achieved. Accordingly Articles 100 to 102 of the Treaty provide for the approximation of laws, and these provisions have a widespread and general application, and extend to all provisions of the Member States which have a direct incidence on the establishment or functioning of the Common Market. This is apparently a residual power vested in the Council to be resorted to only when no other specific provision is available. One of the co-ordinating provisions to be construed narrowly refers toArticle 57(2) which provides for "co-ordinating of legislative and administrative provisions of Member States concerning the engagement in, and exercise of, non-wage earning activities". It follows that the Treaty provisions on establishment are to be implemented by (1) The General Programme, (2) the subsequent Directives, and (3) the co-ordinating provisions.

Recent Case-Law relating to Establishment in the Community

(1) *The Commission v. The French Government* (Case No. 167/73) relates to the free movement of workers. The French Code du Travail Maritime had a regulation that a certain proportion of men employed on French ships had to be French nationals. The Commission claimed that this discrimination on the basis of nationality was contrary to Article 48 of the Treaty, and the Court upheld this contention and held the regulation invalid. This case appears to have extended the general rules to the transport sector, including air and sea transport. But there has been an amazingly strange reluctance on the part of Irish and other authorities to accept this most reasonable interpretation of the Commission. It seems obvious that the provisions of the Merchant Shipping Act 1955, which restricts the right to register or mortgage a ship to Irish citizens, is a grave infringement of Community Law.

(2) *Reyners v. Belgium* (Case No. 2/74). As a full translation of the case appeared in the Gazette, Vol. 68, June, 1974, at page 164, it is unnecessary to go into detail. Suffice it to say that the Court found Article 52 to be directly applicable to Member States, notwithstanding the absence of directives provided for in Articles 54(2) and 57(1) of the Treaty of Rome. The Court in the case distinguished between the two functions of Community Directives. The first function was to remove obstacles during the transitional period which obstructed freedom of establishment. The second function, which still requires full achievement, was to introduce new provisions which would more easily facilitate the right of establishment. Under the Irish European Communities Act 1972, the whole Treaty of Rome, including Article 52, is part of the law of Ireland. Consequently any domestic restrictions in the area of establishment are implicitly repealed. As a result of the *Van Binsbergen* decision, any domestic restrictions in the area of the supply of services, which conflict with Articles 59 and 60, are also implicitly repealed.

Apart from the Merchant Shipping provisions previously cited, the following provisions of Irish legislation, which discriminate on the basis of Irish nationality, appear to be now automatically repealed:-

(1) Regulations under Pilotage Acts which state that only Irish citizens may obtain pilot's licences or pilot's certificates.
(2) Section 6(3) of the Moneylenders Act 1933 which confines the issue of moneylender's licences to Irish Nationals or Irish based companies.
(3) Licensing standards adopted by the Central Bank Act 1971, which required a licensed Bank to be incorporated in the State, and to have a majority of Irish directors. This has already been abandoned by the Central Bank, as witness the establishment of French and Dutch Banks in Dublin.
(4) The articles of the Unit Trust Act 1972 which require any company which intends to exercise the activity of manager and trustee of a trust unit to be incorporated in Ireland.
(5) The Insurance Act 1936, insofar as it prohibits the entry of Insurance Companies from other Member States into the Insurance Market.
(6) Provisions which discriminate against non-nationals of Member States in the issues and transfer of flour-milling licences under the Agricultural (Cereals) Act 1933.

With regard to S.45 of the Land Act 1965, to the extent that it discriminates on the basis of nationality, the Land Act 1965 (Additional Categories of Qualified Persons) Regulations 1972 — S.I. No. 332 of 1972 — covered all beneficiaries mentioned in Directives in relation to establishment in agriculture which had been adopted up to then. But up to the time of the Reyners decision, discrimination on the basis of nationality still existed in those areas of establishment of agriculture which were not the subject of Directives. This is clearly no longer the case, since henceforth nationals of all Member States will have to be given equal treatment in establishing agriculture.

A word of warning should be given in regard to the compulsory Irish language requirements for the solicitors and barristers professions. Although this test is equitably applied in both professions to everyone at the moment, being not unduly cumbersome, if in future it were shown that the Irish langauge requirement was being used as a disguised form of national discrimination, it would undoubtedly have to be abandoned.

The facts of *Van Binsbergen* — Case No. 33/74 — (Gazette, Vol. 69, March, 1975, p. 40) and of *Walrave and Koch*—Case No. 36/74—Gazette, Vol. 69, March, 1975, p. 41) are briefly given.

The conclusions to be drawn are:-

(1) Article 52 is directly applicable to Member States.
(2) Article 59 is similarly directly applicable.
(3) Those portions of Irish law which discriminate on the basis of nationality and are contrary to Article 52 or to Article 59 are automatically repealed, unless they can theoretically survive under other provisions of the Treaty.

(4) The provisions relating to establishment and the supply of services apply to other organisations other than public authorities which regulate economic activity, such as sporting associations.
(5) According to the Commission's interpretation in the case against the French Government, the establishment rules of the Community also extend to the transport sector. If the Court upholds this view, it will have resounding repercussions in the transport law of the Member States.

It is clearly for the Irish Government to indicate the legislation which it considers repealed by virtue of being discretionary, as it would be an impossible task for an Irish lawyer to guess the present position.

European Court compromises on equal pay

Defrenne v. Sabena—Case 43/75 (Preliminary Report).

Luxembourg, April 8.

The European Court of Justice, the Common Market's Supreme Court of Appeal, has ruled that women have a clear right under the Treaty of Rome to claim equal pay backdated to 1962 in the case of the original Member State and to 1973 in the case of the three new Members.

However, because of the economic implications of backdating (the Court says some companies might be driven to bankruptcy) it has ruled that only workers with cases actually pending can exercise this right. All other workers can claim equal pay only from the date of the ruling—April 8, 1976.

The Court has thus decided to face both ways. By introducing a compromise into a legal ruling — admitting the clear right of backdating, but refusing all but a handful with cases before National Courts to exercise it — it is certain to raise considerable protest about its ability to withstand political pressure from Member States in cases with broad implications.

In his summing up a month ago, Sig. Alberto Trabucchi, the Advocate-Generale, specifically argued that the economic implications of backdating submitted to the Court by Britain and Ireland were irrelevant to the judgment.

The seven judges who pronounced the ruling, however, refer plainly to the British claim in their justification of the verdict.

Britain had suggested that backdating could "overturn the economic and social situation in the U.K." while the Dublin Government said the cost of backdating in the State sector alone in Ireland would be about £35m.

British estimates of the total cost of backdating ranged as high as £1 million.

Dilatoriness in enacting equal pay legislation

The Court, in its ruling, refers to the dilatoriness of Member States in enacting equal pay legislation and comments on the failure of the Brussels Commission to take any Member State to court for failure to observe Treaty of Rome obligations under Article 169.

This had given Member Governments the impression that the Treaty meant much less than it said on equal pay.

The case which occasioned this judgment was that of Mlle. Gabrielle Defrenne, a Belgian air hostess, who claimed pension rights from Sabena, the Belgian national airline, equal to those granted to stewards. She invoked Article 119 of the Treaty of Rome which states: "Each Member State shall, during the first stage (of the transitional period ending in 1962), ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work." It defines what it means by work and pay.

Her victory should gain her B.Frs. 12,500 (£160). She had to resign automatically at age 40 under Regulations.

Articles 119 does not apply directly to National Law

The vital issue was whether Article 119 applied directly to the national law of Member States and from what date. Member Governments argued that the Article implied only a constitutional commitment to introduce equal pay legislation, but this view has been restrictively rejected by the Court.

Mlle. Defrenne's pension claim was turned down by the Court of Justice in 1971 on the grounds that pensions did not fall within the admissable definition of pay. However, it then had to rule on a reference from the Brussels Labour Court asking whether Mlle. Defrenne was entitled to equal salary and severance money and this was the specific item behind the present ruling.

Employers in the U.K. have been bound by law to give equal pay to women from December 29, when the Equal Pay Act 1970 came fully into force.

This Act was backed from the same date by the Sex Discrimination Act and the two pieces of legislation taken together broadly make it unlawful to distinguish between men and women when advertising for, paying, promoting or sacking an employee.

This means that the EEC judgment is only relevant to the U.K. in relation to the period between the date the U.K. joined the EEC and the end of December.

Under the Equal Pay Act the same rate of pay and other conditions of employment must be given to men and women who are doing the same, or broadly similar, work for the same or, an associated employer, or who hare doing jobs which, although different, have been given an equal value under a job evaluation scheme.

The U.K. Government considers that, while somewhat vague, these criteria are far more specific than the even more vague "equal pay for equal work" rule adopted by the EEC, which is regarded in the U.K. as too general to be realistically applied by law.

Courts of Justice of the European Communities (Perjury) Act 1975

The effect of this Act is that anyone who, by virtue of swearing anything which he knows to be false or does not believe to be true, before the Court of Justice of the European Community in Luxembourg, shall be guilty of perjury. In such an event, proceedings for this offence may be instituted anywhere within the State, and for this purpose, the offence shall be deemed to have been committed in the place where the proceedings are taken.

IRISH TRUST BANK— WINDING-UP PETITION

The procedure to be adopted in the winding up of the Irish Trust Bank Ltd., of Dawson Street, Dublin, and the appointment of the official liquidator, was announced by Mr. Justice Hamilton in the High Court in Dublin on March 23.

The Central Bank has asked the Court to confirm to extend its order for the closure of the Irish Trust Bank to appoint the Official Assignee as liquidator as provided by the Central Bank Act.

There was also before the Court a petition brought on behalf of Sean O Foghlu, Baily, Howth, Co. Dublin (a depositor) for the winding up of the bank under the Companies Act and for the appointment of Mr. Francis Donnelly of Haughey, Boland and Co., as official liquidator.

Counsel for a number of other creditors supported this petition but put forward Mr. Patrick F. Shortall of Coopers and Lybrand Associates Ltd. for appointment as official liquidator.

At the end of yesterday's hearing, Mr. Justice Hamilton joined Mr. O Foghlu (representing all the depositors before the Court) as a defendant in the proceedings brought by the Central Bank.

Mr. Brian McCracken, S.C., who said he was representing creditors to the extent of £895,000 including Mr. O Foghlu, said that as far as the petition itself was concerned it was, he imagined, almost uncontested or incontestable in the sense that they were petitioning on two grounds, firstly that the company was insolvent and, secondly, that in any event, it was just and equitable that the company should be wound up.

He said it appeared that the Central Bank had already proved to the Court that the company was insolvent. His clients, who were not a party to the Central Bank action, had no means of knowing, apart from the fact that the company had not honoured a formal demand by the petitioner for the repayment of a deposit which was repayable on demand. The real position was that the Bank ceased to carry on business and had been closed down by the Central Bank. That being so, it would appear just and equitable that the company should be wound up.

Mr. McCracken said he did not think that Mr. Landy (for Irish Trust Bank Ltd.) was contesting this. He said that the real problem which arose in this case was what was the most suitable way in which to conduct the winding up of the Irish Trust Bank.

Two proceeding before the Court

The Court, he said, had two proceedings before it, one brought under the Central Bank Act by the Central Bank which sought to appoint the Official Asignee under the provisions of that Act, and the other by the petitioner who was a creditor, under which he sought to have the company wound up in the ordinary way by order of the Court.

If the Court were to find that the best order to make was to wind up the company under order of the Court and not under the Central Bank Act, the question would arise as to who was going to be liquidator.

Mr. McCracken said that his clients' concern was on behalf of the creditors only and his clients felt strongly that this could be the type of case in which there could be a conflict of interests to some degree between the interests of the Central Bank and the interests of the creditors. The purpose of the Central Bank Act and the system of licensing banks, was to protect the public in general but in a case like this it was the interests of the particular creditors which should concern the Court.

There were three ways in which a winding up like this could be conducted. First of all there could be a winding up where there was an immediate realisation of all assets and a distribution of what was there, even if it were 50p in the £. There could also be a position that the Banks were holding securities which were not worth half of what they were worth when they were taken as securities, and if there was an immediate realisation, this might be very much against the interests of the creditors because it would not realise anything approaching a fair value. He thought it was probable that many Banks were sitting on securities deliberately in the hope that they would rise again.

Third possibility — Winding-up under Companies Act

There was a third possffiibility which happened in the case of the only other Bank which had been wound up by the Court in this country, the Irish Intercontinental Bank. The winding up proceedings in that case were under the Companies Act but what happened was that as there was a reconstruction of the Bank, the winding up was never completed. Whether that was possible in this case, he did not know, because they had not seen the accounts; they did not know just how insolvent the Bank was, it was something which might be very much in the interests of the creditors that that happened. It certainly was, in the case of the Irish Intercontinental Bank, which was now a very successful bank.

It was for this reason, that there were three possibilities, that the creditors were extremely anxious that a liquidator should be appointed who would go into the Irish Trust Bank with no preconceived ideas, nor prior knowledge of what had happened and that he should be a totally independent person.

One of the problems of doing it under the Central Bank Act is that there is no provision for the creditors having any say whatsoever; no provision for a Committee of Inspection which is something which Mr. Donnelly, whom we are proposing as liquidator, tells me is something he would prefer.

Mr. McCracken said that if the position did turn out that it was possible to have some kind of reconstruction, he thought this would hardly come within the powers of the Official Assignee under the Central Bank Act. The Official Assignee's job was purely and simply to wind up the Bank, and he would be bound immediately to wind up the Bank, which might well be contrary to the interests of the creditors. There was also the fact that the Official Assignee would almost certainly have to do this with the assistance of outside accountants anyway. The real objection was that he would not have the discretion to act in what might be the interest of the creditors, nor would he be in a position to consult the creditors. It was primarily for this reason they were bringing this petition.

Mr. McCracken said he understood that Mr. Lynch was going to apply to have Mr. Shortall appointed liquidator. His clients had an objection. Prior to these proceedings Mr. Shortall was engaged by the Central Bank to investigate the Irish Trust Bank. In a case

like this there should be somebody totally independent.

He asked for an order winding up the company under the Companies Act and appointing Mr. Donnelly of Haughey, Boland and Co. as liquidator and also that a Committee of Inspection be appointed under the Act to be consulted by him.

Mr. Kevin Lynch, S.C., said he did not dispute the position regarding the financial standing of the Bank but as regards the suggestion that there might be a delay in the winding up with a view to the prospect of reconstruction, the depositors for whom he appeared were anxious that their deposits should be repaid, insofar as the assets were available, at the earliest possible date and they did not welcome the idea that the matter might be put on the long finger in the hope of some vague improvement in the financial situation.

On the question of who should be liquidator, Mr. Lynch said that Mr. Shortall had familiarised himself with the affairs of the company and that was a very strong point in favour of his appointment. Also he was an independent person, Mr. Shortall had already been in at the Central Bank and if the Court made an order under the Central Bank Act and appointed the Official Assignee it would be open to the Court to authorise the Official Asignee to engage Mr. Shortall to assist him in the winding up of the Bank.

Mr. Raymond O'Neill, S.C., for the Central Bank, said the Central Bank considered very strongly that Mr. Shortall was the person best equipped to wind up this company. He could only be appointed as Official Liquidator if the Court made the order under the Companies Act. The Court could undoubtedly authorise the Official Assignee to assist him as liquidator if the Court made the order under the Central Bank Act. He did not understand why it was suggested that it was a disadvantage for Mr. Shortall to be familiar with the affairs of the company nor did he understand why it was suggested that Mr. Shortall was not independent.

The Central Bank, he said, had carried out its own investigation of Irish Trust with its own officers and had engaged Mr. Shortall to carry out an independent investigation. It was not correct to say that the Central Bank had acted on the report of Mr. Shortall.

Mr. Justice Hamilton said it might be helpful if Mr. McCracken's clients were prepared to agree to the appointment of Mr. Shortall. Mr. McCracken said he would take instructions and Mr. Justice Hamilton said he would adjourn to enable him to take instructions.

After the adjournment, Mr. McCracken said he was producing a list of the persons whom he was representing but in accordance with banking practice he would ask that the names of the depositors be not disclosed. He would hand them into Court if necessary.

Mr. O'Neill said he would oppose that being done.

Mr. Justice Hamilton, after further argument, said he would make an order joining as a defendant in the proceedings brought by the Central Bank, Mr. O Foghlu as representing the depositors.

On the question as to whether Mr. McCracken's clients were prepared to agree to the appointment of Mr. Shorthall as liquidator, Mr. McCracken said his

Order made for Winding-up under Central Bank Act

In a reserved judgement delived in the High Court in Dublin on 23 March, Mr. Justice Hamilton made an order for the winding-up of Irish Trust Bank Ltd. under the provisions of the Central Bank Act, 1971, and appointed the Official Assignee as official liquidator.

Later in the day, the Supreme Court, on the application of Mr. Brian McCracken, S.C., who had appeared for a number of creditors in the High Court, granted and listed the hearing of an appeal against it for a stay of execution on Mr. Justice Hamilton's order for Friday, 26 March.

Mr. Justice Hamilton, in his order, had given the Official Assignee liberty to apply to the Court for leave to engage such professional services as he considered necessary to assist him in the winding-up.

Mr. Justice Hamilton directed the Official Asignee to lodge a statement of account on or before July 31 of this year and for each succeeding year on that date. He made an order confirming the direction of the Central Bank made on February 18 last, suspending activities of the Irish Trust Bank Ltd., and he extended the period of its operation for a further six months.

Petition dismissed under Companies Act

Mr. Justice Hamilton dismissed a petition brought on behalf of a number of creditors for an order of winding up under the Companies Act. This petition had been brought on behalf of a number of creditors represented by Mr. Brian McCracken, S.C., and supported by a number of creditors represented by Mr. Kevin Lynch, S.C.

The Judge said that the petition and the application by the Central Bank had been heard together and in the course of the submissions made it had been suggested that because of various factors relating to the staffing of the Official Asignee's office it would not be appropriate to make an order under the Central Bank Act.

The Court, being conscious of the difficulties with regard to the staffing of the Official Assignee's office, had given very careful consideration to the submissions made by Mr. McCracken and by Mr. Lynch. In all probability, if the depositors as represented by Mr. McCracken and Mr. Lynch had agreed on the appointment of a liquidator, the Court would have made an order on the petition in accordance with the provisions of the Companies Act.

In the absence of such agreement, however, the Court, after careful consideration, would order that the winding up be in accordance with the provisions of the Central Bank Act, 1971, and would appoint the Official Assignee as liquidator.

Mr. Justice Hamilton said the Court was conscious of its obligations to the Central Bank, to the shareholders and depositors and would not tolerate any delay in the expeditious dealing with the matter by the Official Assignee's office. If the Official Assignee considered himself to be in any difficulty relating to the staffing of his office with regard to the winding up of this matter, the Court would entertain any aplication by him for leave to engage such professional services as he considered necessary.

Costs allowed on winding-up Order

Mr. Raymond O'Neill, S.C., for the Central Bank, asked for costs of his proceedings against the defendants, and Mr. Justice Hamilton said he would make an order declaring him to be entitled to his costs. He

made a similar order on the application of Mr. Vincent Landy, S.C., for the Irish Trust Bank Ltd., and he awarded the costs of the petition to the creditors represented.

Mr. McCracken said he was instructed to ask for a stay on any order the Court might make and he could undertake to expedite any appeal. He thought the Supreme Court would entertain any application for a quick hearing.

Mr. Justice Hamilton said he was satisfied his orders were correct and he saw no reason to put a stay on them. If Mr. McCracken wanted to appeal he could apply to the Supreme Court.

When Mr. McCracken said he was instructed to ask for the appointment of a Committee of Inspection, Mr. Justice Hamilton said he would make no order in this regard for the moment.

The Court then rose, but half an hour later it was reported to Mr. Justice Hamilton that three men had entered the boardroom of Irish Trust Bank and removed documents. Mr. Justice Hamilton made the order for the attachment of Mr. Bates, his servants or agents from removing any papers from the bank from the jurisdiction.

Application for attachment for contempt of Court

Mr. O'Neill said that Mr. Bates and two other men had entered the bank at 10.30 a.m. and removed a substantial number of documents. He suggested that this constituted contempt of the Court Order appointing Mr. Patrick T. Shortall as provisional liquidator who was, at the time, in possession of the premises and documents of the Irish Trust Bank.

Mr. O'Neill said he was making the application on behalf of the Central Bank to have Mr. Bates attached for contempt. They were concerned that Mr. Bates might leave the country with these documents.

Brian Loughney, in evidence, said he was manager of Irish Trust Bank Ltd. and he was taken on by Mr. Shortall when he was appointed provisional liquidator. At 10.30 that morning Mr. Bates arrived through the front door accompanied by a Mr. Sean O'Shea and another man whom he did not know. Mr. O'Shea was chief executive or general manager of Emerald Isle Holdays and was associated with one of Mr. Bates' companies. The three men went up the backstairs to the board room.

He said that when he got to the door a girl was pushed back by Mr. Bates. He (witness) went downstairs and called Mr. Cooper of Coopers and Lybrand, to tell him what had happened. When he returned Mr. Bates was on his way out with what appeared to be a long sack containing what looked like documents. Fidema Mundo of Mr. Shortall's (the provisional liquidator) staff tried to stop Mr. Bates at the door and said he had no authority to go in. He mentioned something about seeing her in court or something like that.

He said he heard Miss Mondo tell Mr. Bates he was not to take the stuff, that he had no authority to do so.

Authority to take away documents challenged

Miss Mundo, in evidence, said she was an employee of Mr. Shortall in the Irish Trust Bank and she was alone in the Board Room when Mr. Bates came in. She did not know him. He started to collect some documents. He said he was Mr. Bates and she told him he had no authority to take them. He said they were personal documents and that the bank had no authority to keep them.

Clement Cooper said, in evidence, that he was employed by Mr. Shorthall. He was in a room below the Board Room when Mr. Bates entered. One of the girls came down and told him what had happened. The girl asked him to go upstairs to see what Mr. Bates was taking. He went up and the two men with Mr. Bates were there.

Circumstances outlined in which documents taken

Mr. Bates, he said, was coming out with a tin box in his hand. When he told Mr. Bates that he was not entitled to take anything. Mr. Bates ignored him and was putting documents into a large white bag. He also had a blue file in his hand. He thought another man had another white bag. They walked past him towards the front door and he followed them down. There was a car outside with Mrs. Bates, whom he had seen previously, standing at the door of the car. They threw everything through the back door of the estate car. Mr. Cooper said he then locked the front door.

Mr. Patrick Shorthall said he had been appointed provisional liquidator on February 10th and he was in possession of the premises, documents and other property. He did not authorise Mr. Bates to remove documents or other items from the premises.

Mr. Justice Hamilton said he was satisfied that Mr. Bates's action amounted to a deliberate contempt of the order made. He issued an order directing the Commission of the Garda Soochana to arrest Mr. Bates forthwith.

Application to Supreme Court

Later in the Supreme Court, Mr. McCracken applied for a stay of execution on the order. He outlined the proceedings that had taken place in the High Court and said they could be ready with an appeal within a day or two.

They were very concerned about a winding-up taking place in a matter that was contrary to the wishes of all the creditors who had appeared before the High Court. His clients had opposed the order being made under the Central Bank Act as they felt it did not give a proper protection or right of audience to the creditors.

Complex problem

Also, he said, they had doubts as to the capacity of the Official Assignee's office to deal with this type of case in which there were some 1,400 depositors or creditors in a Bank which had offices in Manchester as well as in Dublin. It had been suggested that could be got around by employing outside accountants to help the Official Assignee but, again, these would be one degree removed from the Court and even more removed from the creditors of the bank.

They felt that it was particularly important that the Official Assignee should not take any steps until the matter was finally determined by the Supreme Court. The Court allowed the stay and said it would hear the appeal on Friday.

Mr. Bates in Court

Later in the afternoon the High Court reassembled

and Mr. O'Neill said he understood that Mr. Bates was now in Court although the order of attachment had not in fact been executed.

Mr. Bates was then sworn and agreed he had gone to the Irish Trust Bank premises that morning and removed certain documents and papers. These were his own and he did not need an authority to remove them.

He said there was a room which was leased by the Irish Trust Bank to a company of his. The papers, which were unconnected with the Irish Trust Bank, were in that room. He had not been a director of the Irish Trust Bank since 1972 nor had he participated in the day to day running of it. He worked in the room mentioned, for which he had no bank papers or documents. The Irish Trust Bank was permitted to use the room for board meetings.

Difficulty in securing personal papers

Mr. Bates said he had made a number of efforts to have these personal papers returned to him and he said that Mr. Shortall at first agreed and then changed his mind. He had gone to the premises, to an office which was not part of the bank, to collect his documents. He also had some personal effects over which it could possibly be said the bank had a lien and he was very careful to leave them.

Asked by Mr. O'Neill what he had done with the papers removed, he said he had taken them away and put them in another premises in Dublin. Asked where, he said on the quays.

He said it was a matter for the Court to determine whether the papers belonged to him or to the Irish Trust Bank. Mr. Bates said it would take about 20 minutes to go and collect them and he told Mr. Justice Hamilton he had no objection to being accompanied by a Garda.

Later he produced two sacks, a file and a box which, he said, were the papers he had removed from the premises that morning. He had taken them to the Crofton Hotel to sort them and had then taken them back to the place on the quays which was Ferry Travel. In sorting them out he had discovered that there was one file containing documents belonging to the Irish Trust Bank which must have been placed among his papers by a member of Mr. Shortall's staff.

Apology and undertaking not to re-enter

Mr. Bates apologised to the Court and gave an undertaking that he would not re-enter the premises without authority.

Mr. Justice Hamilton said he thought that in the circumstances the proper procedure would be to retain the documents in the custody of the Court until the appeal had been disposed of. They would then be handed over to the liquidator and Mr. Bates could make any application that he wished to the Court for any documents that he considered personal to himself or had no connection with the Irish Trust Bank.

He rescinded the order of attachment.

(Continued on page 58)

INTERNATIONAL SUMMER COURSES IN LEGAL ASPECTS OF EUROPEAN INTEGRATION

Amsterdam, 16–27 August, 1976

A General Course and a Specialised "follow-up" Course, for previous participants, in the Legal Aspects of European Integration will be held in the Europa Institute of the University of Amsterdam, 508 Herengracht, Amsterdam, from 16th-27th August, 1976.

The General Course will comprise lectures on the institutional framework, the judicial remedies and the substantive Community Law, delivered by Drs. Volker, Schermers, Winter and Gijlstra. The Specialised "follow-up" Course will concentrate on 3 fields of Community Law — its judicial remedies, anti-trust/competition law and Company Law, right of establishment, and the lecturers will be Drs. Schermers, Winter, Baardman, Schrans and van Gerven.

Both courses will be in English and the tuition fee is Df.1,750 (approx. £150). Participants are expected to arrange their own accommodation. Application forms and further details from: The Registrar of the International Summer Courses in Legal Aspects of European Integration, Netherlands Universities Foundation for International Co-operation (NUFFIC), 27 Molenstraat, The Hague 2003, Netherlands, and should be returned before 1st July, 1976.

SOLICITORS BENEVOLENT ASSOCIATION

At the Annual General Meeting of the Solicitors Benevolent Association held on 24th March, 1976, it was resolved that the Annual Subscription be increased to £5.00 and the amount of the Life Subscription to £20.00.

SUPREME COURT UPHOLDS APPEAL BY TRUST BANK CREDITORS

The Supreme Court on 26 March 1976 upheld an appeal brought on behalf of a number of creditors of the Irish Trust Bank Ltd. against a decision of the High Court on Tuesday ordering the winding up of the Bank under the provisions of the Central Bank Act, 1971, and appointing the Official Assignee as liquidator.

The Appeal Judges ordered that the Banks be wound up under the provisions of the Companies Act (as had been sought in the High Court by two sets of creditors who were separately represented) and they appointed Mr. Patrick F. Shortall as official liquidator.

Mr. Justice Kenny (with whose judgment Mr. Justice Henchy and Mr. Justice Griffin agreed) said that the Central Bank, having carried out an investigation by two of its officers into the affairs of the Irish Trust Bank and having had that investigation verified by a well-known accountant, came to the conclusion that there was reason to believe that the Bank would in the near future be unable to pay the depositors and would be insolvent and, accordingly, on February 18th a direction was given by the Central Bank, which suspended the right of the Irish Trust Bank, to take deposits or make payments.

Hamilton J. had been faced with a difficult situation which arose out of the fact that one group of the depositors appeared before him and argued that Mr. Shortall should be appointed official liquidator while the other group opposed Mr. Shortall's appointment on the ground that he, having been involved in the investigation, could not be expected to be independent.

Conflict as to who should be liquidator considered

Hamilton J. having been faced with this conflict between the parties, decided that, as this conflict existed, he should make an order under the Central Bank Act and appoint the Official Assignee as liquidator. Mr. Justice Kenny said there was force in the argument that had been made that in having regard to the conflict as to who should be liquidator, the High Court judge had not dealt with the question of which manner of winding up was more in the interest of the creditors of the company, who had to be the main consideration in this matter, particularly as the accounts showed that there were deposits of approximately £4 million with this company.

He said that while there were certain advantages in having the Official Assignee as liquidator there were other features which had to be considered. The Official Assignee was not a practising accountant and he and his staff had not the expertise that was required in this highly complicated matter.

Australian purchases

It was obvious from reading the reports, he continued, that there had been a number of remarkable transactions and that the funds of the Bank had been applied for the purchase of land and property in Australia or in making loans to companies incorporated in Australia to purchase property in Queensland.

This, he said, made it clear that if the Official Assignee was appointed liquidator he would have to call in a firm of accountants who were experts in this matter and who would have overseas contacts and offices which would be necessary to investigate the loans made to companies in England, Australia and other countries.

Winding-up under Companies Act proper procedure

Mr. Justice Kenny said that as far as the element of economy was concerned there seemed to be nothing in the appointment of the Official Assignee. Nor had the Official Assignee the range of contacts with the commercial world that an accountant's office would have. It was also important to have single control in a matter such as this where the day-to-day management of the company might require speedy decisions to be made.

The Court was of opinion that the fact that an accountant had reported on the affairs of the company was not likely to affect his impartiality.

Having regard to the fact that a winding up under the Companies Act was an established procedure whereas no winding up under the Central Bank Act had been made up to now, the Court was of the opinion that the proper order in this case was that the Company should be wound up under the Companies Act under the petition presented by the creditors.

Advantage of appointing Mr. Shortall

Regarding the appointment of the Official Liquidator, Mr. Justice Kenny said there were many advantages which Mr. Shortall possessed. He had made a report on the company for the Central Bank; he had acted as provisional liquidator, and had some opportunity of making himself familiar with the affairs of the bank and with the devious transactions which had been entered into in connection with the purchase of land, and the making of advances to companies outside Ireland in connection with the purchase of land.

If someone other than Mr. Shortall was appointed that person would have to do again all the work that Mr. Shortall had already done. Mr. Shortall's firm had associated offices in England and Australia and would be able to obtain information and take any steps that would be necessary through those offices.

Order discharged

Mr. Justice Kenny would accordingly discharge the order made by Mr. Justice Hamilton under the Central Bank Act and he would make an order that the company be wound up under the Companies Act. Mr. Shortall would be appointed official liquidator.

Mr. Justice Kenny said that no case had been made at the moment for the appointment of a Committee of Inspection but the order would reserve liberty to apply to the High Court for an order under section 232 of the Companies Act that the liquidator be directed to convene a meeting for the purpose of electing a Committee of Inspection. He thought that Mr. Shortall's security should be fixed at a sum of £100,000.

The Court awarded the parties their costs.

THE PUBLIC INTEREST LAW MOVEMENT IN THE U.S.

by Denis Linehan, L.L.M.,
Lecturer in Law, University College, Cork

Part 2

(Partt I was published in the March Gazette, Vol. 70, No. 2, 1976, at p.39).

Methods of Public Interest Law Representation

3. Organisation of the Constituency Base

Most Public Interest lawyers emphasise the cardinal importance of having an organised constituency base. They point out that legal action seldom if ever exists in a political vacuum, and that one's success in implementing a policy depends very greatly on one's political power.

Certain Public Interest Law Constituencies will already be well established and organised. These tend to be mostly middle class in character, and encompass such interests as the advancement of consumers' rights, environmental protection and the promotion of equality for women in the eyes of the law. Such Constituencies are able to deal with their lawyers very much as do traditional clients.

Different considerations apply in efforts to advance weak minority interests. These tend to arise from the lower economic strata. It has been recognised that "most poor clients are unaware of their rights, afraid to assert them, and traditionally prone to shy away from contact with authority. In this field, Public attornies must prepare them for the unfamiliar role of plaintiff".[10] Public Interest lawyers who are concerned with weak minority interests must to some extent act as brokers by seeking out the cases, the clients and the issues although, in doing so, they may of course run the risk of exceeding the limitations of professional ethics.

The concepts of Community Participation and Control is central in the notions of some Public Interest lawyers who work with the "poor" client. These lawyers seek to develop institutions which embody the idea of community participation, such as, Tenant Organisations, Retail Co-operatives, co-operative housing projects, Community-run Hospitals and small companies. The utility of litigation as an organising device has also been recognised. Litigation can be used as a vehicle for setting in motion other political processes and for building coalitions and alliances. The dissemination of information is essential to organisation, and the "News Letter" is widely used to develop a network of contacts within Community groups.

The establishment of Community Law Offices represents another approach to Community Organisation. Such offices are primarily concerned with providing day-to-day legal services to those caught up in the poverty syndrome. Much of the work at these offices relates to Credit Problems, Tenant Rights, Social Welfare Payments and police-community relationships.

A novel approach to constituency organisation is illustrated by Boston Lawyers for Housing, a project initiated by the American Bar Association. This project was established to promote a single designated public goal, namely, the provision of housing for lower income groups. It seeks to bring together a professional staff which has expertise in housing laws and in the economic incentives available to developers. The programme initiated by Boston Lawyers for Housing includes the provision of information about policy goals, economic incentives and the active role lawyers can play in working towards the announced national policy on housing. In addition, the project co-operates with Community Groups working for specific goals by providing legal expertise in such areas as Taxation, Administrative and Company Law.

4. Monitoring of Government Agencies

The Public Interest Law Movement has done much to focus attention on the performance of administrative agencies. These Agencies have grown in numbers and powers in proportion to the ever expanding sphere of Governmental regulation. The shift in emphasis from individual rights to social duties in the 19th century, and the inclusion of matters such as Health, Welfare, Education and Housing within the area of Governmental responsibility, heralded the arrival of Big Government.

The Public Interest lawyers contend that the Public Interest role of the Governmental lawyer and agency has over time become corrupted by private interests. Private interests, which have long understood that Government is the arena in which the ultimate decisions are made, have the resources to ensure effective representation in the decision-making processes of Government. Diffuse majority interests and weak minority interests have, however, failed in the past to secure comparable accessibility to these processes. Redress of the imbalance in the types of representation made to Government agencies is one of the principal concerns of the Centre for Law and Social Policy, a Public Interest Law firm based in Washington D.C. which concentrates on Consumer Affairs, Environmental Protection and Health. Charles Halpern, Director of the Centre, sees the new Public Interest Law firms as meeting the need "to create a new institution which would help to make old institutions work".[11] He illustrates the problem by pointing out that "at the present time, for example, there are less than twenty lawyers in Washington who are concerned with representation of citizen groups on consumer and environmental problems. In contrast, taking the five largest firms in the city alone, there are 400 lawyers ready, willing, and able to serve corporate clients.

"In the communications area . . . there are between 200 and 250 experts in this field prepared to serve corporate clients. In contrasts, there are two specialists who are prepared to serve citizen groups as clients."[12]

The Centre for the Study of Responsive Law is another Public Interest law institution, the primary concern of which is the performance of Administrative Agencies. The Centre, which like the Centre for Law and Social Policy is based in Washington D.C., was founded by Ralph Nader in 1969. The programmes adopted by the Centre have emphasised investigations designed to give visibility to the workings — and to the shorttcomings — of Administrative Agencies. The Centre has to date conducted studies into such diverse agencies as the Federal Trade Commission, the Inter State Commerce Commission, the Agricultural Department, the Food and Drug Administration and the Department of Health, Education and Welfare.

Some Public Interest lawyers seek to influence the performance of Administrative Agencies by means

other than the broad investigative approach. Effective representation of a client's interest may often be achieved by participation in the formal rule making processes of the Agencies or by informal discussions with agency officials. Litigation of course provides another means of checking administrative performance, but it is commonly viewed only as a "last resort" because of the expenses involved.

5. Political Lobbying

The democratic ideal is that all competing interests will be equally represented in the rule making processes and that, consequently, balanced rules will be formulated. The reality, however, seldom conforms with the ideal, and this is particularly true in the case of the Legislature. The Legislature, although commonly regarded as the ultimate Public Interest responder in any democratic society, is by its nature particularly susceptible to pressure-group domination.

The basic goal of Public Interest law representation is to achieve social change by promoting a more complete and equalised presentation of competing interests in the decision making processes. Some Public Interest lawyers believe that this goal can best be achieved in the legislative rather than in the judicial, administrative or public fori. Consequently, they direct their energies in seeking to introduce new laws through political lobbying.

The use of political lobbying as a technique of Public Interest Law representation has, however, been curtailed to some extent by the Federal Taxation laws. The Internal Revenue Code contains a provision which subjects Foundations to 10% tax on any expenditure made for any attempt to influence legislation by appealing to the public or by communicating with any member or employee of a legislative body.[13] In consequence, Foundations have been willing to support only research and educational ventures, with the result that Public Interest Law Firms, who rely on foundation support, are precluded from political lobbying.

Political lobbying, more so than any other technique of Public Interest law representation, requires the support of a strong constituency base. James Lorenz, Jnr., of the California Rural Legal Assistance, has graphically recorded the result of an effort to promote legislation where such support was lacking; "We introduced model Landlord-Tenant Legislation before the California legislature and submitted 40 pages of well reasoned documented testimony on behalf of our tenant-clients. The California Real Estate Association came into the hearing for three minutes, said that it was opposed to the legislation, and the Assembly Housing Committee then voted against us by a large margin — in part, because the Real Estate Association gives money to their Assembly-men campaigns and remembers how they vote and our clients don't."[14]

Public Interest lawyers have actively promoted the "private attorney-general theory" under which members of the general public are empowered to challenge administrative performance in cases where they have neither a personal nor an economic stake. This theory has been increasingly recognised in statute law where, as the Supreme Court of the United States has recently noted "the trend is towards enlargement of the class of people who may protest against administrative action".[15] Thus, for example, several States including Michigan, Connecticut, Indiana and Minnesota have given private citizens the right to enforce compliance with laws protecting the Environment.

Form taken by the Public Interest Law Response

The Public Interest Law Movement evolved during the social and political turmoils of the 1960's. Many lawyers, during that decade, perceived a need to fashion for themselves a new role whereby they could utilise their skills, not merely in the adjudication of disputes between individuals, but also in the resolution of conflicting social demands. The role adopted by the new public interest lawyers, and the methods of representation which have become associated with the new professional role, have already been noted. It is now proposed to discuss the forms taken by the Public Interest Law response, both within and outside the organised Bar.

Responses within the organised Bar

Private law firms have adopted a variety of forms for addressing Public Interest Work. A number of small firms of young lawyers have been formed to devote all or most of their time to public interest practice. Such firms exist in Washington, Portland (Oregon), Boston, New Haven, and Los Angeles. These firms finance their efforts either by taking reduced fees from previously unrepresented clients or by using regular fees from private clients to finance public interest cases.

In addition, several of the larger, well-established firms have consciously restructured themselves in order to extend access to the legal processes to individuals or groups lacking the means to bring their injuries or interests into the legal system. The response of these firms is due partly to the growth of a new sense of professional responsibility and partly to the impact of the Public Interest Law Movement on the market for law graduates. It has been recognised that Public Interest Law Work carries an intangible increment of "psychic income", and the Public Interest Law Symbols have come to be regarded as one form of currency that can be used by the law firms in competing for law graduates. Various forms of restructuring have been adopted by these larger firms. The most popular form consists of the designation of a Special Public Interest Partner or Committee. It is the responsibility of such partner or committee to screen cases for a public interest element, to advise on any conflict of interest that might arise between public interest work and firm or private client interests, and to decide on the fee, if any, to be assessed on public interest clients. Also, the Partner or Committee may be authorised to institute and develop a Specific Public Interest Law Project.

A second form of restructuring involves the establishment within a firm of a Public Interest Department or section. The Public Interest Department or section has a greater element of permanency than does the public interest work, and helps to promote an external image for the firm. The head of the Department or section is responsible for seeking out public interest business, and for incorporating it into the everyday practice of law.

Finally, the Public Interest Law response of some of the large firms takes the form of participation in "ghetto law offices". The firm may staff and operate the ghetto office under the firm name or, alternatively, may support an existing ghetto office by making staff and facilities available to it.

Apart from the Public Interest Activities of Private Law Firms, a number of the Bar Associations have broadened their activities to include Public Interest

Work. The American Bar Association, for example, strongly supported the creation in 1964 of a Legal Services Programme to provide continuing legal representation for the poor. In addition, it has initiated a number of Public Interest Law Projects. Thus projects have been established to assist law firms to increase the availability of legal services by legal insurance schemes and to provide housing for lower income groups. State and local Bar Associations have initiated similar projects.[16]

The public interest responses within the Organised Bar are significant. They indicate an expanding definition of professional responsibility and a new awareness of how legal expertise may be utilised in the resolution of major social issues or of Community problems. Nevertheless, the overall Public Interest response within the Organised Bar has been minimal. Its effect has been primarily symbolic.

Response outside the organised bar

The Public Interest Law firm

The mainstream in the development of the Public Interest Law Movement has taken place outside of the Organised Bar through the agency of a totally original institution, namely, the Public Interest Law firm. The Public Interest Law firm, which has been described as "a new phenomenon rapidly proliferating on the American scene",[17] is not a set model. It encompasses a wide range of Organisations, with activities as diverse as delivery of legal services to the poor, law reform through litigation and political lobbying, monitoring of Government agencies and education through publication. Its defining feature is that it is formed and operates with the principal objective of serving the public interest by the representation of groups which are under-represented in the decision-making processes.

The sources of funding for these public interest law firms are as varied as are their activities and methods of representation. A small number seek to survive in the ill-defined market for public interest law. These self-supporting firms attempt to generate their own revenue by accepting reduced fees for their services. Public interest law firms who specialise in poverty law tend to rely for funding on Government subsidies. These subsidies are made available for criminal matters under such statutes as The Federal Defender Act of 1965[18] and, for civil matters, principally through the Office of Economic Opportunity Legal Services Programme which was also introduced in 1965.[19]

Direct private subsidies have provided most of the funds for those public interest law firms engaged in major law reform efforts. Private Foundations, which have been the largest benefactors, have in recent years contributed an average of ten million dollars, approximately, per annum to Public Interest Law. The Ford Foundation has, for example, made grants to The Centre for Law and Social Policy, The Centre for Law in the Public Interest, The Citizens Communications Centre, The Institute for Public Interest Representation of Georgetown University Law Centre, and to the Women's Law Fund.[20] Other public interest law efforts, such as the American Civil Liberties Union, the Sierra Club, and the Natural Resources Defence Council, receive a large percentage of their revenue by appealing to the public for support and through membership subscriptions.

Finally, reference may be made to the support given to the public interest law firms by American law schools. A number of Universities, including the University of California (Los Angeles), the University of Michigan, Pensylvania, the University of Southern California, Stanford and Yale, have initiated clinical education programmes in conjunction with the Public Interest Law Firms. Arrangements are made under these programmes whereby third-year students may obtain credits towards their degrees by participating in the projects of specified Public Interest Law Firms. A similar programme is in operation in the University of Georgetown which has established its own Public Interest Law Centre with the assistance of a Ford Foundation Grant.

Conclusion

The Public Interest Law Movement has brought the decision-making processes of American society into a new relief, and it has inspired renewed interest in the fundamental question of the extent to which these processes actually operate in the public interest. Public Interest lawyers have suggested new methods whereby small minority interests and diffuse majority interests may actively participate in making the decisions that ultimately affect them. In doing so, they have succeeded in establishing a counter-force to those of Big Business, Big Government and Big Labour.

Public Interest Law has evoked a new introspection regarding the scope of professional responsibility. It has led to a definition of professional role whereby lawyers may utilize their skills in resolving, not only disputes between individuals, but also competing social demands. Many lawyers, both within and outside the organized Bar, have fashioned public interest responses. Nevertheless, the overall level of response has been low in relation to the need for it.

The future of Public Interest Law, as it has developed, is dependent on continuing financial support. Public Interest lawyers, in providing legal services to previously under-represented groups, have been operating mainly outside the price-demand system for legal services. The provision of these services has, effectively, been subsidized by the lawyers themselves, the Government, the foundations and by the general public. The retention of these subsidies require that Public Interest lawyers continue to substantiate the case for Public Interest Law. Moreover, since it is sought to institutionalize the advancements that are made, the task of justifying Public Interest Law may prove progressively more difficult.

FOOTNOTES

10. Ford Foundation, The Public Interest Law Firm: New Voices for New Constituencies at 35 (1973).
11. Transcript of Hearings before the Subcommittee on Employment, Manpower and Poverty of the Senate Committee on Labor and Public Welfare, "Internal Revenue Tax Exemptions," Nov. 16, 1970, at 104, 105.
12. Id. at 107.
13. Internal Revenue Code of 1954, S. 4945 (a) (1).
14. Interview noted in "The New Public Interest Lawyers," 79 Yale L.J. 1070, at 1078 (1970); research for the article consisted primarily of a series of interviews conducted by members of the Yale Law Journal with public interest lawyers throughout the United States.
15. Association of Data Processing Services Organization, Inc. v. Camp, 397 U.S. 150 (1970).
16. See Marks, Leswing and Fortinsky, The Lawyer, The Public and Professional Responsibility, at 191-197 (1972) for a good review of these projects.
17. Internal Revenue Service Bull. No. 1069 (Oct. 9, 1970).
18. 18 U.S.C.A. s. 3006 A (1969).
19. See 1 C.C.H. Poverty Law Reports. 6020 for an account of the background to the Legal Services Programme.
20. Other foundations which contributed to public interest law include: Carnegie, Clark, Field, New World, Rockefeller Brothers, Rockefeller Family and Stern Family.

SOLICICITORS AND INTEREST FROM CLIENTS' ACCOUNTS

An English viewpoint

by Michael Zander, L.L.M.
(London School of Economics)

A normal feature of a solicitor's practice is to hold money for clients pending the completion of transactions in hand. Most of such monies are held for short periods of a few days or a week or two in connection with conveyancing, trust and probate matters. It is customary to place a substantial proportion on deposit.

Most firms of solicitors make a significant profit from the interest earned on such client accounts. The justification always given for this is that it would be impracticable for the banks to calculate the interest due to any particular client on short deposits in a general client deposit account.

This is not at all convincing since it would be easy for the solicitor himself to calculate the number of days for which the money had been held on deposit and to look up in a ready reckoner the amount of interest due to the client at the going bank lending rate.

There is, therefore, an obvious case for saying that the money ought in fact to be returned to the client. But the question addressed here is whether there is not an even stronger case for saying that it ought to be paid instead into a new fund to be used for a variety of public purposes in the legal services field. Such legislation has recently been passed in Canada and Australia.

At present solicitors are under a legal duty to pay to their clients: interest earned as trustees, or where the client stipulates for such payments or where "having regard to all the circumstances", including the amount and length of lime for which the money is likely to be held, interest ought in fairness to the client to be earned for him. (Solicitors Accounts (Deposit Interest) Rules 1965 made under the Solicitors Act 1965).

Rule 3 states that "it shall be deemed that interest ought in fairness to a client to be earned for him" where over £500 is received for, or on account of, the client which is likely to be held for two or more months. Apart from this, the Rules give no guidance as to what is thought to be fair.

A case heard in the Chancery Division in 1975 showed that the profession was in fact making very substantial profits from these moneys. A six partner London firm sought to argue that they were entitled to earned income relief on interest on the client account. They lost. (*Northend (Inspector of Taxes) v. White and Leonard and Corbin Greener* (1975) 2 All ER 481.)

In one of the relevant tax years, the firm had "earned" £3,495 on client account but had accounted to the clients for only £1,011. It therefore retained about £2,500. If this were typical, the country's 7,000 or so firms would be retaining some £17.5m. (As will be seen below, on current figures this figure could be broadly typical.) Certainly an ordinary small firm would commonly have a hundred thousand pounds or more in the client account, a substantial portion of which would be on deposit. In large City firms the amounts may run ito millions of pounds.

Legislation to use such interest for public purposes has, in the past few years been passed, inter alia, in Alberta,[1] British Columbia,[2] Manitoba,[3] New South Wales,[4] and Ontario [5]. The basic scheme in each case is to require solicitors to pay the whole or part of the interest into a specially created fund administered by trustees representing, typically, the profession, lawyer-appointees of the Attorney-General and a lay element. The objects of the fund are widely drawn and include law reform, legal aid, legal education, law libraries, legal research, etc. The sums generated are very large. In Ontario, for instance, with 10,000 or so lawyers, the income in the fund in the year ending March 1976 was some $4m. with a projected figure of over $5m. next year. Should we have such legislation here?

The arguments in favour appear to be the following:

1. **Interest on client account does not "belong" to solicitors.**

This income is a by-product of the fact that solicitors in the course of their ordinary business necessarily hold client moneys. In the debates on the Solicitors' Bill in 1965, their retention was justified not on the basis of any moral or legal entitlement to the money, but simply on the ground that it was not practicable to account to individual clients for amounts held on short deposit. It is, therefore, right to ask which has the better claim to the money — the solicitor, the client or public purposes?

The solicitor's claim would, on any view, appear to be the weakest. The client's claim might be said to look the strongest. But when the relative advantages are compared, the idea of a public fund would seem to have an even stronger claim. The advantage to the client in the ordinary transaction is likely to be so small as virtually to be *de minimis*. (The interest on £10,000 held on deposit for 7 days at the present rate paid by banks (6⅜ per cent) is £12.46, on which tax must be paid at the rate for unearned income.)

By contrast, the value of the fund when aggregated for all solicitors' firms for the whole country over a year certainly runs into millions of pounds. Moreover, the client would retain his absolute right to ask for the interest, if he wished.

2. **It would hit hardest those firms that do least for the kind of public purposes that would benefit.**

The City firm, for instance, with vast sums on deposit does little to provide legal services to the disadvantaged sectors of the community or to support public causes. The members of these firms make the best living of any in the profession. There would seem to be some elementary justice in a proposal which required the largest "sacrifice" from them.

3. **The money would be extremely welcome** at any time, but especially at a period when needed improvements in the provision of legal services, including many desired by the profession, are impossible (and likely to remain so) for lack of funds.

Several arguments to the contrary must, however, be considered:—

1. **It would not be fair to single out solicitors.**

Others, such as estate agents, hold client moneys on deposit. But two wrongs do not make a right. Moreover, solicitors set considerable store on placing their own rectitude beyond question; as the creators and guardians of the system of equity, lawyers should be the first to do equity.

2. **The money is being used to subsidise uneconomic work,** especially in the legal aid field. For this argument to be convincing, it would have to be shown that a substantial number of firms, now doing a significant amount of legal aid work would become uneconomic.

First, as has been said above, the firms that benefit most from interest on client account are those that do least uneconomic work.

Secondly, legal aid work, at least in the large cities, is mainly done by firms that specialise in it for whom no subsidy is necessary since it is far from unremunerative. The recent study of legal services in Birmingham, for instance, showed that over half the legal aid work in the area was done by 10 per cent of the firms, and that for these firms legal aid represented over half their work. About 20 per cent of all firms did some legal aid work and 70 per cent did hardly any. (*Legal Services in Birmingham*, Richard White *et al*, 1975, p. 35.) The study also showed that nearly all firms, including those that specialised in legal aid work, did a great amount of conveyancing (*Ibid.* p. 36.)

3. **Solicitors, when they act as stakeholders, are entitled to retain interest earned in this capacity.**

This is true at present (see *Potters v. Loppert* (1973) 1 All ER 658). Legislation implementing the proposal made here would either have to change this rule, so far as solicitors are concerned, or make an exception for this category of case. There would seem no great case for excluding stakeholders. Under the present legal position, the stakeholder retains the interest, as has been said, "as his reward for holding the stake" (*Smith v. Hamilton* (1951) Ch at 184.) But as Lord Justice Harman said in that case, "the position seems to me an odd one". The office of stakeholder is hardly a burdensome one and may require no reward. Alternatively, there is, presumably, nothing to prevent a stakeholder from charging normally for any work done in that capacity.

4. **Some of the money held by solicitors for clients is on account of bills that have not yet been delivered.**

This seems a fair point and it would surely be reasonable to exclude any such moneys from the general rule. It is the solicitor who should have the interest on such moneys.

5. **Solicitors only hold some of clients' money on deposit account.**

If legislation took the deposit interest from solicitors, it might be said that there would be no incentive to place it on deposit. It would, however, be provided in the legislation that solicitors were required to place the whole or at least a proportion of their client funds on deposit. The Commonwealth legislation does this, and it seems to cause no problem. Arrangements could, presumably, be made with the banks to permit withdrawals to be made on short notice from moneys held on deposit — no doubt at a lower overall rate of interest.

6. **The volume of interest on client accounts will vary from year to year with the economic position of the profession and the country as a whole.**

Insofar as the fund committed itself to expenditure in the fat years, it might find itself embarrassed in lean years. Obviously, if moneys are expended in years 1, 2 and 3 for, say, law centres, it would be extremely unfortunate if, in years 4, 5 or 6, some had to close because of a reduction in the level of income in the fund. There are various possible solutions. One is to get the Government to guarantee a minimum income, based on projections from previous years' experience. Another is to require the trustees of the fund to reserve a considerable amount of income for the first few years to guard against such contingencies. Certainly there are solutions that could work.

7. **Interest on client account is now taxed at the highest rate earned by the partners as unearned income and a large proportion of it, therefore, goes to the Revenue already.**

(This argument is, of course, to some extent inconsistent with the contention that the profession relies on this source of income.) To the extent that it is true, it only means that there may be Treasury objections to the proposal made here. But maybe these could be overcome by pointing out the great benefits that could accrue from this use of interest on client account as against the present position by which £X go through taxation into the general pool of public moneys, whilst an additional £Y go into the pockets of solicitors. Instead of £X going to the Exchequer and £Y going to the profession, £X plus £Y would go to the purposes earmarked by the legislation.

8. **The aggregate of moneys earned on client account would be a small proportion of legal aid funds generally.**

This is, of course, true, but if sums of a few million pounds were generated from this source and were used as an additional source of income, it could be extraordinarily valuable. The fund could be used for a variety of purposes: law centres; to finance the Law Society's practical skills courses which had to be abandoned for lack of the profession's financial support; institutional advertising; subventions to universities interested in pioneering experiments in legal education; to undertake much needed research and development in the field of legal services; grants to organisations such as the Legal Action Group or the Child Poverty Action Group; to support representation in tribunals by non-lawyers such as members of the Citizens' Advice Bureaux. Once the money started to flow, the trustees would find no lack of proper causes to support.

It would be vital, of course, that the Treasury did not use the existence of the fund as a pretext for reducing existing funding. If this occurred, one would be back to square one. The Fund would, therefore, be used only for special and additional purposes. This seems to have been achieved in the Commonwealth jurisdictions.

9. **Solicitors cannot afford to lose this income.**

The question whether solicitors are, or are not, currently enjoying a period of relative affluence cannot be regarded as critical to the principle at issue — this must stand or fall on its merits, irrespective of the precise level of profits at any given time. But in political terms it is obviously one of the factors that would be taken into account. A definitive answer to the level of the profession's income will now have to await the inquiries of the Royal Commission, but in the meanwhile it is legitimate to suggest that it is far from clear that the profession will be shown to have slipped behind inflation.

In 1968 and 1969 the Prices and Incomes Board thought the profession was making "excess profits" on conveyancing, which remains by far the largest single source of its income. It recommended some increases and some decreases in scale fees. The increases were implemented; the decreases were not. Subsequently, scale fees were abolished altogether, ostensibly with a view to reducing fees to the consumer, but with largely the opposite effect. (See the special *Which* study in June 1975.)

Of course, inflation has raised the cost of overheads and cash flow and working capital problems have increased. Also, conveyancing slowed down in the period 1972-74. (Building Society mortgages went from 681,000 in 1972 to 433,000 in 1974.) But recently

the trend has moved the other way. (The number of building society mortgages in 1975 was 651,000.) Also, house prices (and therefore fees) have, of course, been rising with inflation — according to the statistics maintained by the building societies the average house price went from £4,447 in 1968 to £12,144 in 1975.)

The Prices and Incomes Board showed that the profession's income rose from £179m. in 1966[6] to £217m. in 1968[7]. If the 1966 is taken as the index at 100, the 1968 figure was 121. In the same period, average national wages and earnings only advanced from 100 to 111[8]. In other words, solicitors' earnings increased at a substantially faster rate than those of the community as a whole. This may or may not have continued during the intervening period, but it seems probable that at the very least the profession has more than held its ground.

Conclusion

In the writer's view, the balance of advantage is heavily in favour of legislation along the lines developed in the Commonwealth countries. It would be a matter for discussion what precise method should be adopted.

The purposes of the fund should be widely drawn so as to permit the maximum of creative and imaginative application. The trustees should represent a variety of interests — including, of course, a strong lay element.

The total amount generated by such a proposal must, at this stage, be a matter of guess-work. A 1975 Interfirm Comparison involving 30 firms of varying sizes from different parts of the country showed that non-fee income consisting largely of interest on client account represented a median of 5.5 per cent of gross income. It is impossible to translate this into a reliable estimate of what would be the figure for the profession as a whole since there are no existing figures for the profession's current gross income, nor is it known what proportion of interest on client account is returned to clients. It is, however, possible to make some educated estimates.

As has been seen, the PIB estimated the profession's gross revenue in 1966 to be £179m. and in 1968 to be £217m. Depending on which method of calculation is adopted, this would, today, be something between £430m. and £530m.[9], with the higher figure probably being closer to the reality. Moreover, the profession has greatly expanded over the period — from about 23,000 practising certificates in 1966/7 to nearly 30,000 in 1974/5. This would have had a further tendency to increase gross revenue.

An estimate of £500m. is likely to be conservative. If the Interfirm Comparison is representative in its figure of 5% of income being derived from client accounts, this would give a total of some £25m.

The only indication of the amount retained by solicitors is in last year's decided case. In that case the firm, one of whose partners was a former President of the Law Society, himself a member of the Professional Purposes Committee for 13 years, retained 70 per cent of the moneys in the account. If this were typical, the profession would be retaining some £17m. a year — an average of about £2,500 for each of the 7,000 or so firms in England and Wales.

Even if the actual figures were substantially less, the stakes are obviously high enough to be worth pursuing. A great many invaluable improvements in legal services, legal education, legal research and the like could be achieved with an extra few million pounds per year.

1. *The Legal Profession Amendment Act* 1972 (*No.* 2, *Ch.* 14, *s.* 109.)
2. *The British Columbia Legal Professions (Amendment) Act* 1975, *Ch.* 15, *s.* 71.
3. *The Law Society of Manitoba Act, as amended in* 1972, *s.* 30, 2.
4. *The New South Wales Legal Practitioners Act* 1898-1970, *as amended in* 1967 *and* 1970, *s.* 42.
5. *The Law Society Act* 1970 *as amended in* 1973, *ss.* 23, 26, 51.
6. *National Board for Prices and Incomes*, Remuneration of Solicitors, Cmnd. 3529, 1968. *Table* 2, *p.* 34 *showed there to be* 6,270 *practices. Table* 5, *p.* 37 *showed the average gross revenue per firm was* £26,645. *The multiple of these two figures is* £179m.
7. *National Board for Prices and Incomes*, Standing Reference on the Remuneration of Solicitors, Cmnd. 4217, 1969. *Table* 2, *p.* 29 *showed a total of* 6,580 *practices and Table* 4, *p.* 31 *showed the average gross revenue per firm to be* £33,018. *The multiple of these figures is* £217m.
8. *General Statistical Office*, Economic Trends, *February* 1976, *p.* 40.
9. *If solicitors' revenues increased from* 1968 *to* 1975 *at the same rate as in* 1966-68, *the* 1975 *figure would be* £430m. *This is, however, improbable, since the income of solicitors, like that of other groups, will undoubtedly have been advancing at an accelerating rate because of galloping inflation. Average national wages and earnings grew from* 100 *in* 1966 *to* 111 *in* 1968 *to* 272 *in* 1975. (Economic Trends, op. cit.). *If solicitors' incomes grew only at this rate the* 1975 *figure would be* £488m. *But in reality, the rate of increase would probably have been higher. As has already been seen, solicitors' incomes grew from a base of* 100 *in* 1966 *to* 121 *in* 1968, *whilst national average wages and earnings were growing from* 100 *to* 111. *If solicitors' incomes grew at the same rate relative to all wages and earnings as between* 1966 *and* 1968, *the* 1975 *figure would be* £530m.

(Reprinted by kind permission of the author and of the Editor of the *New Law Journal* — 6 May 1976).

F.L.A.C.

Free Legal Advice Centres (FLAC Dublin) would be pleased to hear from solicitors interested in attending any of the FLAC centres. Those solicitors interested would become members of a panel attached to a centre and would be asked to attend at spacious intervals. Please contact FLAC, c/o Miss Muriel Lee, 6 Palmerstown Gdns., Rathmines, Dublin 6. Phone 978428.

OBITUARY

District Justice John Carr, died in April, 1976. Mr. Carr was admitted in Easter Term, 1939, and practised mainly as Solicitor to Cork County Council. He was appointed a District Justice in 1961, first in Dublin City, and in 1970, in the Kildare and Wicklow areas, on the retirement of District Justice Michael Keane.

Mr. John B. Lynch, died on 5th May, 1976. Mr. Lynch was admitted in Michaelmas Term, 1940, and practised in Ennis, Co. Clare.

Mr. James O'Hanrahan, died in January, 1976. Mr. O'Hanrahan was admitted in Michaelmas Term, 1930, and practised in Kilkenny.

'EXCHANGE PACT' FOR BARRISTERS

Leaders of the English and Paris Bars signed an historic agreement in Paris on 19th December, 1975, that will allow a Paris advocate to appear in an English Court and English barristers to represent clients in Paris Court cases.

It is the first time the Bar has come to an arrangement for reciprocal rights of Court audience with Continental lawyers, who are trained in a fundamentally different system of law.

A French lawyer will now be able to appear in any English Court, if he is accompanied by and under the direction and control of an English barrister. The same rules will apply to an English barrister appearing in a Paris court.

The agreement, signed in the Palais de Justice by Sir Peter Rawlinson, Q.C., Chairman of the Bar, and Maitre Bernard Lasserre, Batonnier of the Paris Bar, is the first of several that the Bar is endeavouring to negotiate with Continental lawyers.

Extension hopes

While the agreement was concluded with the Paris Bar — by far the biggest of several autonomous barrister organisations in France — it is hoped that the arrangements will be extended soon to cover Courts throughout France.

As it is the Judges and not the Bar Council who have the final say as to who can appear as an advocate in English courts, leaders of the English Judiciary were consulted before the agreement was signed.

A spokesman for the Bar Council said they had no estimates of the numbers of French and English lawyers who would take advantage of the new arrangements. But it was thought that, at least initially, it would most help lawyers practicising in the commercial field.

PARIS BAR — CONVENTION SIGNED BY THE ENGLISH LAW SOCIETY

On 12 April 1976 an historic ceremony took place in the Grande Salle of the Avocates' Library at the Palais de Justice in Paris. A bilateral Convention between the Law Society and the Paris Bar was signed in the presence of a large number of avocats and of English solicitors practising in Paris. The Bâtonnier of the Ordre des Avocats at the Paris Court, Me Francis Mollet Viéville, signed on behalf of the Paris Bar, the President, Mr. E. N. Liggins, signed for The Law Society and the President of the Commission Consultative des Barreaux de la Commmunauté Européenne, Me Albert Brunois (a former Bâtonnier of the Paris Bar), signed on behalf of the Commission Consultative, under whose auspices the Convention had been developed. In addition to the President of The Society there were also present Sir Charles Whishaw, Chairman of the Council's International Relations Committee, the Secretary-General, Mr. John Bowron, and one of the Deputy Secretaries-General, Mr. Leach, in his capacity as Secretary, International Relations. Before the actual signing ceremony, the Bâtonnier welcomed the English guests.

Me Brunois then explained the scope of the Convention in the context of the need for lawyers to be available for consultation by the public. He stressed the work that the Commission Consultative were doing in considering the various professional rules applicable to lawyers in the nine Member States of the EEC, in the context of the Treaty of Rome, a task which involved many difficult problems and necessitated a study of all aspects of the legal profession — respect had to be paid to existing national rules enshrining different traditions, and language differences added to the problem. He stressed that the Convention was a great achievement and he paid tribute to Sir Charles Whishaw and Me Pettiti, a member of the Paris Bar, who had worked together for so long to produce the Convention.

The President expressed his pleasure at being present and, on behalf of the Council and his colleagues, his greetings and good wishes to the Bâtonnier and the members of his Council. He said he hoped that the Convention would mark a new and important epoch in the relations between the two organisations and between avocats and solicitors. He pointed out that the draft EEC Directive concerned itself only with occasional crossing of frontiers, whereas the Convention takes the first step towards 'establishment'. It was concerned, with a member of one of the two professions who was 'installé' (installed) in the country of another and it looked forward to closer working relationships. The Convention was thus a pioneering agreement, wholly in the spirit of the Treaty of Rome, and went beyond that between the Paris and Milan Bars and. indeed, beyond that of the Paris and English Bars. The President paid tribute to Me Pettiti and Me Brunois and to the solicitors with offices in Paris for their help. He pointed out that some of these solicitors were registered as conseils juridiques and were outside of the scope of the Convention; so far as The Society was concerned, there was no distinction between a solicitor so registered and one who was not, and he hoped that one day there would be none in the eyes of the French Bar also.

Me Pettiti then explained some of the salient features of the Convention and emphasised the reciprocal control over the conduct and discipline of avocats and solicitors exercised by their respective professional organisations. He pointed out that our Western society was a fragile one and depended on the continued existence of the rule of law.

To mark the signature of the Convention, a reception for The Law Society representatives and the members of the Paris Bar and English solicitors in Paris was given by the President of the French Senate, Me Alain Poher, at the Palais du Luxembourg. In these magnificent surroundings, overlooking the Jardins du Luxembourg, the President of the Senate expressed his satisfaction and pleasure at the signing of the Convention and welcomed the guests.

Later in the evening, Me Mollet Viéville gave a small dinner party for The Law Society guests at the Maison de la Chasse et de la Nature. Also present were a number of members of the Council of the Paris Bar, and Mr. Derek Wise, one of the English solicitors in Paris.

ADJUDICATION OFFICE PRACTICE

ASSESSMENT OF DUTY ON VOLUNTARY TRANSFERS

The attention of Practitioners is directed to the current practice of the Adjudication Office in dealing with the Assessment of Duty on Transfers between related persons (whether by way of voluntary transfer or for consideration). The Adjudication Office can deal with these cases in three ways:—

1. To accept the Valuation furnished by the applicant.
2. To remit the case to the Commissioner of Valuation for his views.
3. To indicate that in the Adjudication Office's view the value of the property should be higher than that set out in the application furnished. The Adjudication Office are entitled to use the information which they get on P.D. Forms as to the values of property as a basis for giving such indications.

It should however be noted that where the third course is adopted the notice received from the Revenue will normally be in the following words:—

> "It is considered that, having regard to the information at the Commissioner's disposal, the value of the property concerned should be fixed at £ for Stamp duty purposes".

The Commissioners mentioned in the notice are the Revenue Commissioners and not the Commissioner of Valuation. This notice does not constitute an assessment by the Revenue Commissioners and it is open to the applicant to request the Adjudication Office to refer the case to the Commissioner of Valuation. This would give the applicant's valuer an opportunity of discussing the valuation with a professional valuer in the Commissioner's Office.

The Society has noted that there have been considerable delays in the use of the third method by the Adjudication Office and have asked the Revenue Commissioner to ensure that if the Adjudication Office are considering adopting the third method in any case that they should issue their notice speedily.

PRIZES

The Patrick O'Connor Memorial Prize for proficiency in Equity for 1975 was awarded to Thomas V. O'Connor (Junior), B.C.L., Swinford, Co. Mayo.

The Guinness & Mahon Prize for proficiency in Tax Law and Commercial Law for 1975 was awarded to Hugh M. Fitzpatrick, B.C.L., "Hazlehurst", Ailesbury Road, Dublin 4.

DISTRICT COURT CHANGES

Justice Francis Johnston has been appointed permanently to District Court Area No. 17 (Bray, Arklow, Athy, Blessington, Kildare and Wicklow) to succeed the late District Justice John Carr.

Justice Dermot S. Dunleavy has been transferred to District Court Area No. 24 (Wexford, Enniscorthy and Gorey) in place of Justice Lanigan O'Keeffe who has retired.

Justice Thomas O'Reilly has been appointed permanently to District Court Area No. 6 (Dundalk, Drogheda, Navan, Carrickmacross, Castleblayney) in place of Justice Dunleavy.

Mr. Joseph Plunkett, solicitor, Dublin, and **Mr. Peter Alfred McMorrow,** B.A., LL.B., solicitor, Manorhamilton, Co. Leitrim, have been appointed Temporary District Justices.

APPOINTMENTS

Miss Mary Finlay, B.C.L., solicitor, has been appointed Chairman of the National Consumer Advisory Council.

Mr. Mervyn Taylor, solicitor, has been appointed a Member of the National Consumer Advisory Council.

Mr. Brendan Kiernan, Barrister-at-Law, has been appointed Registrar of Friendly Societies in succession to Mr. Patrick Joyce, who has retired.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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 May, 1976.

N. M. GRIFFITH
Registrar of Titles
Central Office, Land Registry, Chancery Street, Dublin 7.

Schedule

(1) Registered Owner: Thomas Knox. Folio No.: 1954. Lands: Kilmogue. Area: 38a. 1r. 1p. County: Kilkenny.

(2) Registered Owner: Mary Julia O'Brien. Folio No.: 348L. Lands: The leasehold estate in the dwellinghouse and premises known as 37, Bantry Road situated on the west side of the said road in Drumcondra Parishes of Clonturk and Glasnevin and City of Dublin. City of Dublin.

3. Registered Owner: Thomas Gallagher. Folio No.: 23161. Lands: (1) Laghtadawannagh, (2) Carrowkeribly. Area: (1) 26a. 2r. 20p., (2) 1a. 3r. 12p. County: Mayo.

(4) Registered Owner: Mary Larkin. Folio No.: 26470. Lands: Carrownafinnoge. Area: 121a. 1r. 14p. County: Galway.

(5) Registered Owner: Christopher Brennan. Folio No.: 8401. Lands: (1) Tullahought (parts), (2) Knickeen (parts). Area: (1) 38a. 3r. 33p., (2) 12a. 1r. 5p. County: Kilkenny.

6. Registered Owners: Christopher Brennan and Josephine Brennan. Folio No.: 13527. Lands: Tullahought. Area: 11a. 1r. 4p. County: Kilkenny.

(7) Registered Owner: William Dwyer. Folio No.: 29452. Lands: Ardgroom Outward. Area: 10a. 1r. 18p. County: Cork.

(8) Registered Owner: Martin McEvoy. Folio No.: 8801. Lands: Tooreen. Area: 0a. 0r. 32p. County: Offaly.

(9) Registered Owner: Constance Rogers. Folio No.: 11079. Lands: Ballymote (part) (being a plot of ground with the house thereon situate on the west side of O'Connell Street in the town of Ballymote). Area: 0a. 2r. 7p. County: Sligo.

(10) Registered Owner: Hamilton George Kitchener Porter. Folio No.: 18739. Lands: (1) Ballynarry, (2) Linsfort. Area: (1) 12a. 1r. 21p., (2) 3a. 0r. 11p. County: Donegal.

(11) Registered Owners: The Very Reverend Pierce Canon Coffey, The Reverend Thomas Condon, The Reverend Daniel Walsh. Folio No.: 1432. Lands: Ballykinsella. Area: 0a. 2r. 0p. County: Waterford. The Land Certificate relating to the lands of Ballykinsella folio 1432 now forming the property No. 2 on folio 1290F County Waterford.

(12) Registered Owner: Cecil Rowland Tilson. Folio No.: 7411. Lands: Clonroosk Little. Area: 0a. 0r. 36p. County: Queen's.

(13) Registered Owner: William Gleeson. Folio No.: 1159. Lands: Crumlin Little. Area: 42a. 0r. 39p. County: Tipperary.

(14) Registered Owner: David O'Donnell. Folio No.: 50F. Lands: Grenan. Area: 0a. 2r. 0p. County: Waterford.

(15) Registered Owner: Margaret Mary Glennon. Folio No.: 1342. Lands: Ballyfleming (part). Area: 8a. 3r. 5p. County: Cork.

(16) Registered Owner: Mary Collins. Folio No.: 433 Rev. Lands: Dromtrasna South. Area: 97a. 2r. 16p. County: Limerick.

(17) Registered Owner: Mary Anne Bonar. Folio No.: 1641. Lands: Drumderrydonan. Area: 637a. 0r. 19p. County: Donegal.

(18) Registered Owner: Desmond Purcell. Folio No.: 805F. Lands: Bishopcourt. Area: 1a. 0r. 8p. County: Waterford.

NOTICES

Honours Graduate, B.A. (Mod.); LL.B. (T.C.D.) seeks apprenticeship with Solicitor in Dublin area. Phone 775269.

Final B.C.L. Student (female), wishing to be articled, seeks a master in Cork City or County (or Dublin City). Holds full driving licence. Box No. 125.

M.A. Graduate, son of retired solicitor, seeks apprenticeship in Dublin. Phone 306110.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street.Dublin 1. Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

MAY 1976 VOL. 70 NO. 4

WEALTH TAX

by Robert W. R. Johnston, Solicitor

At the launching of the book on Wealth Tax by Robert W. R. Johnston, in Solicitors' Buildings, Four Courts, Dublin on 17 June 1976 were, from left, Mr. J. F. Richardson, Chairman of the Revenue Commissioners, Mr. Robert W. R. Johnston, author, Mr P. C. Moore, President of the Incorporated Law Society of Ireland, Mr. Richie Ryan, T.D., Minister for Finance, Mr. Bruce St. J. Blake, Senior Vice President of the Society and Mr. Walter Beatty, Chairman of the Society's Public Relations Committee.

Mr. Richardson, Chairman of the Revenue Commissioners, introducing the book, said that much of the criticism of the Wealth Tax was predictable and would have occurred irrespective of the form of the tax or the reliefs that accompanied it. The fact that it was introduced in the context of the abolition of the existing death duties was largely ignored. The greater part of the criticism, however, was due to mis-understandings of the details of the tax rather than to its philosophy and principles. He welcomed Mr. Johnston's boik as a means of removing these mis-conceptions.

Mr. Richardson stressed the dearth of text books on tax law in this country and applauded the joint enterprise of the author, Mr. Johnston, and the publishers, the Incorporated Law Society.

(Book Review appears on p. 86.)

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get.

Guinness + Mahon were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Peter Tuite, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking lies in the flexibility and variety which merchant bankers can bring to the business of banking, and each transaction is treated on its individual merits.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS + MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205
or Peter Tuite at Cork 54277
67 South Mall, Cork. Telex 8469

ORDINARY GENERAL MEETING

The President, Mr. P. C. Moore, took the chair on the occasion of the half-yearly meeting, which was held in the Mount Brandon Hotel, Tralee, Co. Kerry, on Saturday, 8th May, 1976, at 10.00 a.m.

The notice convening the meeting was taken as read. The Official Minutes of the Annual General Meeting held on 27th November, 1975, which had been circulated beforehand, were confirmed and signed. Mr. Gerald Baily, President of the Kerry Law Association, welcomed the President and his guests and all members of the Society, to the Kingdom of Kerry.

The appointment of the following Scrutineers of the Ballot of the Council to be held on 21st November, 1976, was proposed by Mr. Bruce St. J. Blake, seconded by Mr. Rory O'Donnell, and passed unanimously: Messrs R. J. Branigan, Eunan McCarron, Brendan McCormack and R. J. Tierney.

The President, Mr. P. C. Moore, then delivered his **Presidential Address.**

PRESIDENT'S ADDRESS

Ladies and Gentlemen: It is my privilege to report to you on the activities of your Council since my appointment to office in November last. As you are aware the Council is constituted of thirty one elected members with the addition of three Representatives of the Dublin Solicitors' Bar Association, five Representatives of the Southern Law Association, four Provincial Delegates and five Northern Ireland Representatives.

The work of the Council is carried on through the medium of twelve permanent Committees, namely the (1) Registrars, (2) Compensation Fund, (3) Finance, (4) Parliamentary, (5) Privileges, (6) Court Offices and Costs, (7) Public Relations, (8) Premises, (9) E.E.C. and International Affairs, (10) Policy, (11) Education and (12) Company Law Committee, and in addition ad hoc Committees are appointed for the purpose of undertaking research and investigation on particular topics with power to appoint non-members of the Council who have special expertise in particular areas, with a voice but no vote.

I wish as President of the Society and on behalf of the Profession to express our appreciation and thanks for the very valuable contribution which our colleagues have made as your elected Representatives as members of such Committees, and particularly to acknowledge their dedication and hours of service, for without them the effectiveness of the Council would indeed be ephemeral.

I mention these matters, no doubt all very well known to you, in order that you may appreciate the work of the Council, some aspects of which I intend to refer briefly. A great deal of the work of the Council is of its nature continuous and evolutionary, and for this reason you are being updated on its activities.

The enquiry being carried out by the National Prices Commission on Solicitors' Remuneration is still proceeding and your Council has submitted a very comprehensive Report for submission to the Commission in connection with the enquiry being carried out by Professor Lees and his Associates. My predecessor in office, Mr. Osborne, the Costs Committee and our Director General are to be complimented on the excellent job they have performed on behalf of the Profession in the compilation of this Report and it is a very valuable record worthy of being printed and circulated at the expense of the Society.

In connection with this enquiry Professor Lees has written to all Firms to provide specific information on a confidential basis to enable him to construct his Report to the Commission. It is the earnest wish of the Council that the Firms and members of the Society do furnish at the same time to the Society's Auditors Messrs. Coopers & Lybrand, Fitzwilton House, Wilton Place, Dublin, a full and complete copy of the information given to Professor Lees so that the Society will be able to comment accurately and constructively on any interim or other Reports or occasional papers which may be issued by the Prices Commission from time to time. It is pointed out that the information supplied to the Society's Accountants will be treated on a strictly confidential basis.

Taxation

The revolutionary changes in the taxation system arising out of recent Legislation has also been engaging the attention of the Council, with particular reference to the obligations and responsibilities of Solicitors as accountable persons on behalf of their Clients. The Wealth Tax Act, 1975, the Capital Gains Tax Act, 1975, and the Corporation Tax Act, 1976, present a challenge to all of us including our friends in the Accountants' Profession in conjunction with whom we have had many discussions at Seminars and Conferences elucidating and discussing the many difficulties which are certain to arise, in the operation and implementation of this Legislation.

The abolition of Estate Duty from the 1st April, 1975 (Section 47 of Finance Act, 1975) and the substitution of a Wealth Tax and a Capital Acquisition Tax in lieu thereof have created many difficulties for the Profession, such as the dismantling of Family Investment Companies, Discretionary Trusts and other non-trading Companies of a kindred nature causing concern in many domestic fields. It is hoped, however, that the Departments concerned will be ready and willing to introduce amending and ameliorative Legislation in all areas where justice and equity demand such a course, so that the burden of taxation may be equitably distributed amongst all citizens.

Corporate Status

I wish briefly to refer to this item, with particular reference to Section 162 of the Corporation Tax Act, 1975, which was the subject of challenge by your Council and by a number of other Professional Bodies affected by this particular enactment. Briefly this Section is designed to deprive Professional Bodies such as ours from achieving Corporate status if such a course were permissable under the provisions of existing or some future Legislation amending the Solicitors' Acts. The Section in effect imposes the individual rate, that is seventy seven per cent on such Professional Bodies instead of the fifty per cent rate applicable for the benefit of other Trading Institutions. Objection has been taken to this Legislation on the grounds that same is discriminatory and that it is competent for Solicitors and other Professional Bodies if they can so order their affairs to form themselves into Corporate Groups operating with perpetual succession and common seal in the like manner that Corporate status is available in all other areas of Industrial, Commercial and Sociological activity. It is contended that Solicitors and other Professional Bodies should not be deprived of Corporate status or the benefits of special taxation privileges available to other Citizens or Groups of citizens in the State however so called. It is the intention to have this matter fully researched in your interests and subject

to your approval so that Corporate status can be achieved and the necessary legislation promoted by amending the existing code applicable to the Profession, or some other form of legislation outside the Companies Act or the Industrial and Provident Societies' Acts and at the same time preserving the professional status and responsibility of the members of the Profession in the provision of Professional services to their Clients.

Conveyancing Procedures

The Society of Young Solicitors are deserving of our thanks for undertaking the organisation of the recent Seminar at Killarney in connection with the Society's Conditions of Sale 1976. It is hoped that all those who have received the documentation and participated in the discussions will forward as soon as possible their observations and comments for consideration by the Conveyancing Committee so that the new Conditions of Sale can be printed and made available for use as soon as possible. The Conveyancing Committee have also given a very considerable amount of time to the re-drafting of the Requisitions on Title, and it is hoped to have such Requisitions on Title available at the same time as the Conditions of Sale for use in the Profession.

It is hoped at some future date to establish in the Gazette a Conveyancer's Corner where techniques and practices might be discussed and directions circulated from the Land Registry, Revenue Department, Land Commission and other Departments, and Municipal Bodies to facilitate expeditious and smooth completion of transactions.

Land Registry

Discussions, as you have noticed in the Gazette, have taken place with the Department of Justice, the Land Registry and Ordnance Survey and the Society dealing with difficulties arising with particular reference to the Mapping area. Certain conclusions have been arrived at with regard to the provisions of Ordnance Sheets on twenty five inches scale at least and the undesirability of photocopy maps as a basis for registration in subdivision cases and it is hoped to publish a full note in the Gazette showing the procedure that will operate as and from the 1st September of this year.

Rules for Government of Prisons 1976 (S.I. No. 30 of 1976) Prisons Act 1972 and (Military Custody) Regulations 1976. (S.I. 87 of 1976)

The Council has given very careful and full consideration to the implications of the amendments envisaged by these Statutory Instruments. The Council while fully conscious of the security problems which exist in relation to the control of the Prisons in the State, still have grave doubts as to the power of the Minister under the relevant Statute to make the Regulations as provided in the new Rules. It is the decision of the Council to seek a Declaratory Order in the Courts as to the validity of the amended Rules insofar as they affect a Prisoner's right to a Legal Adviser of his choice. The decision taken by the Council was limited to the Statutory Instrument No. 30 of 1976 as the second Instrument was not available at the date of its meeting.

Education

We are all aware of the great contribution made by my predecessor in office, Mr. Prentice, in this particular field. The change-over to the new system has and is operating satisfactorily notwithstanding the many difficulties necessarily arising, all of which have been very capably and understandingly resolved by your very capable Committee responsible in this area, and accommodation for students is by no means the least of these problems. The reconstruction of the new premises at the King's Hospital may indeed be very timely, but as Blackhall Place is the subject of special discussion I will not deal further with the new premises, except to say that work is progressing satisfactorily and expeditiously.

E.E.C. and International Affairs

There has been considerable activity in the International field, particularly by reason of our involvement in the Community and the obligation to peruse and consider all draft Directives and Conventions in our particular sphere, particularly in the area of freedom to provide services by Lawyers. It is hardly necessary to point out that this particular directive gives rise to many difficulties where the Common Law systems operate and the role played by Solicitors on the one hand, and the members of the Bar as advocates on the other. The question of control and expertise in certain areas of Law arising by reason of the different legal systems in operation throughout the Community are the subject of special research and rationalisation of proceedings. The volume of documentation is very large and a special Committee has been appointed to deal with Company Law Directives in conjunction with the relevant Officers of the Department of Industry and Commerce, and particularly in connection with the Bill presently before the Oireachtas dealing with Mergers and Takeovers.

Accountants' Certificates and Disciplinary Procedures

The Registrar's Committee which is a Statutory Committee specifically mentioned in the Solicitors' Acts, is responsible for the issue of Practising Certificates on the basis that the Accounts Regulations and Procedures are complied with, and arrangements have recently been made to bring these items up to date and to insist on members of the Profession obtaining their Accountant's Certificate within a reasonable time as a condition precedent to the granting of a Practising Certificate. A full explanation of the procedure will be given by the Chairman of the Registrar's Committee before the termination of this Meeting.

The Complaints area is a very complex and diverse one and it would be impossible on an occasion like this to give any statistical or other objective comment other than to indicate that these problems are being brought under control and new procedures for dealing with same are being constantly researched in the interests of all concerned.

Checking your Costs

On the question of Solicitors' fees for services rendered many members of the public appear to be unaware of their rights to have their Solicitor's charges examined by an Officer of the Courts known as a Taxing Master who will adjudicate on the correctness or otherwise of such charges. The Solicitors' professional charges are controlled by statute and by statutory regulations: the only professional body whose fees are decided by an independent Statutory Authority. Neither the Solicitors nor their Controlling Body may alter the scale of charges and any increases in such charges can only be made in agreement with the relevant Statutory Committees and subject to the approval of the Minister for Justice. The Taxing Master is a State Official and is an Authority on the laws relating

to Solicitors' Costs and the Rules which govern them. Trustees, Local Authorities and all other Bodies responsible for Solicitors' Charges have the same facility as individual Clients to seek Rulings of a Taxing Master on the propriety of costs or charges for services rendered.

Compensation Fund

On the financial side we have had no major problems involving the Compensation Fund, but it is the policy of the Council to build a fund of such dimension that it will reasonably cover all contingencies and eliminate heavy impositions on members, in the event of unforeseen claims of an unpredictable nature being imposed upon us.

It is well to point out that our Profession and apparently the Stockbrokers are the only Professions who provide exclusively from their own resources a Compensation Fund giving one hundred per cent indemnity to Clients in respect of money entrusted to the Profession in the course of their professional duties. All proven claims have been paid or admitted for payment up to date. One of the onerous responsibilities of our Profession is the unavoidable obligation of handling and accounting for Clients' moneys. In these days of heavy interest rates it is becoming a heavier obligation where there are overlapping or triangular transactions which cannot conveniently or otherwise be suitably arranged, so as to avoid the responsibility and obligations which the Clients must necessarily impose on the Solicitors or Firm concerned. All these problems bring us into the vast area of Solicitors' Undertakings involving bridging finance, trusteeship of Title Deeds, the execution, stamping and perfection of registrations of Purchase Deeds and other Title Documents and a multitude of difficulties that can arise in carrying out these duties with reasonable efficiency to the satisfaction of the Clients, their Bankers and/or other lending Institutions. The system of Solicitors' Undertakings is presently being looked into by the Council and the results of the Council's deliberations will be circulated for the benefit of our members as soon as possible.

Law Reform

The Law Reform Commission under the Chairmanship of Mr. Justice Brian Walsh is an innovation in our legal system and we look forward with great expectation to the activities of this Commission and its impact on our jurisprudence in the fields of Family Law, Property Law, Litigation and Court procedures. It is hoped that our Society will have an important role to play in this area of Law Reform. The Commission is presently considering such problems as the age of majority and the vexed question of domicile of married persons and our Parliamentary committee will in due course be making its views known to the Commission on these fundamental problems.

Legal Aid

Up to recent years all legal aid has been carried entirely by the Legal Profession and the Profession also carries all legal aid on the civil side and will continue to do so until such time as legislation is introduced when the Report of the present Commission is available and also when sufficient funds are available for its implementation. On the Criminal side legal aid has operated since the 1st April, 1965, and this particular Legislation is also the subject of a special enquiry in respect of which comprehensive reports have been submitted by the General Council of the Bar. There is still considerable controversy in this area, and it is hoped that in the interests of the administration of justice these problems may be resolved at an early date.

Solicitors' Benevolent Fund

I have had the privilege of seconding the adoption of the Annual Report and Accounts of the Benevolent Society at its recent Annual Meeting and I am pleased to report that the Association through its Officers and with the assistance and co-operation of our Director General has improved very considerably the income to the Fund. The Association is well worthy and deserving of the support of all the members of the Society.

The Independence of the Legal Profession

Finally I wish to say that the Council of the Society is motivated by the concept that the independence of the Legal Profession and the independence of our Judiciary are fundamental to the preservation of our free democratic Society and its Institutions. It is also equally true that we have a duty and an obligation to uphold and preserve the highest ethical standards in our Profession so that our service to the people may be worthy of the trust and confidence reposed in us since the foundation of our State. The separation of powers (although some say it is a Political illusion) namely Executive, Legislative and Judicial is in my view an integral part of our Constitutional Democratic system. The Constitution provides that all Judges shall be independent in the exercise of their Judicial functions and subject only to the Constitution and the Law (Article 35(11). This judicial independence from administrative direction can only exist and be upheld by an independent legal Profession. The price of freedom is therefore eternal vigilance.

The President then asked **Mr. John F. Buckley,** Chairman of the Education Committee, to make a progress report about the Education arrangements. Mr. Buckley said that, subject to special transitional arrangements which would operate until 1978, the new system of legal education had come into force since October, 1975, and henceforth, apart from special provision for law clerks, all apprentices entering the profession would have to be Arts or Law graduates. He gratefully acknowledged the invaluable assistance he had received from the Advisory Committee, which was composed of ordinary members and some lecturers, and who were making suggestions for the effective administration of the new system.

Mr. Buckley felt it was necessary to obtain professional assistance in order to set up a professional course. Arrangements had accordingly been made that Mr. Kevin O'Leary, who was in charge of Law courses in the National University of Australia in Canberra, would come to Dublin about next October to give us expert advice on this problem, and he hoped there would henceforth be a closer liaison between apprentices and lecturers. On behalf of the Society, he had had a long meeting with the Higher Education Authority, primarily to deal with difficulties in connection with the part-time Law Faculty in Galway, and he had been sympathetically received.

The President then called on **Mrs. Moya Quinlan,** Chairman of the Blackhall Place Premises Committee to make a statement. Mrs. Quinlan reminded the members that no work of external construction was required on the premises. The main problem was to modernise the interior of this 18th century building. The contractors, Messrs. Crampton, had carried out this work efficiently, and it was hoped that the central administration block would be available for occupation in August or September. The original estimate for the

work had been £600,000 but it was hoped that the sum of £400,000 would now be sufficient. Mrs. Quinlan was happy to say that the building had received a special plaque this year, as this was Architectural Heritage Year. She mentioned that members could visit the buildings, and that arrangements would be made to show them around. As Chairman of the Finance Committee, **Mr. Osborne** stated that they were lucky to have £200,000 in cash available, and facilities for a further overdraft of £250,000. Members might be asked for a contribution of £50 each for some years, depending on negotiations as to the future use of the Four Courts premises which were still in progress.

Mr. Grace, Tralee, suggested that it would be helpful if each member would contribute £100 loan free of interest.

Mr. Michael Houlihan, Ennis, said that the Committee should consider the original plan which would provide a residential club.

Mr. Liam MacHale, Ballina, suggested the immediate installation of several telephones in the hall in Solicitors' Buildings Mrs. Quinlan said this would be considered.

The President asked **Mr.W. A. Osborne,** Chairman of the Finance Committee, to make a statement about the National Prices Commission Inquiry relating to the Solicitors' Profession. The Costs Committee, under the Chairmanship of **Mr. John Moloney,** had sent a full report to Professor Lees of Nottingham, who is in charge of the investigation, and other memoranda had been sent to Professor Lees and to Professor Carlsberg of Manchester, who were considering the matter on behalf of the Prices Commission. The Society had attempted to seek an interim increase and Professor Lees, who was in Ireland last month, may be in a position to issue an Interim Report before the end of June. Although the response had been disappointing so far, he strongly advised members to fill in the short form questionnaire, which would be most helpful to their cause.

The Director General, **Mr. Ivers,** said that Professor Lees was essentially trying to assess trends, and that the Society would not necessarily accept his approach. Professor Lees would be starting his analysis within the week. So far 100 returned questionnaires had been received by him, but, in order to make a proper assessment, Professor Lees would require another 100 questionnaires.

The President then asked Mr. Gerald Hickey, Vice-President, to report on the Superannuation Scheme. Mr. Hickey's speech was published on the front page of the April Gazette. Mr. Hickey emphasised the flexibility of the Scheme.

The President asked **Mr. David Pigot,** Chairman of the Registrar's Committee, to make a statement. Mr. Pigot emphasised that his Committee had taken all necessary steps to get members to produce their Accountant's Certificates to the end of 1975, and this had entailed much time. In many cases, these Certificates were 2 or 3 years in arrears.

As from 1977, the Society will make a list of solicitors who failed to submit Accountant's Certificates for more than six months. In such an event, a solicitor will not be entitled to practise, and if he does so, he will be prosecuted.

Mr. Ivers said there were difficulties for solicitors in obtaining Indemnity policies. A Committee of the Council was reviewing the position in the hope of making suitable recommendations.

Mr. W. B. Allen, Galway, proposed a vote of thanks to the President, which was carried unanimously.

The Meeting then terminated.

INTERNATIONAL ASSOCIATION OF LAWYERS OF PAX ROMANA

The 8th International Conference of the International Association of Lawyers of Pax Romana will be held in Dublin from Sunday, 29th August to Friday, 3rd September, 1976. The main themes of the Conference are Family Law and the means to help those who cannot be helped by law, or who for one reason or another are unable to help themselves. An Irish Report, as well as Reports from other Continental countries, have been prepared on the two subjects. The working sessions will be held at University College, Belfield, on Monday, 30th August, Tuesday, 31st August and Thursday, 2nd September. The final resolutions will be drafted and discussed on Friday, 3rd September. There will be an excursion to Kells and the Boyne Valley with lunch at Kells on Wednesday, 1st September. There will be receptions by the Archbishop of Dublin, the Attorney General and Maynooth College.

Except for the Boyne Valley excursions, the Registration Fee for Irish participants providing their own transport for all Dublin functions will be Five Pounds. Irish participants who wish to come on the Boyne Valley excursion, are requested to travel from Dublin on the official coach provided. The additional Registration Fee for this excursion including lunch will be Five Pounds.

All enquiries and applications for Registration Forms should be made to the acting Hon Secretary, Mr. C. Gavan Duffy, Incorporated Law Society of Ireland, Solicitors' Buildings, Four Courts, Dublin 7.

SAINT LUKE'S CANCER RESEARCH FUND

Gifts or legacies to assist this Fund are most gratefully recived by the Secretary, Esther Byrne, at "Oakland", Highfield Road, Rathgar Dublin 6. Telephone 976491.

This Fund does not employ canvassers or collectors and is not associated with any other body in fund raising.

EUROPEAN SECTION

The Paris Convention between the Paris Bar and the English Law Society

L'Ordre des Avocats à la Cour de Paris, represented by Me Francis Mollet-Vieville, Bâtonnier of the Ordre, and The Law Society of England and Wales, represented by Mr. Edmund Naylor Liggins, its President, in the presence of the Commission Consultative des Barreaux de la Communauté Européenne, represented by the Bâtonnier Albert Brunois, its President.

Recognising :

(a) The desirability of regulating the activities of lawyers who practise abroad.

(b) The need for lawyers to participate actively in European development and, in the interests of their clients and third parties concerned, to improve the conditions of work on an economic and social plane by international co-operation between the legal professions.

Have adopted this Convention.

ARTICLE 1

In this Convention :

"avocat" means an avocat inscribed at the Paris Bar;

"avocat stagiaire" means an avocat stagiaire inscribed at the Paris Bar;

"activities reserved to the French legal professions" means those activities which are reserved by French law to members of one or other of the legal or judicial professions defined and regulated by such law;

"activities of an avocat" means all activities which an avocat is not prohibited by French law or the professional rules of the Paris Bar from carrying on within or outside an avocat's professional practice;

"solicitor" means a solicitor of the Supreme Court of England and Wales;

"activities reserved to the English legal profession" means those activities which are reserved by English law to members of either of the branches of the legal profession or to the judiciary as defined and regulated by such law;

"activities of a solicitor" means all activities which a solicitor is not prohibited by English law or the rules of professional conduct of The Law Society from carrying on within or outside a solicitor's professional practice;

"establish" and "establishment" relate to the right to carry on in France all the activities of an avocat or, as the case may be, to carry on in England and Wales all the activities of a solicitor;

"instal" and "installation" relate to the carrying on by an avocat of the activities of an avocat in an office in England and Wales or by a solicitor of the activities of a solicitor in an office in Paris but without the right to carry on the activities reserved to a solicitor in the former case or to an avocat in the latter;

"International Code of Ethics" means the ethical code adopted on 25 July, 1956 by the International Bar Association (as amended).

Unless otherwise required by the context "solicitor" includes "solicitors" and where the solicitor is a member of a partnership those of its partners who are solicitors and likewise "avocat" includes "avocats" and where an avocat is a member of an "association" or "société civile professionnelle" also includes all the avocats who are his partners;

"lawyer" means avocat, solicitor or barrister;

"Paris" means the area falling within the jurisdiction of the Ordre;

"barrister" means a member of the Bar of England and Wales;

"practising certificate" means the certificate issued by The Law Society which entitles a solicitor to practise as a solicitor.

ARTICLE 2

Having regard to the Treaty of Rome and to the decisions of the European Court in *J. Reyners v. L'Etat Belge* (hereinafter referred to as "Reyners") and *J. H. M. Van Binsbergen v. Bestuur Van De Bedrijfsvereniging Voor De Metaalnijverheid* (hereinafter referred to as "*Binsbergen*"), and to the proposed directive on the Provision of Services by lawyers (XII/454/75-E) and noting the laws of France and of England respectively and the professional rules which apply respectively to avocats and solicitors, it is acknowledged by the Ordre and The Law Society that :

(1) The functions which an avocat of the Paris Bar in his practice, and a solicitor in his, may perform, and the activities which they may respectively undertake outside their practices, are not coextensive and that avocats and solicitors are members not of the same profession but of parallel professions.

(2) If it be true that a right of "establishment" in terms of the Treaty is already in effect in the sense of the decision in *Reyners* so as to permit an avocat to carry on the activities of an avocat, other than activities reserved to the English legal profession, in an office in England and to permit a solicitor to carry on the activities of a solicitor, other than activities reserved to the French legal professions, in an office in Paris, nevertheless a right of "establishment" in the sense of (1) the right of an avocat to exercise the activities reserved to the English legal profession or (2) that of a solicitor to exercise the activities reserved to the French legal professions must await *inter alia* a bilateral agreement upon rules of coordination and recognition of diplomas. To avoid confusion, in this Convention the word "installation" is used in lieu of the word "establishment" to describe the first of these rights.

(3) The law which reformed certain legal and judicial professions in France defined the basis for the exercise of the professions of avocat and of conseil juridique and laid down the conditions on which a foreign lawyer may instal himself and may carry on his activities in France.

(4) A solicitor may instal himself in France and may carry on the activities of a solicitor whether alone or in partnership with other lawyers, and whether practising in his own name or in the name of his firm, subject only to compliance with French law.

(5) Certain solicitors have the right to register as Conseils Juridiques and those who have exercised this right are subject to the provisions of French law applicable to that profession.

(6) An avocat may instal himself and carry on the activities of an avocat in England (1) either alone or in such association with other avocats or other persons as the Ordre may permit and (2) either practising in his own name or in the name of a firm subject only to compliance with English law.

(7) French law does not prohibit arrangements by which in France :

(a) an avocat shares premises and services and the consequent expenses with a solicitor;

(b) an avocat enters into partnership with a solicitor;

(c) an avocat acts as "collaborateur" of a solicitor or

a solicitor acts as a "collaborateur" of an avocat, provided that no terms of any such arrangement shall deprive an avocat of his independence or otherwise contravene the law of the Republic of France.

(8) An avocat is entitled to maintain an installation in a solicitor's office subject to the provisions of the Solicitors Act 1974 and the Solicitors' Practice Rules, or to maintain an installation in a barrister's chambers in collaboration with a barrister, or on his own account, under and subject to the relevant rules of the Bar of England and Wales.

(9) Nationality notwithstanding, a solicitor may qualify as an avocat in accordance with the regulations which apply to the Bar of which he wishes to become a member.

(10) An avocat may qualify and be admitted as a solicitor, or he may qualify as a barrister, in accordance with the appropriate regulations.

(11) Neither in France nor in England and Wales does the law prevent a lawyer from the other jurisdiction from practising in any system of law except as regards those activities reserved by law to the French or as the case may be to the English legal profession.

ARTICLE 3
Rights and obligations of an Avocat installed in England or Wales

(a) Ethics and Discipline

(1) The Ordre des Avocats will require any avocat installed or who becomes installed in England or Wales to observe the provisions of this Convention, of the Directive on the provision of services by lawyers and the International Code of Ethics, (Article 2 *et seq*) or such other general code of ethics as the Paris Ordre des Avocats and The Law Society may from time to time agree, and before registration under Part B of this Article to sign an undertaking to this effect.

(2) Any breach by an avocat in England or Wales of such Code or rules which is established or alleged by The Law Society will be referred to the Ordre des Avocats for such disciplinary action to be taken as the Ordre may consider appropriate.

(b) Registration

(1) The Law Society and the Bar of England and Wales will jointly maintain a register in which will be entered particulars set out below of every avocat installed in England and Wales.

(2) The Ordre will require any such avocat to sign the undertaking referred to in Part A of this Article and to furnish the following particulars for the register :
(a) name
(b) address of installation in England and Wales
(c) professional titles and qualification
(d) firm's name, if any
(e) existence and nature of any arrangement with a solicitor or barrister.

(3) Where an avocat has registered under the provisions of this Article no further registration shall be required in respect of any "associé" or "collaborateur" who makes an occasional visit to England or Wales.

(c) Relationship with a solicitor

(1) An avocat carrying on his profession in England or Wales may have his installation in the office of a solicitor and may, subject to the provisions of the Solicitors' Practice Rules of The Law Society, enter into an agreement of a type approved by The Law Society for collaboration with the solicitor. With the approval of The Law Society and of the Paris Ordre des Avocats the avocat's name followed by the words "Avocat à la Cour de Paris" may appear on the solicitor's letter headings.

(2) An avocat who is installed in England or Wales in his own office may enter into an agreement of a type approved by The Law Society for collaboration with a solicitor.

(d) General

(1) The Ordre will require an avocat installed in England or Wales to describe himself at all times as an "avocat" and on his letter headings, notices and other written documents to indicate that he is an "Avocat à la Cour de Paris'.

(2) The Law Society will so far as is practicable afford to an avocat who is registered with The Law Society in accordance with the provisions of Part B of this Article the same aid and assitance *vis-a-vis* the authorities in England and Wales as those enjoyed by solicitors.

(3) Nothing in this Convention affects the right of an avocat practising in England or Wales, whether in an installation on his own account or under an arrangement or agreement such as is contemplated in this Article, to carry on all the activities of an avocat, except activities reserved to the English legal profession.

ARTICLE 4
Rights and obligations of a solicitor installed in Paris

(a) Ethics and Discipline

(1) The Law Society will require any solicitor installed or who becomes installed in Paris (other than those who are registered as conseils juridiques or are employed by a person who is registered as a conseil juridique) to observe the provisions of this Convention, of the Directive on the provision of services by lawyers and the International Code of Ethics (Articles 2 *et seq*) or such other general code of ethics as the Paris Ordre des Avocats and The Law Society may from time to time agree; before registration under part B of this Article the solicitor shall sign an undertaking to the Ordre des Avocats to this effect.

(2) Any breach by such a solicitor installed in Paris of such code which is established or alleged by the Ordre des Avocats will be referred to The Law Society for such disciplinary action to be taken as The Law Society may consider appropriate.

(b) Registration

(1) The Paris Ordre des Avocats will maintain a register in which will be entered particulars set out below of every solicitor installed in Paris (other than a solicitor who is registered as a conseil juridique or is employed by a person who is registered as a conseil juridique).

(2) The Law Society will require any such solicitor to sign the undertaking referred to in Part A of this Article and to furnish the following particulars to the Ordre :
(a) name
(b) professional address in Paris
(c) professional titles and qualifications
(d) details of his practising certificate
(e) firm's name, if any
(f) existence and nature of any arrangement with an avocat together with the particulars of it as set out in the Annex to this Convention.

(3) Where a solicitor has registered under the provisions of this Article no further registration shall be required in respect of any member or employee of the

firm or partnership who makes an occasional visit to Paris.

(c) Relationship with an avocat

A solicitor holding a practising certificate and carrying on his activities in Paris (other than a solicitor who is registered as a conseil juridique or is employed by a person registered as a conseil juridique) may alone or together with his partners enter into arrangements with an avocat of the types specified in the Annex hereto and subject in each case to the conditions provided.

(d) General

(1) The Law Society will require a solicitor other than a solicitor who is registered as a conseil juridique installed in Paris to describe himself at all times as a "solicitor" and on his letter headings, notices and other written documents to indicate that he is a "Solicitor of the Supreme Court of England".

(2) The Ordre des Avocats will so far as is practicable afford to a solicitor who is registered with the Ordre in accordance with the provisions of Part B of this Article the same aid and assistance *vis-à-vis* the authorities in France as those enjoyed by members of the Ordre des Avocats.

(3) Nothing in this Convention affects the right of a solicitor installed in Paris, whether in an installation on his own account or under an arrangement such as is contemplated in this Article, to carry on the activities of a solicitor, except activities reserved to the French legal professions.

ARTICLE 5
General Provisions

(a) Fees

(1) An avocat and a solicitor may in any agreement between them (but subject to any professional or statutory rules which may exist) establish a method of fixing fees in cases where the avocat asks the solicitor for his assistance on behalf of his client or when the solicitor asks the avocat for his assistance on behalf of his own client.

(2) An avocat, who has carried on some professional activity in England or Wales, may with his client's agreement fix his fees according to the local rules and practice and may on this matter ask for the advice of The Law Society.

(3) A solicitor who has carried on some professional activity in Paris may with his client's agreement fix his fees according to the local custom and where appropriate, Paris scales and may on this matter ask for the advice of the Ordre.

(b) Transfer

(1) Subject to such regulations as may be agreed between the Ordre des Avocats, The Law Society and the Senate of the Inns of Court and the Bar, an avocat who ceases to carry on a practice previously carried on in barristers' chambers will be entitled to exercise the rights conferred by this Convention, and an avocat who has exercised such rights will be entitled to carry on his practice in barristers' chambers whereupon his rights and obligations under this Convention will cease.

(2) Where a solicitor who has been registered as a conseil juridique ceases to be so registered, he will be entitled to enjoy such rights conferred by this Convention as he is not entitled to enjoy while registered and a solicitor who has enjoyed the rights conferred by this Convention, will, if he becomes registered as a conseil juridique, no longer be entitled to enjoy such rights nor be subject to the obligations imposed by this Convention.

(c) Benefits in relation to the Courts

(1) A solicitor holding a practising certificate whether installed in Paris or not (other than a solicitor who is registered as a conseil juridique or is employed by a person who is registered as a conseil juridique) may, in conjunction with an avocat, carry out the procedures necessary for examining the Court Record and official files and documents in the possession of the Court and of Registrars or of any public or private body to which an avocat has a right of access and may also when accompanied by and under the control of an avocat appear in a Court in the area within the jurisdiction of the Ordre des Avocats and participate in the hearing to such extent as the Court may consider desirable in the interests of justice. The Law Society will require any solicitor who exercises any rights accorded by this Article to comply with the rules of conduct and to submit himself to the disciplinary controls which apply to an avocat in relation to such matters.

(2) The Law Society will, in conjunction with the Bar of England and Wales, use its best endeavours to ensure that an avocat whether installed in England or Wales or not may, in conjunction with a solicitor or a barrister carry out the procedures necessary for examining the Court Record and official files and documents in the possession of the Court or of Registrars or of any public or private body to which a solicitor or barrister has a right of access. The Law Society will also, in conjunction with the Bar of England and Wales endeavour to secure a right of presence at hearings in Court for an avocat when accompanied by a solicitor or barrister and if necessary under the control of one or other of them and the right to participate in the hearing to such extent as the Court may consider desirable in the interests of justice.

An avocat who has an installation in a solicitor's office shall only have the right to participate in a hearing in a Court in which a solicitor has such a right and in cases in which a barrister is not instructed to appear as the advocate.

The Ordre des Avocats will require any avocat who exercises any rights accorded by this Article to comply with the rules of conduct and to submit himself to the disciplinary controls which apply to the solicitor, or as the case may be the barrister, with whom he is carrying out the procedures above mentioned or under whose control he is participating at the hearing.

(d) Good Standing

(1) The rights conferred by this Convention upon an avocat apply only to an avocat who is in good standing with the Ordre and upon a solicitor apply only to one who is in good standing with The Law Society.

(2) The Ordre reserves the power to deny to any solicitor the right to carry on his practice in the office of an avocat in Paris or to enter into or continue an arrangement or agreement for collaboration with an avocat or an avocat stagiaire in relation to his practice in Paris and The Law Society reserves the power to deny to any avocat the right to carry on his practice in the office of a solicitor practising in England or Wales or to enter into or continue an arrangement or agreement with a solicitor.

(e) Joint Committee

The Ordre and The Law Society will establish a Joint Committee for the purpose of considering all mat-

ters relating to the implementation of this Convention and of resolving any problems which may arise under it, including *inter alia*
(1) the implications of arrangements of the types envisaged above;
(2) the procedure to be adopted for investigating and dealing with alleged breaches of ethical rules;
(3) the matters referred to in Parts B and D of this Article;
(4) insurance against professional negligence and compensation for dishonesty;
(5) activities reserved to the legal professions by law.

(f) Conciliation and Arbitration

If the Ordre des Avocats and The Law Society find it impossible to remove any doubt or resolve any dispute or question concerning the interpretation or application of this Convention they will submit it to the Commission Consultative des Barreaux de la Communauté Européenne for the purpose of consultation and conciliation and if the two bodies so agree, with power to arbitrate, and in such case the Ordre des Avocats and The Law Society agree to accept without reserve the decision of that body.

(g) Termination

This Convention may be terminated by either party subject to a year's notice in writing expiring at any time.

F. MOLLET-VIEVILLE
Le Bâtonnier
E. N. LIGGINS
President of The Law Society

Signed in Paris, 12 April 1976

ANNEX

(a) 'Cabinet Groupé'

(1) The contract shall be in writing.

(2) The activities of the avocat and the activities of the solicitor shall remain separate.

(3) Some or all of the expenses of their respective activities may be shared in the proportions and upon the terms described in the contract.

(4) The respective activities of the avocat and the solicitor may be carried on in separate premises or in the premises of the avocat or in the premises of the solicitor.

(5) Wherever the avocat and the solicitor hold themselves out together to third parties who might otherwise be misled it shall be made clear that the terms of subpara 2 above apply. However the avocat and the solicitor may for all relevant purposes describe their relationship by a fitting title such as, if that be the case, 'correspondants organiques/associated correspondents'.

(6) Either the avocat or the solicitor or the avocat and the solicitor jointly may enter into an arrangement with a "collaborateur".

(7) No avocat or avocat stagiaire shall be obliged to share the use of a room except, in the case of an avocat stagiaire, where it is considered valuable to the acquisition of professional experience, when the period of sharing shall not exceed one year.

(8) No rights shall be granted nor obligations imposed which derogate from the provisions of the law governing each profession.

(b) 'Association'

(1) The contract shall be in writing.

(2) The avocat and the solicitor shall share expenses and stand to benefit from profits or suffer losses in the proportions stated in the contract.

(3) The avocat and the solicitor shall be permitted to hold themselves out to third parties as partners (associés).

(4) In all dealings with third-parties the respective professional titles of the partners shall be made clear.

(5) The partnership may enter into an arrangement with one or more "collaborateurs".

(6) No avocat or avocat stagiaire, whether a partner or a collaborateur, shall be obliged to share the use of a room except, in the case of an avocat stagiaire, where it is considered to be valuable to the acquisition of professional experience when the period of sharing shall not exceed one year.

(7) Although their relationship is one of partnership no rights shall be granted to nor obligations imposed upon any partner which conflict with the provisions of the law governing his profession. For example, but without prejudice to the generality of the foregoing, a French partner may not enter into partnership arrangements as regards accounting for clients' moneys and insurance for professional negligence which constitute a derogation from the laws and regulations governing such matters in the Republic of France or the professional rules of the Paris Bar, unless, in the latter case, such derogation has been authorised by the Bâtonnier.

(c) "Collaboration"

(1) The contract shall be in writing.

(2) The collaborateur may contract, *inter alia,* with either an avocat or a solicitor or an association comprising an avocat and a solicitor.

(3) The contract shall specify the period of the collaboration, the terms of remuneration and the terms upon which the collaboration shall terminate.

(Concluded on p. 80)

Fully State Guaranteed.

When you open a deposit account with ACC, you immediately experience the feeling of real security. The security of a State Guarantee! It covers the sum you invest and the interest you earn. Get in touch with us today and find out how much you can earn on a State Guaranteed investment.

The Agricultural Credit Corporation Ltd.

Head Office: ACC House, Upr. Hatch St., Dublin 2 Tel. (01) 780644

Offices at: Athlone, Ballina, Carlow, Cavan, Clonmel, Cork, Dublin, Dundalk, Ennis, Kilkenny, Letterkenny, Limerick, Longford, Monaghan, Mullingar, Naas, Navan, Portlaoise, Roscommon, Sligo, Thurles, Tralee, Tuam, Tullamore, Waterford, Wexford and Wicklow.

Paris Convention

(Continued from p. 78)

(4) The terms of the collaboration shall be within the spirit of the law.

(5) No collaborateur shall be obliged to share the use of a room except, in the case of an avocat stagiaire, where it is considered to be valuable to the acquisition of professional experience when the period of sharing shall not exceed one year.

The following particulars of any contract entered into (whether under A, B or C above) between an avocat and a solicitor shall be lodged with the Ordre des Avocats :

(1) The names and addresses of the contracting parties.

(2) The nature of the contract (A, B or C above).

(3) A specimen of the notepaper to be employed as a consequence of the arrangement.

(4) Duration of the contract.

(5) In case of an association an explanatory note of the method used for the calculation of profit shares.

(6) A copy of the arbitration clause which shall provide for arbitration by the Bâtonnier and the President of The Law Society.

Some comments on the Convention between the English Law Society and the Paris Bar

The Bilateral Convention between The Society and the Paris Bar signed on 12 April goes far beyond any previous agreement concluded between two Bars. It also goes further than the Draft Directive which the EEC Commission have proposed for Lawyers' Services as defined in the Treaty of Rome since that Directive is only concerned with the occasional crossing of frontiers by a lawyer to serve the interests of a particular client. The Convention signed on 12 April takes a first step towards "establishment" of a member of one of the two professions who has an office in the country of the other : either the avocat with a bureau in England in a solicitor's office or a barrister's chambers or on his own or the solicitor who has an office, either on his own or in the bureau of a Paris avocat. The Convention looks forward to even closer working relationships between respective members although, for these, changes in the Solicitors' Practice Rules and in the Solicitors Act, 1974 will be necessary.

The Convention is forward-looking as it seeks to facilitate greater international activity by solicitors and thus is positive in its approach. With the Royal Commission in mind its importance lies in enabling solicitors to extend their activities as the needs of clients require and thus to provide a more comprehensive service.

Another feature of the Convention is that it means that solicitors are now fully recognised by the leading Bar of France. Hitherto, one of the tasks which The Society has undertaken even since British membership of the EEC was first mooted, has been to explain to the Continental Lawyer and public the place of the solicitor in the English legal system. Barristers were, at the outset, better understood as their functions of advice and court appearance made them recognisable to avocats whereas the solicitor with his far wider activities was more difficult to place. In the French system, he was at one time equated with the avoué (a class now curtailed in France); even when he was recognised as having a separate existence, his status was inferior to that of the Bar. One of the most important changes was represented by the agreement in 1971 that Solicitors and Barristers alike should have the right of audience before the European Court (with certain minor exceptions by agreement with the Bar so far as solicitors were concerned). Furthermore, the work of The Society at the Commission Consultative des Barreaux de la Communauté Européenne (of which the United Kingdom was an observer member until joining the Community and an active participating member thereafter) has done much to inform legal quarters in the EEC and elsewhere of the position of solicitors. Work on the draft Directive on Lawyers has proceeded very largely on the basis of placing the solicitor in the system and ensuring that the Directive does not adopt a policy which would cut down the services which the solicitor at present is able to give to his clients.

Thus, the Convention with the Bar of Paris looks beyond the boundaries of that City and towards the other EEC countries and underlines the fact that in the United Kingdom, it is the Solicitor and the Barrister or avocat who together make up the legal profession, a fact which the Declaration signed at Bath between the English Bar and The Society last November had already made clear in formal terms.

The question which was put several times by Paris Avocats after the signing ceremony on 12 April, was what effect in practice the new Convention might have. This remains to be seen, but one thing of which we can be sure is that the opportunity for closer working together now exists and that the way has been prepared, for those who wish to follow it, of broadening the service which they give on behalf of their clients. The Convention is thus an important event in the history of the profession.

Correspondence

Land Registry, Central Office,
Chancery Street,
Dublin 7.
25th May 1976.

James J. Ivers, Esq.,
Director General,
The Incorporated Law Society of Ireland,
Four Courts,
Dublin 7.

Dear Mr. Ivers,

At the recent meeting with members of your Council on mapping difficulties the importance of accuracy in the preparation of maps for lodgment with applications in the Land Registry was agreed. It is important that maps should be signed by the persons preparing them and it is suggested that solicitors should ensure that this is done before the application is lodged

It is also most important that original maps should show the location of physical marks on the ground. If property corners are not marked on the ground the possibility of subsequent conflict of boundaries is greatly increased.

Yours sincerely,
Nevin Griffith,
Registrar.

[*Editor's Note*—While the signing of maps is not a Rule, the Council asks that the request of the Registrar be complied with, if at all possible.]

HOTEL PROPRIETORS' LIABILITY IN IRELAND

By Hugh M. Fitzpatrick, B.C.L., Solicitor

In 1957 a commentator stated that "of the many anomalous branches of the law at present existing, none can be more productive of hardship and illogical results than that which relates to the liability of the innkeeper".[1] The Oireachtas answered the need for reform early in 1963 by enacting the Hotel Proprietors Act 1963.[2] This Act codified the law relating to inns and innkeepers Delany described it as "a comprehensive code dealing with all aspects of innkeepers' liability".[3] It is on the 1963 Act that this article is based.

The scope of the Act

The liability of hotel proprietors had been considered previously by the Council of Europe the aim of which is to achieve closer unity between its Members, *inter alia* by the adoption of common rules in legal matters. The enactment of the Hotel Proprietors Act 1963 enabled Ireland, being a Member State of the Council of Europe, to sign the Convention on the Liability of Hotelkeepers concerning the Property of their Guests which had been approved on the 17th December 1962 by the delegates of the Council of Europe.[4] The 1963 Act provides that the hotel proprietor has a duty not only to be liable for his guests' personal property but also that he has a duty as to the safety of the person of his guests and a duty to ensure that the hotel premises are safe. The Convention, as its title suggests, restricts its rules to liability in respect of guests' property. In this respect the Irish Act is more extensive than the English Hotel Proprietors Act 1956 and the Hotel Proprietors Act (Northern Ireland), 1958, both of which confine their provisions to the liability of the hotel proprietor in respect of the guest's property.

In England common law rules still apply subject to the provisions of the Hotel Proprietors Act 1956 and the Innkeepers Act 1878. There is a significant difference of approach in Ireland. The 1963 Act replaced and codified the common law of inns and innkeepers and repealed the previous legislation in its entirety.[5] However, some of the concepts of the repealed legislation are retained. Section 2(1) of the 1963 Act provides that "the duties, liabilities and rights provided for by this Act shall have effect in place of the duties, liabilities and rights which heretofore attached by the common law to innkeepers as such." The statutory duties, liabilities and rights as set out in the Act replace those which were imposed by the common law on the innkeeper "as such" (i.e. as the innkeeper). Therefore, it would seem that the provisions of the Act do not relate to the liabilities which a hotel proprietor may incur in some way other than as a hotel proprietor as, for example, where a bailment arises. However, a discussion of such a transaction is outside the scope of this article.

Definitions

The ancient terms "inn" and "innkeeper" have been replaced by the words "hotel" and "hotel proprietor".

A hotel is defined by Section 1 of the 1963 Act as "an establishment which provides or holds itself out as providing sleeping accommodation, food and drink for reward for all comers without special contract and includes every establishment registered in the register of hotels kept under Part III of the Tourist Traffic Act, 1939." The definition is not an exhaustive one. It automatically includes every establishment registered as a hotel with Bord Fáilte. Therefore, a guest at one of these registered hotels will enjoy the protection of the 1963 Act. However, establishments other than registered hotels are not excluded from the definition. It was the view of the Minister for Justice[6] that "apart from registered hotels, the question whether a particular premises constitutes a hotel for the purposes of the Bill will be a question of fact in every case."[7] The Minister continued and said that "it can be taken, however, that, in general, guest houses, boarding houses, and similar establishments do not come within the ambit of the Bill."[8] One can assume that establishments which do not provide sleeping accommodation, such as restaurants, public houses and cafés are outside the definition.

The definition of hotel "proprietor" as set out in Section 1 is self-explanatory.

The word "guest" is not expressly defined but it can be implied from Section 3(1) that a guest is a person who, whether he has made an advance booking or not, presents himself and requires sleeping accommodation, food or drink.

Duties of the hotel proprietor

Sections 3, 4 and 5 of the 1963 Act place certain duties on the hotel proprietor. These can be classified under three headings:

1. The duty to receive all comers.
2. The duty as to safety of guests and as to safety of hotel premises.
3. The duty to receive property of guests.

It is intended to examine each duty in turn.

1. *The duty to receive all comers* (Section 3)

A hotel proprietor is bound to receive all persons whether or not under special contract who present themselves at his hotel and require sleeping accommodation, food or drink and to provide them therewith unless he has reasonable grounds for refusal.

At the time the person presents himself at the hotel the onerous burden of deciding whether a refusal is reasonable in the circumstances is placed on the proprietor. If the proprietor unreasonably refuses accommodation to a person then that person can sue the proprietor in damages. The proprietor (apart from civil liability) could also be convicted (summarily) of a criminal offence if he is in breach of his duty under Section 3. The penalty for such an offence is a fine not exceeding £100.[9]

Since the Act came into operation there have been no judicial guidelines as to what defences are open to a hotel proprietor. According to the Minister for Justice "the interpretation of what are reasonable grounds will be a matter to be determined by the Court in relation to any particular instance."[10] A proprietor would surely have good reason for refusal if a person who presents himself at the hotel is drunk or if all the bedrooms in the hotel are occupied.

The proprietor must provide sleeping accommodation, food or drink at the charges for the time being current at the hotel. This duty is "subject to the terms of any special contract" so that the statutory provision does not interfere with the right of a guest to make an arrangement in advance with the proprietor to provide the guest with sleeping accommodation, food or drink at special prices.

2 *The duty as to safety of guests and as to safety of hotel premises* (Section 4)

The hotel proprietor must take reasonable care of the person of the guest. He is not an insurer of the personal safety of his guest.[11]

The duty of a hotel proprietor would seem to be wider where a guest suffers personal injuries because of the dangerous state of the hotel premises. The proprietor must ensure that for the purpose of personal use by the guest, the premises are safe as reasonable care and skill can make them. In the view of one commentator[12] a guest's statutory right against a hotel proprietor is wider than an invitee's right against his invitor in that the hotel proprietor would seem (as it is phrased under the statute) to be liable for the acts of his independent contractors. The same commentator believes that Section 4 is intended to extend the liability of the hotel proprietor rather than consolidate his common law position and suggests that this view is affirmed by Section 4(2) which declares that the duty is "independent of any liability of the proprietor as occupier of the premises."

3. *The duty to receive property of guests* (Section 5)

The proprietor is obliged only to receive property brought to the hotel by or on behalf of a guest who has engaged sleeping accommodation and for which the proprietor has "suitable accommodation" at the hotel. Thus it would seem that a hotel proprietor is bound to admit a guest's luggage and any other property which a guest normally brings to a hotel. However, this leaves the hotel proprietor "free to refuse items of an exceptional character such as, for example, dangerous or cumbersome articles likely to cause inconvenience or offence to other guests".[13] It is interesting that the Council of Europe Convention is more specific than the 1963 Act in relation to this duty. Article 2(2) of the Annex to the Convention provides that : "A hotel-keeper shall be bound to receive securities, money and valuable articles; he may only refuse to receive such property if it is dangerous or if, having regard to the size or standing of the hotel, it is of excessive value or cumbersome".

The obligation of a hotel proprietor to receive property under Section 5 (as indicated above) extends only to the property of a guest who has "engaged" sleeping accommodation. The choice of the word "engaged" in Section 5 (and in Section 6) is unfortunate. It means that a hotel proprietor could be liable for the property of a guest who engages sleeping accommodation but never actually takes it up. Under the Council of Europe Convention (in Article 1(1) of the Annex) liability for property of a guest only arises where a guest "stays at the hotel and has sleeping accommodation put at his disposal."

Section 5(2) of the 1963 Act lays down a time limit on the liability imposed on the hotel proprietor under Section 5. It provides that the obligation placed on the hotel proprietor applies to property brought to the hotel during the time for which the person is entitled to use the accommodation which he has engaged or during a reasonable period before or after that time.

If the proprietor of the hotel is in breach of his duty under Section 5 he shall, without prejudice to his civil liability, be guilty of an offence and liable to the same penalty as is laid down in the Act for breach of duty under Section 3.

Liability of the hotel proprietor for his guest's property

As in Section 5, the obligation imposed by Section 6 extends only to the property of a guest who has engaged sleeping accommodation. The hotel proprietor is strictly liable for any damage to, or loss or destruction of, property received by him from an "overnight guest" or from someone on behalf of such a guest. The strict liability for loss or damage applies to property of which the proprietor takes charge not only at the hotel but also outside it, as, for example, where he sends a servant to collect the luggage of a guest from a railway station.

Section 6(2) places a wide liability on the hotel proprietor. It provides that a motor vehicle is deemed to have been received by the hotel proprietor where it has been placed within the premises of the hotel or in any garage or car park or other premises provided by the proprietor of the hotel for this purpose. However, a guest will not be protected by Section 6 for loss or damage to a motor vehicle or its contents unless he has previously notified the proprietor of the hotel (or some servant of his authorised) that the motor vehicle has been brought to the hotel. The liability under section 6 applies during the time for which the sleeping accommodation is engaged or during a reasonable period before or after that time.

Under Article 1(2) of the Convention a Contracting Party is free to impose greater liabilities on hotelkeepers concerning the property of their guests than those set out in the Annex to the Convention. Article 7 of the Annex provides that a hotel-keeper is not liable for "vehicles, any property left with a vehicle, or live animals". The liability imposed on a hotel proprietor by Section 6 of the Act is therefore greater than that imposed by the Convention. The provision in this part of Section 6 is more favourable to the guest than the hotel proprietor.

However the hotel proprietor is exempt from liability under Section 6 to the extent that the damage, loss or destruction is due (a) to an unforeseeable and irresistible act of nature, act of war, or (b) to the guest himself or any person accompanying him or in his employment or visiting him.[14] These are the only excepted perils referred to in the Act. Therefore, it would seem that the hotel proprietor is not exempt from liability under Section 6 where the damage, loss or destruction is due to the nature of the property of the guests received by the hotel proprietor.

Where there is contributory negligence by a guest the position is governed by the Civil Liability Act 1961.[15]

The Accidental Fires Act 1943 does not apply in relation to a claim for damages under the Hotel Proprietors Act 1963.[16]

Limitation of liability by notice

The hotel proprietor is not allowed under the 1963 Act to contract out of his strict liability.[17] But, if he conspicuously displays a notice in the form prescribed in the First Schedule to the Act relief is given to the hotel proprietor by Section 7(1). Where the hotel proprietor is liable under Section 6 and the statutory notice is displayed at or near the reception office or desk or near the main entrance to the hotel, then his liability to any one person cannot exceed £100. However, there are three exceptional cases where the liability is not so limited :

1. Where the property was damaged, lost, stolen or destroyed through the wrongful act, default or omission of the hotel proprietor or his servant;
2. Where the property was deposited by the guest (or on his behalf) expressly for safe custody with the hotel proprietor or an authorised servant;[18]
3. (i) Where the property was offered for deposit with the hotel proprietor and he or his servant refused to accept it, or

(ii) where the guest (or someone on his behalf) wished to offer the property for deposit with the proprietor but, through the default of the proprietor or his servant, was unable to do so.

Section 7(2) of the 1963 Act provides that the limitation of liability by notice does not apply to a motor vehicle. Thus, a hotel proprietor is not permitted to limit his liability (in the manner described above) under Section 6 for damage to, or loss or destruction of, a guest's motor vehicle.

The effect of section 7 was explained in the Senate as follows:

"The question was raised in the Dail whether the new amount of £100 (in place of £30 under the Innkeepers Liability Act, 1863), is appropriate to the changing circumstances of modern times. There is no question but that the value of money has fallen by more than that in the past hundred years, but at the same time the principle, I think, is correct and the principle is maintained in the Bill. The exact amount is of secondary importance. It is only the liability of the hotel proprietor as insurer which is limited to one hundred pounds. It is quite clear that Section 7, therefore, means that only his liability as insurer in the strict sense of the term is limited to one hundred pounds by the Section."[19]

Rights of the hotel proprietor

In return for the onerous liabilities he must bear a hotel proprietor is given two remedies under the 1963 Act. Section 8 provides that in certain circumstances a hotel proprietor has a lien over a guest's property and a right of sale of such property.

1. *Lien*

A hotel proprietor has a lien upon property for a debt due by a guest for sleeping accommodation, food or drink until the debt is paid. There are three points in relation to the hotel proprietor's lien which should be noted in particular.

First, the lien extends to property which does not belong to the guest.[20] Thus, goods on hire or hire-purchase which are brought to the hotel by the guest are covered by the lien. There is authority in England for the view that even stolen property may be claimed by a hotel proprietor under his right of lien.[21]

Secondly, it is immaterial whether the guest is an "overnight guest" or not. The right of lien still applies. A hotel proprietor can exercise his lien over the property of a guest who for example, merely has a meal at the hotel. However, the hotel proprietor would not be strictly liable for damage to the property of such a guest under Section 6.

Thirdly, it is expressly stated in Section 2(2) of the English Hotel Proprietors Act 1956 that there is no right of lien on motor vehicles or any property left in such motor vehicles. There is no similar provision in the Irish Act and therefore it can be presumed that here the lien extends to motor vehicles and the contents therein.

The scope of the hotel proprietor's lien in Ireland is wide indeed.

2. *The statutory power of sale*

If the debt remains unsatisfied for at least six weeks the hotel proprietor may sell by public auction any property to which his lien extends. He may deduct the amount of the debt as well as the costs and expenses of sale from the proceeds of sale and then he must pay the surplus to the guest.

In England under Section 1 of the Innkeepers Act 1878, the sale by public auction must be advertised, at least one month before it takes place, in one London and one country newspaper. There is no requirement in the Irish Act that the sale must be advertised.

A purchaser of goods from a hotel proprietor who exercises his right of sale at a public auction gets a good title. Section 21 (2)(b) of the Sale of Goods Act 1893 ensures the validity of this "statutory power of sale" and the rule *nemo dat quod non habet* does not apply.

Even if an Irish Court on considering the point follows *Marsh v. Police Commissioner and McGee*[21] and holds that the hotel proprietor's lien upon property brought to the hotel by a guest extends to stolen property, it would seem that the true owner would not thereby be prevented from suing in conversion the purchaser of the stolen goods which were sold by the hotel proprietor under the power of sale in the 1963 Act. According to Crossley Vaines there seems to be no reason why the power conferred by the Innkeepers Act 1878 (similar to the power in the 1963 Act) should differ from similar enactments and cure inherent defects in title.[22]

It is evident that much preparation went into the drafting of the Hotel Proprietors Bill 1962. The Act itself is the result of quite a lengthy debate in the Houses of the Oireachtas for such a short piece of legislation. The Legislature were "trying to preserve a proper balance between the rights of the hotel guest and the obligations to be placed on hotel proprietors".[23] It is arguable whether they have succeeded in arriving at a fair compromise. However, it cannot be denied that the Act is a fine example of legislative drafting in simple terms.

1. Anon., *Innkeepers Liability: The Need for Reform,* 23Ir. Jur. (1957) 5-6, at p. 5.
2. No. 7 of 1963. The Act came into operation on 1st May 1963.
3. V. T. H. Delany, *The Hotel Proprietors Act 1963* (1962-63), 28-29, Ir. Jur. 19-20, at p. 19.
4. Text: *European Treaty Series,* no. 41; 2 *European Conventions and Agreements* (1961-1970), 75-82. Entered into force on 15th February 1967.
5. Hotel Proprietors Act, 1963, Section 13. The repealed legislation is 14 and 15 Chas. 2(Ir.) c. 3.; Innkeepers' Liability Act, 1863; Innkeepers Act, 1878.
6. Then Mr. Charles Haughey.
7. C. Haughey, Minister for Justice, 56 Seanad Debates, c.290 (20th February 1963).
8. Ibid.
9. Hotel Proprietors Act 1963, Section 12.
10. C. Haughey, 198 Dail Debates, c. 842 (6th December 1962).
11. The original authority for this principle is *Calye's Case* (1584) 8 Co. Rep. 32a. where it was stated that "if the guest be beaten in the inn, the innkeeper shall not answer for it".
12. Bryan M. E. McMahon, *Reform of Law of Occupiers' Liability in Ireland* incorporating a study entitled: *Occupiers' Liability in Ireland. Survey and Proposals for Reform* (Dublin, The Stationery Office), p. 28.
13. C. Haughey, 56 Seanad Debates, c. 291 (20th February 1963).
14. Hotel Proprietors Act, 1963, Section 6(5).
15. Ibid., Section 1(2).
16. Ibid., Section 11.
17. Ibid., Section 9.
18. It is provided in Section 7(1)(b) of the Hotel Proprietors Act, 1963, that the hotel proprietor or his servant may require that the property deposited for safe custody be put in a container fastened or sealed by the depositor.
19. Professor O'Brien, 56 Seanad Debates, c. 298 (20th February 1963).
20. See Hotel Proprietors Act 1963, Section 8(1).
21. *Marsh* v. *Police Commissioner and McGee* (1944) 2 All E.R. 39.
22. Crossley Vaines, *Personal Property,* 5th edition, p. 207.
23. C. Haughey, 56 Seanad Debates, c. 359 (6th March 1963).

SOME SIDELIGHTS ON THE TALENTS OF THE LATE J. A. COSTELLO, S.C.

By Frank Connolly, formerly Solicitor to the Department of Posts & Telegraphs

Having regard to the number of tributes which have been already published about the life of this distinguished lawyer, it is with some diffidence that the present writer ventures to add to them. Some aspects of Costello's career however, have not been dealt with in detail; therefore, they might be of interest to Solicitors practising in the provinces, or young Solicitors who did not see this brilliant advocate at work when he was at the zenith of his profession.

When in private practice, I had the duty of briefing him as a Senior Counsel, attending him at consultations; and on several occasions, I heard him address juries, and public meetings. He told me that in 1922 he was asked by the late Hugh Kennedy, K.C. to assist him in his work, when the latter was appointed Law Officer to the Irish Provisional Government. At first, the Law Officer was given the rooms of the former Lord Chancellor of Ireland in Dublin Castle for his official work. Mr. Costello worked in these offices in Dublin Castle, but found that the time of the Law Officer was so taken up with conferences with the Provisional Government and the drafting of the new Irish Free State Constitution that it was only possible to get his undivided attention for a few hours each week. As opportunity offered, he discussed complicated legal points in files submitted for advice by the Provisional Government Departments with the Law Officer and then returned the files with the opinion of the Law Officer endorsed. After working as assistant to Hugh Kennedy, K.C., and subsequently to John O'Byrne, S.C., when the latter was appointed Attorney General in succession to Hugh Kennedy, Mr. Costello was made Attorney General on the promotion of John O'Byrne to the judicial bench.

The highly flattering reputation that he made for himself as Attorney General is borne out by the fact that I first heard him discussed by Solicitors on holidays at the back of the Twelve Pins in Connemara in the year 1928. These Solicitors referred to him as Jack Costello, and the warmth in their voices was noticeable when they spoke about his splendid personal and professional qualities and his immense success as Attorney General.

What struck me most about him was that his intellect was of the powerful capacious kind with great range and depth coupled with all round abilities, the most evident of them being: logical thought, lucid exposition of ideas, flair for politics and history, the power of rapid assimilation of facts, and great oratorical gifts. In addition, his mind worked quickly and accurately like the snap of a well oiled breech of a gun. Since he also had wide cultural interests, even though he could spare little time for them from his professional responsibilities, he was a whole man in the Renaissance conception of the whole man.

John Costello's Oratory

Perhaps, his greatest endowment was his aptitude for oratory. His oratorical powers were in the true tradition of the famed orators of Grattan's Parliament, John Philpot Curran, O'Connell, Meagher of the Sword, and Isaac Butt. Although his style of oratory was much less flamboyant than theirs in keeping with the fashion of his times, a reading of their speeches shows that, there is no doubt that he was their equal in oratorical capacity and artistry. During his lifetime Ireland had some very accomplished public speakers, but none had brought the art to the height of perfection achieved by him. Notwithstanding that in his day oratory was becoming suspect of fustian and claptrap, and that his speeches to juries and public meetings were infused with deep feeling and full blooded rhetoric, his skilful use of eloquence based on carefully chosen arguments couched in language of great distinction, all painting a striking verbal picture, was most effective in persuading people to accept his thesis. With an unhesitating delivery in address, he was able to clothe his thoughts instantaneously in appropriate graceful words and telling phrases, so that his points were clearly illuminated and could be easily understood. He was also most adroit at emphasizing the weak and vulnerable parts of his adversaries case, and pouring scorn on its flimsiness, followed by putting the best complexion possible by plausible arguments on his own case. Unlike some would be orators, he never bored his hearers, thereby failing to hold their attention. For he took care to avoid repetition and to stimulate their imagination by the use of colourful figures of speech for the purpose of illustrating the ingredients of his arguments and to vary the pace and timbre of the passionate ring in his voice by mixing appeals to their common sense with irony and division, interspersed with sentiment and pathos. Moreover he was the only orator in modern Ireland who could use properly ample studied gestures of his hands and arms to reinforce the effect of his arguments.

Undoubtedly, the vehement tone of his voice in speeches at public meetings to juries, and in Dail Eireann led some people to take objection to his methods of advocacy on the grounds that it verged on tub thumping or hectoring, but it was virtually unknown for him to be rebuked for his mode of address by any trial judge or by the Dail. Nor do his trenchant speeches at public meetings appear to have led to his being heckled to any extent, or to attempts to interrupt the meetings—possibly his felicitous choice of English took the sting out of his invective. Experienced Solicitors agree that he dominated most court trials in which he took part, and that his glittering rhetoric appeared to have had a mesmeric effect in his favour on juries who tended to think it one of the greatest experiences in their lives to have been addressed by him. In all tribunals, including enquiries, District Courts, Appeal Courts, and the Supreme Court he was a successful special pleader because while always intensely forceful in the presentation of his submissions, he adapted the sound of his voice to suit the nature of his audience, and his perceptive mind enabled him to bring out and stress points not readily apparent to others.

If not too tired by his political and professional duties, he was a particularly attractive after dinner speaker, since he knew how to blend calls to loyalty to the dinners social objects with personal reminiscences spiced by jocosities, and opposite literary and idealistic references.

John Costello's Cross-Examination

The newspaper accounts of his life have failed to do justice to his powers of cross examination. In fact he was one of the most deadly cross examiners that every practised at the Irish Bar. His *modus operandi* was first by reassuring questions to beguile a witness into agreeing with his version of the facts; if he proved inimical, he would proceed by searching questions to try to

morally coerce him into admissions; then, if the deponent still remained intransigent, every word and sentence sworn to would be subjected to probing, dissection, and analysis, for the purpose of showing that there were contradictions and improbabilities in the testimony. Few partisan witnesses emerged from such a steely scrutiny of their evidence without some part of their veracity, or at least, their accuracy and reliability having been discredited. Any attempt by a witness at hyperbole, or humbug, or to be smart at Mr. Costello's expense would be crushed by a few sledge hammer questions, or dismissed by some stinging and contemptuous comments.

So important is leadership in every field of endeavour that numerous books have been published on the subject. All of these books point out that high ethical standards, humanitarianism, good judgment and power to make and execute decisions are the salient qualities required for successful captaincy. It is virtually certain that John A. Costello never had enough leisure to read books on leadership. But his own kindly character contained a combination of the essential attributes which enabled him instinctively to win the esteem of his associates; in consequence he exercised leadership of a very high order. Proof of this is to be seen in the fact that he remained on terms of close friendship with many Solicitors and Deputies of Dail Eireann for over 30 years; and that he was asked to head two coalition governments. Notwithstanding that these coalition governments under his aegis were defeated in general elections twice, his reputation as a legal and political chief suffered little diminution if anything it was enhanced by the great powers of management of men he displayed while in office; furthermore, experienced politicians and solicitors know well that a leader is not a magician able to conjure governmental obstacles out of the way at will.

To say that he was a wit would not be entirely correct. Nevertheless he was good humoured in disposition; and frequently amusing remarks would come bubblingly up in the course of his conversation. Like most busy intelligent men his jokes, sallies, and quips were prompted by the incongruous happenings in everyday life, and the foibles of ebullient personalities. Also, he was very adept at contrived verbal jokes and lively oblique remarks, which while never wounding or malicious, could hit off the funny side of characters and events very entertainingly. In Dail Eireann he used witticisms to give point and interest to his speeches, and to relieve the ennui of long monotonous debates. His general manner had the great advantage of making working with him easy, both in law and politics, which led to the quick dispatch of business.

Making all due allowances for the fact that he belonged to the senior branch of the profession there are still many lessons which solicitors can learn from the life of this great worker in the legal vinyard, and it is not necessary to specify them, since they are so clearly self evident.

LATE J. A. COSTELLO, S.C.

Mr. John Aloysius Costello, Senior Counsel, died at his home in Dublin on 7th January, 1976, aged 84 years. Mr. Costello had been a Deputy in Dail Eireann for more than 30 years since 1924, and had been Attorney-General from 1926 to 1931. By agreement with the other parties composing the Inter-Party Government, Mr. Costello was appointed Taoiseach first from 1948 to 1951 and from 1954 to 1957. Mr. Costello was called to the Bar in 1912, became a Senior Counsel in 1925, and became a Bencher of the King's Inns in 1926. He had been Father of the Bar for several years, and continued to practise until the summer of 1975.

On Monday, 12th January, 1976, the Judges of the Supreme Court and of the High Court, as well as barristers, solicitors and Court officials, assembled in the Supreme Court to pay tribute to the late Mr. Costello, and to extend sympathy to his son, the Attorney General, Mr. Declan Costello, S.C. The Chief Justice spoke on behalf of the Judiciary and Mr. Frank Murphy, S.C., Chairman of the Bar Council, made a panegyric on behalf of the Bar.

Then, the President of the Society, Mr. P. C. Moore, said :

On behalf of the Solicitors' Profession I join with you Chief Justice and Mr. Frank Murphy in paying tribute to a great Irishman and a distinguished Lawyer who has passed from our midst. No words of mine are adequate to extol the virtues and attributes of this noble man, John A. Costello, S.C. He was beloved and esteemed by all his colleagues in the Judiciary, at the Bar and by Solicitors throughout the land. Those of us who had the privilege to listen to his eloquent and dedicated advocacy in the cause of our Clients, will remember him with a particular affection. His adversaries will also attribute to him his great integrity and his passion for what was fair and just in the pursuit and ascertainment of the truth.

John Costello was and is an inspiration to us all. He believed in the Rule of Law and the upholding of our Institutions, particularly those concerned with the administration of Justice.

He was a great Statesman as well as an outstanding Lawyer and Advocate and he never faltered in the pursuit of peace through justice for the achievement of happiness, understanding and loyalty amongst all the people of this Island.

God grant that his great heart and great mind will not have laboured in vain.

BOOK REVIEWS

Johnston, Robert W. R., B.A., LL.B. — Wealth Tax. Dublin: The Incorporated Law Society of Ireland, 1976. xiv, 136p. 25cms. £5.00

The wealth tax legislation, which is one of the three new capital taxes foreshadowed in the White Paper of February 1974, must have been the most controversial taxing statute ever to pass through the Oireachtas and the longest in terms of time spent on debate. It is a novel tax in many ways, not least because it is an annual tax on capital. Furthermore it was not subject to either the benefits or the drawbacks of any common law precedent Early and informed commentary on the new legislation was therefore highly desirable for all concerned. We are indeed fortunate that Mr. Robert Johnston's book has provided this in good measure.

At first sight, an annunal tax on capital at a flat rate of 1% appears to involve merely a simple valuation exercise. Certainly, valuation is a very important factor in this tax and the author wisely devotes a lengthy chapter to this one topic. However, when one considers how the ownership of wealth is so inextricably linked with the law of property, trusts and settlements, it becomes quickly apparent, that this is a tax, where the guidance of the legal practitioner is of vital importance for the taxpayer, and where his advice will be or ought to be sought. It is very fitting therefore that this text-book should be written by a practising solicitor of the standing of Mr. Johnston.

The layout of the book follows the customary format of all text-books on taxation beginning with the usual but highly important topic of the interpretation of the taxing statute. This is an area which should be digested at regular intervals by practitioners—not to mention students. It will enable them more easily to apply to particular problems, the fundamental principles (mostly comprised in judicial dicta) which are regarded as governing taxing statutes. The paramount position of the grammatical interpretation for instance or where the onus of proof lies are areas which spring to mind as being of vital importance in considering any taxation problem

The basic elements of every taxing statute are unchanging though understandably each particular statute will have its own variations. The taxing statute charges a tax in a given area on certain property, designates the taxpayer, restricts or enlarges the scope of the general charge to fit particular circumstances, provides exemptions and reliefs and finally instals the general mechanics for proper administration of the tax not least of which are the sanctions for non-compliance. Mr. Johnston treats each of these different aspects in a clear and concise fashion, at times with a highly relaxing and narrative style, while at the same time never straying far from the text of the Act.

I am reminded here of the dictum of Lord Denning in the Stamp duty case of Escoigne Properties Ltd. v. I.R.C. (1958) 2 W.L.R. part of which reads as follows :

"... One of the best ways I find of understanding a statute is to take some specific instances which by common consent are intended to be covered by it. This is especially the case with a Finance Act. I often cannot understand it by simply reading it through. But when an instance is given, it becomes plain. I can say at once 'Yes, that is the sort of thing Parliament intended to cover'. The reason is not far to seek. When the draftsman is drawing the Act, he has in mind particular instances which he wishes to cover. He frames a formula which he hopes will embrace them all with precision. But the formula is as unintelligible as a mathematical formula to anyone except the experts : and even they have to know what the symbols mean. To make it intelligible, you must know the sort of thing Parliament had in mind. So you have to resort to particular instances to gather the meaning."

Far be it from me to suggest or infer that the Wealth Tax Act 1975 is unintelligible at any stage, but there are several areas in the Act which introduce new concepts in taxation law. Mr. Johnston by means of apt illustrations explains these and emphasises the necessity for such concepts in the Act For this both Revenue and taxpayer will be grateful. The scope of the Wealth Tax Act as regards the first assessable person, the individual, is governed by two criteria, domicile and ordinary residence. Domicile is so largely a matter of intention that it could be difficult for the Revenue to rebut a statement by a living individual that his intention was to leave the country permanently. The anti-avoidance provision of deemed domicile is therefore introduced in the Act as a counter to fictitious claims of change of domicile. The relevant provisions of Section 3(5) appear rather daunting at first sight. The author correctly points out however, again by way of example, that a case of genuine change of domicile will not be adversely affected. In such a case of genuine change of domicile, the second criterion of ordinary residence will almost certainly not be present.

One of the most impressive chapters in the book is, in my opinion, the chapter on discretionary trusts. This is an area where legal expertise is a sine qua non and where the author is therefore at his best. The discretionary trust, as defined in Section 1 of the Act, is treated, as we know, as an assessable person and the property comprised therein is regarded as the taxable wealth of the trust. No benefit of threshold is available and the reliefs and exemptions granted to the individual are also excluded. In view of the central theme of the Act. which is to tax wealth in possession only it is obvious that the discretionary trust could not be treated in any other fashion. Regardless of pleas to the contrary, I think most will agree that the discretionary trust was created in very many cases as a tax avoidance vehicle. This being so, any legislation taxing discretionary trusts would tend to be of an anti-avoidance nature. It is also true to say that most anti-avoidance legislation which is drafted of necessity in wide terms, will at times cover bona fide areas and cause undue hardship. No doubt it is for this reason that the draftsman included the relieving provisions in Sections 5(2) and 5(3) of the Act. These provisions are intended to cover situations where discretionary trusts were set up for reasons other than tax-avoidance. While the author makes a reasoned plea for single object discretionary trusts, it seems likely that the overriding consideration which guided the draftsman was the existence of avoidance possibilities. This factor presumably also explains why the scope of Section 5(2) is not extended to include "issue" instead of "children".

Speaking of trusts brings us to limited interests in the context of the Act—again very much a legal area. The Act in fact deems the owner of the limited interest to be beneficially entitled in possession to each item of the underlying property just as if it was his absolute property This point is emphasised several times in the book and the topic of settled property is dealt with comprehensively in Chapter 6 with the author again resorting to examples to drive home the principles.

The chapter on valuation contains a fine study of this important area with particular reference to the valuation of private trading company shares, where the author makes full use of the excellent Irish case law available on this subject. As regards the absence of "Anti-Lynall" legislation in the Act, it is pointed out that "the persuasive use"—as the author says—of this factor might in any particular case be to the advantage or disadvantage of the taxpayer. It is true that the facts of the Lynall case were such that the decision to limit the information available in the hypothetical open market did mean in fact a lower value for Estate Duty. However, it is equally possible that such limitation could also cause the exclusion of information, which, if admissible, would have a detrimental effect on the market value of shares with a consequent "over-valuation" under the open market rule as laid down in Section 8.

One of the most controversial areas of the Act is Section 6, which deals with the private non-trading company. This entity is of course the third assessable person and is, like the discretionary trust, burdened by the absence of a threshold. Mr. Johnston here again produces a contribution which is difficult to fault His exposition of the control factor is well executed, and his reliance on the Interpretation Act 1937 is a reminder to both tax adviser and student of tax law of the importance of this legislation in interpreting statute law. Section 11 of the 1937 Act states, inter alia, that "every word importing the singular shall, unless the contrary intention appears, be construed as if it also imported the plural . . ." and vice versa. It is interesting to see how the use of this provision works in Section 6(1) (b)(iii) to the disadvantage of the taxpayer and in Section 6(5) to his advantage. On the question of the future of the private non-trading company as an element in tax planning, the example in Appendix B is interesting and shows that it still has a valuable function. Like many other questions the answer is not always clear-cut.

There are so many other areas which could be commented on that it is difficult to choose. A very practical contribution by the author which will benefit all parties dealing with the tax, is the treatise in Chapter 9 on the appropriate forms of return and how they should be completed.

To sum up, this is a very readable book, which is a rare quality in any textbook on tax law. It ought to find a place in the law library of every practitioner and it is a text-book equally suited to the needs of the student of taxation. There should be a market for it in the U.K. also where a wealth tax is still in futuro. For this reason, among others, it is regretted that a reprint of the Act was not appended. I have no doubt that speedy publication plus keeping costs down are the reasons for omitting the Act. It should also be noted that the author incorporates in his text many quotations from the Act. Still, in my opinion, the work would have been much more complete with a reprint of the Act included.

Finally, Mr. Johnston has earned well our thanks for his initiative, his industry and not least his expertise in producing such an excellent book. To the Incorporated Law Society also, full marks for the valuable part it played in the publication of this very welcome work. Let us hope that this book will be the forerunner of other text-books on Irish tax law, an area where we have been far too long dependent on outside texts.

J. F. QUINLAN

Current Legal Problems 1975. Edited by Lord Lloyd of Hampstead and Roger W. Rideout. vii, 252p. 23cms. (Current Legal Problems, 28). London: Stevens, 1975. £8.75.

This is Volume 28 of the series "Current Legal Problems" which has been successfully edited by Lord Lloyd of Hampstead, Mr. Roger Rideout and Mr. Robert Venablts on behalf of the Faculty of Laws of University College, London. The contents of this volume are as comprehensive as its predecessors and lawyers will gain a wealth of knowledge from experts. Lord Edmund Davies, a Law Lord, discusses the doctrine of Judicial Activism which save for Lord Denning, is not favoured in England. As Lord Morris declared in *Pickin v. British Railways Board* (1974) A.C.: "When an enactment is passed, there is finality unless and until it is amended by Parliament". We are fortanate in being able to rely on a written Constitution as our Fundamental Law. It is also fortunate that the Law Reports contain many instances of judicial independence. Professor Joliet of Liege deals in detail with a decision of the European Court, relating to patents, known as the *Sterling* case, but whose official title is *Centrafarm v. Winthrop B.V.*—Case 16/74 (1974) 2 C M.L.R. 480. It will be recalled that the product Negram is sold in England for half the price it is sold in the Netherlands Centrafarm bought medications patented in England and imported them into the Netherlands without the agreement of the parent company. With regard to free movement of goods the Court held that under Article 30 quantative restrictions on imports are prohibited. Derogations can be made under Article 36 in order to protect industrial or commercial property, but such derogation is not justified, where the patent has been put on to the market in a legal manner by the patentee himself or with his consent. One cannot justify the prohibition of parallel imports, because of the patentee's desire to control the marketing in order to protect against the defective pharmaceutical products.

Mr. Stephens, Lecturer in Law in London, considers the thorny matter of the "Agent's Duty to Account". Lord Denning had endeavoured to introduce the Scottish doctrine of Restitution in the case of *Reading v. Attorney General,* but, on appeal to the House of Lords—(1951) A C. 513—Lord Porter, though concurring with Lord Denning's judgment, stated that the law of unjust enrichment forms no part of the law of England. The old Equity case of *Hallett's Estate* (1879) 13 Ch.D. suggests that it is necessary to establish a fiduciary relationship before it is possible to trace in Equity. *Re Diplock* (1948) Ch.D. established that once property is regarded as a subject to a trust, then the property, or its proceeds in a mixed fund, can be traced into anyone's hand, unless the recipient is a *bona fide* purchaser or the fund has no assets. In *Phipps v. Boardman* (1967) 2 A.C. the trustees decided to use some of the trust funds to acquire additional shares in a private company so that control could be obtained with a view to asset stripping. The defendant, having informed the trustees, acquired some of the shares. Subsequently he made some capital payments to members from which the defendant benefited. The plaintiff claimed that the defendant solicitor held these on trust for him as a beneficiary, and the House of Lords unanimously held that the defendant was liable to account.

Mr. Oakley, Fellow of Trinity College, Cambridge, considers learnedly in even more detail the "Prerequisites of an Equitable Tracing Claim". Mr. Prentice, Fellow of Pembroke College, Oxford, makes some proposals for reform relating to the complicated theory of "Insider Trading".

Professor Diamond, from his vast experience as a Law Commissioner, gives examples of "Repeal and Desuetude of Statutes". In "Roots of Title Today", Professor Pritchard of Nottingham has shown how gradually the equitable doctrine of constructive notice has disappeared from modern English conveyancing. Mr. Austin, a Lecturer in University College, London, in considering "Judicial Review of Subjective Discretion", deals in detail with *ultra vires*; he favours the reasoning that, as in *Coleen Properties v. Minister of Housing and Local Government* (1971) I W.L.R. 433, the Minister was held to have acted without jurisdiction because the statutory reason for his confirmation of a local requisition, was unsupported by evidence. Mrs. Freeman, in considering "References To the Court of Justice under Article 177", considers at length Lord Denning's judgment in *Bulmer v. Bollinger* (1974) 2 All E.R. The following guide-lines for a Reference were laid down: (1) The point in the judgment must be conclusive; (2) A previous ruling by the Court of Justice on substantially the same point can be followed by the English Court; (3) the doctrine of the "acte clair"—the English Court may consider the point is reasonably clear and free from doubt; and (4) the facts must be decided first, therefore it is not open to refer a preliminary point to the Court. But essentially the mechanism of Article 177 depends on judicial co-operation. Professor Brown writes learnedly on a contemporary problem that is causing much concern, namely the competence to establish and enforce standards in the prevention of marine pollution by oil from ships, particularly the International Convention of 1973

Mr. Butler, in considering "The Sources of Soviet Law", emphasies that all Soviet legislation receives unanimous endorsement in the Soviet Parliament. In practice the legal acts of the Presidia are superior to all others. Acts of the U.S.S.R. Council of Ministers are issued on the basis of laws in force, and are binding throughout the Soviet Union. Judgment of Courts are not deemed to be precedents. Soviet Courts are forbidden to cite decrees or rulings of higher Courts in their judgments; nor are the teachings of Soviet jurists regarded as a source of law.

It will thus be seen that the work "Current Legal Problems 1975" does not belie its title, and many legal experts have given us the benefit of their views in relation to their particular field

Cole, J. S. R. — Cases on Criminal Law. Dublin: Golden Eagle Books, 1975. xi, 240p. 22cms £5.50. £5.50.

This book, as its title suggests, deals essentially with Irish Cases on Criminal Law; it is a pity that the word "Irish" has been omitted, and practitioners of Criminal Law will be well aware of most of the cases decided from 1924 to 1951 by the Irish Court of Criminal Appeal which had already been adequately dealt with by Sandes. Mr. Cole has wisely concentrated on the more recent cases, particularly as some of them are unreported and thus unavailable. It need hardly be stressed that, in order to confine the book within reasonable limits, many of the judgments were not quoted in full, but extracts from the more important points in judgments are included. There is a useful short summary as to the effect of each decision at the beginning of each judgment, and if the matter has been considered subsequently in a later judgment, there is a note to that effect. Under the heading of "Inchoate Crimes" four cases of attempt are dealt with, including an unsuccessful plea of innocence in a charge of attempting to drive a car while drunk—*The State v. Coelman Porter* (1961) Ir. Jur. The important principles relating to manslaughter by a driver as a result of Davitt P.'s decision in *Attorney General v. Dunleavy* (1948) I.R. is fully considered. In the *People v. Gallagher* (1972) I.R. Kenny J. established that it was henceforth not necessary in order to establish a dangerous driving charge, that the accused's dangerous driving was the sole cause of the accident. In the *People v. Messitt*—(1974) I R. 406—the Supreme Court gave full consideration to the terms "wounding" and "grievous bodily harm". In dealing with contempt of court, the case of *Re O'Kelly*—Supreme Court, 30 July, 1973—is duly noted. In the chapter on Public Mischief, the author fails to point out that Gavan Duffy, P. did not consider this a crime as it was the duty of the police to pursue investigations no matter how involved. The important case of *People v. Dwyer*—(1972) I.R.—in which the Supreme Court directed a new trial on self-defence is fully given, but the equally important Northern Ireland case decided by the House of Lords—*Lynch v. Director of Public Prosecutions for Northern Ireland*—(1975) 1 All E.R. 913—appears to be omitted. The vital decision of the Supreme Court in *People v. O'Callaghan*—(1966) I.R. relating to bail is fully reported but the vital principle in *Bourke v. Attorney General* (1972) I.R. that henceforth *travaux preparatoires* are admissible as evidence, is not stressed.

It is hoped that the author's painstaking work, which entailed much research, will be amply rewarded.

LODGEMENT OF INFANTS' MONEY IN COURT

LODGMENT OF INFANTS' MONEY IN COURT

Solicitors are 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' moneys in Court.

As soon as the relevant Court Order is perfected the Solicitor concerned should immediately bespeak same and attend the Accountant with an attested copy of the Schedule of 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 satisfactory explanation for such delay the Court may have to consider the question of recoupment of the infant's loss by the person responsible. Normally a delay of more than seven weeks from the perfection of the Order would be regarded as unreasonable

J. K. Waldron,

Registrar.

9th June 1976.

DUBLIN SOLICITORS' BAR ASSOCIATION

With a view to keeping in closer touch with its members, the Association decided to institute half-yearly meetings, to take place approximately mid-way between yearly meetings, at which the activities of the Association during the preceding six months could be communicated to members and views sought on matters of professional interest.

The first of such half-yearly meetings was held on 5th April 1976.

Among various topics discussed, the President of the Association, Mr. David Pigot, reported that the Association's Submission to the National Prices Commission had received very favourable comment from the Incorporated Law Society and was regarded as a valuable contribution to this important subject.

A lengthy discussion took place concerning the perennially vexed question of Solicitors acting for both parties in certain transactions and the views of each member present were ascertained. It was almost unanimously agreed that the practice of acting for both parties in any transaction was most undesirable, but opinions differed as to how the practice should be curtailed or prevented. Among the views expressed, were suggestions that the Incorporated Law Society should either lay down guide-lines, to be followed at the discretion of the individual practitioner, or should impose a mandatory prohibition upon the practice as a whole.

Mr. Charles Meredith read a paper on the general question of Solicitors' Undertakings.

At the invitation of the Leinster Society of Chartered Accountants, a joint Seminar of that Society and the Association was held at Jury's Hotel, Dublin, on 22nd April. The subject treated was "Insolvencies, Liquidations and Receiverships" and informative papers were read by Mr. Oliver Fry and Mr. Lawrence Crowley. The papers and the subsequent discussion pinpointed a new but obviously increasing danger for the legal profession, in that under E.E.C. regulations it is becoming increasingly frequent for continental suppliers of goods to retain contractually the ownership of the goods supplied until all accounts have been settled as between the supplier and the purchaser. This creates many practical difficulties for the legal profession, not the least being that it could well become almost impossible to advise clients whether it was worth instituting liquidation or receivership proceedings against a debtor Company which might turn out to have no assets whatever—all its apparent stock in trade remaining the property of its continental suppliers.

This meeting was considered very valuable and it is hoped that others will follow.

To mark the retirement of Mr. Michael Kelly, Registrar of the Circuit Court after 40 years service, a Reception was held in the Council Chamber, Solicitors' Building, Dublin, at which a presentation was made to him in appreciation of his consistent kindness and help to Dublin Solicitors during his career in the Circuit Court Office.

It is hoped in next month's Gazette to provide brief details of the recent work of the Association's Subcommittees on various matters of practical interest.

Any member of the Association who would like to raise matters of interest, either at Council level or through the medium of this column, is invited to write to Charles Meredith at 9-10 Ely Place, Dublin 2.

PROCEEDINGS UNDER SOLICITORS' ACTS

(1) By an Order of the President of the High Court made on the 27th February, 1976, the banking accounts of Mr. Patrick T. Kennedy, Solicitor, Carrickmacross, Co. Monaghan, and the banking accounts of the firm of Messrs. P. J. Kennedy & Sons, Solicitors, carrying on business at Carrickmacross and at Dundalk, Co. Louth, were frozen. Consequently no Bank is allowed to make any payments out of any banking account of the said solicitor or the said firm without leave from the High Court.

(2) By an Order of the President of the High Court made on the 8th February, 1976, Mr. James G. Orange of 35, Beechpark Drive, Foxrock, Co. Dublin, was struck off the Roll of Solicitors and all Banking Accounts in the name of the said Solicitor were frozen save by leave of the High Court.

(3) By an Order of the President of the High Court made on the 30th day of April, 1976, the Banking Account of Mr. Patrick J. Murray, Solicitor, now practising at 25, South Richmond Street, Dublin 2, were frozen, and no Bank is allowed to make any payments out of the Banking Accounts of the said solicitor without leave of the High Court.

SOCIETY FOR THE PROPAGATION OF THE FAITH

The new address of the Society for the Propagation of the Faith is

47, Talbot Street, Dublin 1.

Secretary: Rev. Charles Smith.

Solicitors with clients who wish to leave legacies for missionary purposes might advise them to contact this office.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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 1976.

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: Edward Berry. Folio No.: 7968. Lands: Confey. Area: 39a. 0r. 8p. County: Kildare.

(2) Registered Owner: Nicholas Ely. Folio No.: 189R. Lands: Clonmines. Area: 30a. 2r. 36p. County: Wexford. (The Land Certificate of Annie Ely).

(3) Registered Owner: William Blaney Grier. Folio No.: 1611. Lands: Gartylough. Area: 12a. 1r. 6½p. County: Cavan.

(4) Registered Owner: Frank McCann. Folio No.: 7284. Lands: Cloonagh (part). Area: 20a. 3r. 10p. County: Longford.

(5) Registered Owner: Michael Kennedy. Folio No. 940. Lands: (1) Ballintaggart, (2) Ballyandreen. Area: (1) 45a. 1r. 29p., (2) 14a. 2r. 16p. County: Kerry. (Now forming the Land Nos. 1 and 2 on Folio 29489).

(6) Registered Owner: Thomas Quinn. Folio No.: 5279. Lands: (1) Conagher, (2) Conagher (an undivided moiety). Area: (1) 19a. 1r. 18p., (2) 0a. 1r. 34p. County: Galway.

(7) Registered Owners: Eileen Coffey and Elizabeth Coffey. Folio No.: 6646. Lands: Ballynagrenia. Area: 42a. 2r. 16p. County: Westmeath.

(8) Registered Owner: Celia Looney. Folio No.: 3380. Lands: Sleveen East. Area: 0a. 0r. 10p. County: Cork.

(9) Registered Owner: William O'Donnell. Folio No.: 5124F. Lands: Baunreagh. Area: 114a. 0r. 4p. County: Limerick.

(10) Registered Owner: Patrick Browne. Folio No.: 36R. Lands: (1) Castletown, (2) Crotta. Area: (1) 54a. 1r. 12.6p., (2) 7a. 3r. 20p. County: Kerry.

(11) Registered Owner: Thomas Fitzgerald. Folio No.: 1261. Lands: Newtown. Area: 107a. 2r. 27p. County: Waterford.

(12) Registered Owner: John Lawlor. Folio No.: 1337F. Lands: Kinneagh. Area: 1a. 0r. 3p. County: Kildare.

(13) Registered Owner: Michael Ryan. Folio No.: 18403. Lands: Thurlesbeg. Area: 8a. 2r. 34p. County: Tipperary.

(14) Registered Owner: Edward Joseph Doorigan. Folio No.: 200R. Lands: (1) Knockadrinan, (2) Meelragh (Nagur), (3) Bellageeher. Area: (1) 13a. 3r. 30p., (2) 1a. 0r. 20p., (3) 2a. 2r. 20p. County: Leitrim.

(15) Registered Owner: Cormac Fitzpatrick. Folio No.: 30. Lands: Dunmakeever. Area: 14a. 0r. 22p. County: Cavan.

(16) Registered Owner: Patrick J. O'Connor. Folio No.: 16210. Lands: Gatterstown. Area: 214a. 3r. 31p. County: Tipperary.

(17) Registered Owner: Mervyn Wynne. Folio No.: 12409. Lands: Hilltown. Area: 177a. 2r. 30p. County: Wexford.

(18) Registered Owner: Declan Burton. Folio No.: 8330. Lands: (1) Curtlestown Lower, (2) Curtlestown Lower (one undivided 3rd part). Area: (1) 46a. 3r. 7p., (2) 55a. 1r. 4p. County: Wicklow.

(19) Registered Owner: Christopher Molan. Folio No.: 5341. Lands: Garranewaterig. Area: 62a. 1r. 19p. County: Cork.

(20) Registered Owner: Thomas Butler. Folio No.: 2927. Lands: (1) Bollyglass, (2) Ballinteskin. Area: (1) 67a. 1r. 31p., (2) 32a. 2r. 22p. County: Kilkenny.

(21) Registered Owner: Patrick Gallagher. Folio No.: 40448. Lands: (1) Churchland Quarters (Carrowtemple, Moneyshandoney and Carrick), (2) Churchland Quarters (Carrowtemple, Moneyshandoney and Carrick). Area: (1) 1a. 0r. 7p., (2) 0a. 1r. 4p. County: Donegal.

(22) Registered Owner: Laurence Coogan. Folio No.: 2370F. Lands: Ballynakelly. Area: 0a. 1r. 0p. County: Dublin.

(23) Registered Owner: Roger Rafferty. Folio No.: 16784. Lands: Ballymany. Area: 0a. 1r. 21p. County: Kildare.

(24) Registered Owner: Thomas Radford. Folio No.: 4585. Lands: Killiane Little. Area: 28a. 1r. 18p. County: Wexford.

LAW DIRECTORY 1976

Mr. Quentin Crivon, Solicitor, Partner in the firm of Messrs. Hugh J. O'Hagan Ward & Co., 94, Lower Baggot Street, Dublin 2, wishes to draw attention to an error in the entry under his name in the 1976 Law Directory. The telephone numbers in the entry should read as follows: (01) 764496/7/8, 767621, 686832.

NOTICES

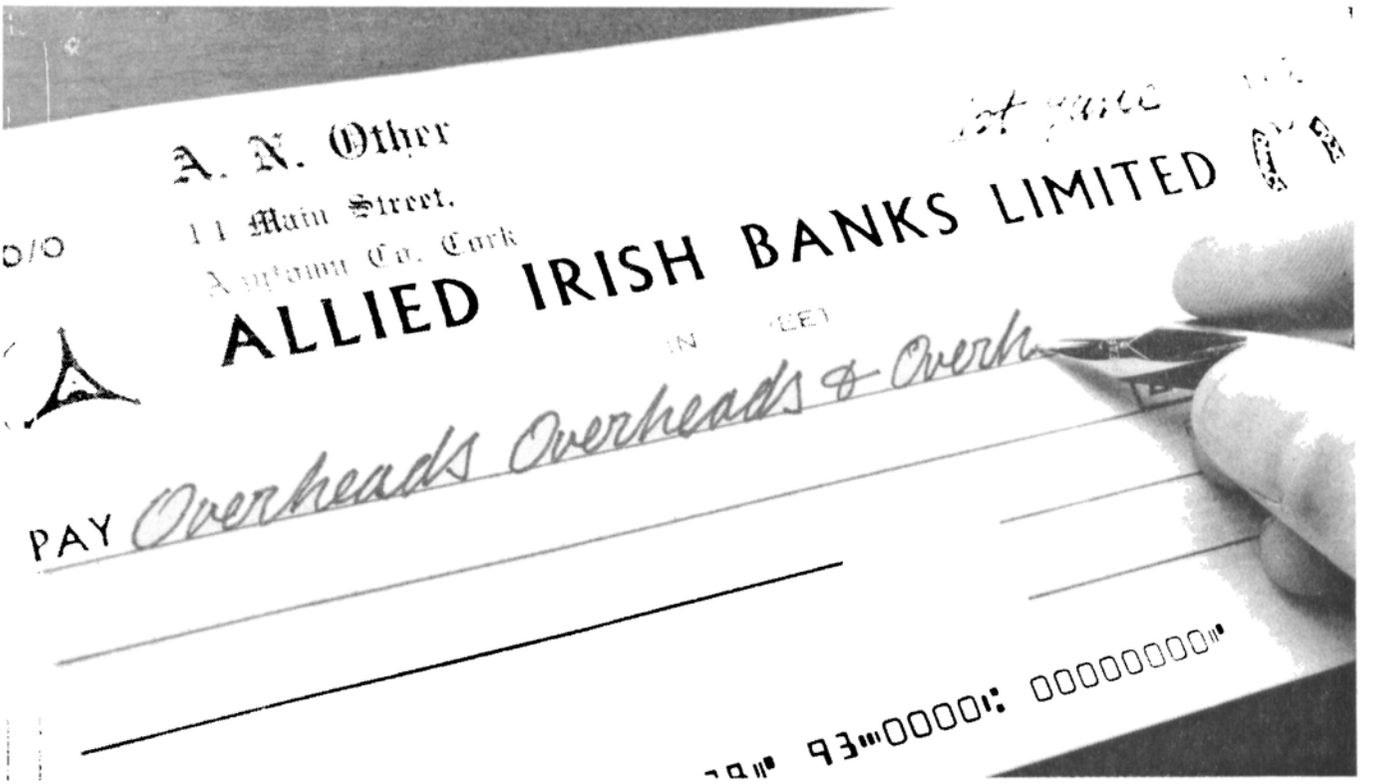
Solicitor's Practice for Sale. Long established firm with freehold premises centrally situated in West of Ireland town. Enquiries will be treated with absolute confidentiality. Replies to Box No. 129.

Country Solicitor will accept Graduate Apprentice. Particulars to Box No. 130.

Assistant Solicitor required in Southern town. Applicant looking for experience for 2/3 years may suit. Apply in writing to Box No. 131.

Solicitor with good Conveyancing experience would like to work part time. Replies to Box No.: 127.

Assistant Wanted. North Leinster town, easy access Dublin. 2 years' experience desirable but not essential. Mixed practice. Salary Dublin Rates Plus. Attractive Bonus. Replies to Box No.: 128.



Costs aren't just something your clients pay.

Every year, a larger proportion of your fee income is being swallowed up by overheads, while the demands on the modern law practice for a faster turn-around in clients' instructions are increasing daily.

In addition, with many of the services of the legal profession charged at static fees and with office costs continuing to rise, more and more of those fees are being eaten away by staff salaries and overheads.

All professions are under pressure and it is the fee-earners who are bearing the brunt of the increase in overheads and workload.

IBM can offer some practical help and comfort for the legal profession. Our range of memory typewriters is already bringing about dramatic changes in many legal offices. They have taken the drudgery out of routine procedures and introduced methods of handling volumes of work faster, more efficiently and more economically.

Using memory typewriters a first draft is produced, error free, in a fraction of the time required using conventional methods, and the fee-earner can make amendments comparing only the amendment itself. Retyping a final draft or for example typing an engrossment is carried out automatically at speeds of up to 180 words per minute.

Most of your routine correspondence can also be handled automatically releasing you for more productive work; while the secretarial drudgery is removed from the production of important documents.

All this adds up to saving time — and that means money too — for you and your secretarial staff. You spend less time drafting and checking — they spend less time typing and correcting.

Heretofore, handling paperwork in a legal office has become an ever increasing problem, hereinafter, IBM memory typewriters will make it easier for you.

For further information, contact Mr. Tony Pickavance at IBM.

IBM

IBM Ireland Limited, 2 Burlington Road, Dublin 4. Tel: 785344.
Irish Life Building, South Mall, Cork. Tel: 23311.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street,Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

JUNE - JULY 1976 VOL. 70 NO. 5

BANK STRIKE

In anticipation of a closure of the Associated Banks, the Council of the Society at its meeting on 17th June, 1976, authorised the President to make the Solicitors Accounts (Amendment) Regulations, 1976 (S.I. No. 125 of 1976) as set out in these columns.

Since the Statutory Instrument was made, the President has approved the following banks licensed by the Central Bank under the terms of Section 9 of the Central Bank Act, 1971, for the purposes of the Accounts Regulations:—

Allied Irish Banks Ltd.
Allied Irish Investment Bank Ltd.
Ansbasher & Co. Ltd.
Investment Bank of Ireland Ltd.
Northern Bank Finance Corporation Ltd.
Ulster Investment Bank Ltd.
Anthony Gibbs Ireland Ltd.
City of Dublin Bank Ltd.
Irish Intercontinental Bank Ltd.
Trinity Bank Ltd.

It has been drawn to the Society's attention that the "First National City Bank of Chicago" as listed in the Regulations, should have been designated as the "First National Bank of Chicago".

The Society has written to the Irish Banks Standing Committee on various problems arising for the profession during the currency of the strike and in the settlement of various problem situations thereafter. A reply is awaited.

The situation regarding the lodgment and payment of moneys in High Court Actions etc., has been raised with the Accountant of the Courts of Justice by Mr. Houlihan, member of the Superior Court Rules Committee. In reply the Accountant has stated:— "The position is that my cash account is kept in the Bank of Ireland as the Rules of Court require. The drafts which have recently come into your possession are drawn on this account and regrettably cannot be paid out of my account until the Bank of Ireland re-opens. I could not have anticipated this difficulty by transferring my cash account or part of it to another Bank before the strike began as this procedure would be contrary to Order 77 Rule 20.

This Rule provides that all moneys to be lodged in Court shall be paid in at the Bank, the Bank being defined in Order 111 as the Bank of Ireland. Presumably the cheques to which you refer are drawn on accounts in Banks also affected by the strike. If so it would not be possible to have such cheques cleared for lodgment in Court during the closure of the Banks of issue.

The position outlined about obtained during the closure of the Banks in 1970/1971.

Regarding notional lodgments of cash under Order 22, this is a matter for arrangement between the parties to the Court Actions; and such arrangements were common during the last closure. In fact the forms of Request for Lodgment (Order 77 Rule 21 No. 9) were lodged in this Office in the usual way by the Solicitors for the defendants during the entire period and the Accountant's direction for lodgment was signed by him and the forms returned to the Solicitors even though the actual lodgments could not be made at the time.

I would mention, however, that funds not yet lodged in Court are not subject to these Rules, and where cash is available, it might be placed on deposit account in any of the Banks specified in the Trustee (Authorised Investments) Act, 1958. Some of these are open for business, e.g. the Post Office Savings Bank, Trustee Savings Banks in the State and the Agricultural Credit Corporation Limited".

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get.

Guinness + Mahon were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Peter Tuite, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking lies in the flexibility and variety which merchant bankers can bring to the business of banking, and each transaction is treated on its individual merits.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS + MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Dublin 782444
17 College Green, Dublin 2. Telex 5205
or Cork 54277
67 South Mall, Cork. Telex 8469

FAMILY LAW

A Commentary on the Family Law (Maintenance of Spouses and Children) Act, 1976

by W. R. Duncan, M.A., Barrister at Law,
Lecturer in Law at Trinity College, Dublin.

The Family Law (Maintenance of Spouses and Children) Act 1976 introduces the most important changes in maintenance proceedings in this country for almost a century. It radically alters the bases upon which a spouse may secure a maintenance order, it attempts to equalise the maintenance rights of legitimate and illegitimate children, it contains the first ever (admittedly limited) statutory controls over maintenance agreements, it raises substantially the District Court maintenance limits and it introduces new mechanisms (including attachment of earnings) for the collection and enforcement ef maintenance payments.

The Act does of course make other changes in family law, but it is primarily concerned with maintenance and it is this aspect which will be dealt with here. This commentary is not intended as an exhaustive explanation or analysis of the Act, but as a pointer to a number of practical problems which may confront the lawyer in operating the Act and to some of its defects.

Section A. Maintenance Proceedings against Spouses.

Who is entitled to maintenance and who may bring proceedings?

In contrast to the *1886 Married Women (Maintenance in Case of Desertion) Act,* under which only a wife could obtain maintenance, the new Act gives to either spouse a right to be maintained by the other (s. 5(1) (a). Dependent children of the family are, as in the case of the *Guardianship of Infants Act 1964,* given maintenance rights in respect of both parents. The definition of a dependent child is broader than that formerly applying under the *Courts Act 1971.* It includes an adopted child and any child in relation to whom either or both spouses are *in loco parentis.* Where a child is the child of one spouse only (e.g. an illegitimate child or the child of a previous marriage) the other spouse may still be liable for his maintenance if, being aware that the child is not his, he has treated the child as a member of the family. The age of dependency is extended from 16 to 21 in a case where a child is receiving full time education or tuition, and indefinitely where a child is suffering from mental or physical disability such that it is not reasonably possible for him to maintain himself.

Although dependent children are given maintenance rights, the power to bring proceedings will normally vest only in their parents. However s. 5(1) (b) introduces an important new exception to this principle in a case where a dependent child has lost (by e.g. death or desertion) one parent and the other is not fully maintaining him. In such a case *any person* may apply for maintenance on behalf of the child. "Any person" would certainly include e.g. a social worker and may arguably include the child himself. It might be possible e.g. for the child of a widower, who is 18 years old and beginning a University course, to bring proceedings against his father to contribute towards his maintenance. It is perhaps unfortunate that non-parental proceedings for maintenance in respect of a child cannot be brought in a case where both parents are continuing to live together and where both are failing to support their child. Why should it be possible for a social worker to bring maintenance proceedings against a deserted wife or a widow for not supporting her child, while it remains possible to bring the same proceedings against a married couple living together?

On what grounds may an order be made and how will maintenance be assessed?

An order may be made against a spouse where that spouse has failed to provide "such maintenance for the applicant spouse and any children of the family as is proper in the circumstances". Where failure to maintain is proved, the Judge or Justice may order the defendant spouse to make periodic payments "of such amount and at such times as the Court may consider proper." (s. 5(1) (a))

A number of matters here call for comment. First it is now no longer necessary to prove desertion as it was under the 1886 Act. It is possible for one spouse to bring a maintenance action against the other while the two are still living together as one household. This is an important change, though one which was under the old law partly anticipated by certain District Justices in accepting a very liberal definition of "desertion".

Second the conjunction "and" between "dependent spouse" and "any dependent child" is something of a mystery. Its presence suggests that before an order can be made it must be proved that both a spouse and at least one dependent child are not being properly maintained. Read strictly the section would deny a remedy to an inadequately maintained wife with no children or with children who are being adequately maintained. Such a conclusion would be unfortunate and could hardly have been intended by the legislature.

Third the requirement that there should appear to the Court to have been a failure to provide such maintenance "as is proper in the circumstances", and the power given to the Court to order the defendant spouse to pay such maintenance "as the Court may consider proper" provide the first of many examples under the Act where the Court is asked to exercise a considerable degree of discretion. In exercising this discretion the Judge or Justice is required to have regard to all the circumstances of the case including a number of specific matters set out in s. 5(4) (a)&(b). (Where an interim order is being sought under s. 7 even less guidance is given.) The specified matters are not accorded any priority and they are not intended to be exhaustive. Clearly there is a possibility of inconsistency in the practice of different Courts. How much weight e.g. should be attached to "earning capacity" (specified in s. 5(4) (a))? Should a wife who is qualified but not working as a secretary be awarded less maintenance than an unqualified wife? Should a husband who is not making use of his qualifications and who has taken a job which does not realise his full earning potential be asked to pay more than an unqualified man in a similar position? And there are more general questions. Should the Court attempt to maintain a rough equality in the standard of living of husband and wife? Or will the Courts accept the old ecclesiastical principle of awarding an innocent wife a sum equal to one-third of the joint incomes of husband and wife? The principle of accepting $\frac{1}{3}$ of the combined resources of the parties as a starting point has recently been favoured in Eng-

land (see judgment of Lord Denning M.R. in *Watchel v Watchel* [1973] I All E.R. 829 at p. 839), and there are some indications that a similar rule of thumb is already applied by some Justices in this country, but there is yet no settled practice.

There will be even greater room for inconsistency in cases where it is alleged that the plaintiff has been guilty of misconduct or of contributing in some way to breakdown of the marriage. (Cases of desertion and adultery are referred to in the next section). Should a fault principle operate to reduce the amount of maintenance received by the "guilty" spouse, or should misconduct be ignored unless it is "obvious and gross" (the principle accepted by Ld. Denning M.R. in *Watchel v Watchel* supra at p. 835.)

Finally the practical problem of determining precisely what the earnings of a party are, has not been resolved by the Act. Although s. 13 gives the Court power to order an employer to give the Court a signed statement of earnings, this can only be done at the stage when attachment proceedings have been commenced against a maintenance debtor, not strangely enough at the crucial stage when maintenance is first being fixed.

Bars to relief

The Act keeps alive the concept of desertion and constructive desertion together with the considerable case law which has developed around them by providing in s. 6(2) that "the Court shall not make a maintenance order for the support of a spouse where the spouse has deserted and continues to desert the other spouse".

Adultery however ceases to be an obsolute bar and becomes a discretionary bar to relief. Under the 1886 Act the position had been that a Justice was bound to refuse maintenance to a wife who had committed adultery, and might, though was not bound to, terminate an order made in favour of a wife who subsequently committed adultery. Under the new Act, provided that the adultery is not condoned, connived at or by wilful neglect or misconduct conduced to, it will not be an automatic bar to relief. However the Act is worded in such a way (s. 5(3)) as to permit a Justice to refuse maintenance solely on the ground of an adulterous act by the plaintiff spouse if he thinks it proper to do so. In this matter especially, because an element of moral judgment is involved, judicial approaches are likely to be individualistic.

Discharge, variation and termination of orders

The provisions of the Act which fall under this heading call for little comment save that there is a new provision for the discharge of an order after a year at the defendant's request where, having regard to his record of payments and other considerations, and provided that the persons in whose favour the order was made will not be prejudiced, the Court thinks it proper to do so.

Section B. Maintenance Agreements

S. 8 of the Act enables either spouse for the first time to have a maintenance agreement (as well as certain other forms of agreement) made a rule of Court, with the result that the agreement may be treated as a maintenance order for certain purposes, the most important of these being enforcement. But it is important to note the restrictions. The agreement must be written. It must be made after the commencement of the Act. The Court must be satisfied that it is a fair and reasonable agreement which in all the circumstances adequately protects the interests of both spouses and any dependent children of the family. And the agreement cannot, like other maintenance orders, be varied by the Court.

S. 27, introduced at a late stage by the Minister for Justice, makes void any agreement in so far as it attempts to exclude or limit (inter alia) the bringing of maintenance proceedings under the Act. This important section clarifies a doubtful point of law. Earlier Irish cases had suggested that an agreement not to sue for maintenance was fully enforceable. (See e.g. *Ross v Ross* [1908] I.R. 339 and *Courtney vCourtney* [1923] I.R. 3, where there is even the suggestion that, in the absence of an express covenant not to sue, it may be possible to imply one into a maintenance agreement if it can be established that this represented the real character of the agreement.) After *Grealish v Murphy* [1946] I.R. 35 there was always the possibility that in an extreme case a covenant not to sue might be regarded as improvident, and the English Courts eventually favoured the view that an agreement not to sue would be void as being contrary to public policy. (See *Hyman v Hyman* [1929] A.C. 601.) In view of the fact that, when maintenance agreements are concluded, the parties are usually in unequal bargaining positions, the new statutory provision is welcome.

The wording of s. 27 is careful not to make void other elements that may be included in the maintenance agreement. Thus, although a wife may not be held to her promise not to sue, her husband will still be contractually bound to pay the agreed maintenance.

It will be interesting to see what effect ss. 8 & 27 have on the popularity of maintenance agreements. They certainly make such agreements less attractive from the point of view of the liable spouse—normally of course the husband. If a husband knows that his wife may apply to have their agreement made a rule of Court, that she may then enforce it by e.g. attachment of his earnings, and that her promise not to sue for further maintenance is valueless, his incentive to enter into an agreement in the first place to avoid litigation is reduced.

Section C. Affiliation Proceedings

The most substantial amendments made by the Minister for Justice to his original Bill (introduced mainly at the Report stage) relate to affiliation proceedings, and they result from his acceptance of the principle that the maintenance rights of legitimate and illegitimate children should be broadly equal. The same principle is to be found in the recently finalised European *Convention on the Legal Status of Children Born out of Wedlock* (October 1975). The definition of dependent child is in the Act the same in affiliation proceedings as in inter-spousal maintenance proceedings; the maintenance limit of £15 per week per child in the District Court is the same in both kinds of proceeding; and the methods laid down in the Act for collecting and enforcing maintenance payments are the same in both.

The normal limitation period for bringing proceedings has been extended from 6 months to 3 years (2 years in the original Bill) after the birth of the child. And in a case where the alleged father has not been resident in the State or has ceased residing in the State within the 3 year period, the limitation period will now run, not from the time when he enters or re-enters the State, but from the time when he takes up

residence or resumes residence in the State.

There has been a good deal of discussion about the ideal length of the limitation period or whether any limitation period is needed at all. One interesting feature of the Act is that, where a person who is not the mother brings maintenance proceedings against one of the child's parents (as he may now do under the amended s. 4A(1) of the *Illegitimate Children (Affiliation Orders) Act* 1930), no limitation period is expressed. Arguably therefore, in a situation where a mother has failed to bring proceedings against the alleged father within the 3 year period, it may still be possible for some third party (a social worker perhaps) to bring proceedings against him for the support of his child at a later date. But this argument will only hold water if a Court is prepared to accept that the right to bring maintenance proceedings against the father of an illegitimate child implies also the right to bring proceedings to have the alleged father adjudged the "putative" father (i.e. affiliation proceedings). The reason is that a maintenance order can be obtained by a third party only against a "putative" father (see amended s. 4A(4) of the 1930 Act). If such a right cannot be implied and it is not possible for a third party to bring maintenance proceedings against the alleged father of a child, who has not yet been adjudged the putative father, then one can see little value in permitting third party proceedings at all. One of the reasons for allowing third parties to bring proceedings is to protect the child's interests in cases where the mother is not for whatever reason prepared to act. If an affiliation order has to be obtained before the third party can bring maintenance proceedings, and if the only person who may bring affiliation proceedings is the mother (or a local body giving relief to the mother), then the safeguard is lost.

Section D. The Collection and Enforcement of Maintenance Payments.

S. 9 of the Act takes a considerable burden off the shoulders of the maintenance creditor by requiring the Court to order the maintenance debtor to transmit payments through the District Court Clerk, and by requiring the Clerk, in a case of default, at the request of the creditor, to take steps to recover arrears, including the institution of enforcement proceedings. The Court must order payments to be made through the Clerk unless the creditor requests the Court not to do so and the Court thinks it proper not to do so. Such an order may be discharged on the application of the debtor, provided the creditor is given an opportunity to oppose the application and provided also that the Court is satisfied that, having regard to the debtor's record of payments and other circumstances, it is proper to do so. The Clerk cannot on his own initiative commence enforcement proceedings; a written request from the creditor to do so is required. And even then the creditor's right personally to bring enforcement proceedings is preserved.

Clearly in most cases the Clerk will be ordered by the Court to act as collecting agent, and will be requested, where default occurs, to institute enforcement proceedings. This procedure certainly has advantages from the creditor's point of view and knowledge of its existence may persuade some maintenance debtors to be more assiduous in keeping up payments. But there is one objection to the scheme. S. 9(2) gives the Clerk power inter alia to "proceed in his own name for an attachment of earnings order or otherwise." A situation may thus arise in which an officer of the Court becomes a party to a dispute before the Court. If a Clerk commences attachment proceedings and the debtor contests them on the ground e.g. that he has a reasonable excuse (under s. 10(3)) for non payment, the Clerk may find himself in an argument with the debtor or the debtor's solicitor or counsel. The Clerk might avoid this situation at the outset by arguing that he considers it "unreasonable in the circumstances" (under s. 9(2)) to commence attachment proceedings himself. But once attachment proceedings have been begun by the Clerk it would be strange if he were to terminate them simply on the ground that they were likely to be contested.

Whether the attachment of earnings provisions themselves, which occupy Part III of the Act, will make a significant improvement in securing payment of maintenance debts is difficult to predict. Indeed since no survey has been undertaken to assess the efficacy of existing enforcement procedures, there will unfortunately be no basis for comparison. There are certain inherent limitations in the attachment scheme. It cannot operate in respect of persons who derive income from a source other than an employer (e.g. self-employed persons, persons living on unearned incomes, persons receiving unemployment benefit etc.). And in the case of an employed person it is doubtful whether the provisions of the Act are strong enough to prevent the classic method of maintenance avoidance, i.e. getting lost by a change of address and employment and possibly even a change of name. In this context it is unfortunate that, whereas the Act requires (s. 14(a)) the maintenance debtor to inform the Court of changes in his employment, no effective sanction is stipulated in case of non-compliance. The sanction set out in s. 20(1)

Solicitors' Account (Amendment) Regulations 1976
S. I. No. 125 of 1976

Solicitors' Accounts (Amendment) Regulations 1976.

The Incorporated Law Society of Ireland in exercise of the powers conferred on them by Sections 4, 5, 66 and 71 of the Solicitors Act 1954 and of every other power thereunto them enabling and with the concurrence of the President of the High Court hereby make the following regulations.

1. These regulations may be cited as the Solicitors Accounts (Amendment) Regulations 1976, and shall be read together with the Solicitors' Accounts Regulations 1967 (S. I. No. 44 of 1967) (hereinafter called the Principal Regulations) and shall, to the extent to which they are inconsistent with the said regulations, alter and amend the same.

2. These regulations shall come into operation on the 17th day of June, 1976.

3. The Principal Regulations shall be amended by the addition of the following Fourth Schedule.

Fourth Schedule

Any branch in Northern Ireland of a bank named in the first Schedule.

Post Office Savings Bank;
Trustee Savings Banks;
Agricultural Credit Corporation Ltd.
First National City Bank;
First National City Bank of Chicago;
Algemene Bank Nederland (Ireland) Ltd.;
Banque Nationale de Paris (Ireland) Ltd.;
The Bank of Nova Scotia;
Chase and Bank of Ireland (International) Ltd.;
Bank of America.

Or any other bank licensed under the Central Bank Acts as the Society may from time to time approve.

London clearing banks: Barclays Bank Ltd.; The Bank of England; Coutts & Co.; The District Bank Ltd.; Glyn Mills & Co.; Guinness Mahon & Co. Ltd.; Lloyds Bank Ltd.; Martins Bank Ltd.; The Midland Bank Ltd.; The National Bank Ltd.; The National Westminster Bank Ltd.; Williams & Deacon's Bank Ltd.; The Westminster Bank Ltd.

Scottish clearing banks: The Bank of Scotland; The British Linen Bank; The Clydesdale Bank Ltd.; The National Commercial Bank of Scotland Ltd.; The Royal Bank of Scotland.

Dated this 17th day of June 1976.

Signed on behalf of the Incorporated Law Society of Ireland

PATRICK C. MOORE
President of The Incorporated Law Society of Ireland.

I concur in the making of the above regulations

THOMAS A. FINLAY
President of the High Court.

The effect of these regulations which are intended to be of a temporary character, is to authorise solicitors to open designated client accounts for clients' monies with the named British and Scottish clearing banks, or any branch in Northern Ireland of an Irish associated bank, or in any of the other designated banks.

(making the wrongdoer liable in debt) cannot effect the defaulter: he is already liable for his maintenance debts. And the criminal sanctions stipulated in s. 20(2) (up to £200 fine and/or up to 6 months imprisonment) only apply to a case where the defaulter has made a false or misleading statement, not where he has made no statement at all.

One element of the attachment procedure is likely to be a particular source of uncertainty. The order served on the employer will specify two rates of deduction, (a) the normal deduction rate (a rate sufficient in the Court's view to secure payment of the maintenance order and to make up over a period of time any outstanding payments), and (b) the protected earnings rate (the rate below which, having regard to the resources and needs of the maintenance debtor, the Court thinks it proper that his earnings should not be reduced). The employer may not make any deduction which would result in the debtor's income falling below the protected earnings rate. The uncertainty here lies in the fact that, beyond considerations of the debtor's needs and resources, the Court is given no guidance on how to determine an appropriate protected earnings rate. What exactly should the Court be aiming at? Should it aim at a figure which is reckoned to be sufficient to maintain the debtor at subsistence level? Should the figure aimed at be higher in the case of a person earning a large salary? Should the Court make use of external standards (e.g. the current rate of unemployment assistance) as guides?

Section E: Conclusion

The many areas of discretion left to the Court by the new Act will pose familiar problems of prediction for the legal profession and their clients. But more important still, injustices may arise if these discretionary powers are exercised in widely differing ways by different Courts. Regular conferring among Judges and Justices could help to minimise inconsistency, and it is possible that more specific principles will be established on appeal. But a responsibility also rests on the legal profession to monitor the Act's operation and to draw attention to any glaring inconsistencies in its application by different Courts.

How successful the Act will be in terms of providing more maintenance more efficiently for more spouses and children remains to be seen. The absence of Legal Aid will reduce its efficacy. But even with Legal Aid the importance of the Act is not to be exaggerated. Maintenance proceedings provide just one of a number of mechanisms for helping to secure family incomes. In terms of the number of spouses and children actually benefitting recent changes in social welfare legislation have made a more significant contribution to the problem of family maintenance than the new Act will ever do. The schemes for Deserted Wives' Allowances (introduced in 1970) and Benefits (1973), and for Unmarried Mothers' Allowances (1973) are already contributing to the support of thousands of families (e.g. in April 1976 4,411 wives together with 6,360 dependents were in receipt of Deserted Wives' Allowances or Benefits), and when the Social Welfare (Supplementary Welfare Allowances) Act 1975 comes into operation many more will be benefitting. To a small extent the large numbers in receipt of these allowances and benefits is a reflection of the past inadequacy of maintenance proceedings legislation, but to a much greater extent it is a reflection of a simple economic fact — that where a marriage has broken down and a family unit has split up, the liable spouse or parent is often simply not earning enough to support two households.

EUROPEAN SECTION

Principle of Free Movement of Goods extends strictly to Member States only.

Case 51/75

EMI v CBS - United Kingdom.

Case 86/75

EMI v CBS Grammofon A/S - Vanlose.

Case 96/75

EMI v CBS Schallplatten GmbH, Frankfurt am Main. (Preliminary ruling) 15 June 1976.

I. Judgments

Columbia records are well known but what is generally unknown is the fact that a record bearing that trade-mark may have been produced either by the company EMI or by CBS. The case has its roots in 1887 when a company was set up in the United States specializing in the production and utilization of "graphophones". That company became the owner of the trade-mark Columbia which, in 1917, it assigned to the British subsidiary which it had created in several countries, including those which now make up the Community. That American company, which became CBS, nevertheless reserved that trade-mark for the United States and for other third countries.

The trade-mark Columbia is therefore at present held in a certain number of countries composing the Member States of the Communities, by the British company "EMI Records Limited" and in other countries, including the United States, by the American company "CBS Inc." which has a subsidiary in each of the Member States here concerned, the United Kingdom, Germany and Denmark.

The proceedings in the main action arose as a result of sales within the Community, through the European subsidiaries of CBS, of products bearing the trade-mark *Columbia*, manufactured in the United States. This led EMI to have recourse to the National Courts, requesting that CBS be ordered to cease production, importation and sale within the Community of records bearing the trade-mark "Columbia".

CBS claimed that the principles of the free movement of goods and free competition authorize it to undertake such importations.

The National Courts seised of the case, that is to say the High Court of Justice, London, the Landgericht Köln and the Maritime and Commercial Court, Copenhagen, put to the Court of Justice in Luxembourg the question whether the proprietor of a mark in a Member State of the Community may exercise his exclusive right to prevent the importation or marketing in that Member State of products bearing the same mark coming from a third country or manufactured in the Community by a subsidiary of the proprietor of the mark in that country. As regards the *free movement of goods*, the Court emphasizes that Articles 30 and 36 of the Treaty provide that quantitative restrictions and measures having equivalent effect shall be prohibited *between Member States* and that restrictions justified on grounds of the protection of industrial and commercial property shall not constitute a disguised restriction on trade *between Member States*. Consequently, the exercise of a trade-mark right in order to prevent the marketing of products coming from a third country under an identical mark does not affect the free movement of goods between Member States and does not come under the prohibitions set out in the Treaty.

As regards the provisions of the Treaty on Community commercial policy it is nowhere provided that the Member States shall extend to trade with third countries the principles governing the free movement of goods between Member States. The measures agreed by the Community in certain international agreements, such as the ACP - EEC convention of Lomé or the agreements with Sweden and Switzerland, cannot be relied upon by other third countries.

With regard to the rules on competition it must be emphasized that the exercise of a trade-mark right cannot fall within the ambit of the prohibitions contained in the Treaty unless it is the subject, the means or the consequence of an agreement or a restrictive practice. But it appears from the file that the foreign trader can obtain access to the Common Market without availing himself of the mark in dispute and, in those circumstances, it appears that the requirement that the proprietor of the identical mark in a third country must, for the purposes of his exports to the protected market, obliterate that mark forms part of the permissible consequences flowing from the protection of the mark.

The Court has ruled:

1. The principles of Community law and the provisions on the Free Movement of Goods and on Competition do not prohibit the proprietor of the same mark in all the Member States of the Community from exercising his trade-mark rights, recognised by the National Laws of each Member State, in order to prevent the sale or manufacture in the Community by a third party of products bearing the same mark, which is owned in a third country, provided that the exercise of the said right does not manifest itself as the result of an agreement or of concerted practices which have as their object or effect the isolation or partitioning of the Common Market.

2. In so far as that condition is fulfilled the requirement that such third party must, for the purpose of his exports to the Community, obliterate the mark on the products concerned and perhaps apply a different mark forms part of the permissible consequences of the protection which the National Laws of each Member State afford to the proprietor of the mark against the importation of products from third countries bearing a similar or identical mark.

S.A.D.S.I. INAUGURAL MEETING

The President, Mr. P. C. Moore, presided at the Inaugural Meeting of the 90th Session of the Solicitors' Apprentices Debating Society which was held in the Library of the Incorporated Law Society, Four Courts, on Friday, 26th March, 1976. The customary humorous and inaccurate minutes of the previous meeting were read and signed.

Awards were made to the following :

Oratory

Incorporated Law Society's Gold Medal: Ciaran O'Mara.

Society's Silver Medal: John Bourke & R. Vincent Shannon.

Legal Debate

President's Gold Medal: Niall Sheridan.

Society's Silver Medal: David Leon.

Impromptu Speeches

Vice-President's Gold Medal: Niall Sheridan.

Vice-President's Silver Medal: Eugene Tormey.

Irish Debate

Society's Parchment: Declan Sherlock & Maria Durand.

First Year Speeches

Society's Silver Medal: Michael D. Murphy

Replica of Auditorial Insignia: Brian P. O'Reilly.

A presentation of Waterford Glass was made by the President, on behalf of past Auditors of the Debating Society, to Willie O'Reilly and Mrs. O'Reilly to mark the continuous and loyal service they had rendered the Society for 30 years. The President then called upon the Auditor, **Mr. Niall Sheridan, B.C.L.,** to deliver his Inaugural Address on "Apprenticeship, Theory and Practice".

□

INAUGURAL ADDRESS:

Apprenticeship, Theory and Practice

By NIALL SHERIDAN, B.C.L.

130 years ago a Select Committee was established by the House of Commons to report on the state of legal education. It recommended that the Universities should play a leading part in providing an education in law. The Committee recognised that "this would not be sufficient for future practitioners, because the Universities were not designed for and were unwilling to play the role of providing professional training and therefore a special institution would be required for this purpose".

In the Report of the Ormrod Committee on Legal Education in 1971 the same conclusions were expressed in the following terms "The demands which the legal profession had to meet, and the roles which professional lawyers are called upon to play in Society, are so varied, and require such different qualities, that the profession will always need to recruit men and women of widely differing character, temperament and intellectual attainments. Schemes of training and the requirements for qualification must reflect the need for variety in the intake to the profession. They must not be unnecessarily rigid or overdemanding in time, lest the abler students are discouraged from entering, nor must standards be set so high that the profession will lose the services of people who are capable of becoming valuable members of it".

"The professional lawyer requires a sufficiently general and broadbased education to enable him to adapt himself successfully to new and different situations as his career develops. He must acquire an adequate knowledge of the more important branches of the law and its principles the ability to handle fact both analytically and synthetically and to apply the law to situations of fact; and the capacity to work not only with clients but also with experts in other disciplines. He must also acquire the professional skills and techniques which are essential to practice and a grasp of the ethos of the profession; he must also cultivate a critical approach to existing law, an appreciation of its social consequences and an interest in and positive attitude to appropriate development and change. To achieve these aims a combination of education at university level and apprenticeship in its widest sense is necessary. The training process must therefore be planned in three stages—the academic stage, the professional stage, comprising institutional training and in training and continuing education after qualification."

The foregoing paragraphs should be the "Credo" for anybody who has an interest in Legal Education. The bones of the Ormrod recommendations mirrored in nearly all respects the findings of the Commission on Higher Education in Ireland.

Society's Report on Legal Education

The reports of both the Society of Young Solicitors and the Solicitors' Apprentices' Debating Society which were published in 1967, coming out, as they did, in favour of a Law Degree as an entry requirement to a professional Law School, came to basically the same conclusions as the two Government appointed Commissions. So the universal opinion is that a University Degree is an essential part of Legal Training. Now the Universities seem to be moving towards an approach to the teaching of Law in a Sociological context.

University Degree essential

In 1965 there were only three full time professors, eight part time professors, two full time lecturers, two part time lecturers in the four Universities in the Republic of Ireland. The Convocation of the National University of Ireland submitted at that time that "the Law Staffs of the University should include an adequate number of full time teachers to give the Law Schools cohesion and to have the time and facilities for original work". Since the publication of the Report of the Commission on Higher Education there has been vast improvements in the staffing arrangements in the Universities. It was the lack of full time lecturers that was central to the problem in our Law Faculties. In 1974/75 in U.C.D. alone there were eleven full time teachers of Law and four part time lecturers. Although the number of full time students also increased from 146 to about 450, the ratio of full time staff to students halved in that period.

This is in direct contrast to the situation in 1959 when the Board of Visitors held appointments by U.C.D. of college Lecturers and Assistant Lecturers on a yearly basis legally invalid. This practice caused uncertainty among the staff. The Board of Visitors also found that there was a policy of not filling vacancies which constituted a breach of duty. This policy was begun in 1949 and had been expanded in 1953.

Understaffing in Universities

The chief reason for the gross understaffing in the Universities, and this still exists today, is that there are six Universities catering for a relatively small student

population. This, as Mr. Justice Kenny pointed out in his submission to the Commission on Higher Education, resulted in over-lapping, waste of resources, unnecessary duplication of Libraries and small salaries to staff. Furthermore in the absence of full-time staff there was almost no legal research and little legal writing.

With the requirement of a Degree as a pre-requisite to enter a professional School, the Universities will no doubt introduce courses of a more Theoretical nature than before. Dr. Michael Tierney stated in 1966 to the Commission on Higher Education "the requirements of the professional Legal Bodies have had a strong indirect effect on the U.C.D. course in Law. The practical requirements of both the Legal professions have rendered it difficult to give the courses for this degree in anything other than a severely practical, professional bias, and have avoided the kind of theoretical, historical and philosophical training which is associated with University Law courses in America and on the Continent". Even now pressure is being put on U.C.D. by the Law Society to include a course on Company Law which comprises one of the subjects at the basis of the Society's proposed Educational Curriculum.

Conflict between Theoretical and Practical approach to Law

This conflict between the theoretical and practical approach to law is dealt with by Mr. Justice Megarry in his presidential address to the Society of Public Teachers of Law in 1966. Theoretical education, he contended, minimized the importance of facts. Academics include only relevant facts in examination problems which are always, or nearly always based on certainty. The facts are usually on all fours with some Legal rule although the more enlightened lecturers might leave out a relevant fact to test the student. A practitioner however is faced with an imprecise account of relevant and irrelevant facts which he has to evaluate and it is for this reason that he requires a practical education. A university student condenses the relevant text book to note form for examination purposes whereas a Solicitor or Barrister uses merely a line or two from a text book and the relevant footnotes reading the cases and magnifying the principle in order to come to a solution of his problem. A student then is taught to deal with the sources in a completely different way from what he will be required to when he qualifies. In an academic context, the examiner seeks perhaps a touch of brilliance in a student; the qualities of a good Solicitor however, are thoroughness and accuracy. It is the practitioners job to avoid problems rather than solve them. In a University exam context the subjects are neatly compartmentalized. These compartments however do not exist in practice and there one also has to contend with the human element. It is much easier for an academic to voice doubts about the value of a point of law or a judicial decision. Were a practitioner to challenge some such point which he doubts, he risks his client's money. Mr. Justice Megarry, though he shows up defects in theoretical Education from a practitioner's point of view, does not try to advance a case for a purely practical education.

Balance between Professional and University Course

In Legal Education, a balance must be struck between both Professional and University Course. The new system of training Solicitors would provide more scope for an abstract study of law in a University context. The new Professional Course would also help the student to adapt the theories he learns in University to the realities of Legal Practice. It is entirely necessary and desirable that one should pursue a University Course to satisfy one's intellectual curiosity. The fault of the present training system is that the exercise of an inquisitive mind jeopardises the process of note memorizing and thus the result of the important examination. This type of education does not lead to the expansion of a person's mind but the system becomes synonymous with rigid limitation.

Non-Legal subjects necessary in University Course

Since the University Degree Course has now to a certain extent been divorced from practical training I am of the opinion that it should contain non-legal subjects. A study of English and History would perhaps be appropriate. The Report of the Solicitors' Apprentices' Debating Society to the Law Society on Legal Education also held this view. A Lawyer tends to use a great deal of technical jargon. In this way he expresses his intentions concisely but I believe harms his overall command of the English Language. The result is often an inability to explain his actions to his clients. Apart from this consideration the study of such subjects as History and English will provide a broader based education which in turn would make for a better Lawyer. I realize there are pressures of both finance and time which present difficulties but the student should at least be given the option to pursue such a broader course in the First Year of his studies. The reasoning behind the recommendations of the Ormrod Report relating to other studies of Legal Education from the necessity of a University Degree is that it should awaken a critical faculty in the student. A study of non-legal subjects in my opinion would add to this critical faculty.

The Vocational Course of the Society

The second phase of legal education mentioned in Ormrod is the Vocational Course. As from October 1975 the Incorporated Law Society requires that intending Apprentices except in a couple of cases be University Graduates. Law Graduates of Irish Universities are entitled to enter into Apprenticeship and to immediate entry to the Society's Law School for the Vocational Course. Arts Graduates of Irish or United Kingdom Universities are automatically entitled to admission to Apprenticeship but must pass the final exam—First Part. The exception to the requirement for a degree is that Law Clerks of 7 years standing can apply for exemptions from the Preliminary Examination. Graduates from other disciplines or from other Universities may apply for exemption from the Preliminary Examination but the grant of this is at the discretion of the Law Society. Non-Graduates of 21 years and over may sit for the Society's Preliminary Examination. The Final Examination—First Part is of Degree Standard in what Ormrod called the Core Subjects. In the Incorporated Law Society's Sylllabus these are the Law of Real Property, Tort, Contract, Constitutional Law, Company Law and another subject. A year is then spent pursuing the Vocational Course. Since most of the people who are being taught on this Course are University Graduates it presents a unique opportunity to break away from the straight lecture system which is being used in Solicitors' education. At present lectures are merely dictation sessions. Tutorials, Group Discussions and Student Essays along with conventional lectures should constitute the Study Course. It is interesting to note that in both the Report of the Solicitors' Apprentices' Debating Society in 1967 and in a Report by the Auditor of S.A.D.S.I. for the 84th Session, Donough O'Connor, a preference was ex-

pressed for a break away from the traditional Lecture System. Donough O'Connor contended that Apprentices should be provided with Lecture Notes at the beginning of each year summarizing the sources used in each lecture, citing cases, statutes and texts referred to. This he said would provide an opportinity for discussion in class. I believe that in the Vocational Course the proposals in the Ormrod Report for a system of Practicals should be adopted. This would involve setting exercises in Professional Problems and Procedures including relevant as well as irrelevant facts and allowing the student access to all the relevant Text Books and Law Reports. This would be a great benefit in preparing the student to make the transition from the theoretical treatment of Law in University to the requirements of practice.

The Harthog and Rhodes experiment in examinations

Mr. Justice Megarry in his article also recommended changes in the examination system. The inadequacies of the examination system was shown up by an experiment by Harthog and Rhodes where they chose 15 examination papers which had been given the same mark by different examiners. The papers were then circulated among the other examiners and marked by them. The results were very interesting—one paper was given credit by 6 examiners, passed by 5 and failed by 4. The following year the same papers were represented to the original examiners. There was a 44% difference between their assessments. In another survey Fairthrop listed 17 variables which affected exam results and have no bearing or lack of it, speed in writing or thinking, ability to cram, ability to conform to the examiners views although the examiner would like to deny that this in fact is the case. I would recommend for the Vocational Course a system of continuous assessment, if this accounted for 20% even of the total marks for an examination I feel a fairer result would ensue. Linked to this the implementation of the proposals of the Society of Young Solicitors, of Mr. Justice Megarry and of the Ormrod Report concerning the type of examination questions which should be set in those exams would provide a more comprehensive test of the students abilities. The general consensus of these reports is that there should be fewer questions on the examination papers, which should be a test of professional proficiency. They should be designed to make a student, when he is studying, learn for his own benefit for his future knowledge rather than memorizing facts for an examination. All agree that the questions should be comprised of long practical problems containing irrelevant as well as relevant facts. Conditions in the examinations should be as close as possible to an office situation so that the Professional Examination should be on an open "book basis". Mr. Justice Megarry in his article recommended that the Paper should have no specific title but it should instead be concerned with a general theme of questioning. Since we are dealing with Post Graduate Students the failure rate should be very low indeed.

The general consensus among all the experts is that the Professional Law Schools should be amalgamated. In fact The Incorporated Law Society recommended this to the Commission of Higher Education in their submission. Mr. Donough O'Malley then Minister for Education in a Speech at the Council Dinner of the Incorporated Law Society made the same point. The abolition of the present dual system of Professional Legal Education would mean the money saved by the pooling of staff and premises could be used to provide better facilities for students. In Ireland one result of the dual system is that library facilities are totally inadequate to meet the needs of the present day student.

Merging of Legal Professions

Professor Hamish R. Gray, a Barrister and a Solicitor in New Zealand argues that the merging of the two Professions would not be fatal to Professional Skill and Integrity as feared in Britain and Ireland. He contends that the main reason for the reluctance of the Professions to co-operate with one another is the concern for protection from the other. He claims this is a bar to proper legal education in terms of professional needs and the professions duty to the Public. A common professional course, once the University Degree is obtained by the student, would present very little difficulty as Bar Students and Solicitors' Apprentices study the same subjects in their professional courses. The theory is the student would choose which branch of the Law he wished to practice after finishing his studies. If this is unacceptable, then surely as a compromise, there should be a Common Professional Law School with those students who choose to study for the Bar before they enter it in order to undertake certain subjects like Advocacy and Psychology at the same time as the Trainee Solicitor would attend his Book-Keeping or Office Management Lectures. They would meet for Lectures in the main Vocational Subjects.

Advisory Committee on Legal Education

The difficulties in the relationship between the Incorporated Law Society and the King's Inns and indeed between the Professional Bodies and the Universities could perhaps be lessened by the implementation of the Proposals contained in the Ormrod Report for an Advisory Committee on Legal Education. This would establish closer links between all the Bodies concerned and would build up mutual trust. The Advisory Committee as envisaged by the Ormrod Committee would have no Executive Powers. It was proposed that the Body be headed by a Chairman with 3 Representatives from each of the Professional Bodies, 6 Members from the Society of the Public Teachers of Law, 2 from the Association of Law Teachers and a Solicitor and Barrister both under 10 years qualified.

The Ormrod Report also provides for the continuation of Legal Training after qualification.

The Society of Young Solicitors, does good work in the sphere of the continuation of training by the holding of Week-end Seminars. Other Societies like the Society for the Study and Practice of European Law also try to promote an awareness among Practitioners of the need to keep abreast with current developments. The Ormrod Report mentioned 5 broad sections in which these courses should be divided :

1. Judicial Duties.
2. Refresher Courses for Practitioners.
3. Course in New Legislation.
4. Specialists Courses, e.g., in Tax Law or Law of European Communities.
5. Interdisciplinary Courses.

Courses should be run from time to time by the Law Society in the Law School to further this aim. The Law of the European Communities is one area in which Irish Solicitors need to be educated. Lasok, an expert in Community Law has said "Certainly neither the volume of Legal Writings nor the extent of instruction in the Community Law gives credit to the seats of learning whose business it is to advance scholarship and dissemination of knowledge". This certainly applies to our standards in relation to the study of E.E.C. law. In my opinion a Course should be provided which is

at least twice as intensive as the minimum standard laid down by The Council of Europe in 1972 which was for a 25 hour lecture Course.

New Law School for Apprentices

The provision of a New Law School for Solicitors' Apprentices is a great step forward in Legal Education. I have my doubts however that the lot of the Solicitors' Apprentice will be significantly improved by it. The Ormrod Report suggests that the number of unsuccessful candidates in examinations in the Vocational Course should be very small. The following comments of Mr. William Osborne at the admission of new Solicitors to the Rolls in December lead me to believe this will happen.

He said on that occasion "It might not be possible to find the room for all the students who may wish to qualify as Solicitors in the next 4 to 6 years". If this means that failure rates in the Society Examinations will be kept at an artifically high level, I lay the blame at the door of the Law Society. As early as 1968 Mr. Patrick Noonan the then President of the Society said that "There is going to be a gross over supply of the market in 4 to 5 years." At that time the number of Solicitors on the Rolls was increasing by approximately 100 per annum. It was the Policy of the Law Society at that stage that they would not raise—indeed that they had the duty not to raise—the entrance qualifications to the Profession. If the Law Society wish to keep numbers down it was then that they should have devised a system to make sure that there was no saturation of the market. To try to limit the number of people qualifying by failure rates such as 78% in First Law, 60% in Second Law and 50% in Third Law, is totally unfair to the Students under the new system. If failure rates are kept high, it will mean that people with Law Degrees might then fail to graduate from the Professional School. They would then find it far more difficult to pursue alternative courses than if they had been refused entry as a school leaver.

Abolition of premiums advocated

The Law Society with the advent of the New Courses missed a golden opportunity to do away with premiums. In my view there was nothing to prevent them doing so. These premiums constitute a totally unjust exploitation of those in a weak position. 35% of Apprentices are charged premiums. 80% of this number are students with no business or family connections with their Master. Premiums can be as high as a £1,000 indeed I have personal knowledge of one such case. It has been claimed that under the new system the Apprentice will be an asset to the Master and his firm and won't be charged a fee. I believe that after a couple of years when the number of people entering the Vocational Course reaches a steady number and as it is bound to, demand far outstrips the supply of Solicitors willing to take Apprentices the practice of taking premiums from Apprentices will continue unabated. The Law Society have a clear duty to stop this.

Remuneration of Apprentices

It is also claimed that under a new system when an Apprentice has finished his Vocational Course and is doing his practical year in an office he will receive remuneration. The Ormrod Report stated "That as long as they are called Apprentices, they will not receive remuneration." Except in the more efficient offices who have put Apprenticeship on a business footing already I do not see any great change occuring in the area of remuneration in the near future. I call on the Law Society to follow the example of the Institute of Chartered Accountants and lay down minimum rates to be paid to Apprentices.

I do not believe that some Solicitors will be willing to pay a fair wage to Apprentices. There is a certain element among the Profession which is unscrupulous in this regard. 9% of Solicitors in 1975 paid below the minimum wage to employees, and were censored.

The Solicitors' Act 1954 is a positive hindrance to the equitable operation of the Apprenticeship system. The rigidity of its provisions tie the Law Society in what it can do in relation to changing the Rules on Apprenticeship. There is great need for the Act to be repealed and a more flexible piece of legislation substituted. The Law Society should be given far more discretion in its dealings with Apprentices. It would perhaps not be a bad move to follow the recommendation of the Ormrod Committee and do away with Apprenticeship altogether. The Committee favoured the implementation of a period of a year during which the student would hold a provisional practising certificate; this would be along the line of a Doctor's Intern Year in a hospital before he gets his full qualification. The advantage of this would be that a Solicitor under the guidance of a partner in a firm could carry out all the tasks of an assistant solicitor and both pupil and master would derive a far greater benefit from this arrangement. Under this system the Trainee Solicitor would have freedom to change jobs.

Increases in cost inevitable

I also believe that under the new system the cost to the student of qualifying is bound to increase. After he leaves University a student will not be able to obtain any Grants from the Government unless there is a change of Policy on their behalf. This will mean that at the very least he will have to keep himself for an extra year. He will also have to pay fees to the Law Society. At present the very minimum an Apprentice pays for his education to the Incorporated Law Society is £235. Under the new system, because of the increased financial burden on the Law Society, I fear this figure will rise yet again to withstand the present stringent economic conditions.

The Law Society has taken on more responsibilities than I think it realizes at present. By opening a fully fleged college they will have to provide the facilities that go with it. For it to be of any benefit to the students any Canteen would have to be subsidised, the Society's Library greatly expanded and other recreational facilities provided.

Our Debating Society has for the past 90 years provided a Forum for Apprentices to meet socially as well as serving a very useful educational function. The Society's role should grow rather than contract under the new system. There will be a greater need for the services which it provides and greater use will be made of them by the students.

The standards to which we should aim at, as regards Legal Education, have been set by the findings of the Ormrod Committee and the Commission on Higher Education. It is up to the Profession to see that these standards are realised. In this respect my paper has no firm conclusion. In the time left before the opening of the Law School it is up to all interested parties to ensure that the standards in the school are as high as the tradition of the Law Society demands that they should be.

The setting up of a New Law School should only be regarded as a start on the road to a comprehensive Legal System. Funds should be provided without delay for establishments like University College Galway to

institute a Law Faculty with full-time professors and lecturers.

The Hon. Mr. Justice Kenny proposed, and **Mr. John F. Buckley,** Chairman of the Education Committee seconded the Resolution that the Auditor deserved the best thanks of the Society for his address, and that it be printed at the expense of the Society. This resolution was carried unanimously. The script of these speeches is not available.

Mr. Diarmuid Sheridan, S.C., proposed the resolution "That the Solicitors' Apprentices' Debating Society of Ireland is worthy of the support of Solicitors' Apprentices, of the Council of the Incorporated Law Society of Ireland and of the Solicitors' profession".

Mr. Diarmuid P. Sheridan, S.C., in moving this resolution said that he wished to make it quite clear that this was, in no way, a family affair. I bear no relationship, as far as I know, to the Auditor, said Mr. Sheridan.

It was a paper obviously carefully assembled and designed to set out in relief the many problems of legal education.

We are all very deeply conscious, nowadays, of the increasing numbers of those desiring to enter the professions either through the Universities or other Degree Bodies. This problem appears to me to be so acute that a certain type of individual gifted in his own special way such as a lawyer may find the door to his profession barred and bolted by reason of his failure to obtain the necessary number of points in the Leaving Certificate examination. I would like to make a plea for the late developer who may not have found such subjects as Algebra, Georgaphy and Biology greatly to his liking but who has, nevertheless, a passion for justice.

Courage essential for the Lawyer

I wonder how we got on at all in the old days when any student, except in rare and exceptional circumstances, was entitled to embrace a profession by the expedient of either passing the Leaving Certificate examination or achieving a Pass in the appropriate Preliminary Examination for his chosen profession. It does not necessarily follow that a boy or girl equipped with a superfluity of points will make the best Lawyer. In my view, the first great attribute of the Lawyer is courage. It may need courage, first of all, to get through the examination with the limited amount of intellectual powers bestowed by the Almighty on the particular student, but, having got there, I feel that this same courage will equip the Lawyer with a special attribute of inestimable value to society. It seems to me that, this courage inspires a high degree of integrity. It is essential for the Lawyer, occasionally at least, to embrace the unpopular cause. The motivating factor of a Lawyer is not necessarily confined to questions of money, but the measure of our freedom is essentially the right and obligation, in appropriate circumstances, for the Lawyer to arrive in Court and to be able, fearlessly, to say "thou shalt not" to Government Departments, Local Bodies or any other powerful organs, acting under circumstances whereby injustice is being caused to the Lawyer's client. This is an essential element in a free Society.

Rules for Government of Prisons

These comments, I think, naturally lead me to my second point and this concerns Statutory Instrument 30 of 1976 known as "The Rules for the Government of Prisons 1976". In the Explanatory Note which does not purport to be a legal interpretation, it is stated that these Rules empower the Minister to direct the Governor of a Prison to exclude for reasons of security, a person, including a Prisoner's Legal Adviser, from the Prison, or to admit a person only on such conditions or in such circumstances as the Minister may direct. I have read these Rules and after my twenty-three years as a practising Lawyer I never thought I would see the day when I would be included in the brackets at the end of Clause 2 of the Rules which read "including a Prisoner's Legal Adviser". I am well aware that because we live in troubled times there is a necessity for State security, but, I feel that this denial, formalised in these Rules, is a denial of a basic fundamental human right enjoyed by a person in custody in Prison to consult with a Legal Adviser of his own choosing in respect of the Charges brought against him.

Whilst it may be contended that these Rules are designed to cater for a minute section of our Legal Profession, there is nothing to stop a Civil Servant including my name or the name of the President of the Incorporated Law Society or anyone else in a list prepared by him and with his pen to deny our services to a person in custody in a Prison. It will be argued that powers contained in Clause 3 of the Regulations form a safeguard but this provision, as I read it, merely means that the entire membership of the Legal Profession cannot be included in the list and I feel it is quite wrong for the reasonable choice of Legal Adviser by a Prisoner in custody to be subject to the sanction or limitation of the Minister for Justice or his Agents.

Members of the Legal Profession, in dealing with Prisoners in custody, are under a duty, both under the Law and under the Rules of their Profession, not to deal in or in any way be party to any subversive activities under the cloak of Legal Advice and Consultation. This is a matter of trust and if the trust is broken by any member of the Legal Profession, be he Barrister or Solicitor, such an individual should be visited by the full rigours of the Law and punished accordingly and, in addition, he should be also made liable to the maximum penalties prescribed by the Governing Bodies of his Profession by reason of such breach of trust.

Defence of legal jargon

The Auditor in his paper referred to the use by Lawyers of a great deal of technical jargon. May I make some defence in relation to this. We are constantly subjected to the rising tide of administrative law made possible by simple Statutes giving the Minister power to make Regulations of every shape and form. This leads to inadequate legislation in the sense that the policy of the Act is not always clearly stated with clarity and completeness. There is always a danger in oversimplification as witness the Workmen's Compensation Act of 1934 which was supposed to be a measure of classic simplicity and one which even the most unlettered could readily understand. Years later learned articles were still being written and learned Judgments still delivered upon such topics as what precisely was meant by "An accident arising out of and in the course of employment". The comprehensive Statutes of the last century have stood the test of time much better, even although, the expansiveness of the Draftsman could, in some churlish quarters, be reckoned as creating jargon.

The President then thanked the Auditor for his address, and the speakers. The Meeting then terminated.

Fully State Guaranteed.

When you open a deposit account with ACC, you immediately experience the feeling of real security. The security of a State Guarantee! It covers the sum you invest and the interest you earn. Get in touch with us today and find out how much you can earn on a State Guaranteed investment.

The Agricultural Credit Corporation Ltd.

Head Office: ACC House, Upr. Hatch St., Dublin 2 Tel. (01) 780644

Offices at: Athlone, Ballina, Carlow, Cavan, Clonmel, Cork, Dublin, Dundalk, Ennis, Kilkenny, Letterkenny, Limerick, Longford, Monaghan, Mullingar, Naas, Navan, Portlaoise, Roscommon, Sligo, Thurles, Tralee, Tuam, Tullamore, Waterford, Wexford and Wicklow.

Extracts from Proceedings of the Council, 17th June, 1976.

(ii) *Notary Public*:
The President sought endorsement of the action taken by the Society on his direction to object in the Courts to a lay resident of Shannon Town being appointed as a Notary Public. The line of action taken was approved. It was suggested that the Society's ppsition in the matter be brought to the notice of the Faculty of Notaries.

(vi) *Solicitors appearing in the High Court*:
Mr. Prentice asked if it would be possible for solicitors execising their right of audience in the High Court to indicate their name to the presiding Judge by presenting their card or otherwise at the opening of the case. It appeared that many young solicitors were now exercising their right of audience and Judges were embarrassed in addressing them, through not knowing who they were.

(i) *Land Registry*:
A letter from the Registrar recommending the signature of mays was considered. Mr. Lanigan pointed out that local authority officers throughout the country, on whom the profession relied to a large extent, would not be prepared to sign maps. It was agreed to publish the letter in the *Gazette* with a footnote drawing attention to the fact that the signing of maps was not required by the Rules.

(i) *Bar Council*:
The Council agreed to draw attention of members to the undersirability of sending files to Counsel.

(v) *Public Relations*:
The Committee expressed great concern over the increasingly bad Public Relations accruing to the profession due to the continuing failure of the Bar to operate the Criminal Legal Aid scheme. Following discussion it was agreed to list the matter for the next Council agenda, in the event of no developments taking place in the meantime. In reply to a query from the President and Mr. Pigot, Mr. Beatty indicated that a reply to the Zander article would be published in the *Gazette*. The particular article had been published to acquaint the profession of the arguments which could be made against it and to give it an opportunity of putting its own house in order.

Note: A temporary arrangement whereby Counsel can appear in Criminal Legal Aid Cases has been made between the Bar Council and the Minister for Justice.

Restriction on Second Apprentice
The Council has decided that, as from 1st January, 1976, it will not normally grant permission to solicitors to have a second apprentice indentured to them.

Society for Computers and Law Ltd.
The second Conference of this Society will be held in Warwick University from 17th to 19th September on the Practical Benefits of the Computer for Lawyers. There will be demonstrations relating to new systems for handling time recording, tax modelling, retrieval of statute law, and drafting of wills and conveyancing documents. The cost for attending the Conference, including all meals and accommodation, will be £37.84. Application Forms should be obtained from Mrs. Diana Wilson, 6 Latton Close, Chilton, near Didcot, OX11 OSU, England.

ENGLISH CASE

Unqualified persons who only copy material submitted to them do not "draw or prepare" documents within the English Solicitors Act 1957

An association, which was formed with the object of reducing the high cost of conveyancing, undertook for its members, on payment of a fee, the general conduct of the members' property transactions. The association retained £2.50 of a fee paid and passed the remainder to one of its transfer agents, who undertook all the work involved in the transaction except drafting the instrument of transfer or conveyance. The draft was prepared by R, who was not a person qualified for the purposes of section 20 of the Solicitors Act 1957, and for that work R received no remuneration. The defendants, who acted as transfer agents for the association and were also unqualified for the purposes of the section, were found by the justices to have directly or indirectly prepared such instruments and they were convicted of offences, contrary to section 20(1) of the Act.

On the defendants' appeal against conviction:—
Held, allowing the appeal, that "directly or indirectly" in section 20 (1) of the Act related to the words "draws or prepares" and the offence created by the subsection was the drawing or preparing, whether directly or indirectly, of an instrument that was prohibited by the section from being so drawn by an unqualified person (post, pp. 582b-d, 583b, h-584a); that (*per* Lord Widgery C.J. and O'Connor J.) the concept of "draws and prepares" was the use of the intellect to compose the document by the selection of the correct words and to place them in the right sequence so that the document expressed the intention of the parties and, therefore, since the defendants had not drawn or prepared the documents within the meaning of the section, they had committed no offence.

Per Goff J. If an unqualified person doese any of the relevant acts, either himself or through another, he commits an offence under section 20 of the Act. The question whether the defendants did a prohibited act through R depended on whether they assumed responsibility for the particular act to the lay client. Having regard to all the facts, it was R who alone assumed responsibility to the clinet (post, p. 584a-c).

(Lord Didgery C.J., O'Connor and Goff J.J. - 10 March 1976 - [1976] W. L. R. Queens Bench Division Court.

LEGAL PROFESSION

Should Solicitors "profit" from their Client Accounts?—A reply

by J. C. Stebbings, M.A., Member of the Council of the English Law Society

THE broad assumption made in Mr. Michael Zander's article in the May 6 issue is that the retention by solicitors of any part of interest arising in the deposit of their clients' mixed balances is in fact wrong, at least morally; accordingly it proposes legislation to provide for the collection of such interest from Banks and the application of the resulting moneys for purposes such as Law Reform, legal aid, Legal Education, Law Libraries, legal research etc.; it refers to legislation in force in some States or Provinces in Commonwealth countries.

The use by one part of moneys belonging to another is to be found in almost every walk of life; it is the foundation of banking; the practice in one form or another is generally adopted by Estate Agents, Insurance Brokers, Stock-brokers, Accountants and all others who in the course of their profession or business handle money for clients or customers; it exists in every area of commerce.

Many solicitors, for years prior to the Solicitors Act 1965, placed a greater or smaller part of the aggregate balances on general client account on deposit with their bankers and were accustomed to receive and retain interest thereon; had they not done so, the entire benefit of those balances would have accrued to their bankers; as was demonstrated in the case of *Brown v I.R.C.* [1964] 3 All ER 119, the problems posed by a need to allocate interest to moneys held for a short time did, and does, not admit of a simple practical solution. The Solicitors Act 1965 enshrined solicitors' rights and responsibilities in this matter and gave effect to the practice and custom referred to above.

In terms of morality, therefore, many would differ from the views expressed in Mr. Zander's article that solicitors should be specially selected for treatment different from the rest of the community.

The position in the Commonwealth countries referred to is historically different; it is understood that lawyers in those Commonwealth States or Provinces which have legislated in this sphere have never received nor counted on deposit interest from general client account as part of their income or as an aid to their cash flow; there are differences in the regulation of remuneration and conditions of practice between the Commonwealth countries and England which require detailed examination before any true comparison can be made.

For many years the Law Society's Compensation Fund has safeguarded the interests of the public against the dishonesty of solicitors in connection with their practice; there is no need for a fidelity or guarantee fund in England and that is one of the main purposes of the legislation in at least one of the States in Australia.

Legal Education has been sponsored by English solicitors for many years; the College of Law is a memorial to that sponsorship of which solicitors are justly proud.

Legal Aid in England was, from its conception, nurtured by the English legal profession. The financial contribution and sacrifice of time by members of the legal profession in general and solicitors in particular receives little or no recognition nor on the whole is recognition sought.

The circumstances in England and the Commonwealth countries are not parallel and it appears that the Commonwealth legislation was promoted to fill gaps in their system which had already been catered for in England.

Reply to Mr. Zander's criticisms

Mr. Zander's article states certain propositions in support of its concluding recommendations:

1. "Interest on client account does not 'belong' to solicitors". The widest commercial practice and custom would entitle a solicitor to such interest; the issue before Parliament in 1965 considering the Solicitors Bill was whether in the light of "the Brown decision" and having regard to the special features of the solicitor/client relationship that practice and custom should be displaced by Statute. The rights of his client were and are uppermost and the formula was designed through the medium of the Solicitors Act 1965 and the Solicitors Accounts (Deposit Interest) Rules 1965 to ensure, irrespective of whether a solicitor chose to deposit the whole or any part of the mixed balances on his client account, that he is himself under a personal obligation to pay interest to a client on moneys held where in fairness interest ought to be earned for the client; subject to that responsibility the Statute enshrines the commercial practice.

2. "It would hit hardest those firms that do least for the kind of public purposes that would benefit". This must be a matter for speculation; the majority of solicitors do undertake in their professional or private capacity some public and social work; certainly many city solicitors are so involved; very often the larger commercial clients move money around with such directness that the question of deposit — even overnight — does not arise. The large city firms are not necessarily the recipients of the most deposit interest.

3. "The money would be extremely welcome". Money for public purposes is, of course, always welcome especially when it comes from somebody else's pocket. In so far as payment for legal services to be provided is part of the welfare state the cost should be borne out of the public purse as with all other services. The legal profession is independent and a bulwark of the liberty of the individual; there are those whose aim is to establish a National Legal Service and they would be vociferous in their claims over any moneys derived from this source under the initial guise of promoting the cause of the disadvantaged sectors of the community.

Fairness dictated that arguments contrary to the conclusion recommended in the article should be set forth as indeed they were, at least in part:

1. "It would not be right to single out solicitors". That is, indeed, fair comment for the reasons stated above.

2. "The money is being used to subsidise uneconomic work".

That may indirectly be the case inasmuch as it is treated, except for taxation purposes, as part of the general income of a solicitor's practice. Many solicitors do, however, regard the receipt of deposit interest as a contribution towards the cost of every increasing 'dead' overheads. The central administration of a solicitor's office today has to cater for sophisticated accounting procedures, to deal with clients' money, staff salaries, pensions and employment, VAT, insurances, time costing and general organisation, none of which is itself productive. More importantly the receipt of deposit interest does ensure a cash flow for the maintenance of those central services.

3. "Solicitors, when they act as stakeholders, are entitled to retain interest in this capacity".

This is a separate point which does not affect the argument but in any event there can be no logical ground for a change in the law in this respect designed only to apply to solicitors.

4. "Some of the money held by solicitors for clients is on account of bills that have not yet been delivered".

That is a fair point, more particularly so by reason of the special statutory provisions and delays in payment of their bills. Solicitors' overhead expenses continue unabated and every receipt is very important to maintain an adequate cash flow.

5. "Solicitors only hold some of clients' money on deposit account".

Under present English law and practice, moneys held by a solicitor in his client account, are, in the absence of an arrangement with his client, repayable on demand. Banks will not normally pay interest unless a sum is deposited for a minimum of seven days.

6. "The volume of interest on client account will vary from year to year with the economic position of the profession and the country as a whole".

This must undoubtedly be true to an extent and the article suggests that if, under the suggested legislation, the global income was used for say Law Centres, the dangers of fluctuation could be extremely unfortunate; that summarises the lot of solicitors.

7. "Interest on client account is now taxed at the highest rate earned by the partners as unearned income and a large proportion of it, therefore, goes to the Revenue already".

That argument carried to its logical conclusion extends to all income whether earned or not; so why does anyone bother anyway? The fallacy is that a great majority of the practising solicitors are not such relatively high taxpayers and the net income received is very important to them. In any event the cash flow considerations are just as, if not more, important to them.

8. "The aggregate of moneys earned on client account would be a mere drop in the bucket of legal aid funds generally".

Once again, Mr. Zander's article assumes that proceeds would be applied towards the cost of legal aid or the provision of legal services outside the Legal Aid Scheme. The political threat to the independence of the legal profession as a whole creates not unnaturally a grave fear in the minds of many, if not all, its members; the failure of successive governments to maintain the impetus of the Legal Aid Scheme is a matter of regret but it remains a national responsibility.

9. "Solicitors cannot afford to lose this income".

This is dismissed by Mr. Zander because he says it is not critical to the principle at issue. Solicitors are not as mercenary as sometimes implied. Inasmuch as those solicitors receiving deposit interest regard it as a contribution towards dead overheads, they would undoubtedly, if deprived of that source of income, seek to recover it elsewhere by making additional charges to their clients wherever practical so to do; they do not normally make specific charges for handling moneys etc., but regard it as a back-up service to the subject matter of their particular retainer. In short, the cost of services to the clientele of solicitors as a whole would be bound to increase. True and fair inferences from statistical information available are difficult to draw but one factor is certain — for many solicitors it is not only their real income in terms of purchasing power that is substantially diminished but their actual income is currently on the decline.

They labour under many statutory requirements with which it is increasingly expensive to comply:

(a) Compensation Fund contributions;
(b) Practising Certificate fees;
(c) The cost of a strict compliance with the Solicitors Account Rules;
(d) The cost of compliance with the Solicitors Indemnity Rules.

The burdens and responsibilities, both professional and administrative, of their practice — borne for the most part with great conscientiousness — demonstrate the devotion of solicitors to their profession and their firm belief is not only the Rule of Law but also the absolute independence in the role of law of their professional existence.

The Law Society strains every limb to maintain professional standards and equally it should defend to the hilt every aspect of professional independence.

Conclusion

Inasmuch as the English legal profession has already discharged and will continue to discharge its public responsibilities having made substantial provision in those areas which Commonwealth legislation was designed to make, there is no case for altering the existing position in relation to solicitors' entitlement to deposit interest and even less reason for selecting them for special treatment to extract money for what is a Government responsibility.

(Reprinted by kind permission of the Author and of the Editor of the New Law Journal - 20 May 1976).

PRESENTATION OF PARCHMENTS

The ceremony of presenting parchments to 37 newly qualified solicitors was held on 3rd June, 1976, in the Library of Solicitors' Buildings. The President, Mr. P. C. Moore, delivered the following address:—

Ladies and Gentlemen: On behalf of The Council of the Law Society and myself I welcome you all on this happy occasion of the presentation of Parchments to the recently qualified young entrants to the Profession. It is indeed an occasion of great joy to the parents, relations and friends of all those students who have brought their many years of work and endeavour to a successful conclusion by achieving their objective of enrolment to-day as Solicitors and members of our honourable Profession.

Continuing Education

It is usual on an occasion like this to stress certain aspects of your activities as practitioners in your role as solicitors. I consider that emphasis should be laid on the necessity for continuing post qualification education as a *sine qua non* to a successful career. The complexities of life in all spheres of activity demand specialised knowledge, and specialisation in the field of law is no exception to this trend. It is obvious that continuous study and research must be a fundamental part of your activities, if you are to provide the skill and services expected from you as lawyers qualified to practice. It is only necessary to mention our new taxation system including as it does Wealth Tax, Capital Gains and Capital Acquisitions as areas of study and assimilation fundamentally so necessary to every practitioner if he is to advise competently and direct his clients in their business, financial and domestic affairs to the best advantage. In this area I would recommend you all to become members of your local Bar Association, members of Young Solicitors' Association, and particularly that you attend all Seminars and discussions organised and sponsored by the Society and by other professional bodies with whom our profession is closely associated. If possible and if finances permit, do not hesitate or delay the creation of your own private library.

Dedication

On the question of success in your career, I would like to indicate that dedication is required in the pursuit of your professional activities and there appears to be no alternative to this call upon your time, your hours of work, research and consultation if you are to achieve the confidence, the trust and the respect of your clients, entrusting as they do their most confidential affairs and problems to your care. Superficiality, lack of human understanding and a merely commercial approach on the basis of profit or gain (even though a reasonable reward is essential to your existence) mut never be your guiding philosophy.

Communication in Writing with Client

I like to stress one particular aspect, and that is full communication in writing between you and your client. This is an area which is neglected by many who operate on the basis that communication with the opposite party is all that is required of them. This is understandable because it is one of the consequences of the adversary system under which we operate, but in the context of modern society and the many demands that will be made upon you by your clients it is vitally necessary to keep your client informed in writing of every step you take for and on his behalf and in pursuance of his instructions, unless of course the subject matter is one that ought not to be committed to writing by reason of its particular confidentiality and in such circumstances alternative methods of communication should be sought.

Clients to be kept fully informed

Many of our problems are due to lack of communication and because of this fact I exhort you to establish from the inception of your career as a practitioner the principle that you keep your client fully informed of all steps taken by you in relation to the subject matter entrusted to your care, and also seek your client's instructions from time to time so as to avoid unilateral action on matters peculiarly within the province of the client whose instructions you can implement provided that they conform with the ethical standards and procedures which you are bound to uphold.

Ethical Standards

On this question of ethical standards and professional conduct, you and you alone are the sole judge and if a client's instructions would bring you into conflict with, or, be calculated to bring you and the profession into disrepute, you must there and then repudiate all such suggestions and categorically refuse to implement any such instructions. If you are in any doubt about a course of conduct, do not hesitate to communicate with the Secretariat of the Law Society so that one of the relevant Committees of the Council can rule on the correct code of professional conduct, to follow in a particularly difficult situation. You no doubt have had some directions in this area by reference to the lectures given from time to time, on the rights, duties and responsibilities of solicitors and as appears from time to time in the Law Society's Gazette.

Importance of Community Law

Finally I have the privilege of recommending to you the special pursuit of post qualification education in the realm of European Community Law which is now an integral part of our Municipal Law and of which cognizance must be taken by our Courts in our national jurisdiction. There are many Directives and Regulations to be read and digested, and as I said in my annual address to the Society at Tralee, this is an area that is continuously expanding and the documentation is constantly increasing in volume and output. Do not, as young practitioners, overlook the importance of this area of endeavour.

Well-organized office essential

Finally I must impress upon you the urgent necessity of a well organised office with well organised records accessible and procurable at all times in the interests of efficiency and in particular the creation of an accounting system in conformity with the Regulations so that you will be able at all times to control and discharge the heavy obligation that will be imposed upon you in the control of other peoples' monies generally referred to as "client Trust Accounts". Unfortunately I see no remedy from this heavy burden which will be imposed upon you and the obligation must remain with us for many years in the forseeable future. This is another matter I would like to mention which is more relevant to our new and intending apprentices than to your goodselves and it is the fact that the Council of the Law Society disapproves of the practice of charging an apprenticeship fee to intending apprentices as such a charge is inappropriate in the context of the

educational system now in operation.

On behalf of my colleagues on the Council and myself I bid you welcome and again congratulate you on your achievements.

Parchments were then presented to the following newly qualified solicitors:—

Brian Adams, Cormac Street, Tullamore, Co. Offaly.
Bernard Armstrong, Rosses Point, Co. Sligo.
Diarmuid Barry, Mountcharles, Donegal.
David Bergin, 12, Orwell Park, Rathgar, Dublin 6.
James Binchy, Knights Lodge, Charleville, Cork.
Ciaran Branigan, 78, Merville Road, Stillorgan, Co. Dublin.
Laura M. Casey, The Square, Rathkeale, Co. Limerick.
Dominic Dowling, 6, Woodlawn Park, Churchtown, Dublin 14.
Beatrice Ensor, Lymington Road, Enniscorthy, Co. Wexford.
Janet Erskine, 27, Wellington Lane, Dublin 4.
Peter Flanagan, Maddenstown, Curragh, Co. Kildare.
Paul Fleming, Hazeldene, Putland Road, Bray, Co. Wicklow.
Margaret Gleeson, 2, Neville Road, Rathgar, Dublin 6.
Christopher Grogan, Main Street, Leixlip, Co. Kildare.
Terence Hanahoe, 8, Parliament Street, Dublin 2.
Veronica Huggard, Butler Arms Hotel, Waterville, Co. Kerry.
Fionnuala Murphy, Gort, Co. Galway.
Anthony Murray, St. Helens, O'Connell Avenue, Limerick.
Patrick McCafferty, Kilmacrenan, Letterkenny, Co. Donegal.
Gerard McCanny, The Old Rectory, Baronscourt, Newtownstewart, Co. Tyrone.
Raymond McGovern, Lubraig, 83, Foster Avenue, Mount Merrion, Co. Dublin.
Patrick McMullin, The Grove, Stranorlar, Co. Donegal.
Patrick McNally, 17, Parkowen, Quaker Road, Cork.
Bernard O'Beirne, Bellevue, Coolgraney Road, Arklow, Co. Wicklow.
Catherine O'Donnell, 33, Garville Road, Rathgar, Dublin 6.
Thomas O'Donnell, Tirconnell, North Circular Road, Limerick.
Donal P. O'Hagan, B.A. (Mod.) L.L.B., Ravensdale, Dundalk, Co. Louth.
Anne O'Reilly, 21, Orwell Park, Rathgar, Dublin 6.
Irene K. O'Sullivan, 11, North Circular Road, Dublin 7.
Brendan Rossiter, Clara Road, Tullamore, Co. Offaly.
James J. Ryan, Innisfail, Kickham Street, Thurles, Co. Tipperary.
Sharon Scally, 57, Shrewsbury Lawn, Cabinteely, Co. Dublin.
Alan Shatter, 14, Crannagh Park, Dublin 14.
Joanne Sheehan, Mervyn, The Hill, Monkstown, Co. Dublin.
Gerard Walsh, 325, Grace Park Estate, Dublin.
Henry Ward, 103, Tyrconnell Road, Inchicore, Dublin 8.
Brian Whitaker, 148, Stillorgan Road, Dublin 4.

The FREE LEGAL ADVICE CENTRES (Dublin)

Summary of Report for 1976.

The 1976 Report on the Free Legal Advice Centres shows once again the need for free legal aid and advice in Ireland. FLAC have consistently advocated that a comprehensive State system of Legal Aid should be introduced, and the statistics of the FLAC centres for 1975 bear out this need. A total of 3869 cases were dealt with by the eight part-time centres, operating on only one night each week. The full time Centre at Coolock dealt with 816 cases during the months from April 1975 to January 1976. These figures show the number of legal needs that would not have been met but for the existence of FLAC and they place a question mark on the extent of unmet legal needs in our society, which should be the concern of lawyer and law student alike.

The Report commented on the Seminar on Legal Aid that was held in Dublin in December 1974. The purpose was twofold. Firstly to acquaint those involved in the Irish Law System with the problems encountered in the English Legal Aid scheme and secondly to provide informed discussion on what type of legal service system would be most appropriate in Ireland. Guest speakers were invited and included a representative from the Brent Community Law Centre and two representatives fromt the Legal Action Group. Mr. John Finlay spoke on behalf of FLAC. The Council of FLAC felt that the Seminar had performed a public service for those who will be working an Irish system of legal aid.

Undoubtedly the major event for FLAC during the period under review was the founding and opening of the Coolock Community Law Centre on 2 April 1975. The Centre is run by a solicitor who is assisted by a panel of solicitors and students. The reason for establishing this centre was to demonstrate the necessity for a Community Centre. From the commencement the Coolock Centre was inundated with clients and the Centre's caseload has continued at this high level. Because of this, liaison with local groups and community contacts generally have played a major role, but it is hoped that this situation can be rectified during the coming year.

The report included a case load study which showed the content and extent of cases in each category. The Family Law Category was by far the largest, comprising almost 40% of the caseload. Criminal matters were the next largest group with Landlord and Tenant problems following close behind. A new category was opened to deal with Labour Law problems which FLAC felt was a potentially large area and our figures in this group have borne this out.

During the past year FLAC have made Reports and recommendations to the Government Task Force on children and Child Care and also to the Criminal Legal Aid Committee.

The Report also outlined the developments in Legal Aid. The Pringle Committee on Civil Legal Aid which was established in July 1974 in still sitting. Mr. Brian Gallagher, solicitor, is the FLAC representative on the Committee. The Council was disappointed that the Minister for Justice saw fit to set up a separate Committee to look into the scheme of Legal Aid in Criminal cases, especially as the Pringle committee might have considered this problem. During the past 18 months both solicitors and barristers have withdrawn from the State scheme of Criminal Legal Aid. At present the barristers are not operating the scheme and they await

(Continued on page 111)

EXAMINATION RESULTS

FIRST LAW EXAMINATION — APRIL 1976

At the First Law Examination held in April 1976 the following candidates passed:

Richard Bennett, Helen Boland, Gerard Brennan, Helen Burke, Bernadette Cahill, Michael J. Carter, Ronald J. Clery, William Cullen, Kevin Curran, Patrick Dalton.

Donal Geraghty, Geraldine Gillece, Carol Gillespie, Daniel J. Hanley, Catherine Heffernan, Pauline Horgan, Thomas J. Kelly, Giles J. Kennedy, Patrick Kennedy, Ruadhan Killeen.

Morette Kinsella, J. David Lavelle, Deirdre A. Leeman, Thomas Loomes, Charles Louth, Patrick V. Lynch, Thomas Madden, Joseph F. Maguire, Raymond V. Mahon, Michael D. Martyn.

Kevin Mays, Pierce Meagher, Matthew B. Mulvaney, Mary Mylotte, Gavan McAlinden, Paul MacArdle, Keyne McEvoy, Richard McGuinness, John P. McKenna, Mark McParland, Edward McPhillips.

Denis McSweeney, Stephen Nicholas, Maire Ni Shuibhne, William M. O'Brien, Seamus P. O'Carroll, Patrick O'Connoll, Kieran P. O'Duffy Peter J. O'Keeffe, Cornelius O'Leary, John O'Malley.

Kenneth Parkinson, Noel A. Quinn, John Redmond, James Scally, Pamela Sheppard, Patrick Smalle, Jane Stewart, Audrey Treacy, Andrew Walker.

142 candidates attended.
60 candidates passed.

SECOND LAW EXAMINATION — APRIL 1976

At the Second Law Examination held in April 1976 the following candidates passed:

Monica Becker, Richard O. Beechinor, John Bourke, Garrett Byrne, Jarlath Canney, Mary Cullen, Michael Cunningham, Andrew Davidson, Eugene Davy.

Heather Debeir, Michael E. Delahunty, Ian Dodd, Peter J. Dooley, Pauline Doyle, Sylvester Duane, Bridget Duffy, Patrick Duffy, Shaun Elder.

Gerard Ellis, Sheila Fingleton, Bryan Fox, Gerard J. Gallagher, John Garahy, William Gleeson, John R. Grace, Anne Griffin, Michael Hayes.

Mery Hederman, Paul G. Horan, Terence Hanahoe, Brendan Hyland, Marcus Jones, Eric Kelleher, Mark A. Keller, Thomas King, Florence Lawlor.

Muriel G. Lee, Laurence Levine, Joseph P. Leyden, Kevin Liston, Gemma Loughnane, Mary W. Mangan, David Martin, Denis Molloy, Michael Moran.

Patrick F. Mulvey, James T. Murphy, Joseph T. G. Murphy, Mary Murphy, Gavan L. McAlinden, Patrick McCarthy, David P. S. McCormack, Peter F. X. McDonnell, Mary McElligott, Edward McEllin.

Anne McKenna, John C. K. Nagle, Sheila Neary, Ann M. Nolan, Maurice O'Callaghan, Margaret V. O'Connell, Kevin O'Connor, Michael F. O'Connor, Ursula O'Dwyer.

Michael F. O'Gorman, Ann O'Loughlin, Michael P. O'Malley, John O'Neill, Niall O'Reilly, Irene O'Sullivan, Cliona M. O'Tuama, James Purcell, Desmond P. Rooney, Barbara Robinson.

James J. Ryan, Oliver Ryan-Purcell, Paula Scully, Henry Sexton, Colman D. Shanley.

Vincent R. Shannon, James Sweeney, Mary A. Twomey, Michael W. Tyrrell, Patrick Wallace, Ann C. Walsh, William X. White.

165 candidates attended.
86 candidates passed.

THIRD LAW EXAMINATION

At the Third Law Examination held in April, 1976, the following candidates passed:

Michael Barrow, Diarmuid Barry, Marian Baynes, Ciaran J. Branigan, Marion E. Campbell, Laura Casey, Cyril Cawley, Therese M. Clarke, Helen Collins.

Dominic Dowling, Pauline Doyle, Janet Erskine, Josephine Fair, John Fetherstonhaugh, Peter Flanagan, Paul Fleming, Margaret Gleeson, Christopher Grogan, Emmet Halley.

Timothy Hallissey, Brendan Hyland, Denis Jacobson, Joseph Jordan, Mary N. Kelly, Kevin P. Kilrane, Thomas King, Mary Larkin, Kevin Liston, Margaret Lucey.

Sheila Lynch, Barry Manning, Derek J. Mathews, Fionnuala Murphy, Patrick McCafferty, Gerard McCanny, Lorna McCarthy, Raymond McGovern, Patrick McMullin, Patrick McNally.

John C. K. Nagle, Sheila Neary, Sylvia O'Connor, Catherine O'Doherty, Brian O'Donnell, Thomas O'Donnell, Hugh V. O'Donoghue, Stephen P. O'Dwyer, Donal P. O'Hagan, David O'Keeffe.

Mona O'Leary, Anthony O'Malley, Francis A. O'Riordan, Irene O'Sullivan, Brendan Rossiter, Sharon Scally, Alan Shatter, Joanne Sheehan, Adrian Stokes, Vincent Toher.

David Tomkin, Deirdre Townley, John Territt, Valentine Turnbull, David Turner, William Twohig, Gerard H. Walsh, Brian S. Whittaker, Margaret Wren

106 candidates attended.
68 candidates passed.

(Continued from page 110)

the report of the Criminal Legal Aid Committee. It is unfortunate that persons awaiting trial suffer the most and FLAC hopes that a settlement can be reached in the near future.

During the past 18 months there have been some long-awaited developments in the area of Family Law. The Section of the Marriages Act 1972 which provided for the raising of 16 of the age at which a person could marry came into force on the 1st January 1975 by Ministerial Order. Similarly, the Maintenance Orders Ace 1974 came into force on the same date by a Ministerial Order. This Act enables a wife to bring maintenance proceedings against her husband who has deserted to England withou having to travel there. It will enable a wife to enforce an Irish or English maintenance order against the husband. However, the main development in family law was the Family Law (Maintenance of Spouses and Children) Act 1976. FLAC welcomes the introduction of the Act and we feel that it may go some way to ameliorating the plight of those caught in our inadequate and antiquated system of family law. We also welcome the Family Protection Act 1976 which protects the wife from having the matrimonial property sold withou her consent. □

Ownership of Goods belongs legally to Vendors although in physical possession of purchasers

In the early part of 1975 two very important decisions were made quite independently by English and Irish courts which have had a considerable effect and, assuming that the cases are followed at a later date, may cause a radical change in one particular aspect of the law as it now stands.

The two cases in question are commonly known as the Romalpa case (the English case) and the Interview case (the Irish case). Dealing first with the former, the facts of the case were as follows: Between 1971 and 1973, the English importers, who were a partnership, obtained from the plaintiffs, a Dutch company, supplies of aluminium foil under agreed terms of sale. On 1 September 1973, the defendants, a limited company, took over the partnership. Although two of the partners became controlling directors the company got into financial difficulties, and a receiver was appointed. The plaintiffs sought declarations that aluminium foil in defendant's possession valued at over £50,000 was their property, and that the proceeds of subsales of aluminium by the defendants held by the receiver amounting to £35,000 was held in trust for them. Mocatta J. held that the terms of sale did apply. Accordingly a term must be implied that the material sold by the defendants was sold on the account of the plaintiffs. In view of *Hallett's Estate* (1880) 13 Ch. 6, the plaintiffs were entitled to trace the proceeds of the subsales. A Dutch supplier brought an action against an English company which had had a receiver appointed to it. The supplier was claiming for the return of the goods which the receiver had in his possession and, more importantly, for the amount of the proceeds of sale by the English company of the balance of the goods in question. *In the sale contract there was a clause stating that the title in the goods (aluminium foil) did not pass to the English company until such time as any debt due to the supplier by the English defendant company had been discharged. The debt included any sum which might not be directly connected with the present transaction.*

The question of paramount importance was "Did the term in the contract give the Dutch supplier the right to claim not only the goods which were in the possession of the receiver but also the proceeds of sale from that portion of the goods previously sold?" The Court held in favour of the Dutch company.

The defendants appealed unsuccessfully to the Court of Appeal (Megaw, Roskill and Goff L.JJ.). The Court held that the crucial facts were that the defendants were selling goods which the plaintiffs owned, and the relevant clause was designed to protect the plaintiffs against non-payment by the defendants. The defendants were selling goods as agents for the plaintiffs and so stood in a fiduciary capacity. Accordingly *Hallett's Estate* (1880) applied. Appeal heard on 16 January 1976 (Solicitors Journal, p. 95).

The consequences of this case are clearly of considerable significance. First, it will undoubtedly become common practice for suppliers to include in their conditions of sale a similar provision to that contained in the conditions used by the Dutch company. Secondly, any seller of goods who includes such a condition and who does not receive payment, will, apparently, have a good cause of action based upon a claim on the goods supplied. Thus, the supplier can rank in priority to a debenture holder and, in effect, has a first fixed charge over the goods and also a charge over the proceeds of sale of the balance of the goods, if some have already been sold on.

The latter means that a Bank who would normally be prepared to advance finance on the security of the goods in question will no longer be able to do so as the security might be subject to a prior charge in favour of the supplier. Further, the value of a floating charge must seriously be diminished and the consequences of the case may go so far as to affect accounting principles when valuing the worth of a company.

This latter point is of particular significance when one remembers that the right of action which a supplier might have refers not only to monies due for the goods in question *but also for any other monies which might be due to it from the buyer.*

The Irish case, to be summarised at page 17 of Irish cases, was decided on rather different grounds. The matter in this instance was a rather complicated one whereby a German company supplied goods to an Irish company which was associated with Interview Limited. As in the Romalpa case, there was a provision in the conditions of sale to the effect *that the supplier remained the owner of the goods although possession had passed to the purchaser.*

Due to the fact that the contract was subject to German law, the Irish courts were prepared to accept the effect of this clause, but the argument was put forward that the importing company which was associated with Interview Limited had sold the goods on to Interview Limited and thus Interview Limited could avail of Section 25 of the Sale of Goods Act to be considered hereafter.

In essence, this meant that the person to whom goods are transferred will get good title to them if the original buyer acted in the ordinary course of business as a mercantile agent. The latter phrase is rather confusing but probably means that the sale must have taken place at a business premises and during business hours. Kenny J. held that the Irish importing company could not have transferred the property in the goods delivered by the German companies because they themselves never had it.

Consequently, Interview Limited was unable to rely on the Sale of Goods Act because they did not receive the goods in good faith and they had notice of the rights of the original sellers contained in their conditions of sale. It was further held that due to the application of the conditions of sale, the goods were merely in the possession of Interview Limited and, as they were not owners of them, the debenture holder was not entitled to rank in priority to the German suppliers who were owed money for the goods. *Further, had the receiver sold the goods, then the amount realised by the sale would in effect rank prior to the claim of the debenture holder.*

The effect of this case, although complicated by the existence of the Irish importing company, seems similar to that of the Romalpa case and, this being so, it may be that a considerable change in interpretation and application of the law in this area is under way.

BRENTFORD NYLONS

Special Preference of Unsecured Creditors in case of Liquidation

Brenford Nylons will make history this year on two counts. The first is that it will prove to be one of the most notable success stories in the grisly world of receivership and bankruptcy. But of equal importance is the lesson that Brentford has to teach to Britain's bankers.

A recent High Court decision means that in certain cases — and Brentford Nylons is the first major instance in the UK — *apparently unsecured trade creditors can go to top of the list in terms of preference in the case of a bankruptcy because of a special type of terms of sale agreements which is becoming increasingly common in the UK under the pressure of events.*

In the case of Brentford Nylons, the bulk of its synthetic fibre raw material supplies came from subsidiaries of the Dutch company, Akzo. Of these, both British Enkalon and Enka Glanzstoff of Germany *sold under a "Reservation of Title" clause, in which the ownership of goods supplied does not change until the bill had been paid in full.* This applied to raw material stocks and also to finished goods containing the raw materials, regardless of whether the product contained additional supplies from other sources.

So any trade supplier using a Reservation of Title selling agreement has a claim on the assets of a bankrupt company which takes preference even over debenture holders and secured creditors such as the banks.

In practical terms, when Kenneth Cork was appointed receiver/manager of Brentford Nylons on February 23, all the cash received from retail sales from the 70 High Street Stores became the property of the Akzo subsidiaries. To continue trading, Kenneth Cork had to arrange a deal in which British Enkalon and Enka Glanzstoff relinquished their prior charge. These two companies accounted for the bulk of the trade creditors, and a settlement was made on a straight cash payment of one-third of the total amount owing to them. Eventually, Akzo should get more, should the receivership be as successful as we believe it will be.

The use of trading conditions including reservation of title is widespread within the EEC, and Holland and Germany in particular. In the UK, its use is fairly new and has only been tested properly in the High Court within the last three months.

The case involved an obscure company called Romalpa Aluminium which went into receivership in November 1974. Romalpa had been supplied with aluminium by a Dutch company using reservation of title. The concept was challenged by Romalpa's receiver, who lost his case and subsequently the appeal in January 1976. The use of Reservation of Title clauses is spreading rapidly especially where the customer is of questionable viability. Brentford Nylons is believed to be the first major case of a UK company bound by these conditions going into receivership.

The importance of this situation cannot be understated. Although effectively a floating charge on the stocks and work-in-progress, a Reservation of Title does not need to be registered. When doing a company search, a Bank now will need to enquire into the conditions of sale/purchase used by a company before making any loans. Inevitably, such a trading clause will reduce the collateral which may be pledged to a bank. In the case of default the existence of a Reservation of Title clause could cause immediate closure — to the detriment of all but the supplier with its preferential claim.

At Brentford, having paid the price for the support of British Enkalon and Enka Glanzstoff, Kenneth Cork has made tremendous progress at Brentford Nylons. Admittedly, he was helped by a massive buying spree which followed the collapse of the company. Immediately prior to the crash, Brentford's weekly sales had slumped to £250,000 per week, equivalent to an annual rate of less than £13m. Fears that the supply of cut-price bed linen might disappear altogether sent weekly sales up to £1m. per week so clearing out most of the accumulated stocks in a very short time. Sales have now eased back to £½m. per week, and at an annual rate of £25m. are only a little short of the level needed for the £27m turnover achieved in 1975.

Last year, Brentford's pre-tax loss was around £2m. most of which was incurred in the second half of the year. In Brentford's heyday there were profits of over £1m. In 1973 profits slumped to £356,000, a pre-tax loss of £420,000 emerged in 1974. Immediately after Kenneth Cork's appointment the upsurge in sales whisked the company back into profits, and even now Brentford is not far from break-even after a heavy reduction in overhead costs.

One of the features which will help Kenneth Cork to rescue the bulk of the business is the excellence of Brentford's modern Cramlington textile factory, built at a cost of about £15m. Unfortunately, Brentford was expanded without an adequate capital base (the January 1975 balance sheet showed borrowings of £10.66m. supported by net assets of only £.07m.), making it incapable of supporting the 1975 trading losses. Total liabilities at the time of the failure are believed to have been in the region of £17m.

Although the company is basically viable a purchaser will have to be found, to pay back as much as possible to the creditors.

Considerable interest has already been shown in a package containing the Cramlington factory and the retail shops; this would leave two rather smaller factories and the Brentford office block (probably worth £5m.) to be sold separately.

In contrast to many liquidations, this time Kenneth Cork has high quality assets for sale and the name of Brentford Nylons should continue. In the meantime, he is expanding the product range and tightening management control. This is no ordinary receivership.

Note: This company has since been acquired by Lonrho Investments.

OBITUARY

MR. JUSTICE HUGHES

A Supreme Court judge, Mr. Justice Joseph Hughes, who only a few weeks ago, announced his resignation from the Zambian Judiciary to work in another independent African country, died in Lusaka on 3rd June, 1976.

Mr. Justice Hughes, aged 48, leaves a widow and three daughters, one of whom is married.

The news of the Judge's death was announced by Chief Justice Annel Silungwe at a combined sitting of the Supreme Court and the High Court for Zambia held in Lusaka High Court building.

Also present at the sitting were the High Court Registrar, Mr. Moses Mwamba, the Deputy Chief Justice Leo Baron, Supreme Court Judge Brian Gardner and Judges Brendan Cullinan, William Bruce-Lyle, Bonaventure Bweupe and Godfrey Muwo as well as State Advocates, private practitioners, legal aid counsels and other judicial officers.

Disclosing the sad news, Mr. Justice Silungwe told the packed courtroom: "The combined sitting of the Supreme Court and the High Court for Zambia today marks the passing of our very dear departed brother Mr. Justice Joseph Hughes, who passed away peacefully in the bosom of his family and in the comfort of his deep abiding faith, to his Maker in the early hours of the morning".

The Chief Justice said it was sad that some few short weeks ago before the sitting of the Supreme Court itself counsel had occasion to extol the late judge's virtues.

"He was a man of high and determined principles. He was a Judge whose clarity of mind carried with it such firmness of decision. For all that, he was a man of great insight, humility and warmth.

"The Republic will sadly miss the services of one who for so many years so diligently and faithfully performed his duties", Mr. Justice Silungwe said.

He added that the people of Zambia will be saddened by the death of Mr. Justice Hughes.

Mr. Shamwana, Mr. Chirwa and Mr. Osakwe, speaking on behalf of their respective departments, also paid tribute to the impressive work done by the late Judge during his stay in this country.

Mr. Justice Hughes was born in Dublin on April 29, 1928. He was educated by the Christian Brothers at O'Connell School in Dublin and at the University College, Dublin.

He was enrolled by the Incorporated Law Society of Ireland and was admitted as a solicitor of the Supreme Court of Ireland in 1950. He practised as a solicitor in Dublin until 1958 when he first came to the then Northern Rhodesia on appointment as a Resident Magistrate.

He was appointed a Judge of the Court of Appeal for Zambia and became Judge of the Supreme Court in August, 1973.

SOLICITORS' APPRENTICES DEBATING SOCIETY OF IRELAND

Solicitors' Buildings, Four Court, Dublin 7.

The following are the committee of the Society for the 93rd Session:

Ciaran A. O'Mara — Auditor.
Declan Sherlock — Treasurer.
Janet Doherty — Correspondence Secretary.
Michael D. Murphy — Records Secretary.
Niall King — Ordinary Member.
Niall Sheridan — Junior Ex-Auditor (ex-officia).
Jackie Moloney — Social Secretary.
Cliona O'Tuama — Debating Captain.
Karen Jordan — Dress Dance.
Tom Donaghy, Hugh Sheridan — Party Sub-Committee.

OBITUARY

Thoras J. Guihan, Kenmare, Co. Kerry, died on 8th February, 1976. Mr. Guihan was admitted in Hilary Term, 1935. He practised at Kenmare and also in Tralee at the offices of his late uncle, Joseph C. Guihan of Law Chambers, Ashe Street, Tralee, Co. Kerry.

EXCHANGE BETWEEN IRISH AND AUSTRALIAN LAWYERS

An Australian firm of Solicitors wishes to organise overseas travel for its members and profesional employees with a view to broadening their experience.

The firm wishes to make contact with similar firms of lawyers practising in Ireland so that mutual visits might be arranged to exchange ideas and methods.

The Australian firm has 9 Solicitors and a total staff of 25 and practises in a closely settled rural area with a population of about 100,000 on the North Coast of New South Wales.

Would any firm interested in taking the matter any further please write to Rummery Trenches, P.O. Box 570, Lismore, N.S.W., 2480 Australia (Reference M:R).

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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 July, 1976.

N. M. GRIFFITH
Registrar of Titles

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

Schedule

(1) Registered Owner: Patrick Brennan. Folio No.: 899L. Lands: The leasehold interest in the property situate in part of the Townland of Knockballynameath and Barony of Bunratty Lower. Area: 0o. 0r. 11p. County: Clare.

(2) Registered Owner: Denis Callaghan. Folio No.: 16961. Lands: Tonaknock. Area: 29a. 2r. 34p. County: Kerry.

(3) Registered Owner: Martin Joyce (Junior). Folio No.: 27041. Lands: (1) Brodullagh South, (2) Brodullagh South. Area: (1) 66a. 1r. 14p., (2) 3a. 1r. 4p. County: Mayo.

(4) Registered Owner: Peter O'Dwyer. Folio No. 36112 L. Lands: The leasehold interest in the property situate in part of the townland of Templeogue and Barony of Uppercross. Area: 0o. 0r. 12p. County: Dublin.

(5) Registered Owner: William Blight. Folio No. 3858. Lands: (1) Knockatee, (2) Garraree (part). Area: (1) 50a. 3r. 10p., (2) 0a. 3r. 4p. County: Westmeath.

(6) Registered Owner: William Bligh. Folio No. 6871. Lands: Parsonstown (Part). Area: 48a. 1r. 6p. County: Westmeath.

(7) Registered Owner: Martin Morris. Folio No. 9192L. Lands: The leasehold interest in the property situate to the east of Blackhorse Avenue in the Parish of Castleknock. Area: 0a. 0r. 9p. County: Dublin.

8) Registered Owner: Molly O'Brien. Folio No.: 17506. Lands: Skagh. Area: 0a. 1r. 34p. County: Limerick.

(9) Registered Owner: Seamus Brett. Folio No. 753F. Lands: Oldgrange (part). County: Kildare.

(10) Registered Owner: Michael Joseph Clarke. Folio No. 10927. Lands: Ballynamona. Area: 26a. 3r. 28p. County: Cavan.

(11) Registered Owner: The Right Honourable The Lord Mayor Aldermen and Burgesses of Dublin, City Hall, Cork Hill, Dublin. Folio No. 350. Lands: Cardiffsbridge. Area: 39a. 2r. 14p. County: Dublin.

(12) Registered Owner: Robert Ernest Moore. Folio No. 15919. Lands: Lissagroom. Area: 74a. 0r. 25p.

(13) Registered Owner: Charles Lee. Folio No. 12027. Lands: Leggagh. Area: 5a. 3r. 30p. County: Longford.

(14) Registered Owners: Thomas Weldon and Catherine Weldon. Folio No. 1659L. Lands: The leasehold interest in the property known as 96, Marian Park situate in the Barony of St. Mary's and Borough of Drogheda. County: Louth.

(15) Registered Owner: William O'Donoghue. Folio No.: 4541. Lands: Tinode (part). Area: 29a. 2r. 0p. County: Wicklow.

(16) Registered Owners: Thomas Maguire, William Hanratty and John Waters. Folio No. 9705. Lands: Collon. Area: 0a. 0r. 5p. County: Louth.

(17) Registered Owner: James Connors. Folio No. 9305. Lands: (1) Faha, (2) Faha. Area: (1) 231a. 2r. 17p., (2) 17a. 2rfl 32p. County: Waterford.

(18) Registered Owner: Iisbella Gertrude Gillespie. Folio No. 560. Lands: Shanmullagh. Area: 23a. 2r. 35p. County Monaghan.

(19) Registered Owner: Thomas O'Connor. Folio No.: 14323. Lands: Guhard North (part). Area: 37a. 0r. 3p. County Kerry.

NOTICES

LOST WILL

Ann Mooney, deceased (otherwise Nan), late of 16, Wallace Road, Walkinstown, Dublin. Would any Solicitor or other person knowing the whereabouts of a Will made by the above deceased who died on the 15th May, 1976, please contact Donal M. Gahan & Co., Solicitors, 52, Ranelagh Road, Dublin 6.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like, with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street, Dublin 1. Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

AUGUST 1976 VOL. 70 NO. 6

SOCIETY CONSULTS LEADING AUSTRALIAN EDUCATIONALIST

Mr. O'Leary meets members of the Education Advisory Committee

Back Row, from left, Messrs. Rory O'Donnell, Brian Overend, Laurence Shields and Joseph Dundon. Front Row, from left, Messrs. Harry Sexton, Kevin O'Leary, John Buckley (Chairman) and Maurice Curran.

The Director of the Legal Workshop at the Australian National University in Canberra Mr. Kevin F. O'Leary visited Dublin at the end of August at the invitation of the Society to discuss and advise on the Society's new Professional course in Legal Training which will commence in 1978. Mr. O'Leary, who is a practising Barrister, and previously had practised for a number of years as a Solicitor, established the Legal Workshop at the Australian National University which is seen as a fore-runner in the field of Legal Professional training. The course is a whole-time course which trains both prospective Solicitors and Barristers and is operated by a small full-time teaching staff supported by a large number of "consultants" who are members of the Legal Professon and assist in the programme on a part-time basis. The consultants comprise Judges, members of the Bar, Solicitors, Civil Servants and members of other professions who are asked to assist in the course for not more than a few days each year.

The Society's prospective Professional Law School will hopefully operate on somewhat similar lines and during his meetings with the Education Advisory Committee, members of the Education Committee and Officers of the Society Mr. O'Leary has been able to offer much useful advice and assistance to us.

Mr. O'Leary is the current President of the Law Council of Australia and in that capacity has recently represented Australian Lawyers at the American Bar Association Bicentennial Conference in Atlanta and at the International Bar Association Conference in Stockholm.

PAX ROMANA

The 9th International Conference of the Lawyers Section of Pax Romana was held in Dublin from 29th August to 3rd September, 1976. Pax Romana is a Catholic Association of University graduates and professionals to represent the intellectual elite of the Catholic religion; practically every profession has a branch of its own, and the International Lawyers Section purports to represent Catholic lawyers throughout the world. At its previous International Conferences, it has dealt with various themes such as The Family and the Legal Order, Paris, 1953, and the useful subject of Respect for Humanity in the Application of the Criminal Law, Rome, 1956. Further topics discussed were Law and International Peace, Luxembourg, 1959, Law and the Social Order, Bochum/Ruhr, 1962, and Freedom of Religion in Salamanca, 1965. A strong Irish delegation, which included Mr. and Mrs. P. C. Moore and Mr. and Mrs. Bruce St. J. Blake, went to Salamanca in 1965. Conferences have also been held in Dakar, 1968, Fribourg, 1971 and Detroit, 1974, before proceeding to Dublin in 1976 About 70% of the participants were French.

The Conference started on Sunday, 29th August, 1976, with a Latin Mass in the Pro-Cathedral under the Presidency of His Excellency Most Rev. Dr. Alibrandi, Nuncio Apostolic and the President, Maitre Pettiti delivered his Inaugural Address in the afternoon in the Mater Dei Institute on "The Lawyers, the Church and the Rights of Man. The two themes of the Dublin Conference were Family Law and the Fourth World — the problem of the poor who for some physical or mental reason are unable to support themselves, or who do not come within the scheme of State Aid. Lectures and discussions were held in Belfield and the General Family Report was presented by Mr. James O'Reilly while the Irish Family Report was presented by Mr. Gavan Duffy and the Irish Report on the Fourth World by Sister Stanislaus.

Delegates had an opportunity to visit the State Apartments, as well as the antiquities of Kells, Mellifont, Monasterboyce and Glendalough. They were most grateful to the Attorney General for providing a splendid reception in Iveagh House, as well as to His Grace, the Archbishop, when they were received by Dr. O'Mahony in Clonliffe College, to Mr. Moore for receiving them in the Law Society and to Monsignor Fee for their kind reception in Maynooth.

Amongst the distinguished participants were Maitre Louis Pettiti (Paris), President, Maitre Lombard, Deputy Mayor of Marseilles. Professor Salves, troni (Florence), Mr. M. Penty, Solicitor (Isleworth, near London), Professor Verdier, President of Nanterre University, Professor Wagner (Detroit, U.S.A.), Maitre Visée (Belgium), Maitre Wittgen (Luxembourg), Maitre Jacob (Paris), Father Ngundi (Zaire) and Professor Wilpert (Cologne).

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get.

Guinness + Mahon were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Tim Howard, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking lies in the flexibility and variety which merchant bankers can bring to the business of banking, and each transaction is treated on its individual merits.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS + MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205;
or Tim Howard at Cork 54277
67 South Mall, Cork. Telex 8469.

THE CONSTITUTIONALITY OF THE CRIMINAL LAW (JURISDICTION) BILL 1975

The President of Ireland, the Hon. Cearbhall O'Dalaigh, having first consulted the Council of State, referred the whole of the Criminal Law (Jurisdiction) Bill 1975, under Article 26 of the Constitution for an opinion as to its constitutional validity to the Supreme Court. The Supreme Court heard arguments against the constitutionality of the Bill by Mr. Colm Condon, S.C., and Mr. Donal Barrington, S.C., and in favour of the constitutionality of the Bill by the Attorney General (Mr. Declan Costello, S.C.) and Mr. Rory O'Hanlon, S.C. from 26th April to 30th April, 1976, inclusive. On 6th May, 1976, in accordance with Article 26, a single judgment was delivered by the Chief Justice on behalf of the Supreme Court which advised the President that all provisions of the Bill were in full accord with the Constitution. The President subsequently signed the Bill, which has now become an Act. On 25th May, 1976 the Minister for Justice (Mr. Patrick Cooney) and the British Secretary of State for Northern Ireland (Mr. Merlyn Rees) signed a Convention whereby the British Criminal Jurisdiction Act 1975 and the Irish Criminal Law (Jurisdiction) Act 1976 were to come into force on 1st June, 1976.

In the course of a 41 page judgment, the following submissions were considered:-

I General Principles

As the Bill had been passed by the two Houses of the Oireachtas, the Court adopted the dictum of Sullivan, C. J., in re the *Offences against the State (Amendment) Bill 1940* – (1940) I.R. 178 – that "if it is sought to establish that a law is repugnant to the Constitution by reason of some implied prohibition or repugnancy, we are of opinion that such repugnancy must be clearly established". The Court rejects the contention that a distinction should be drawn between an Act passed by the Oireachtas and a Bill referred by the President under Article 26.

II Extra-Territorial Effect of Irish Legislation

It was submitted that pending the re-integration of the National Territory under Article 3 of the Constitution, the Oireachtas was debarred from passing legislation which had territorial effects in Northern Ireland. It is to be noted that Articles 1 to 3 of the Constitution refer to "The Nation", whereas Article 10, which relates to natural resources, refers to "The State".

The Court stated that Articles 2 and 3 could only be appreciated in relation to a knowledge of the background of law and politics. Up to 1920, the Imperial Parliament at Westminster claimed sole legislative power over the whole of Ireland. The Government of Ireland Act 1920 made provision for a Parliament of Northern Ireland with limited legislative jurisdiction over the six North Eastern Counties and a Parliament of Southern Ireland with the same limited jurisdiction over the remainder of Ireland. Articles 11 and 12 of the Treaty of 1921 made provision for the area then known as the Irish Free State, and now described as the Republic of Ireland. The Treaty was ratified by the Imperial Parliament on 31st March, 1922, and by Dail Eireann, sitting as a Constituent Assembly, on 25th October, 1922. The effect of the said Articles 11 and 12 of the Treaty was that, if within one month of the ratification of the Treaty, an address was presented to the King by both Houses of the Parliament of Northern Ireland to the effect that the powers of the Parliament and Government of the Irish Free State were no longer to extend to Northern Ireland, then this provision would take full effect, and the powers given to the Parliament of Northern Ireland under the Government of Ireland Act 1920 would also be of full effect.

The Irish Constitution of 1922 was ratified by an Act of the Imperial Parliament on 5th December, 1922, and the Proclamation issuing the Constitution was signed by the King on 6th December, 1922. In accordance with Article 12 of the Treaty, the Parliament of Northern Ireland presented a resolution that the powers of the Government and Parliament of the Irish Free State should not extend to Northern Ireland on 7th December, 1922.

The Irish Constitution of 1922 derived its authority not from any British Act, but essentially from the Act of Dail Eireann establishing that Constitution, which was passed on 25th October, 1922. The Constitution was in fact enacted as a Schedule to the Constituent Act passed on 25th October, 1922 by the Third Dail Eireann. The existing boundaries of the Irish Free State with Northern Ireland were duly confirmed by the Treaty (Confirmation of Amending Agreement) Act 1925.

The correct meaning of any constitutional document is to be construed with regard to the historical circumstances in which it came into being. The Constitution is a fundamental document which establishes the State, and expresses not only legal norms, but in Article 5 of the present Constitution, which declares Ireland as a sovereign, independent and democratic State, and also contains basic doctrines of political belief.

One of the basic theories held in 1937 was that the Nation, as distinct from the State, has rights, and that the Irish people in the whole island of Ireland formed the Irish Nation as a unitary or federal State and that a nation has a right to unity of territory; it was consequently felt that the provisions of the Government of Ireland Act 1920, though legally binding, were a violation of the right to national unity (which had been superior to positive law).

The claim to national unity is stated in Article 2 of the present Constitution. The effect of Article 3 is that, until the division of Ireland is ended, the laws enacted by the Oireachtas are to apply to the same area as was formerly the Irish Free State and is now described as the Republic of Ireland. The laws enacted by the Oireachtas under the present 1937 Constitution were to have the same territorial effect as the laws of Saorstat Eireann. It is clear that the natural resources belonging to the State under Article 10 of the Constitution only applies to the natural resources "within the jurisdiction of the Parliament and Government established by this Constitution".

Article 3 does not prohibit the Oireachtas from legislating with extra-territorial effect in relation to Northern Ireland, as long as the division of the country lasts, as long as the Parliament of Saorstat Eireann was enabled to do so. Section 3 of the Statute of Westminster 1931 had declared that the Parliaments of British Dominions had full power to make laws having extra-territorial operation. Since the Constitution of 1922 had been enacted in 1922 by a Dail sitting as a Constituent Assembly, Saorstat Eireann had full power to legislate with full extra-territorial effect.

In the **Lotus** case (1927), the Permanent Court of International Justice held that every sovereign State had power to legislate with extra-territorial effect; consequently it may enact that acts or omissions done outside its borders may apply to its own citizens; this is technically called a "jurisdiction to prescribe", particularly if

the offences bear upon the peace, order and good government of the Legislative State. The Court has no doubt that the offences described in the Schedule to this Bill, which include murder, manslaughter, arson, kidnapping, false imprisonment, malicious damage, robbery and offences in connection with explosives firearms and the unlawful seizure of aircraft and vehicles, bear upon the peace, order and good government of the State, particularly as they are committed within the "national territory" as defined by Article 2 of the Constitution.

III Repugnancy with Article 38 of the Constitution

It is asserted that the Bill confers jurisdiction on the Special Criminal Court to try the scheduled offences. This is alleged to be repugnant to the Constitution on one of these two grounds:-

(i) That, if the constituent acts of an offence are committed outside the State, no such offence could affect the administration of justice or the preservation of public peace and order within the Sate.

(ii) In the alternative, if this statement in (i) were not correct, it is still possible to envisage circumstances surrounding the commission of particular offences under the Bill, which would render these incapable of affecting the administration of justice or preservation of public peace and order within the State. Article 38 (3) of the Constitution provides for the establishment of Special Courts if it is determined that the ordinary Courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. Under S.35 of the Offences Against the State Act 1939, the Government can make a proclamation declaring the existence of such state of affairs, and can then set up a Special Criminal Court under Part V of the 1939 Act. This Special Criminal Court, when established, is only entitled to try offences set out in Sections 36, 37, 45, 46, 47 and 48 of the Act. These offences are:-

(1) S.36 enables the Government to declare any offence of any particular class a scheduled offence, provided they are **satisfied** that the ordinary Courts are inadequate to secure the effective administration of justice. The Government must be equally **satisfied** that the ordinary Courts are so effective, in order to alter any declaration in relation to any scheduled offence.

(2) By S.37, attempting, or conspiring, or inciting to commit, or aiding, and abetting a scheduled offence, shall be deemed itself to be a scheduled offence.

(3) S. 45 relates to the procedure in the District Court in relation to scheduled offences. If a person charged with a scheduled offence is brought before the District Court, and the Attorney General so requests, that person will be sent forward for trial to the Special Criminal Court. In the case of an indictable scheduled offence, at the request of the Attorney, the accused will be sent forward to the Special Criminal Court. Pending the hearing by the Special Criminal Court, the High Court may grant bail to the accused.

(4) By S. 46, if an accused is brought before a District Justice charged with a non-scheduled offence, and the Attorney-General produces a written Certificate to the effect that the ordinary Courts are inadequate to secure the administration of justice, and the preservation of public order, then the Justice shall send forward the accused in custody, or by consent, on bail, to the Special Criminal Court.

(5) By S.47 if it is intended to charge a person with a scheduled offence, the Attorney General may direct that such a person shall be brought forward direct to the Special Criminal Court without any preliminary investigation in the District Court. This procedure may also be adopted in the case of a non-scheduled offence, if the Attorney General certifies that the circumstances warrant it. If the accused does not appear after notice before the Special Criminal Court, that Court may issue a warrant for his arrest.

(6) By S.46, if an accused has been sent forward by a District Justice, to the Circuit or Central Criminal Court, and the Attorney General issues a certificate that the ordinary Courts are inadequate to secure the administration of justice and the maintenance of order in his case, then the Attorney General may apply to the High Court for an order that the trial of the accused be transferred to the Special Criminal Court. A copy of the High Court Order shall be served on the accused and the County Registrar. The accused shall then be brought before the Special Criminal Court at the designated time.

It follows that even if this contested Bill were enacted, it cannot confer on the Special Criminal Court any new jurisdiction to try any offence. Before any such offence could come within the purview of the Special Criminal Court, it would be necessary either for the Government to declare under S.36 of the 1939 Act that such offence is a scheduled offence, or in a special case relating to the trial of a particular person, for the Attorney General to certify that the ordinary Courts are inadequate to try such offence.

The Supreme Court has an obligation to be alert in upholding constitutional rights, and must determine wheher, in enacting this 1975 Bill, it would create any special offence triable by a Special Court as a result of an action by the Government or the Attorney General. The pre-condition for the Government to schedule an offence, or for the Attorney General to issue a Certificate is that, for the specified offence or for the particular trial to be effective that the Courts are inadequate to secure the maintenance of order and peace. Many factors could go to the formulation of such an opinion, such as a general state of unrest within the State, or the nature of the crime alleged. There appears to be no justification for singling out any of these factors, and then asserting that, because the acts which constitute an offence were committed outside the State, that no such declaration or certificate could be issued. It follows that contention No. (1) based on this ground is unsustainable. **In Re McCurtain** — (1941) I.R. 83 — decided that it was constitutional for the Oireachtas to have provided in the 1939 Act that the question of the inadequacy of the ordinary Courts be decided by a Proclamation of the Government or by a Certificate of the Attorney General. The Court does not decide in what circumstances it would be entitled to review any such Proclamation or Certificate.

The question of opinion whether the ordinary Courts were inadequate to secure the maintenance of order would be appropriate is not the correct one. The test must be whether it would be impossible to envisage any case of an offence against the Bill in which that opinion, if formed, would be justified and appropriate. It is quite clear that if an organisation within the State were engaged in intimidating jurymen and were tried here for acts committed either within or outside the State, such an opinion could properly be formed.

Note:- In the **State (Burke) v. Lennon** (1940) I.R. 147, Gavan Duffy J. held that only a Judge could be satisfied whether certain steps could be taken, as this term involved a judicial determination strictly limited to judicial power.

Clause 10 of the abortive Sunningdale Agreement

between the Irish and British Governments of December, 1973, set out in **Boland v. An Taoiseach,** (1974) I.R. 343, is also relevant. By that clause it was agreed that persons committing crimes of violence, however motivated, would be brought to trial, irrespective of the part of Ireland in which they were located. As a result of this clause, a Law Enforcement Commission consisting of 4 British and 4 Irish representatives was established which eventually issued a Report. While the British favoured extradition as the principle to be applied, the Irish suggestion of the principle of extra-territoriality embodied in this Bill, was ultimately agreed.

IV Section 11 Conflicts with Article 40(3) of the Constitution

The provisions of S.11 of the Criminal Justice Bill are:-

(1) It is contended that an accused can only be present at the taking of evidence on commission in Northern Ireland by submitting to unduly harsh and unreasonable conditions. It is contended that, by compelling the accused to be in custody while he is in Northern Ireland, the accused has to leave the security of the State. Art. 38(1), which states that no person shall be tried on a criminal charge save in due course of law, requires just treatment for the person charged with the special right of the State to prosecute, and to ensure that the accused will stand trial. "Due Course of law" should merely represent a fair balance between the exercise ofindividual freedom, and the requirements of an ordered society.

The accused has an undoubted right to be present at and throughout his trial, which will normally be held in the Special Criminal Court. What is at issue is his right to be present for the taking for the purposes of the trial of the evidence of witnesses in Northern Ireland. This involves the travelling to Northern Ireland of members of the Special Criminal Court, and the taking there of the evidence, in their presence before a Northern Ireland High Court Judge. Obviously if, as a result of leaving the jurisdiction, the accused is not in custody in Northern Ireland, there is a danger that he may not return to stand his trial; and, while in custody there, the accused is accorded an immunity from detention in respect of any previous offence in the North. If the accused does not wish to be present, he can be represented by a solicitor and counsel. It is to be noted that, while he is in custody, the accused is placed under the protection of the Royal Ulster Constabulary. Accordingly this provision is not repugnant to Article 40 (3) of the Constitution.

(2) It was also contended that if the accused was in custody while evidence was taken in Northern Ireland from witnesses resident there constitutes a deprivation of his right of access to the Courts for the purpose of obtaining bail. The granting of bail is not a constitutional right, but a mere recognition by the Court that a person presumed innocent shall not have his liberty unnecessarily interfered with pending his criminal trial. In **People (A.-G.) v. O'Callaghan** (1966) I.R. at p. 533 — Walsh J. said that from time to time necessity demands that some unconvicted persons shall be in custody pending trial to secure their attendance at the trial, but **necessity** is the operative test. The accused need only go to Northern Ireland at his own request, and if the order for arrest is made on a wrong basis, it can be set aside by the High Court. It is clear that the requirement of custody while in Northern Ireland is an absolute necessity.

(3) It is contended that the accused is deprived of rights, inasmuch as if he does not elect to be present in Northern Ireland, his counsel or solicitor have no right to cross-examine witnesses. This contention is unsustainable, as the opportunity to cross-examine any witness is fundamental to a trial in due course of law, and this right is undoubtedly also available in Northern Ireland

(4) S.11 does not provide that a statement of evidence intended to be given by the Northern witness shall be given to the accused before such evidence. By virtue of the Special Criminal Court Rules 1976 the accused is entitled to a statement of the evidence of each witness whom it is proposed to call. The Court is satisfied that S.11 must be interpreted as making a person, whose evidence is to be taken on commission on Northern Ireland, a witness whom it is proposed to call. In the making of an order for the taking of evidence, the Special Criminal Court has to consider the interests of justice, which would require a full and adequate disclosure of the nature of the evidence being given beforehand to the accused. This submission fails.

(5) Although it was contended that a statement of evidence made in Northern Ireland might not be an accurate transcript, the Court is satisfied that a statement of evidence correctly certified by a Northern Ireland High Court Judge to be a true and accurate statement of the evidence so taken satisfies the requirements of justice.

(6) It was contended that S.11 did not extend to evidence of opinion from experts. Accordingly an accused on trial here who wished to have the evidence of an expert taken in Northern Ireland as part of his defence would allegedly be hampered in his defence. This submission is unsustainable.

(7) It was contended that S.11 only provided for the transmission of the actual statement of evidence, and did not mention exhibits. This Court does not regard

this question as relevant to the constitutionality of the section.

(8) It was urged that this would mean that the evidence in Northern Ireland would be taken with laws regarding the exclusion of evidence and the withholding of documents which might not accord with Irish Law. It is for the Court of trial, or, on appeal, for the Court of Criminal Appeal to determine whether a statement made under Schedule 4 of the corresponding British Act ought to be admitted in evidence. This Schedule states that he is entitled to the same immunities as if he were on trial in Northern Ireland. It is suggested that these laws are more elastic than Irish Law. Nevertheless this submission fails.

(9) It was finally submitted that, with regard to the rights which, under S.11 (2), paragraph (a) to (d), the Court has to inform the accused of, these rights are to be accorded as a matter of course. The Court does not consider this a sustainable objection. However it is the opinion of the Court that a statement taken in such circumstances without these safeguards would not be taken in compliance with the section and would on that ground not be admissable at the trial.

It is contended that there is an implication that all proceedings and procedures permitted under the legislation were intended to and would be conducted in accordance with the presumption of Constitutional Justice. (See **East Donegal Co-Operative Society v. Attorney-General** — (1970) I.R. 317. This presumption does not apply to proceedings or procedures required by legislation to be performed outside the State. The rights of the accused can be protected by the Court of trial or, on appeal, by the Court of Criminal Appeal.

The judgment was signed by the Chief Justice (The Hon. T. F. O'Higgins), the President of the High Court (Mr. Justice Finlay), Mr. Justice Griffin, Mr. Justice Kenny and Mr. Justice Parke, who constituted the Court.

It is understood that the Commission of the European Communities, with the consent of the Ministers of Justice of the nine Member States concerned, will probably issue a Directive probably applicable as from 1st January, 1977, to all the Member States which will define acts of terrorism in detail, and will put forward joint remedies by all the Member States to endeavour to take effective measures to end all acts of terrorism. It is understood that, as soon as this Directive is fully applicable, the Irish Criminal Law (Jurisdiction) Act, 1976, and the British Criminal Jurisdiction Act 1975, will in effect be repealed and superseded by the new legislation.

EMERGENCY POWERS BILL, 1976

The Law Society has noted the provisions of the Emergency Powers Bill, 1976. While it regrets the necessity for its introduction, even for a limited period, the Society accepts that the enactment of such legislation is a matter for the Oireachtas of the day.

The Society, however, is concerned to ensure that persons detained in custody under emergency legislation will have the usual right of access to their legal advisers.

Dated this 30th day of August, 1976.

□

CRIMINAL LAW BILL, 1976

The Law Society has considered the provisions of the Criminal Law Bill, 1976. This Bill proposes legislation of a permanent rather than of a temporary nature.

This being so the Society is very concerned by the following points:—

(1) Section 7 gives wide powers to a member of the Garda Siochana when dealing with a person who is in custody "under the provisions of any enactment for the time being in force under which persons may be arrested, kept in custody and questioned", such as searching, photographing, fingerprinting, or chemical testing. The Explanatory Memorandum indicates that these powers are intended to apply only to persons in custody under the provisions of Section 30 of the Offences Against the State Act, 1939, and Section 2 of the Emergency Powers Bill, 1976. This is not clear from the Section, which in its present form could apply to other existing or future legislation. Hence it is suggested that the Section, if enacted, should be incorporated into the Emergency Powers Bill, 1976, or applied only to the Sections mentioned in the Explanatory Memorandum.

(2) The Section as drafted may be deemed to restrict the operation of the Judges' Rules, relating to the rights of persons in custody and should not become part of the normal Criminal Law, without full consideration of the issues independently of any state of emergency.

The Society is very concerned with the provisions of Section 6 when read in conjunction with Section 9. Section 6(2) provides that **any** person who conveys or attempts to convey any article or thing into or out of a prison or to a person in prison in certain circumstances is guilty of an offence. Section 6(3) entitles a prison officer to search any person, while he is in a prison or while in the custody of the governor of a prison.

Section 9 empowers a person authorised to make a search to seize and retain for use as evidence in **any criminal proceedings,** anything which he believes to be evidence of any offence or suspected offence. The combined possible effect of these two sections is to give a right to seize and retain for use as evidence in any criminal proceedings, documents which may be confidential or privileged communications between a person in custody and his legal adviser, seized either from a person in custody, or from a legal adviser while "he is in prison".

The Law Society is making urgent representations to the Government on these matters.

Dated this 30th day of August, 1976.

WEALTH TAX

By

ROBERT W. R. JOHNSTON, B.A. (Mod.) LL.B. (T.C.D.)
Solicitor

ORDER FORM

PRICE : £5.00, plus 35p postage

Please supply copy/ies of WEALTH TAX by Robert W. R. Johnston to the undersigned at the address appearing below. Remittance £5.00 plus postage is enclosed.

Signed .....

Name .....

Address .....

Cheques should be made payable to the "Incorporated Law Society" and should be sent with this form to the Incorporated Law Society of Ireland, Solicitors' Buildings, Fourt Courts, Dublin 7.

PROPOSED CHANGES IN NULLITY LAW

The Government's draft proposals for reform of the law on annulment of marriage in Ireland, published in a discussion paper on 28 August would give much greater discretion to the Courts to grant decrees of nullity on the grounds of personality defect, mental disorder, duress or lack of true consent of either partner.

Introducing the discussion paper at a briefing, the Attorney-General, Mr. Declan Costello, said that another major change being recommended was that the child of an annulled marriage should be regarded as legitimate, and that the Courts should be given broad powers to direct financial settlements and arrangements for the well-being of the children.

Mr. Costello said that the 57-page document, entitled "The Law of Nullity in Ireland," did not represent the Government's final proposals on the subject. Comment on it was now being invited and would be welcomed.

After taking into account the views and observations of the public and interested bodies, the Government would formulate the legislation which it would ask the Oireachtas to enact.

Discussion paper

The Discussion Paper comprises a memorandum on the law of nullity which was prepared in the Office of the Attorney-General after "inter-Departmental discussions," and a draft Bill.

The draft Bill had been prepared to facilitate discussion on the proposals suggested.

Mr. Costello said that the examination of the law of nullity carried out in his Office "showed clearly that a need existed for a new, codifying and reforming statute."

Very little development in the law had occurred in this country in the last 100 years—due, to a considerable extent, to the fact that very few nullity petitions had been filed. In fact, between 1964 and 1974, only 20 nullity suits were instituted (only eight were successful).

Mr. Costello said that research had been carried out into the developments in the jurisprudence of the Ecclesiastical Courts in this country, and consideration had been given to changes which had occurred in the Civil Law of nullity in England and elsewhere. Assistance had also been obtained from medical experts in the field of psychiatry.

The object of these proposals is to achieve a law which will be a fair and just one, and which will assist in easing the very real hardships which exist due to the present inadequacies in the law.

The discussion paper begins by setting out briefly the present state of the law of nullity. It points out that the Constitution prohibits the enactment of a law providing for the grant of a dissolution of marriage, but that there is no Constitutional prohibition on the power of the Courts to grant a decree of nullity. Such a decree is not a dissolution of an existing marriage, the subject matter of the proceedings, did not exist, the document says.

The discussion paper points out that prior to 1871 the Civil Courts in Ireland had no jurisdiction in matrimonial matters, and up to that time jurisdiction in suits for nullity of marriage had been exercised by Ecclesiastical Courts.

By the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 a Court for Matrimonial Causes and Matters was established, and the former matrimonial jurisdiction of the Ecclesiastical Courts transferred to the new court.

Reforming measure

"There is a real and pressing need for reform. This need arises from a number of causes. Firstly, many aspects of the law relating to nullity matters are uncertain and clarification of this important branch of the law is obviously desirable. Secondly the law in relation to nullity matters has not developed in any significant way and has not kept pace with developments in other countries including England or with the law administered in the Ecclesiastical Courts in Ireland. Thirdly, a comprehensive law which would be both a codifying and reforming measure would greatly assist the public in understanding rights in relation to nullity matters and make the law more easily accessible. Accordingly, it is recommended that a comprehensive, codifying and reforming measure be enacted."

The document goes on to list the various grounds of Nullity under existing law–including bigamous marriage, underage marriage, marriage within prohibited degrees of affinity, marriages to which an 1811 statute of George III entitled "an Act to prevent marriage of lunatics" applies, invalidity of the ceremony, defective consent, and impotence.

In recommendations on these, the Government's paper suggests no change in the present nullity law on prior existing marriage, or on marriages where one of the parties is under age.

On affinity, it suggests that "It would be desirable if the prohibited degree of relationship were stated clearly and comprehensively in a new statutory provision. Attention should be drawn to the fact that the scope of affinity has recently been restricted in England."

The document says that the George III "Act to prevent marriage of lunatics" is clearly both obsolete and anomalous and should be repealed.

"The Act of 1811 is an aspect of the principle of law which provides that the incapacity or unfitness of a party to a marriage may be a ground for its annulment. This principle finds expression in the common law rule relating to non-consummation. In that case it is the physical unfitness of the impotent spouse in relation to a fundamental function of marriage which justifies the law in annulling it."

Mental infirmity

It is obvious that a person may by reason of a mental infirmity or disorder be as unfit for marriage as is a person found a lunatic by inquisition under the provision of the Act of 1811.

"In this connection, the nature of marriage according to the relevant Irish law should be recalled. By the Common Law as applied in this country marriage is a voluntary union for life which creates and imposes mutual rights and duties. In addition, the Constitution underlines the fact that marriage is to be regarded as more than a civil contract. It is referred to as an 'institution' upon which the institution of the family (which possesses inalienable and imprescriptible rights antecedent to all positive law) is founded, and the State is required to guard with special care the institution of marriage. . . ."

"It follows, therefore, that a person may be unfitted for the institution of Marriage and for the responsibilities attached to it (including the family responsibilities which the Constitution regards as involved in the marriage contract) by reason of mental infirmity or disorder.

"It is *recommended,* therefore, that legislation should be introduced to deal with unfitness for marriage arising from mental disorder existing at the date of the

solemnisation of the marriage. The term 'mental disorder' should be defined so as to include any 'mental illness, arrested or incomplete development of mind or psychopathic or any other disorder or disability of mind' which makes the person suffering from it unfit for marriage; and it should be made clear that the marriage would be void."

Personality defect

"It is proper, however, that account should be taken of the insights which advances in psychiatry and psychology have given into aspects of human personality. It is clear that there exist defects of personality which though not capable of being characterised as 'mental disorder' may render the person suffering from them unfit for the responsibilities of a life-long union and the founding of a family.

"It is, for example, certain that cases exist where a spouse may at the date of the marriage be so immature or may have such an arrested sense of responsibility as to render him or her as unfit for marriage as if he or she had been a victim of a mental illness.

"It must, of course, be recognised that it is not possible to define by statute the degree of personality defect which would justify an annulment decree being made. Accordingly, considerable discretion must be given to the Court to decide each case on its own evidence (including the evidence of psychiatrists and psychologists in appropriate cases.)"

"This fact, however, should not preclude the enactment of a provision which would allow an annulment of a marriage when the evidence establishes the unfitness of a spouse by reason of a defective personality. In this connection, it is to be borne in mind that Ecclesiastical Courts exercising nullity jurisdiction are required to consider and adjudicate upon this evidence.

"It is recommended, therefore, that the term 'mental disorder' should be so defined as to include arrested or incomplete development of personality of such a kind as to render the person suffering from it unfitted for marriage."

The document recommends that the marriage laws relating to the formal requirements of marriage (that is, the valid form of ceremony and the provisions for registrations, etc.) should be undated and consolidated. New legislation should provide that a marriage should be null and void if the "true consent" of either party was absent.

True consent essential

The document refers to the fact that threats of the consequences of not marrying will only be accepted as a ground of nullity by the courts if it can be shown that the threats were false or fraudulent.

The test to be applied in all cases is whether the consent was free and full.

"To apply this test in the law relating to duress an amendment of the law is recommended so as to render invalid a marriage which has been brought about by grave threats of the consequences of not marrying, even if such threats are based on a true accusation, provided that they destroy the reality of the free consent of the party threatened.

"The law relating to undue influence should also be extended to cases where it can be established that undue influence was exerted by any person (and not merely the respondent) if it can be shown that such undue influence destroyed the reality of the free consent of the party subject to it.

"Deceit exerted by any person, and not merely the respondent, should annul a marriage when it can be shown that the petitioner was deceived to the extent that his or her consent to the marriage was not in reality a free consent.

"It is suggested that the present rigid categories of duress, mistake, mental incapacity, and fraud should be departed from. Instead, a general principle should be enunciated that a marriage should be null and void if the true consent of either party was absent. It should go on to provide that in ascertaining whether or not true consent was absent the Court should take into account:

(i) the mental incapacity or deficiency of either party at the date of the marriage, including a mental incapacity to appreciate the nature of the marriage contract and the responsibilities attached to marriage;

(ii) deceit on the part of any person deceiving the petitioner as to a fundamental feature of the marriage contract;

(iii) duress or undue influence exerted against the petitioner whether exercised by or on behalf of the respondent or not;

(iv) threats of grave legal financial or social consequence of not marrying including threats associated with a true accusation of legal responsibility, such as paternity or a binding contract to marry;

(v) mistakes as to the identity of the other contracting party or as to the nature of the ceremony."

"It will be a matter for the Court to decide in a case before it whether the deceit was such as to affect the fulness and freedom of the apparent consent of the petitioner to the marriage and if the deceit went to a feature of the particular marriage which the Court was considering which could be regarded as fundamental to it."

"Each case would depend on its own facts."

Void marriage in case of non-consummation

The document recommends that the law relating to non-consummation should be amended so as to provide that a spouse could petition for a decree on the grounds of his or her own impotence. Non-consummation should render the marriage void (not voidable as heretofore).

Pointing out that the Irish civil law recognises a distinction between a marriage which is regarded as being "voidable" and one which is regarded as being "void" (a voidable marriage is one that requires a decree to annul it, while a void marriage is regarded as never having taken place), the document recommends that this distinction should be abolished. If invalidity arises it should make the marriage void.

The document says that non-consummation stemming from psychological inability should be a ground of nullity. "It should be made clear that the psychological inability is one which would include an inability to consummate the marriage with the particular spouse. A marriage should be annulled if it can be shown that the respondent even though capable of intercourse is nonetheless psychologically incapable of consummating the marriage with the other party to it," it states.

There should be a bar to obtaining a decree of nullity on grounds of impotence if the petitioner's approbation would render the granting of a decree unjust. "Approbation" is defined as "conduct on the part of the petitioner which so plainly implies recognition of the existence of validity of the marriage as to render it unjust between the parties and contrary to public policy to permit him or her to challenge its validity."

Invalid ceremony

The document recommends that the doctrine of approbation should apply generally, except where the

marriage is void on the grounds of an invalid ceremony, prohibited degree of relationship or prior existing marriage. The doctrine of approbation and ratification should be codified and formulated appropriately.

It recommends also that where the marriage is null and void on the grounds of invalid ceremony, prohibited degree of relationship or prior existing marriage, the Court should be free to declare the marriage null and void at any time notwithstanding the death of one or both parties.

No time limit should be imposed for the institution of proceedings for a nullity decree.

Recommending that a child born of an annulled marriage should be treated as a legitimate issue of its parents, the document points out that the present position here is that such children are illegitimate. In England and under Ecclesiastical Law at present administered in Ireland, the situation is different.

"The present situation obviously works unjustly in relation to children of an annulled marriage and should be changed."

Other recommendations made are as follows:

1. The new legislation should apply to all marriages, not merely to those entered into after the passing of the Act;
2. A power to make ancillary orders to a nullity decree should be conferred on the Courts. These orders would include a power to appoint a person to be a guardian for the children of an annulled marriage and a power to make orders relating to the property of parties to an annulled marriage and their rights under settlements, as well as children's rights which could arise under the Succession Act;
3. A decree of annulment or a declaration of annulment will be required before a marriage can be treated as null and void;
4. Only parties to the marriage should bring proceedings for its annulment in cases where the decree is sought on grounds of incapacity to consummate, lack of age, lack of consent and mental disorder. Otherwise a person with a "sufficient interest" can petition for a decree;
5. Present Court procedures should be simplified. A review for this purpose should be undertaken by the Rules Committee of the Superior Courts.
6. The doctrine of collusion should be clarified so as to provide that an agreement by virtue of which false evidence or relevant evidence is not disclosed is a punishable offence, but that no other agreement or understanding relating to the proceedings should be a bar to them;
7. Section 13 of the Matrimonial Law (Ireland) Amendment Act, 1870, should be repealed (this section enjoins the Court to follow the principles and rules on which the Ecclesiastical Courts have acted in regard to nullity);
8. The Courts should have jurisdiction to pronounce a decree of Nullity when either of the parties is domiciled in Ireland, when both parties are resident in Ireland, or when the marriage was celebrated in Ireland. The Courts should have jurisdiction in cases where a wife has been deserted by her husband and he has left the jurisdiction. A study as to the law applicable when a foreign element is present in a nullity suit should be undertaken.

Family courts

The Attorney-General also pointed out that the whole question of Civil Legal Aid was being examined at the moment, and was obviously relevant to the application of new nullity legislation. He also pointed out that the whole question of Family Courts was clearly going to arise.

The discussion paper is available from the Government Publications Sale Office, GPO Arcade, Dublin 1, or any bookseller, price 40p.

Mr. Bruce St. John Blake, Senior Vice-President of the Incorporated Law Society has been asked by the Society's Parliamentary Committee to undertake an examination of the position in light of the White Paper. Mr. Blake will welcome comments from members of the profession.

IRISH SOCIETY FOR THE STUDY AND PRACTICE OF EUROPEAN LAW

A one-day Seminar being organised by the Irish Society for the Study and Practice of European Law will be held on Saturday, 16th October, 1976, in the Library of the Incorporated Law Society of Ireland, Solicitors' Buildings, Four Courts, Dublin 7. The themes of the Seminar are Recent Developments in Competition Policy in the European Communities, and Equality of pay and opportunity in the European Communities, and speakers will be Mr. John Temple Lang, and Mlle. Marie-Jose Jonczy, Legal Service of the E.E.C. Commission, Mr. Finbarr Murphy, Lecturer in European Law, U.C.D., and Mr. Gerald FitzGerald, Solicitor, Brussels. The Registration Fee is £3.00 Application forms are available from Hugh M. Fitzpatrick, Hon. Secretary, I.S.S.P.E.L., 50 Fitzwilliam Square, Dublin 2, and should be returned with the Registration Fee by Friday, 8th October, 1976.

COUNCIL OF EUROPE—STUDY VISITS ABROAD

A Scheme, drawn up by the Council of Europe, exists to promote study visits abroad by lawyers from Member States of the Council. Under Article 7.2 of this scheme, applications may be made to the Secretariat of the Council for financial assistance towards the cost of visits.

Further information, and application forms for assistance towards organising or financing study visits in accordance with the scheme are available on request from the Secretariat of the Dept. of Justice, 72-76, St. Stephen's Green, Dublin 2. Completed forms should reach the Department not later than 27th September, 1976.

PRESENTATION OF PARCHMENTS

The following name was omitted from the list (June/July Gazette) of those who received parchments in June, 1976 – Catherine O'Doherty, Malin Road, Carndonagh, Co. Donegal.

HIGH COURT PROCEDURE

The Council wishes to draw the attention of members to a problem which has arisen on a number of occasions recently in the High Court.

Solicitors who are still the solicitor on record in Actions before the High Court have been in particular cases unable to obtain any further instructions from their clients who probably have decided not to prosecute further or defend as the case may be, the particular Action.

A number of solicitors seem to think that that fact discharges them as the solicitor in the Case.

This does not appear to be a correct view and the proper position seems to be that such a solicitor still owes an obligation to the Court and possibly even to his client to attend at any hearing or adjournment of the Case and to state the position, unless of course, he has adopted the appropriate procedure under Order 7 to have himself discharged.

This misunderstanding has been causing considerable inconvenience in the Lists, Judges not being in a position to know whether a Case can with justice be dealt with in the absence of an appearance by or on behalf of one of the Parties.

1976/77 COMMITTEE OF THE SOCIETY OF YOUNG SOLICITORS

The Officers of the Committee of the Society of Young Solicitors for 1976/77 are as follows:

Chairman: Derek Greenlea.
Treasurer: Mary Finlay.
Secretary: Aine Hanley.
Committee Members: Maeve Breen, Michael Carrigan, Rory Conway, Clare Cusack, Terence Dixon, Andrew Donnelly, John Glackin, William Earley, Michael Hayes, Tom O'Connor, Norman Spendlove.

THE LAW AND PSYCHOLOGY

A one-day Workshop organised by Psychologists and Lawyers of the Psychological Society of Ireland Legal Group will be held at Granada, Stillorgan Road, Dublin (Entrance opposite Brewery Road) on Saturday, 9th October, 1976, at 10.00 a.m. The idea of the workshop is to explore areas in which Psychologists and their Reports may be of assistance to lawyers, particularly in the area of litigation. Fee: (to include lunch and coffee and tea breaks) £3.00. Further information can be obtained from The Hon. Secretary, Psychological Society of Ireland, 75, Merrion Square, Dublin 2. Closing date for Registration is 30th September, 1976.

AN INTERIM ASSESSMENT OF THE LATE MR. JUSTICE GEORGE GAVAN DUFFY AS ADVOCATE AND JUDGE

by Frank Connolly, formerly Solicitor to the Dept. of Posts and Telegraphs.

Twenty five years have passed since Mr. Justice George Gavan Duffy died. Now he is little more than a name which is only brought to mind when the law reports are consulted; and his achievements are almost forgotten. This is a meloncholy thought for not only was he a successful Senior Counsel and one of the best known judges in his day, but he also played an eventful part in the foundation of an independent Irish State. He belonged to a family which in each of its last five generations has thrown up members which rendered services to education, journalism, politics, and jurisprudence; and which helped to write brilliant pages in Irish history. Although short accounts of the work of some individual members of the Gavan Duffy family have been published, a comprehensive description of the contributions to Irish and Australian life made by the Irish Judge and his kith and kin is badly needed. But such a book would require lengthy research, and the present writer has neither the time nor the equipment for such a task.Nevertheless, the following personal impressions, and a tentative appraisal of the Judge as an advocate and a jurist may be of interest to solicitors who were not in practice when he was alive.

To understand what kind of man he was, particularly since he was dogged by controversy in political life, it is desirable to review briefly his ancestry and family connections. For the very marked traits which constituted strong motive forces in his life were equally prominent in all the other Gavan Duffy kindred. The Gavans and the Duffys were two Catholic families long settled in County Monaghan who, notwithstanding the rigours of the Penal Laws against the Catholics, had by the exercise of diligence acquired a modest prosperity by about the year 1790. The earliest known progenitor of the Judge was John Duffy, a small house property owner and business man in the town of Monaghan married to a Gavan. Charles Gavan Duffy, was the son of John Duffy. After working as a journalist, and later studying for the Irish Bar, he founded in association with Thomas Davis as one of the Young Ireland leaders, the famous weekly journal entitled 'The Nation' with the object of educating the Irish people, and inculcating Irish nationalism — two objects which were always dear to the heart of every Irish member of the Gavan Duffy family. Because of the failure of the Young Ireland movement and a breakdown in his health, Charles Gavan Duffy emigrated to Australia where his talents and gargantuan capacity for unremitting toil secured for him eminence in politics, and the Prime Ministership of the State of Victoria. Mr. Frank Gavan Duffy, a son of the second marriage of Charles, did well at the Australian Bar and was appointed a Judge of the Supreme Court of Victoria and later Chief Justice of the Commonwealth of Australia. (Miss Louise Gavan Duffy, who was a full sister of the Irish Judge, taught Irish in Pearse's School; helped the Irish Volunteers in the 1916 Rising; afterwards established her own secondary school in Dublin, and was a noted educationalist). Mr. Colum Gavan Duffy, M.A., LL.B., a son of the Irish Judge, has carried on the legal, literary, and educational traditions of his family by practising for some time as a solicitor; contributing articles to a number of learned journals; lecturing in University College, Galway; and for many years has been Librarian of the Incorporated Law Society.

The Irish Judge, who was a son of the third marriage of Charles Gavan Duffy, at first practised as a successful solicitor in London. He defended Sir Roger Casement at his trial in 1916. The unpopularity of defending, what the British called a traitor compelled him to leave England. He consequently settled in Ireland and was admitted to the Irish Bar. Having been elected a Member of Parliament in 1918 he voted in 1919 to establish Dail Eireann, and was sent to France and Italy as an Envoy of the Dail. For publicity purposes on behalf of Dail Eireann he contributed articles to the French, Italian and Scandinavian newspapers. He was selected as a member of the Irish Delegation which negotiated and signed the Anglo-Irish Treaty of 1921; and was made Minister for External Affairs in the Irish Provisional Government which was set up under the terms of the Treaty. After six months he felt it necessary to resign from the Provisional Government over a fundamental disagreement about policy. From then on he concentrated on practising at the Irish Bar. Like his father he was endowed with superhuman powers of work, and this factor, coupled with his forensic aptitudes, enabled him to forge his way rapidly into the front rank of the Bar. As time went on he acquired a reputation for being especially good in claims involving abstruse, or complex, or obscure law. When the Fianna Fail party first obtained office in 1932 he was retained as one of their State Counsel, and proved himself highly capable. Subsequently, he was promoted to the judicial bench in 1936 and ended his career as President of the Irish High Court in 1946.

Messrs. James O'Connor & Co., Solicitors, in Dublin where I served part of my apprenticeship, frequently briefed the Judge when he was a Senior Counsel. Since I knew that he was a signatory to the Treaty of 1921, I looked forward with interest to doing business with him as part of my duties. Physically, he was a thick set man of middle height, with a small well trimmed beard, fastidiously dressed, and had a cosmospolitan appearance. If seen without his wig and gown, he looked more like a wealthy **savant** of a continental university than an Irish lawyer. In the discharge of business, he was slightly formal in manner, but kind and, indubitably, of high mental calibre. I was very glad that Ireland was represented in 1921 on her first appearance on the political international stage for nearly a century by a man of such patent intellectual ability and distinguished bearing.

As an advocate in presenting a case to a Court he spoke plainly and fluently with measured even paced delivery, never having to pause in search of a word. To the onlooker it was evident that he was able to display abundant, ingenious, perspicuous arguments with irrefutable logic from a well stocked store of legal knowledge, reinforced by the clarity of ordered thought. While soft voiced and dispassionate in his address, he was always careful to drive home his thesis by emphasising at some little length the distinctive features in the evidence on which his polemics depended. His graceful and perfectly phrased sentences, with delicate shading of tone and effect, appeared naturally more suited for a judge sitting without a jury or in the Supreme Court.

Nevertheless, because of his conspicuous legal acumen, he was briefed as one of the Senior Prosecuting Counsel for the State in criminal trials. Initially, his cultured accent and slightly pedogogic air made him seem out of place in the atmosphere of violence conjured up by recitals of chicanery and assaults in the Criminal Courts. But he soon proved himself of tough, and tempered mettle, imperturbable, and well fitted for coping with truculent defendants. His phenomenal capacity for long hours of grinding labour and mastery over details ensured that no loose ends were left untied in any prosecutions. And in cross-examination in criminal trials his polite manners and subtle mental processes misled some foolish defendants into assuming that he would be easy to bamboozle, and tempted them into wild lying to their undoing.

Obviously, a large number of attributes are desirable in a judge; for instance good brains, experience of the world, knowledge of the corpus juris, courtesy, good health, and a desire to do justice. But of all the qualities the one most needed is, of course, the determination to administer justice according to law. Not only did Mr. Justice Gavan Duffy possess all the requisite qualities, but he also had a judicial temperament, and a sense of public spirit in a high degree He showed skill in the interpretation of enactments; in the balancing of arguments pro and con; and in the elucidation of the shades of proper meaning in the phraseology of statutes. Above all, he sought in his judicial work to postulate a creative philosophy leading to the better development and extension by the Courts of criteria which would govern the interpretation of fundamental legal presumptions, so that the feelings of society that fair dealing, as understood by the ordinary citizen, should be enforced; and anachronisms which caused hardship should be superseded. Frequently, Irish lawyers have complained that the law is a morass of uncertainties; that in a large number of cases all too often there does not appear to be any form of legal redress obtainable because Irish jurisprudence has not kept up with the times; and that at best the application of the law is merely a blind stumbling from precedent to precedent. This Judge like Lord Denning in England gave a much needed impetus to the slow movement for the modernisation of the Irish forensic system, and overruled many archaic obiter dicta and old court decisions which were clearly repugnant to Irish present day thinking.

Even his elevation to the Bench made little change in his voracious appetite for work in pursuit of legal knowledge. He made it a practice to take home to his first class law library the pleadings in important law suits; and to do legal research himself on the matters in dispute disclosed in the pleadings. In consequence, he was able to discuss with Counsel every point of difficulty and obtain their views on them; thereby helping to eliminate minor matters, and spotlighting pointers to the direction in which the actions should be decided. Practising in the Judge's court was a pleasant experience. Invariably, he was gracious to all practitioners; listened to their submissions attentively; but usually tested all doubtful arguments by questioning them in a way which was in effect veiled cross-examination. If he were sceptical of the worth of some arguments, he took time to consider them patiently before ruling on them. At the conclusion of a trial, irrespective of the result, everybody felt that there had been a most fair and careful hearing. It was unknown for him to refuse any reasonable request made for the convenience of the litigants or Counsel, if it were possible to grant it.

Of all his judgements, the best known are those in the **Foyle Fishery** case (1948) (never fully reported) in which he made a declaration relating to the public ownership of the fishery, and the Sinn Fein Funds case (**Buckley & Ors. v. A.G.** [1950]) in which he held that the statute purporting to dispose of the funds was unconstitutional as the proceedings had started. Other important decisions given by him were those in the **Irish Aero Club** case (IR-1939), **Exham v. Beamish** (IR-1939), **State (Burke) v. Lennon & Anr.** (IR-1940), re Kindersley, an Infant (IR-1944), **Cook v. Carroll** (IR-1945) and the **Tilson** case (IR-1951). The judgement in **Cook v. Carroll** is notable for the fact that it decided that confidential statements made to a priest are privileged. The decision in the **Irish Aero Club** case has put it beyond doubt that the State is not entitled to priority of payment in respect of moneys due to it, other than taxes and duties. Reports of his judgements which will repay perusal are the **Exham** and **Carroll** cases, as they provide good examples of his wide quotation from analogous rules in foreign countries germane to the fields of enquiry in these cases; his command of mitutiae; and his powers of logic.

On reading his judgements, one cannot help being impressed by the thoroughness by which he unravelled tangles of fact; his vast amount of research into the usages in other countries in respect of similar issues as those on which he had to adjudicate; the marshalling of the salient features of the law suits; his narrowing down of the true questions for decision; the analysis of precedent court decisions; his deductions of governing principles from such precedents; and the closeness and cogency of the reasoning leading to his conclusions.

Ordinarily, a High Court judgment is not the place to look for a felicitous English prose style. Owing to the importance of the matters at stake, an inordinate amount of prolixity and tiresome repetition of different aspects of the same facts is usually necessary to demonstrate the rationale and to avoid ambiguity. These desiderata furnished the pretext for Disraeli's famous quip that the legal mind chiefly displays itself in illustrating the obvious; explaining the evident, and expatiating on the commonplace. Notwithstanding the difficulties created by the requirements of precision, the prose style of the Judge is too good to be passed over without comment. It will be found that his written utterance is clear and exact, but contains no frills, no pomposities, or hollow rhetoric. Furthermore, it has the laudable qualities of being vigorous, full bodied, and supple, displaying a copious and wide garnered vocabulary with now and then forceful passages delineating in vivid words a convincing exposition of the canons of the law applicable in the litigation under consideration. In addition, his use of languge is remarkable for the development, continuity, and smooth flow of his views from one sentence to the next in logical sequence, and the easy transition from one idea to another in paragraphs without abrupt change of subject. The cumulative effect is that of a narrative which holds the reader's attention so that the Judge's meaning is conveyed quickly and without difficulty. Therefore, there is never any necessity to try to puzzle out what is being stated or to re-read any part of it. Possibly, however, it could be argued that occasionally his idiom is a little too Johnsonian for present day taste, and that he sometimes uses recondite words rarely met with in modern literature. An example of an extract from **Tilson Infants** (1951) I.R. will suffice.

"The strong language of articles 41 and 42 arrests

(*Continued on page* 134)

A MEETING OF A LOCAL AUTHORITY

Part 1

Paper delivered by T. S. Smyth Esq., B.L., former Assistant Secretary of the Society, to the Society of Local Authority Solicitors in May 1975.

Beginning with the assumption of entitlement and obligations of a local authority to hold meetings, I treat of "a local authority" as a municipal authority.

BEFORE THE MEETING

The Notice

The statutory position is that by virtue of Section 92 of the Municipal Corporations Ireland Act, 1840 notice is required (which I will refer to as "the Public Notice") of the time and place of a meeting; but does not require that there be any notice of the business of the meeting. This is so where the meeting is summoned in the ordinary way. The Public Notice is to be signed by the Mayor Chairman and to be fixed on or near the door of the City or Town Hall at least three clear days before the meeting.

The Section provides for an alternative summoning of a meeting on requisition of five members, and in the case of such a meeting, if the Authority refuses or fails to call the meeting and the five members exercise their own right to call the meeting, in such circumstances they must give public notice of the business proposed.

The section further requires that a Summons to attend the Council or Board be delivered to each member, and such Summons shall specify the business of the meeting (to wit, the Agenda).

Section 61 (1) of the Local Government Act, 1955 (No. 9 of 1955) provides that the Minister may by regulations make provision in relation to all or any local authorities with respect to (inter alia) the summoning and holding of meetings. However, regulations or standing orders (of which more anon) are limited in that they must be made pursuant to and for the purposes of the Act or Acts and they must (a) not be repugnant to any statutory provision in the Act or any Act incorporated by reference and (b) they must not be repugnant to the general law — whether Statute Law or Common Law or particularly Constitutional Law.

THE AGENDA

In relation to the Agenda, the only business a member has an actual legal right to set down is a motion in relation to business concerned with the purposes, duties and powers of the local authority as conferred or imposed on it by law. The only notice of motion which the Manager (Secretary or Town Clerk) is obliged to accept is a motion relating to a matter in respect of which a member has an actual legal right to set down. The use of a local authority meeting as a forum of debate for matters of public interest, however grave, urgent or praiseworthy which is completely dissociated from the purposes, duties and powers of the particular local authority is not compellable business. Neither Bye-Laws, Regulations, direction or Standing Orders can enlarge the duties of publication so as to confer protection outside the obligations of the Statute. When considering the legal position as to defamation the recognition of these limits is all important.

Generally where there is a legal duty imposed by Statute to publish certain matters, then the publication is privileged. In relation to any publication made pursuant to a legal duty, whether the duty be imposed by Statute or by some person exercising a legal power to impose it, the law of privilege applies (subject to the absence of malice on the part of the person publishing it).

There are three cases which illustrate the matters which have already been mentioned:—

Andrews v. Nott Bower (1895) I Q.B. 888.

The magistrates of a Borough, for the purpose of facilitating the business of the General Annual Licensing Meeting, ordered the defendant, who was Head Constable of the Borough, to issue to persons having business before the meeting copies of a Report made by him to the Magistrates stating the grounds of objections taken to the renewal of licences.

Held, that publication by him of the Report in pursuance of the Magistrates' order was upon a privileged occasion, and therefore that, in the absence of actual malice on his part, an action was not maintainable against him in respect of grounds of objection so published, which the plaintiffs alleged to be a libel upon them.

De Buse & Ors. v. McCarthy & Ors. (1942) 1 K.B. 156

The defendants in this case were the Town Clerk of Stepney and the Borough Council. They had published a report, which was tabled for consideration at a forthcoming meeting of the Borough Council and they had, as was normal practice, circulated the Agenda and the business to be considered, including a copy of a Report, to the Public Libraries in their jurisdiction. It was found by the Court that their mandatory public duty was limited to giving notice by posting it on or near the door of the Town Hall and transmitting it by post to the members. Lord Greene, Master of the Rolls, pointed out that the mandatory duty did not include any obligation to post the notices of business in the public libraries. He further stated that the defence of a public duty did not bear examination so far as circulation to the public libraries was concerned since the material statutes imposed no obligation to do so.

The defence of privilege of statutory obligation to publish is available, therefore only in respect of:—

(i) Motions concerned with purposes, duties and powers of the local authority, and
(ii) The limited publication of the Public Notice affixed to the City or Town Hall and the sending by Summons to the members.

Adam v. Ward (1917) A.C. 309.

This is a case that is invoked with regularity in a great variety of cases of defamation both of libel and slander. It treats of that element of privilege, said to protect him who, on a privileged occasion publishes defamatory matter in a situation where the person who publishes the defamatory matter has an interest or duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is made has a corresponding duty to receive it. This reciprocity is essential. The question as to whether the defence of privilege applies or not involves two considerations, (a) the subject matter of the motion, and (b) the persons to whom it is addressed, i.e. the

persons who are likely to read it by virtue of the method of publication selected.

That privilege may apply if the following conditions are fulfilled:—

(A) The subject matter must be one that involves at least the social or moral obligations of the Members of the Local Authority to the county, city or town. It must fall within the purposes, duties and obligations of the particular local authority.

(B) The contents of the motion must be such as to be reasonably confined to the privileged matter. As Lord Loreburn put it "Anything that is not relevant and pertinent to the discharge of the duty or the exercise of the right or the safeguarding of the interest which creates the privilege will not be protected".

(C) Publication ought not to go beyond what is reasonably necessary for the purposes of fulfilling the duty in question. Thus if there is to be publication it must be in relation to a matter in respect of which the public or a large or substantial proportion of it has a right to be informed.

There are cases where the public or a substantial part of the public is entitled to know facts which though injurious to the character and reputation of an individual are nonetheless justified. One such case was **Allbut v. The Medical Council** 23 Q.B.D. 400 (1889), where a doctor who had been struck off the register took an action against the Medical Council and the Judges in the Court of Appeal took the view that the communication was protected by privilege. Indeed S.17 of the Solicitors' Act, 1960, imposes a statutory duty on the Incorporated Law Society to publish certain notices on certain orders being made by the High Court, nothwithstanding which such must of necessity injure the character and reputation of the individual solicitor.

DURING THE MEETING

Standing Orders

FORMULATION: Section 62 of the Local Government Act, 1955, empowers a Local Authority to make Standing Orders for the regulation of their proceedings. This provision is in effect in substitution of the powers previously conferred under Section 96 of the Commissioners Clauses Act, 1847, which was repealed by Section 5 of the 1955 Act. Some preliminary points may be made regarding Standing Orders:—

(a) They must not be *ultra vires* the Statutes;

(b) They cannot confer any immunity outside the scope of the General Law;

(c) They cannot enlarge the scope of the business to be considered;

(d) They cannot impose an obligation on the Manager as to accepting or giving or publishing Notices outside the Statutes, and

(e) They cannot protect members or officials in relation to matters that are offences or actionable in ordinary process of law.

AMENDMENT: While the formulation of Standing Orders is a matter that by and large gives rise to no great difficulty, their amendment may and often does. The tendency to change the rules of the game when losing the game is not peculiar to members of local authorities, but a solicitor being consulted in such a case (and it is usually one of urgency and controversy) must be careful to observe the basic tenets of Natural Justice and fair play, and to ensure that whatever rules are laid down in the Standing Orders themselves for amendment are strictly followed.

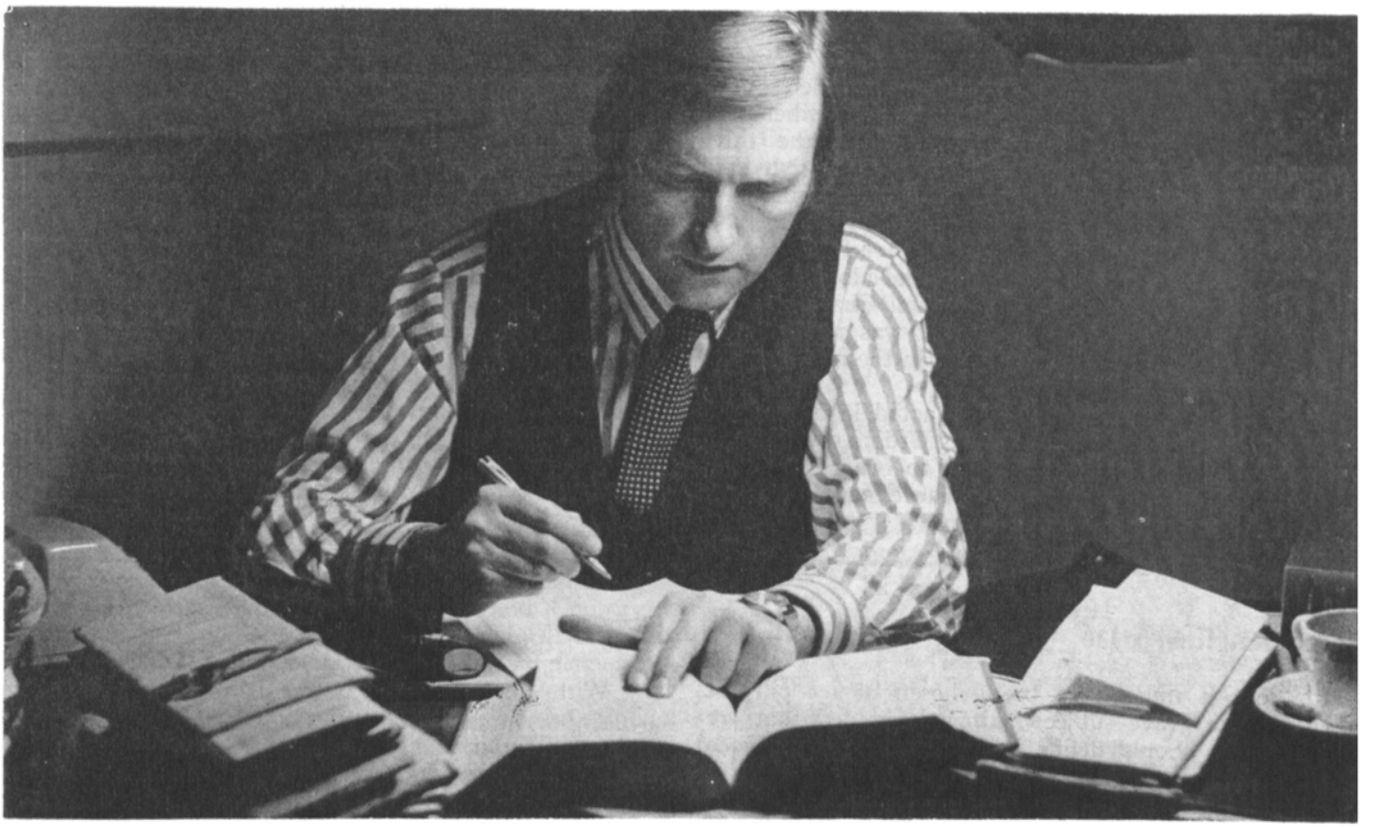
IMPLEMENTATION: The implementation of Standing Orders is one that only gives rise to difficulty in moments of crisis and heated argument, when rage rather than reason prevails. It is in such circumstances that the value of simple direct orders is appreciated—the touchstone is simplicity; for we have moved into an age when in Ireland, at least in politics, words mean what we choose them to mean. We have adopted the Fables of Aesop and abandoned the Concise English Dictionary.

Conduct

OFFICERS: In treating the conduct of a meeting and regarding the position of the officers of the local authority, there can be little to say to the experienced official who knows what his functions are and how and when to carry them into effect. The impartiality of the official at the meeting, especially when he sees what he considers to be poltroons making hay of his cherished plans, is of importance. The official's entitlements at the meeting are very limited, usually to record, report, explain and rarely to recommend. He has not the same latitude as the members. Had Lowe (in the case of **Horrocks v. Lowe** of which I treat later) been an official, it is very doubtful if he would have been accorded the privilege extended to him in that case.

MEMBERS: To say that members should conduct themselves at meetings is to state the obvious, but that is not always understood. **Marshall and Others v. Tinelly** 81 S.J. 902 (1937) was an Appeal by way of Case Stated from a decision of a Justice who convicted the appellants of assault. On the 1st April (a well chosen date for the prank), 1937, the three appellants and the respondent Tinelly were present at a Meeting of the Fire Brigade and Sanitary Committee of Feltham Urban District Council in the Council Chamber of the Council, the appellant Marshall being in the chair. The meeting was conducted in accordance with regulations regarding the conduct of business and Standing Orders of the Urban District Council. Paragraph 47 reads:—

> "The Chairman may call the attention of the Council to continued irrelevance, tedious repetition, unbecoming language or conduct, or to any breach of order on the part of any member and may direct such members, if speaking, to discontinue his speech, or, in the event of persistent disregard of the authority of the chair, the meeting may, on Motion made by the Chairman and put without debate, order the member to be suspended for the remainder of the sitting. Any member so suspended shall forthwith quit the Council Chamber and in the event of his neglect or refusal to do so, the Chairman may order him to be removed therefrom."



Must fee-earners have the worst of both worlds?

Fee-earners in law practices today certainly seem to have the worst of both worlds. Clients demand an ever increasing speed of turn-around of instructions and this is putting more pressure on the fee-earner to put in longer hours.

But that's not all. Many legal fees are still charged at static rates, so fee-income is being eroded by mounting overheads and staff salaries, while the fee-earner works longer and harder.

The plain fact is that the legal profession is under pressure and it is the fee-earner who is bearing the brunt of that pressure.

IBM can offer some practical help and comfort for the legal profession. Our range of memory typewriters is already bringing about dramatic changes in many legal offices. They have taken the drudgery out of routine procedures and introduced methods of handling volumes of work faster, more efficiently and more economically.

Using memory typewriters a first draft is produced, error free, in a fraction of the time required using conventional methods, and the fee-earner can make amendments comparing only the amendment itself. Retyping a final draft or for example typing an engrossment is carried out automatically at speeds of up to 180 words per minute.

Most of your routine correspondence can also be handled automatically releasing you for more productive work; while the secretarial drudgery is removed from the production of important documents.

All this adds up to saving time -- and that means money too — for you and your secretarial staff. You spend less time drafting and checking — they spend less time typing and correcting.

Heretofore, handling paperwork in a legal office has become an ever increasing problem, hereinafter, IBM memory typewriters will make it easier for you.

For further information, contact Mr. Tony Pickavance at IBM.

IBM

IBM Ireland Limited, 2 Burlington Road, Dublin 4. Tel: 785344.
Irish Life Building, South Mall, Cork. Tel: 23311.

At the meeting Tinelly having made frequent interruptions, called out 'liar' when a vote of thanks was being passed, and having been suspended from the Committee by unanimous motion, was called on by the Chairman to quit the Council Chamber and refused. He was thereupon removed by the three appellants. It was contended on their behalf that their action in ejecting Tinelly was justified because:—

(a) he was behaving in an abusive and violent manner and refused to leave the Council Chamber when requested to do so, so that it was necessary to remove him to maintain order in the meeting, and

(b) in any event, the appellants acted in accordance with the rules of the Standing Orders and if thereunder Marshall was entitled to order Tinelly to be removed, he was entitled to effect the removal himself with the help of the other appellants.

On behalf of Tinelly it was contended that the appellants had assaulted him without justification in fact or in law. The Justices held that the appellants were not entitled personally to eject Tinelly and were consequently guilty of assault. Lord Hewart, C.J. said it was quite clear that the appeals must be allowed. When Marshall, acting in pursuance of the Resolution carried by the Committee, ordered Tinelly to withdraw, and Tinelly had refused to withdraw, the latter became a mere trespasser. In these circumstances Marshall and the other appellants were entitled to do what they had done, and it was found as a fact that what they had done was done as gently as the circumstances permitted. The appeal was allowed, Humphreys and Du Parcq, JJ. agreed.

Part II will be published in the September 1976 Gazette.

Continued from p. 130

attention; it must have been chosen of set purpose, because the grave subject-matter demanded that Ireland to-day should define her position in unequivocal terms. Thus, for religion, for marriage, for the family and the children, we have laid our own foundations. Much of the resultant polity is both remote from British precedent and alien to the English way of life, and, when the powerful torch of transmarine legal authority is flashed across our path to show us the way we should go, that disconformity may point decisively another way."

"The cardinal position ascribed to the family by our fundamental law is profoundly significant; the home is the pivot of our plan of life. The confused philosophy of law bequeathed to us by the nineteenth century is superseded by articles which exalt the family by proclaiming and adopting in the text of the Constitution itself the Christian conception of the place of the family in society and in the State; hence an ante-nuptial agreement, made to be effective within the ambit of the parental sphere and to reinforce in its vital religious rôle that indispensable moral institution, that fundamental unit of society, in a State which honours and respects religion, has a claim to the most serious consideration in our Courts."

Despite the praise that he won as an advocate, he was unfortunate in the sphere of politics. For as a result of his resignation from the Provisional Government, he was subjected to much criticism; and in the bitterness engendered by the fighting in the Civil War the reasons for his resignation carried little weight. Unhappily, part of the political obloquy was carried over into the legal world and echoes of the old controversies which still linger on affected to a great extent the estimation in which he was held as a jurist. It was alleged that he was pedantic, impractical, and inclined to change well settled law too much. This criticism must be taken with a grain of salt; as, in a large measure, it was prompted by the earlier political antagonism stemming from the Civil War. As a Judge, he was vulnerable to imputations of that kind because it was his duty to insist on compliance with the letter of the law; at the same time, there was a considerable area of Irish jurisprudence which needed bringing up to date, and the concomitant changes inevitably were not always popular with everyone.

With conviction it can be claimed that though it may be too early yet to pronounce a definitive assessment of the merits of Mr. Justice George Gavan Duffy as an advocate and as a Judge, there is ample evidence that he was an unusually skilful, and persuasive advocate; and one of the most courteous, scholarly, high minded and perceptive jurists who sat on the Irish bench. Moreover, in years to come when political prejudice has fully died out, his judgements will be given the respect they deserve, and will then form a noble and imperishable memorial to his attainments.

LIST OF RECENT LIBRARY ACQUISITIONS TO 31st JULY, 1976

ADMINISTRATION, French-English Glossary of French Legal Terms in European Treaties.
ADMINISTRATION UNDER LAW — REPORT BY JUSTICE.
ALDRIDGE, Your Home and the Law.
ANNUAL SURVEY OF COMMONWEALTH LAW, 1974.
ARCHBOLD (J.). Criminal Pleadings, 39th Edn., 1976.
ATIYAH, P. S., The Sale of Goods, 5th edition, 1975.
ATKIN, Lord (Ed.) Court Forms, 2nd edition, Revised Edition. Vol. 6 (Appearance, Arbitration, Auction, Bailment and Banking) 1976. Vol. 13 (Coroners, Costs and County Courts), 1975. Vol. 24 (Landlord and Tenant), 1976. Vol. 25 (Legal Aid, Libel and Slander, Limitation of Action, Literary and Scientific Institutions, Local Government, Magistrates and Malicious Prosecution), 1975. Vol. 29 (Negligence, Nuisance and Rylands v. Fletcher, Order 14 Proceedings, Originating Summonses), 1976. Vol. 38 (Town and Country Planning, Trade Marks, Trade Names and Designs, Labour and Employment), 1975. 1976 Supplement.

BRADBURY, Paul L., Cases and Statutes on Commercial Law, 1973.
BRAZIER, Rodney, Cases and Statutes on Contract. 2nd edition, 1976.
BROMLEY, P., Family Law, Supplement to 4th Ed., 1974.
BRITISH TAX REVIEW INDEX, 1966-1975.
BURKE, ed., Irish Family Records, 1976.

CARVER (T). Carriage by Sea, 12th Edn., 2 Vols., 1971.
CAPITAL TRANSFER TAX (English).
CATALANO, Nicolas, Manuel de Droit des Communautés Européennes. 2e. edition, Dalloz, 1965.
CARTER-RUCK, Peter F., Libel and Slander, 1972.
CHALMERS, John, Law relating to the Sale of Goods. 17th edition by Michael Mark, 1975.
CHARLESWORTH, Judge, and J. E. CAIN, Company Law. 10th edition, 1972.
CHESHIRE, G. C., The Modern Law of Real Property. 12th edition by E. H. Burn, 1975.
CHESHIRE, G. C., Law of Contract. 9th edition, 1976.
CHILD, Graham, and John EVANS—Britain, Europe and the Law, 1973.
CHITTY, J., The Law of Contracts. 6th cumulative supplement.
CLERK, J. F., and W. H. B. LINDSELL, The Law of Torts. 14th edition by A. Armitage and R. W. Dias, 1975.
COLE, J. S. R., Irish Cases on Criminal Law, 1975.
CONTRACT—Terms in English Law of Contract in English and in French.
CONVEYANCING FEES and CHARGES (English).
CORDERY, Law relating to Solicitors, Supplement to 6th edition, 1975.
COX, Civil Liberties in Britain.
CRACKNELL–Law Students Companions :
(a) Equity and Trusts by J. G. Riddall. 2nd edition, 1974.
(b) Evidence by Patricia Thomas, 1972.
(c) Contract by V. Powell-Smith. 4th edition, 1973.
CROSS, R., and P. ASTERLEY JONES, Introduction to Criminal Law. 8th edition, 1976.
CURRENT LAW CITATOR, 1947-1975.
CURRENT LAW YEARBOOK, 1975.
CUNNINGHAM, James P., Fair Trading Act 1973 (English), 1974.

DAVIES, M. R. RUSSELL, The Law of Burial, Cremation and Exhumation 1974.
DENZA, Eileen, Diplomatic Law, 1976.
DIAS, R. W. M., Jurisprudence. 4th edition, 1976.
DIRECTORY of Local Authorities in England and Wales. London: Oyez, 1975.
DONNER, Andre M., The Role of the Lawyer in the European Communities, 1966.

EUROPEAN GLOSSARY—Terms in English Law of Contract.

FARRAND, J. T., Contract and Conveyance. 2nd edition, 1973.
FELD, Werner, The Court of the European Communities: New Dimensions in International Adjudication, Nijhoff, 1964.
FLEMING, John G., The Law of Torts. 4th edition, 1971.
FORRESTER, Ian S., Simon L. GOREN and Hans ILGEN, The German Civil Code as amended to 1975. North Holland, 1976.
FRIDMAN, G. H. L., The Law of Agency. 4th edition, 1976.

GARNER, T. F., ed., Planning Law in Western Europe, Elsevier, 1975.
GARNER, T. F., The Law of Sewers and Drains. 5th edition, 1975.
GIBSON'S Probate Law. 18th edition, 1975.
GIFTS TAX GUIDE (English) by T. Lundberg and G. G. Newman, 1975.
GILL, William H., The Law of Arbitration. 2nd edition. 1975.
GRANT, Judge Brian, Family Law. 2nd edition, 1973.
GRAVESON, R. H., Conflict of Laws. 7th edition, 1974.
GREIG, D. W., The Sale of Goods, 1974.

HALLSTEIN, Walter, Europe in the Making, 1972.
HALSBURY, Lord, The Laws of England, Annual Abridgment, 1975, and Cumulative Supplement—2 Vols., 1976.
HAMBLIN, C., and F. B. Wright, ONC/OND Commercial Law, 1976.
HEYDON, Evidence: Cases and Materials, 1975.
HOUSEMAN, D., Law of Life Assurance, 8th edition, 1975.

IVAMY, E. R. Hardy–General Principles of Insurance Law. 3rd edition, 1975.
IVAMY, E. R. Hardy, Casebook on Mercantile Law. 2nd edition, 1973.
IVAMY, E. R. Hardy, Casebook on the Sale of Goods. 3rd edition, 1973.

JACKSON, David, The "Conflicts" Process: Jurisdiction and Choice in Private International Law,
JACKSON, Law of Unfair Dismissal.
JACOB, Potential for the Reform of Justice.
JACOBS, Francis G., The European Convention of Human Right, 1975.
JOHNSTON, Robert W. R., Wealth Tax, 1976.
JONES, Tax Covers and Measures against Tax evasion,
JONES, Frank, One Thousand Questions and Answers in Company Law. 3rd edition, 1975.

THE JUDICIARY, Report of Justice.

KEETON, G. and L. SHERIDAN, Casebook of Equity and Trusts, 2nd Edn. 1975.
KELLY, F. N., and K. S. CARMICHAEL, Irish Income Tax and Corporation Profits Tax. 8th edition, 1975.
KNIGHT, M., Criminal Appeals, 1975 Supplement.
KOMMUNALRECHT (Local Government); German-English Glossary of English Terms.

LLOYD of HAMPSTEAD, Lord, Introduction to Jurisprudence. 3rd edition, 1972.
LOWE, Robert, Commercial Law. 5th edition, 1976.

MATHIJSEN, P. S. R. F., Guide to European Community Law. 2nd edition, 1975.
MAUDSLEY, R. H., and E. H. BURN, Land Law: Cases and Materials. 3rd edition, 1975.
MEGARRY, Hon. Mr. Justice, Miscellany at Law, 1955.
MEGARRY, Hon. Mr. Justice, Manual of the Law of Real Property. 5th edition by P. V. Baker, 1975.
MONTGOMERY, Edward, Practice of Notaries Public in Ireland, 1976.
MURDOCH, J. R., Law of Estate Agency and Auctions, 1975.

NAPLEY, D., The Technique of Persuasion.
NATHAN, J. A., and O. R. MARSHALL, Cases on the Law of Trusts. 6th edition, 1975.
NOCK, R. S., and Tony SHERRING, Capital Transfer Tax (English), 1975.

PALMER, Sir Francis, Company Law. 22nd edition, 2 vols., 1976.
PARRIS, Law and Practice of Arbitration.
PAYNE, J., and E. R. Hardy IVAMY, Law of Carriage of Goods by Sea. 10th edition, 1975.
PENNINGTON, R., French Company Law, 1975.
PESCATORE, Pierre, ed., The Law of Integration, Sijthoff, 1974.
PETTIT, Philip, Equity and the Law of Trusts. 3rd edition, 1974.
PLUNKETT, H. G. S., and V. R. CHAPMAN, Taxation Appeals. 3rd edition, 1975.
PUISSOCHET, J. P., The Enlargement of the European Communities, Sijthoff, 1975.

REEDAY, T. G., Law relating to Banking. 3rd edition, 1975.
REUTER, Paul, Organisations Européennes. Paris: Themis, 1970.
RODDIS, R. J., Law relating to Parks and Recreation Grounds, 1974.
SAINSBURY, Ian M., Legal Subject Headings for Libraries, 1974.
SCHMITTHOFF, Clive M., ed., European Company Law Texts, 1974.
SERGEANT, The Law of Stamp Duties, with cumulative supplements.
SHAW'S Directory of Courts in England and Wales 1974/75, 1975.
SIM, R. S., and V. SMITH, Casebook on Contract. 2nd edition, 1972.
SIM, R. S., Casebook on Company Law. 3rd edition, 1972.
SIMON, Lord, ed., Tax Cases for 1975.
STREET, Professor Henry, The Law of Torts. 6th edition,1976.

TEMPERLEY, R., Merchant Shipping Acts. 7th edition, 1976.
THORNTON and McBRIER, Building Society Law: Cases and Materials, 1976.
TREITEL, Professor G. H., An Outline of the Law of Contract, 1975.
TREITEL, Professor G. H., Law of Contract. 4th Edn., 1975.
TRISTRAM and COOTE, Probate Practice. 24th edition, cumulative supplements.

WICKENDEN, The Modern Family Solicitor, 1975.
WILLIAMS and STEIN, Solicitors Introduction to Accounts.
WILLIAMS, Law relating to Investigation of Title.
WILLIAMS, Law relating to Wills. Edn. 19.
WILLIAMS, Glanville, and V. A. HEPPLE, Foundation of the Law of Tort, 1976.
WHITEMAN, Peter G., and G. S. A. WHEATCROFT, The Law of Income Tax. 2nd ed., 1976.
WURDINGER, German Company Law, 1975.
WURTZBURG, F., and J. MILLS, Building Society Law. 14th edition, 1976.
WYLIE, John, Irish Land Law, 1975. (Three Copies).

YEARBOOK OF WORLD AFFAIRS, 1976.

ZANDER, Michael, Cases and Materials on the English Legal System. 2nd edition, 1976.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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, 1976.

N. M. GRIFFITH
Registrar of Titles

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

Schedule

(1) Registered Owner: Hugh Durkin. Folio No.: 692. Lands: Rathcronan. Area: 24a. 3r. 35p. County: Longford.

(2) Registered Owner: Home Rentals.Limited. Folio No.: 9104. Lands: Waltersland. Area: 2a. 2r. 3p. County: Dublin.

(3) Registered Owner: Ellen Quinn. Folio No.: 1950. Lands: Tirnagushoge or Bicketstown. Area: 16a. 3r. 5p. County: Donegal.

(4) Registered Owner: John Pepper. Folio No.; 1750R. Lands: Drumgerd. Area: 4a. 2r. 0p. County: Cavan.

(5) Registered Owner: Henry Hunt Limited. Folio No.: 16998. Lands: (1) Moncalinoe, (2) Crossagalla. Area: (1) 67a. 1r. 2p., (2) 15a. 1r. 37p. County: Limerick.

(6) Registered Owner: William Neary. Folio No.: 2514L. Lands: The leasehold interest in the property situate in part of the Townland of Shannabooly and Barony of North Liberties. Area: 0a. 0r. 39p. County: Limerick.

(7) Registered Owner: John Joseph Holland. Folio No.: 35508. Lands: (1) Ballyellane, (2) Belgrove. Area: (1) 18a. 3r. 17p., (2) 17a. 3r. 17p. County: Cork.

(8) Registered Owner: Patrick Ferguson. Folio No.: 5615. Lands: Part of the Townland of Rush in the Barony of Balrothery East. Area: 0a. 0r. 20p. County: Dublin.

(9) Registered Owner: John Owen McGrath. Folio No.: 6738. Lands: (1) Drumbarkey, (2) Dung. Area: (1) 34a. 3r. 0p., (2) 0a. 0r. 1p. County: Cavan.

(10) Registered Owner: Richard Bartnett. Folio No.: 875. Lands: Waterpark. Area: 45a. 0r. 38p. County: Cork.

(11) Registered Owners: Francis John Stanley and Thomasena Lilian Stanley. Folio No. 13118. Lands: Knockbrown. Area: 206a. 0r. 6p. County: Cork.

(12) Registered Owner: Paul L. Cassidy. Folio No.: 12930L. Lands: The leasehold interest in the property situate in part of the Townland of Kingstown. Area: 0a. 0r. 8p. County: Dublin.

(13) Registered Owner: Michael Connell. Folio No.: 6265. Lands: Ballylinnen. Area: 30a. 0r. 3p. County: Kilkenny.

(14) Registered Owner: Robert Ernest Moore. Folio No.: 15919. Lands: Lissagroom. Area: 74a. 0r. 25p. County: Cork.

(15) Registered Owner: Richard Cross. Folio No.: 8629. Lands: Dreenan. Area: 0a. 2r. 0p. County: Kildare.

(16) Registered Owner: Joseph Carroll. Folio No.: 8348. Lands: Cappocksgreen. Area: 0a. 2r. 0p. County: Louth.

(17) Registered Owner: Richard Crowe. Folio No.: 3042. Lands: Moanvaun (Parish of Toem). Area: 66a. 2r. 2p. County: Tipperary.

(18) Registered Owner: Brian Gormley. Folio No.: 49316. Lands: Clare. Area: 0a. 0r. 26p. County: Mayo.

(19) Registered Owner: Gabriel Hannon. Folio No.: 641F. Lands: A plot of ground situate to the south side of the Clara Road in the Urban District of Tullamore. County: Offaly.

(20) Registered Owner: William Tynan (Junior). Folio No.: 61R. Lands: Courtwood. Area: 29a. 1r. 25p. County: Laois.

NOTICES

Solicitor wishes to purchase Practice or Partnership, preferably Munster. Reply in confidence to Box No. 132.

For Sale: 1907 Edition of Butterworths Forms and Precedents together with Supplemental Forms and Notes. Reasonable. Replies to Box No. 133.

Aging Solicitor with large and busy practice, Northern Republic, Fee simple premises, will sell or rent. Suit two practitioners. Box No. 134.

Samuel James Woods, deceased. Would any Solicitor, Banker or other party holding a Will or other testamentary writing executed by Samuel James Woods, Retired General Labourer, who formerly resided at Navery Street, Ballybofey, Lifford, County Donegal, and latterly at 3, Westwood Crescent, Ayr, Scotland, please communicate as soon as possible with Robert Welsh & Co., Solicitors, 21 Wellington Square, Ayr KA7 1HD, Scotland.

William Tatton, deceased, late of 27, Connolly Villas, Ennis, County Clare. Would any Solicitor having knowledge of a Will of the above-named deceased kindly contact F. F. Cullinan & Company, Solicitors, Bindon Street, Ennis, County Clare.

Young Solicitor with B.C.L. Degree seeks position in South West. Good working Apprenticeship. Reply Box 135.

Student seeks Solicitor for Apprenticeship. Final B.C.L. completed. Replies to Box No. 136.

Solicitor, six years general experience (particularly conveyancing), seeks assistantship with view to partnership. Box No. **137.**

In the Estate of Liam Doyle, deceased, late of 65 Raphoe Road, Crumlin. Would anyone having knowledge as to the whereabouts of the Title Deeds of the premises, 65 Raphoe Road, Crumlin, kindly contact Messrs. Aitken, Ryan & Company, Solicitors, 24 Upper Ormond Quay, Dublin 7.

Co. Cork firm seeks Assistant Solicitor. Box No. 138.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street,Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

SEPTEMBER 1976 VOL. 70. NO. 7

PRACTISING CERTIFICATES MEMORANDUM OF PROCEDURE

The purpose is to ensure that —

(a) That Solicitors obliged to do so will take out their Practising Certificates each year, and

(b) That Solicitors' Accountants' Certificates at no time become more than 12 months in arrear.

1. In early March of each year, the Society will prepare a list of those Solicitors :-

(i) Who had not applied to the Society for the issue of a Practising Certificate by the last day of February in that year, and

(ii) Whose Accountants' Certificates were on the last day of February in that year more than six months in arrear.

2. The Society would then write to each Solicitor on the list informing him :-

(a) Either that no application had been received from him for his Practising Certificate or that delivery of his Accountants' Certificate was six months or more in arrear, and (in the case of the Solicitor whose Accounts' Certificate was in arrear) that the Society would (under Section 49 of the Solicitors Act 1954-60) direct the Registrar to refuse to issue a Practising Certificate to that Solicitor until the required Accountants' Certificate (or Certificates) had been delivered by the Solicitor to the Society.

(b) That, if the Society had not received an application from the Solicitor entitling him to issue of his Practising Certificate for that year or the required Accountants' Certificate (as the case might be) by 31st March in that year, his name would appear in a list of Solicitors (to be published in the Law Society's Gazette at the first opportunity thereafter) in respect of whom no Practising Certificates for that year were in force and who accordingly were not entitled to act as Solicitors.

(c) That if he continued to practise after the 31st March of that year without having a Practising Certificate in force, the Society would be compelled to move to have the Solicitor prosecuted under Section 55 of the Solicitors' Acts 1954-60 for acting as a Solicitor whilst being in fact unqualified to do so.

SOCIETY OF YOUNG SOLICITORS

THIS SOCIETY WILL IN FUTURE PUBLISH TWO PAGES OF MATERIAL IN EACH ISSUE OF THE GAZETTE

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get.

Guinness + Mahon were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Tim Howard, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking lies in the flexibility and variety which merchant bankers can bring to the business of banking, and each transaction is treated on its individual merits.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS + MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205;
or Tim Howard at Cork 54277
67 South Mall, Cork. Telex 8469.

AN ECONOMIST'S VIEW OF THE LEGAL PROFESSION

LECTURE DELIVERED ON SUNDAY, 9 MAY 1976, TO THE SUMMER MEETING OF THE INCORPORATED LAW SOCIETY IN TRALEE

by Professor Martin O'Donoghue

Mr. Bruce St. John Blake, Senior Vice President, presided.

Introduction

Members of the legal profession might be forgiven if they cast a somewhat cold and jaundiced eye on the economist. Our activities or perhaps, more accurately, our image has not exactly been of the kind to endear us to the people in general and to commercial and professional bodies in particular. Some hold that we are the contemporary epitome of Oscar Wilde's cynics —people "who know the price of everything and the value of nothing". Others recall Edmund Burke's words that "the age of chivalry is gone, that of sophisters economists and calculators has succeeded'. Before turning to my main task of seeking to describe how economists do view the legal profession—it may be wise to spend a few moments seeking to "win friends and influence people" so as to show that the advent of the economist onto the legal scene should not be a cause for concern since there are many things where we hold or should hold common interests and views.

Historical Importance of Law to Economics

It is no exaggeration to say that without a legal system — a Rule of Law — there could be no economic system of the type which we today take for granted, perhaps take too much for granted, as part of a free democratic society. Such a Code of Law, guaranteeing the individual's rights, identifying his duties and obligations, delineating his property rights and defending his liberties against arbitrary attacks or intrusions are essential preconditions for the emergence of a free market for the purchase and sale of goods and services, and for the free organisation of production and distribution Historically the rise of the mercantile system followed on the emergence of such a legal code as part of the Greek and later Roman civilisations. In contrast other ancient civilisations such as the Chinese which did not successfully articulate such a legal code also failed to develop a sound trading or mercantile system.

The full flowering of the free market system in the past two centuries, based as it was on this rule, saw the emergence of Economics as a subject of importance in its own right. This importance would never have been necessary in the previous feudal monarchial or other hierarchical systems. If decisions on what to make, how to produce it, sell it or otherwise use this production are based on commands, customs or other procedures which exclude the scope for individual decision-making, then there is little need for economics as we know it. But once a society has emerged in which to quote the philosopher Kant, "man is free if he needs to obey no person but solely the laws", then there is scope for, and meaning in the study of the economic behaviour of such free men.

It is not flattery or politeness, but rather a plain statement of fact that **without the law and the legal profession, there would be no science of economics.** Any economist who values or seeks to understand the operation of a market economy will freely acknowledge his debt to the legal profession; not all, alas, fall into this category since there are those who would wish to replace the market economy completely with some form of planned system, and with such a command system, law and economics again become less relevant.

Links with the Political System

A second bond of affinity between the legal and economic professions is that we are both the subject of much attention on the part of politicians. Indeed this involvement is inevitable. For your part, since the process of law-making is essentially conducted through the political process, you must have adequate contacts with and understanding of these political processes, if you are to, not alone successfully administer, but also advise and influence (in the best sense of that term) the reform or evolution of the legal code. As for the economists, it is obvious that any statements which they might make, or conclusions which they would draw from their analysis, about the most suitable form of economic policy, will have considerable political interest and, occasionally, repercussions. Indeed the earlier name for our subject was Political Economy and its remit was an enquiry into the causes of the wealth of nations : highly unlikely with this lineage that we should escape the politician's attentions. One solution which we found for this problem of a too close relationship with politics was to shed, over a period of a century or so, the political element in our original title, by developing economics as a specifically scientific subject; that is to say, one in which any rules or laws or principles were to be based on the systematic testing of hypotheses, and be capable of empirical verification. In short, they were to be emptied of any value judgements, whether these judgements emanated from morals, social *mores,* custom or any other non-scientific source. By thus carefully distinguishing the scientific components from the elements of art in our subject matter, the economics profession has drawn the demarcation lines fully, or as carefully as some might wish perhaps, but sufficient to provide a valid operational separation of functions.

I do not propose to attempt a description of the manner in which the legal profession distinguishes its role from the political process, save to note that you do draw this distinction, while yet maintaining sufficient points of common reference and contact to permit the necessary and permissible interchange between the two spheres. To some extent our two professions may find it profitable to draw on our experiences in this realm since the question of links and interaction with the political process takes on new and increasingly complex forms in contemporary conditions.

Economics and the Law—General

Having, hopefully, established the possibility that the economist is not a menace whose advances should be vigorously resisted, I may now turn to the topic in hand. The economic approach to the legal profession may be thought of as falling into two segments : (1) the application of general economic principles such as would apply to any industry–be it the production of goods such as shoes, ships or sealing wax, or the provision of services, be they those of doctor, footballer or opera singer, and (2) the examination of those aspects which are peculiar to the legal profession and which are of some economic importance. The questions arising in any general economic analysis are readily summarised since they are relatively simple–it is the answers to them which are difficult and complex. First there are the efficiency questions, since economics is concerned with making the best use of scarce resources. These may be summarised as the questions of what to produce and how, when, and where to produce it. These give rise in turn to the equity or distributional questions, namely who gets the product and the manner in which this distribution occurs.

At the very outset, in posing the question of what to produce or how much to produce, we immediately note one interesting feature which law has in common with some other industries, namely that there is not a clear definition of the product nor of the quantities required. With ships or shoes, customers place orders for the quantities needed and production can be organised to meet these demands; the same is true with many services–the demand for footballers or opera singers will depend on the numbers who wish to see such performances (in part perhaps a function of the particular skills of "star" performers). Not so with law. Demand is not based on a final product or service demanded in its own right; **the demand for the services of the legal profession is a derived demand,** because people want some other end product for which a legal input is needed. In buying a house the purchaser wants to be clear about his title. If there is a dispute about a contract a process is needed which will determine the rights or duties of the parties and decide the compensation payable in the event of damage or loss. If there is a prosecution for a crime, the defendant will want an adequate presentation of his case, and the community will want to see that justice is done and seen to be done. This latter example of crime is perhaps the most important illustration of the care needed in determining the precise nature of the product or output supplied by the legal profession and legal system. Is the emphasis to be on the nature of the legal process itself–i.e., that there is a "fair trial" irrespective of the verdict reached, or is the emphasis to be on the end result, i e., "punish the guilty, free the innocent" whatever the precise process needed to achieve this result? When we have recognised the nature of these questions about the product of the legal system (even if not answering them) we may then take up the question of examining the methods of producing these results. The economist's interest will be to find the least costly method(s) of attaining the desired product and also to find the least costly methods which can actually be applied or adopted. The two are not always identical. Thus the least costly method of dealing with some form of crime might well be to "bribe" the successful criminals to retire rather than expend large amounts of police, legal or other resources in unsuccessful attempts to apprehend them or prevent their criminal acts. However such amoral solutions would normally be ruled out!

Parallels with other professions

Leaving aside such interesting philosophical questions, we may think of the examination of alternative methods of producing the desired products or end results as being bound up in the case of the legal profession with more mundane issues such as the numbers and qualifications of legal practitioners, the methods, if any, by which their skills or knowledge or fitness to practice should be established, the size of firm likely to yield the best results and so forth. Here the parallels with other professions are likely to arise. Just as the medical profession has to strike a balance between the GP and specialist provision of services, so too the legal profession provides a mixture of the two approaches, causing no surprise to the economist who will repeat the two-centuries old formula of Adam Smith that he expects the degree of specialisation and division of labour to be limited by the extent of the market.

In examining the relative costs of alternative methods for producing any specified result, one question which has become of increasing importance in recent years is the impact of inflation. The layman is familiar with the "laws delays", but may not be significantly affected by them in periods when £1 today does not have a markedly different value to £1 a year hence. **In periods of high inflation, however, delays can wreck havoc with the financial consequences of actions.** In such circumstances when time acquires a very high value, less accurate but more rapid methods may yield preferable results to the more precise but slower procedures acceptable in periods of price stability. This effect of inflation may extend to the members of the legal profession itself. The gentle practices of yesteryear when accounts were only rendered after due process of time, need to give way to the crudities of the instant computer if financial calamity is not to overtake the advocate as well as the client!

Having thus touched on the efficiency questions which may arise, we may refer to the distributional aspects, and to the interaction of the two. The operation of the legal system appears to throw up one interesting result in that it implies quite large subsidies to criminals! Since most discussions of distributional issues seem to proceed on the assumption that any redistribution of income should be to the needy or deserving, this perverse pattern in the case of crime is one feature at least of the legal system which interests economists. There may be very good reasons for this result. Many criminals have very low incomes (or none), hence may not be able to pay for the full costs of dealing with their crime(s). If justice before the law is deemed to be a basic public good to which all should be entitled then indeed there is no point in seeking to eliminate such subsidies since they are part of the necessary price of attaining this objective. However the existence of this result does give point to the question of asking whether there are cheaper methods of processing many of the cases and actions at present dealt with by cumbersome and expensive procedures.

High Cost of Motor Insurance

As an example I quote the area of motor insurance and the cases which arise as to the liability of drivers involved in accidents. A sample examination of these cases showed that the legal costs of dealing with these disputes were very high for the majority of cases, and that a reduction in premium levels of about 10% would be feasible if a simplified procedure were used for cases of minor damages, leaving the more serious cases to be dealt with through the full application of the liability system as at present.

Such a solution would also have clear implications from our efficiency viewpoint since it would alter the proportions of time spent on different categories of work by members of the legal profession. Apart from the short term fall in income for those members of the profession most heavily involved in the existing system, such a change might also be expected to have a generally beneficial impact on the profession. It has been suggested for example that an undue proportion of the best talents are devoted to insurance cases, so that a lessening of the work load in that area would lead to a greater availability of talented people in other branches of legal work.

Economics and the Law—Specific Property Rights

Having illustrated the nature of the general approach which economists would adopt to the analysis of any profession let me now say something briefly about those unique aspects of the law which possess considerable economic significance. The aspect which I have chosen to illustrate this aspect is that concerning **the definition of property rights,** because the presence or absence of such rights affects both the level of production and also

economy. Thus if there are no legal restrictions on the discharge of smoke, effluent or other by-products of production then the pattern of output will be different than that which prevails when the process of manufacture is hedged in by laws governing such discharges or the creation of nuisance for neighbouring persons. There are many interesting cases adjudicating on this issue of who has the right to do what. One which illustrates some of the points and helps to distinguish the economic from the legal aspects is that of *Bryant v. Lefever* (4 Common Pleas Divn. 1878). The plaintiff and defendants were occupiers of adjoining houses which were of about the same height.

"Before 1876 the plaintiff was able to light a fire in any room of his house without the chimneys smoking; the two houses had remained in the same condition some thirty or forty years. In 1876 the defendants took down their house and began to rebuild it. They carried up a wall by the side of the plaintiff's chimneys much beyond its original height and stacked timber on the roof of their house and thereby caused the plaintiff's chimneys to smoke whenever he lighted fires" (because the wall and timber prevented the free circulation of air). In a jury trial the plaintiff was awarded £40 damages. On appeal the decision was reversed. Bramwell L.J. argued :

> "It is said and the jury have found that the defendants have done that which caused a nuisance to the plaintiff's house. We think there is no evidence of this. No doubt there is a nuisance but it is not of the defendant's causing. They have done nothing in causing the nuisance. Their house and their timber are harmless enough. It is the plaintiff who causes the nuisance by lighting a coal fire in a place, the chimney of which is placed so near the defendant's wall that the smoke does not escape but comes into the house. Let the plaintiff cease to light his fire, let him move his chimney, let him carry it higher and there would be no nuisance."

The second appeal judge argued in similar vein. The novelty of this case is that the smoke nuisance is suffered by the man who lit the fire and not by some third person. However to answer the question of who caused the smoke nuisance it would seem to the economist that both parties were involved. Given the fires, there would have been no smoke nuisance without the wall; given the wall, no nuisance without the fires. Eliminate either and the nuisance goes. On the marginal principle so beloved of economists it seems that both are responsible and both should take it into account as a cost when deciding whether or not to provide walls or smoke.

Lest you think that by saying both should take it into account, economists would end up double counting, let me hasten to explain how the economic system should in theory settle the matter. Let us take the smoke damage as £40, and first suppose the value of the wall to be £50. Now if the wall owner has a right to build walls, his neighbour will approach him and offers say £40 (the value of the smoke damage). This is declined since the wall is worth £50–but nonetheless the wallowner is now conscious that his net gain is £10. Conversely, if the smoke-owner had a right to the free flow of air the wall builder would offer him £41 (say) to gain his permission to build the wall. This is accepted since it makes the smoke owner better off, and still leaves a net profit on the wall. In contrast if the value of the wall were only say £30, it would not be built, under the legal system, since either the smoke owner could offer more than £30 (if the wallbuilder had the right to build) or the wallbuilder could not offer enough compensation (if the smoke owner had the right to the free flow of air). Thus the free bargaining based on the economic facts of the matter would decide whether chimneys smoke or no wall is built. What the legal system does in this case in determining who has the right to what action, is to decide the pattern of income distribution; i.e., whether the smoke owner ends up financially better off (if entitled to damages) or as happened worse off.

The precise basis on which the Courts decide who has the right to do what is not always clear to the layman, but it does seem that economic considerations do enter into the process. Thus one American writer on Torts states :

> "A person may 'make use of his own property or conduct his own affairs at the expense of some harm to his neighbours. He may operate a factory whose noise and smoke cause some discomfort to others. . . . It is only when his conduct is unreasonable in the light of its utility and the harm which results that it becomes a nuisance. The world must have factories, smelters, oil refineries, noisy machinery and blasting even at the expense of some inconvenience to those in the vicinity".

Thus legal decisions as to whether certain actions may or may not take place, whether their operations may be restricted to certain hours–all of these are decisions about the ownership and exercise of property rights and these property rights have all the characteristics of factors of production in that they affect the quantities of goods and services produced and the costs of this production.

Conclusion — Danger of too much State intervention

The detailed study of legal activities is a comparatively recent development for economists. Nonetheless the work

which has already been done, suggests to me at any rate that there are many points, for further discussion and for fruitful inter-change between our two professions. I believe that we can learn much from each other. Indeed I would go further. Over and above the detailed aspects of our respective work, there are the more fundamental values and attitudes underpinning our societies to which we can jointly contribute on a critically important scale. Thus there was an understandable reaction against the free enterprise of the 19th century, which for many was simply the freedom to starve or eke out a miserable existence, and the consequence of this reaction was the rise of the modern welfare state, with the government charged to intervene and protect the weaker sections of society. However there is a danger that modern society will carry the process of government intervention well beyond the point of diminishing returns, to the stage where no real or meaningful freedoms remain for the individual citizen. It is our two professions which together provide the capacity to warn against this danger and to identify the areas of excessive encroachment by arbitrary powers. For the economist, the role is to point out the need to ensure economic independence and security as a precondition for political freedom. How can citizens be really free politically if all are employed by the State and therefore dependent on the exercise of political or bureaucratic power for access to the necessities of life? For the lawyer, his role is to point out the need to preserve a Rule of Law in which disputes about the rights and duties of citizens are decided on the basis of an impartial set of rules applied impartially to all, and not on the "merits of each case". This latter approach so beloved of many in contemporary society assumes the existence of some exceptional person or group who are indeed capable of this fair and unbiased identification of individual merits, and assumes also that this group will not be corrupted by the possession of such vast powers: two assumptions which conflict with the whole of human history. We need to be reminded that **we shall never prevent the abuse of power if we are not prepared to limit power,** even though these limits may occasionally prevent its use for desirable purposes. If this final note seems somewhat remote and the dangers of which I speak far removed, I would remind you of David Hume's words "it is seldom that liberty of any kind is lost all at once." Order without liberty is morally intolerable.

Trinity Honours History Graduate (1976), aged 25, female, married, seeks Apprenticeship in office within 20 miles radius Dublin City.

5 years experience at office work before University (shorthand, typing, bookkeeping, business methods). Experience of working in solicitor's offices, (Court work, Registry of Deeds, Stamping, etc.).

Available for immediate full time work, prior to commencing apprenticeship course in Autumn, 1977.

Complete details from Box. No. 142 or phone Dublin 760541 (Dr. J. Bradley), during business hours.

SOLICITORS' GOLFING SOCIETY
AUTUMN OUTING — BALTRAY GOLF CLUB

2nd October, 1976

Captain's (E. Gillan's) Prize: P. D. Fallon (12) 41 pts. Runner-up, P. Gearty (11) 40 pts.

St. Patrick's Plate (H'Caps 12 & under): Donal Branigan (10) 38 pts. Runner-up, B. Gannon (11) 37 pts.

Veteran's Cup: D. Lynch (6) 35 pts. Runner-up, W. A. Tormey (14) 35 pts.

H'Caps 13 & Over: T. J. O'Reilly (15) 40 pts. 1st Nine, M. Green (15) 22 pts. 2nd Nine, J. H. Dockrell (15) 22 pts.

Members from more than 30 miles: B. Rigney (15) 38 pts.

Best score by lot: J. McGowan (14) 31 pts.

Vacancy for Post of Appeal Commissioner of Income Tax in the Office of The Revenue Commissioners
The Minister for Finance invites Applications for Appointment to a Post of

APPEAL COMMISSIONER OF INCOME TAX

The Post at present carries a salary of £10,023 a year (married).
The Post is pensionable.

Candidates must be practising Barristers or Solicitors in the State of not less than six year's standing.

Application Forms and Conditions of Service for the post may be obtained from :
The Secretary, Department of Finance, (Personnel Section), Upper Merrion Street, Dublin 2.

Completed applications should be sent to the same address to arrive not later than 5.30 p.m. on 17th November 1976.

Department of Finance,
Upper Meriron Street, Dublin 2.
23rd September 1976.

SAINT LUKE'S CANCER RESEARCH FUND

Gifts or legacies to assist this Fund are most gratefully received by the Secretary, Esther Byrne, at "Oakland", Highfield Road, Rathgar, Dublin 6. Telephone 9764919.

This Fund does not employ canvassers or collectors and is not associated with any other body in fund raising.

S.I. NO. 234 OF 1976

CRIMINAL JUSTICE (LEGAL AID) (AMENDMENT) REGULATIONS, 1976

I, Patrick Cooney, Minister for Justice, in exercise, of the powers conferred on me by section 10 of the Criminal Justice (Legal Aid) Act, 1962 (No. 12 of 1962), and, in so far as these regulations are in relation to rates or scales of payment of fees, costs or expenses payable out of moneys provided by the Oireachtas pursuant to certificates for free legal aid, with the consent of the Minister for Finance, hereby make the following regulations:

1. (1) These Regulations may be cited as the Criminal Justice (Legal Aid) (Amendment) Regulations, 1976.

(2) The Regulations and these Regulations may be cited together as the Criminal Justice (Legal Aid) Regulations, 1965 to 1976.

2. In these Regulations—

"the Act" means the Criminal Justice (Legal Aid) Act, 1962 (No. 12 of 1962);

"the Principal Regulations" means the Criminal Justice (Legal Aid) Regulations, 1965 (S. I. No. 12 of 1965);

"the Regulations" means the Principal Regulations, the Criminal Justice (Legal Aid) (Amendment) Regulations, 1970 (S. I. No. 240 of 1970), and the Criminal Justice (Legal Aid) (Amendment) Regulations, 1975 (S. I. No. 100 of 1975).

3. (1) The fees (payable under the Act) for any particular case of senior counsel (subsequently referred to in this paragraph as "the defence counsel") assigned in relation to that case in pursuance of a certificate or certificates for free legal aid shall—

(a) in case the same number of senior counsel appear for the prosecution in relation to that particular case and are present in court during the whole of the case and the prosecution relates only to the defendant or defendants to whom the defence counsel are assigned. be fees of the same amount as the fees of the senior counsel appearing for the prosecution, and

(b) in any other case, be fees of the same amount as the fees that would, in the opinion of the Attorney General, formed after consultation wih the Director of Public Prosecutions, have been payable to senior counsel appearing for the prosecution in that particular case if the same number of senior counsel appeared for the prosecution and were present in court during the whole of the case and the prosecution related only to the defendant or defendants to whom the defence counsel were assigned.

(2) The fees (payable under the Act) for any particular case of junior counsel (subsequently referred to in this paragraph as "the defence counsel") assigned in relation to that case in pursuance of a certificate or certificates for free legal aid shall—

(a) in case the same number of junior counsel appear for the prosecution in relation to that particular case and are present in court during the whole of the case and the prosecution relates only to the defendant or defendants to whom the defence counsel are assigned, be fees of the same amount as the fees of the junior counsel appearing for the prosecution, and

(b) in any other case, be fees of the same amount as the fees that would, in the opinion of the Attorney General, formed after consultation with the Director of Public Prosecutions, have been payable to junior counsel appearing for the prosecution in that particular case if the same number of junior counsel appeared for the prosecution and were present in court during the whole of the case and the prosecution related only to the defendant or defendants to whom the defence counsel were assigned.

(3) (a) Notwithstanding paragraphs (1) and (2) of this Regulation, where any counsel assigned in relation to a case in pursuance of a certificate for free legal aid is not present in court during the whole of the case, the question whether the fees of that counsel calculated under the said paragraphs (1) or (2), as the case may be, should be modified and the nature and extent of the modification (if any) shall be determined by the Attorney General, after consultation with the Director of Public Prosecutions, by the application of the criteria applied in determining the like matters in relation to the fees of counsel appearing for the prosecution in a case and any modification so determined shall be made accordingly.

(b) Notwithstanding paragraphs (1) and (2) of this Regulation, where the fees of counsel appearing for the prosecution in a case include a fee that is specifically for attendance at a conference or consultation in relation to the case, the amount of such fee shall, unless the Attorney General, after consultation with the Director of Public Prosecutions, otherwise directs, be disregarded in the calculation of the fees (payable under the Act) of counsel assigned in relation to that case in pursuance of a certificate for free legal aid.

(4) (a) Where the same counsel are assigned—

(i) in pursuance of two or more certificates for free legal aid to two or more defendants and the cases to which they relate are heard together, or

(ii) in pursuance of two or more certificates for free legal aid to one defendant,

the counsel so assigned shall be deemed, for the purposes of these regulations, to have been assigned to the said defendants or defendant, as the case may be, in relation to one case only:

Provided that, if the cases in relation to which the certificates are granted are treated, for the purposes of the determination of the fees of counsel appearing for the prosecution in the cases, as being any number of cases other than one, the counsel so assigned shall be deemed, for the purposes of these Regulations, to have been assigned to the said defendants or defendant, as the case may be, in relation to the same number of cases.

(b) Regulation 7 (4) of the Principal Regulations shall not apply in a case where sub-paragraph (a) (ii) of this paragraph applies.

(5) Reference in this Regulation to fees of counsel appearing for the prosecution in a case do not include references to any fee paid to such counsel in respect of the preparation of statements of the evidence to be given on behalf of the prosecution in the case.

(6) Where two senior counsel are assigned to a person in relation to any particular case in pursuance of a certificate or certificates for free legal aid and two or more senior counsel do not appear for the prosecution in that case, one senior counsel only and one junior counsel only shall be deemed, for the purposes of these Regulations, to have been assigned to the person in relation to that particular case in pursuance of the certifiate or certificaes aforesaid.

4. Regulation 3 of these Regulations is in substitution for so much of the Regulations as prescribe rates or scales of payment of fees of counsel assigned in pursuance of certificates for free legal aid but nothing in this Regulation shall be construed as affecting the

operation of paragraphs (2) and (3) of Regulation 7 of the Principal Regulations.

5. (1) The fees (payable under the Act) for any particular case of a solicitor assigned to a person in relation to that case in pursuance of a certificate for free legal aid the grant of which entitled the person to have counsel assigned to him in relation to that case shall, if the person is represented at the hearing of the case by the solicitor and not by counsel and counsel appear for the prosecution in that case, be fees of the same amount as the fees that would, in the opinion of the Attorney General, formed after consultation with the Director of Public Prosecutions have been payable to counsel assigned to the person in relation to that case pursuant to the certificate aforesaid if the counsel so assigned were present in court during the whole of the case.

(2) Paragraph (1) of this Regulation is in substitution for so much of the Regulations as prescribed rates or scales of payment of fees of solicitors assigned in pursuance of certificates for free legal aid in relation to cases to which the said paragraph (1) applies.

(3) Travelling and subsistence expenses incurred by a solicitor in connection with a case to which paragraph (1) of this Regulation applies and in relation to which the solicitor is assigned pursuant to a certificate for free legal aid shall not be paid under the Act.

6. (1) Regulation 10 (inserted by the Criminal Justice (Legal Aid) (Amendment) Regulations, 1975 (S. I. No. 100 of 1975), of the Principal Regulations is hereby amended by:

(a) the insterion in paragraph (5) after "counsel" of "or a solicitor", and

(b) by the deletion of paragraph (6).

(2) Regulation 11 (as amended by the said Criminal Justice (Legal Aid) (Amendment) Regulations, 1975) of the Principal Regulations is hereby amended by the deletion in paragraph (4) of "other than an application in relation to bail to the High Court or Supreme Court".

GIVEN under by Official Seal, this 5th day of October, 1976.

MINISTER FOR JUSTICE
L.S. PATRICK COONEY

The Minister for Finance hereby consents to the making of the foregoing Regulations in so far as they are in relation to rates or scales of payment of fees, costs or expenses.

GIVEN under the Official Seal of the Minister for Finance, this 5th day of October, 1976.

L.S. LIAM MAC COSGAIR
ACTING MINISTER FOR FINANCE

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

These Regulations provide for parity between the fees payable to defence counsel under the Legal Aid Scheme and those payable to prosecution counsel; for the payment of solicitors, in certain circumstances, of fees determined on the same basis as counsel's fees, and for certain other amendments to the Legal Aid Regulations.

A MEETING OF A LOCAL AUTHORITY

PART II

by T. C. Smyth, B.L., former Assistant Secretary
(Part I was published in the August Gazette)

THE PUBLIC: What then of the conduct of the public at a meeting of a local authority. Two points may be immediately noted:—

(i) The Local Authority have the right to admit members of the public to meetings — that is to admit them as an audience or to make representations, and
(ii) That, except where there is permission under Statute or Bye-Laws, to the contrary, such right of the authority is discretionary.

Though the case law may seem ancient on the topic, the principles enunciated are still relevant.

(1) **Purcell v. Sowler & Ors.** (1877) 2 C.P.D. 215.

This was a libel action arising out of words spoken at a meeting of a Board of Poor Law Guardians, Cockburn C.J. stated:—

> "It is quite clear that the meetings of Poor Law Guardians are not necessarily public. They have full right to close their doors and although the public are generally admitted yet when changes are to be made affecting private character the proper course would be to close the doors and hold the discussion in Camera. This is one of the cases in whihc the Board of Guardians are not called upon to make their proceedings public. They are clearly not bound to do so and they ought to use proper discretion as to closing their doors".

Again Mellish LJ. says: "A Board of Guardians have a discretion whether or not they will admit the public to their meetings and whether they choose to admit, the public have no right to complain".

(2) **Tenby Corporation v. Mason** (1908) 1 Ch. 457.

In this case the Defendant claimed a right to attend meetings of the Borough Council of Tenby in any one of these capacities:—

(a) as a Burgess of the Borough,
(b) as a representative of the Press, and
(c) as a member of the public.

As the first claim was not pursued, and the second has since been covered by legislation — S.15 of the Local Government (Ireland) Act, 1902 — the third depended upon the English Municipal Corporations Act, 1882. It was held in the first instance that as there was no expression of any public right in the Act, he could not reasonably infer any such right from a provision that the notice of the time and place of intended meetings being fixed on the town hall or that notice of any meeting called by members of the Council should state the business proposed to be transacted. On appeal Cozens Hardy, M.R., concurred at page 467: "I am clearly of opinion that there is no such right as that claimed and that no member of the public be he burgess or not has a right to attend meetings of the Council unless by the express or implied permission of the Council itself".

Buckley LJ. concurring says: "It seems to me that this meeting of the Council of the borough was not a public meeting such that any member of the public had a right to go there . . . No person had simply as a member of the public the right to say 'open that door I will come in'."
The public has no right to attend the meeting, but it may in the discretion of the local authority.

The recent case of **Regina v. Liverpool City Council, Ex Parte Liverpool Taxi Fleet Operators Association** (1975) I All E.R. 379 dealt with the public's "right" to attend a meeting of a local authority. There 40 members of the public wished to attend a meeting of a Committee of a Local Authority. There were only 14 seats available for the Press, the public and those making representations to the Committee. The Chairman suggested to the Committee that it was not practicable with the limited seating available to open the meeting to the public and that it was desirable that those making representations should be heard in the absence of those making conflicting representations. The Committee passed a resolution, giving effect to the Chairman's suggestion, which complied with the requirements of S.1(1) of the Public Bodies (Admission to Meetings) Act, 1960. An application by the Association for, *inter alia*, an Order of Certiorari to quash the Council's resolution on the ground that the Committee's resolution excluding the public was contrary to the provisions of the Statute failed.

The supposed entitlement of the public to attend at a local authority meeting was the subject of a decision by District Justice Delap at Dun Laoghaire District Court in January, 1973 (reported in the Vol. 67, No. 7, p.163 — July/August, 1973).

The case — *Att.-Gen. v. Eugene Keogh and Aidan Griffin* was one in which the Defendants were charged with:—

(a) Forcible Entry, and
(b) Forcible occupation of the Town Hall, Dun Laoghaire, on 4th September, 1972.

Both Defendants were members of a group calling itself 'The Dun Laoghaire Housing Action Group' and they entered the Town Hall when a meeting of the Corporation was in progress and they interrupted the deliberations of the Councillors, distributed leaflets in the Council Chamber and refused to leave when requested to do so by the Chairman and later by a Garda Sergeant, the Gardai having been called to the meeting.

The contention of one of the Defendants on the hearing was that he felt that as a citizen of Dun Laoghaire he was entitled to attend any meeting of the Corporation. He also contended that the system of obtaining admission by way of invitation from a Councillor (which was provided for in the Standing Orders of the Corporation) was not democratic or in order. The case is of importance because a statutory defence to the offence of forcible entry of land or a vehicle is provided in the Forcible Entry and Occupation Act 1971 which provides that a person who enters in pursuance of a bona fide claim of right does not commit an offence.

Justice Delap in the course of judgment referred to the White Paper on Local Government Re-Organisation and S.15 of the Local Government (Ireland) Act, 1902, the provisions of the Procedure

of Councils Order, 1899, and S.187 of the Grand Jury Act. The Justice applied Tenby's case and stated:—

> "In view of the complexity of the law on the subject the Defendants may have genuinely but mistakenly believed that they had a right as citizens to enter the meeting and although the actual method of entry revealed a certain amount of clever planning I am disposed to give them the benefit of the doubt on the "forcible entry" charge and hold that they entered in pursuance of a bona fide belief."

On another aspect of the case the Justice bound the Defendants to the peace on very stringent and special terms.

Regarding the jurisdiction of the Gardai, I do not think that people interrupting a Council meeting, whether members of the Council or of the public, could *ipso facto* be prosecuted, nor could they be bound over without some strong justification, stemming probably from anticipated offences or anticipated breach of the peace. Whether or not a Garda who, at a Council meeting, reasonably apprehended the occurrence of a breach of the peace if a certain person or persons did not leave the meeting, could require them to do so (or at least to be silent) without recourse to the authority of the Council or of the Chairman may be debatable. It may well be that the principle of *Duncan v. Jones* (1936) 1 K.B. 218 would apply and a person failing to comply would be guilty of wilfully obstructing a Garda in the execution of his duty. At any rate it was held in *Thomas v. Sawkins* (1935) 2 K.B. 249 that the Gardai had a right at common law to be present at a public meeting held on private premises, if they reasonably apprehended that, if they were not present, seditious speeches would be made, or a breach of the peace would take place. Assuming that the Irish Courts are prepared to take a similar view I see no reason why they should be reluctant to enter the Council Chamber, and every reason why they should do so (and deal with the breach of order).

What has been stated in relation to defamatory motions on the Agenda may be reiterated in relation to defamatory statements generally made at a meeting. So long as a person believes in the truth of what he says and is not reckless, malice cannot be inferred from the fact that his belief is unreasonable, prejudiced or unfair.

Of the two particular facets of defamatory statements I referred to I understand that that dealing with the "governing" reputation with a local authority is entitled to protect in the case of *Bognor Regis Urban District Council v. Campion* (1972) 2 Q.B. 169 has been fully discussed at an earlier Seminar. Hence I will confine my remarks to the case of *Horrocks v. Low* (1972) 1 W.L.R. 1625; (1972) 3 All E.R. 1098 C.A. There:—

> Councillor Horrocks issued a writ against Alderman Lowe, each of them being members of Bolton Council, claiming damages for slander. At a meeting of the authority the Alderman claimed justification and fair comment on a privileged occasion. By his reply the Councillor pleaded that the Alderman was actuated by express malice. Stirling J. held that the occasion was privileged, that the Alderman had honestly believed that what he had said was true but that he had shown such gross and unreasoning prejudice as to constitute malice in law sufficient to destroy the privilege. On appeal by the Alderman, to the Court of Appeal it was held, allowing the appeal that as the Alderman had been found to have honestly believed what he said was true and believed that it needed to be said in the public interest, the qualified privilege attaching to the occasion could only be destroyed if he were proved to have been actuated by express malice in a sense of spite or ill will. Lord Denning said:—

Defamatory Statements

> "It is of the first importance that the members of a local authority should be able to speak their minds freely on a .matter of interest in the locality. So long as they honestly believe what they say to be true, they are not to be made liable for defamation. They may be prejudiced and unreasonable. They may not get their facts right. They may give much offence to others. But so long as they are honest they go clear. No councillor should be hampered in his criticisms by fear of an action for slander. He is not to be forever looking over his shoulder to see if what he says is defamatory. He must be allowed to give his point of view, even if it is hotly disputed by others. This is essential to free discussion".

The attitude of the Aldermann had been described as one of brinkmanship, megalomania or childish petulance).

This recent and authoritatively reported case on the topic casts the net very wide.

AFTER THE MEETING

Minutes

The obligation to keep minutes of meetings is referred to in several enactments, S.92 of the Municipal Corporations Act, 1840, expresses it thus:—

> "Minutes of the Proceedings of all such Meetings shall be drawn up, and fairly entered into a Book to be kept for that purpose and shall be signed by the Mayor, Alderman or Councillor or Commissioner presiding at such meeting; and the said Minutes shall be open to the inspection of any Burgess or Voter at all reasonable times, on payment of a fee of One Shilling, and any Burgess shall be at liberty at all reasonable times to make any copy or take any extract from such Book".

The obligation is reiterated in S.55 of the Commissioners Clauses Act, 1847, and again in the Public Bodies Orders of later years. The minutes of Statutory Committees where the relevant Act so provides may be open to inspection, with a right to take copies. The right of inspection and to take copies or extracts is not confined to the individual person entitled by statute; the right may be exercised through an agent (*R. v. Gloucestershire County Council* (1936) 2 All E.R. 168). Further it is a right available to electors, as such, not to persons who desire to inspect for other motives (*R. v. Wimpledin Urban District Council* (1897) 62 J.P. 84). The minutes of a committee exercising referred powers, if submitted to the council for approval, are

part of the minutes of the council and are therefore open to inspection, for one could not understand the approval without seeing the recommendation (*Williams v. Manchester Corporation* (1897) 45 W.R. 412. In England the rule as to inspection does not extend to a Committee exercising delegated powers notwithstanding the fact that the decisions of the Committee have in all respects a force and validity of decision of the authority by itself, for these are minutes of a Committee and not of a Local Authority. This somewhat surprising principle emerges from *Wilson v. Evans* (1962) 2 Q.B. 383. I doubt very much whether this decision would be followed in Ireland, notwithstanding that it is a decision of a Court of Appeal.

The guiding principle in Minutes as in Standing Orders is simplicity and recording matters of fact only. It is the ambiguity or comment that leads to litigation.

Reports

Reports of meetings of local authorities are, save in most exceptional cases, conveyed to the public by the Press. The position regarding the Press and the Local Autority Meeting here differs very much from the position in England. There the situation is governed by the Public Bodies (Admission to Meetings) Act, 1960, which provides that the Press must on request be supplied with agenda and certain other documents relating to matters before local authorities and other bodies. Where such matter is made available to the Press, or to the public attending the meeting at which it is discussed, the Agenda and other documents are privileged unless publication is proved to have been made with malice. Qualified privilege therefore attaches to them.

In Ireland the position is governed by:—

(a) S.15 of the Local Government (Ireland) Act, 1902 which states:—

"No resolution of any Council, Board or Commissioners to exclude from its meeting representatives of the Press shall be valid unless sanctioned by the Local Government Board in pursuance of bye-laws, which the the Local Government Board are hereby empowered to frame, regulating the admission of the representatives of the press to such meetings."

The reference to the Board must now be read as to the Minister for Local Government by virtue of S.4 of the Constitution (Consequential Provisions) Act, 1937 (No. 40 of 1937). S.R. & O. 92 of 1903 makes it obligatory on County, District and Town Councils, in the absence of a sanctioned resolution, to admit duly authorised representatives of the Press.

In *Pickard v. Oliver* (1891) 1 Q.B. 474 it was held that the presence of reporters at the meeting of the Guardians did not destroy the privilege of the member speaking at the meeting. But, the basis there was that the member had a right and a duty to raise the matter that he did at the particular meeting, and to communicate the defamatory material to the other members present. That being so, the mere fact that reporters also had access could not affect the privilege. That case cannot cover the position where a non-obligatory prior publication is made to the public press of the contents of the Agenda.

(b) Section 24 of the Defamation Act, 1961, affords the defence of qualified privilege to certain newspaper and broadcasting reports by reference to Part II of the First Schedule of the Act.:—

"3. A fair and accurate report of the proceedings at any meeting or sitting of—

(a) any local authority, or committee of a local authority or local authorities . . . ."

However, local authorities would do well to leave to the Fourth Estate their prerogatives, and confine themselves to the Council Chamber and offices; because the privileged statements so published are subject to explanation or contradiction. If a Local Authority feels it has to engage in the whitewashing exercise of public relations, it ought prudently adhere to facts. Its perpetual statutory succession of its guarantee to survive the cheap jibes of the uninformed and the barbs of the antagonistic. "The liberty of the press consists in printing without any previous license, subject to the consequences of law. The licentiousness of the press is Pandora's Box, the source of every evil" *R. v. Shipley* (1784). Local authorities are in sewers and drains—there is no logical reason for lifting the lid off Pandora's Box as well as the manhole!

APPOINTMENT OF LECTURERS & EXAMINERS

1. Examiner in Tort—Patrick Cafferky.
2. Assistant Lecturer/Examiner in Probate—Eamonn Mongey.
3. Examiner in Criminal Law and Evidence—Brendan Garvan.
4. Examiner in Contract—William Binchy.
5. Assistant Examiner in Property—Patrick Durcan.
6. Assistant Examiner in Tort—Michael Staines.
6. Examiner in Commercial Law—Hugh Fitzpatrick.

CHANGES IN DISTRICT COURT BENCH

District Justice Bernard J. Carroll has been transferred from District No. 21 to District No. 19 – Cork City – replacing the late District Justice Denis P. O"Donovan, B.L.

District Justice William F. O'Connell has been transferred from District No. 8 to replace Justice Carroll in District No 21 (South Tipperary).

District Justice Oliver A. Macklin has been assigned to District No. 8 (Athlone/Ballinasloe).

District Justice James Kelly has been appointed permanently to Dublin Metropolitan District Court.

District Justices Joseph Plunkett, Brendan Wallace, Hubert Wine and Arthur McMorrow have been appointed temporary Justices.

SOCIETY OF YOUNG SOLICITORS

Introduction

When the Incorporated Law Society suggested that the Society of Young Solicitors be allocated part of each issue of the Gazette we were faced with a fairly formidable challenge which we agreed, with a certain trepidation, to take up and which we hope that we have the enthusiasm and calibre to meet.

Before plunging headlong into print it is essential to give some idea of what form of contribution we plan to make.

In the first instance it is proposed to report comprehensively on the seminars and meetings organised by the Society and to give details of forthcoming events of apparent interest to the profession. It is hoped, from time to time, to introduce a note of levity, a little light relief to these papers, which bashful self-consciousness at our first venture into journalism at present forbids. More importantly, however, it is our intention to provide a compendium of basic information on selected topics in the form of guidelines for which no satisfactory means of reference is readily available, a sort of guide to legal lifemanship which would instruct the uninitiated, alert the unwary and, where necessary, provide a red rag to the unhappy few who are possessed of reforming zeal

Because a tendency to specialise in areas of law seems so often to preclude solicitors from providing the kind of service which their clients have come to expect from them the guidelines will be in the form of a brief summary for easy reference only and will not necessarily be exhaustive.

Initially it is intended to focus on Family Law and in the forthcoming issues of the Gazette to adhere, more or less, to the following programme which we have devised :-

1. MARRIAGE.

2. BREAKDOWN OF MARRIRAGE 1 :-
   (a) Nullity.
   (b) Divorce a mensa et thoro.
   (c) Separation by Agreement.

3. BREAKDOWN OF MARRIAGE 2 :-
   (a) Custody of children.
   (b) Battered wives.
   (c) Social organisations.

4. BREAKDOWN OF MARRIAGE 3 :-
   (a) Maintenance.
   (b) Social Welfare.
   (c) Legal Aid.

5. BREAKDOWN OF MARRIAGE 4 :-
   Recognition of foreign divorce.

6. ADOPTION.

7. LEGITIMACY and AFFILIATION ORDERS.

8. LEGAL EFFECTS OF MARRIAGE :-
   (a) Property.
   (b) Contract.
   (c) Tort.

Colleagues are invited to recommend areas of law or practice on which they would like contributions to be made and many comments or suggestions favourable or otherwise will be gratefully received.

SPRING SEMINAR

Even if attendance figures alone were the only criterion, the 1976 Spring Seminar, held in the Great Southern Hotel, Killarney on 3/4th April, was remarkably successful. The recent spate of Government legislation had quite clearly startled the legal profession and there was therefore particular interest in a Seminar concerned with Conveyancing.

First and foremost perhaps, the Seminar heralded the introduction of the new Incorporated Law Society Contract for Sale and **John Buckley** and **Maurice Curran,** two of the chief architects of the new Contract, were, quite properly, the heralds. The existing Contracts in all their forms had, they argued, become outdated and there was need for a more modern standard form of Contract which would hold a more even balance between Vendor and Purchaser and which could be used for sales by public auction and private treaty alike.

There were some major changes. The payment of the deposit is to be an essential element of the Contract; the closing date is to be five weeks after the date of the Contract unless otherwise specified; interest is only to be payable in the event of the default of the Purchaser; the Purchaser is only to be on notice of the covenants, conditions, rights and restrictions contained in the Fee Farm Grant or Lease mentioned in the Particulars of Special Conditions and no more; the Vendor is to warrant that he has full planning permission for any development within the last five years unless the Special Conditions provide to the contrary; the Vendor is to be obliged to disclose to the Purchaser any easements or other rights of which he is aware.

Mr. Buckley and Mr. Curran considered all the changes, commented at length on the reasons for them and indicated somewhat bravely that they would weather comment, favourably or otherwise, from the floor.

The floor, armed with copies of the conditions which had been circulated in advance, availed of the opportunity and having formed themselves into small discussion groups proceeded to dissect the Contract clause by clause. Some sought to prove that the entire Contract was, on a technicality, void and some, perhaps a little less destructively, made other useful comments and suggestions which would be incorporated into the final edition.

John C. W. Wylie, well-known for his recent publication on "Irish Land Law", in his lecture on 'Recent Case Law in Conveyancing Contracts' comprehensively covered all the modern judicial decisions pertaining to Contracts for Sale and provided the participants with a very useful list of the cases which he analysed.

Many conveyancers were in a quandary as to the requisitions on title which ought now to be raised in view particularly of the several recent enactments on Capital Taxation. It was therefore with particular interest that they heard the views of **Anthony Osborne** and **Joseph Dundon** who not only considered requisitions on title generally but indeed very kindly dictated forms of requisitions which might be used. Mr. Osborne and Mr. Dundon indicated that a new form of requisitions on title was being drafted by the Incorporated Law Society and would be finalised when one was better able to assess the implications of the numerous recent enactments.

One of the most notable features of the Seminar was the re-introduction of discussion groups where the participants were afforded the opportunity of discussing amongst themselves the effects of the New Contract for

Sale and the nature of the requisitions on title which ought to be raised.

Time perhaps militated somewhat against their usefulness but they were undoubtedly a beneficial exercise and afforded some of the younger members the opportunity to elicit from their senior colleagues a little of the learning which only years of hard earned experience might otherwise have gained them.

The lectures apart, there was of course ample opportunity for a little conviviality and so whether the lectures or the attendance figures or even just the fun were the criteria the Seminar was an unqualified success.

1976/77 COMMITTEE OF THE SOCIETY OF YOUNG SOLICITORS

The Officers of the Committee of the Society of Young Solicitors for 1976/77 are as follows :

Chairman : Derek Greenlea.

Treasurer : Mary Finlay.

Secretary : Aine Hanley.

Committee Members : Maeve Breen, Michael Carrigan, Rory Conway, Clare Cusack, Terence Dixon, Andrew Donnelly, John Glackin, William Earley, Michael Hayes, George Mills, Tom O'Connor, Norman Spendlove.

PRESENTATION OF PARCHMENTS

The next Presentation of Parchments will take place on Thursday, 2nd December, 1976, at 4.00 p.m.

Apprentices, whose indentures have expired and who have passed all the Society's examinations and wish to receive their parchments, should lodge with the Society on or before 19th November, 1976 :-

(1) Completed form AE 5,
(2) Full name and address in Irish and English.
(3) £40.00 admission fee,
(4) Dates of passing Law Society's examinations.

Please note that no applications will be accepted after 19th November, 1976.

CHANGE IN PARTNERSHIP

TAKE NOTICE that the Partnership subsisting between **FRANCIS A. J. O'HARE, MICHAEL B. KELLY** and **RICHARD KNIGHT** practising as W. G. Bradley & Sons, Solicitors, at 11, Lower Ormond Quay, Dublin, has been dissolved by mutual consent as and from the eighth day of July, 1976, and as from which date the said practice shall be carried on by the continuing partners, Francis A. J. O'Hare and Richard Knight at 11, Lower Ormond Quay, Dublin. The retiring partner shall as and from the said date carry on practice as a Solicitor at 10, Proby Square, Blackrock, Co. Dublin.

FORTHCOMING EVENTS

Autumn Seminar

The Autumn Seminar will be held in the Ardree Hotel, Waterford on Saturday, 6th November and Sunday, 7th November, 1976 under the general heading of Developments in Conveyancing, Probate and the Administration of Estates.

The Programme will be as follows :

Saturday, 6th November

10.00 a.m. — The effect on Conveyancing practice of the new Law Society Contract for Sale and the Family Home Protection Act 1976.
Frank Daly - Solicitor

2.30 p.m. — The Drafting of Wills.
Robert Johnston - Solicitor

4.30 p.m. — Returns and Assessments under the Capital Asquisitions Tax Act 1976.
James J. Geoghegan, B.L.
Capital Taxes Branch of the Revenue Commissioners

Sunday, 7th November

11.00 a.m. — Current problems in Probate Procedure.
Eamonn Mongey, B.L.
Assistant Probate Registrar.

TRIP TO LUXEMBOURG

The Society has organised a visit to the European Court on the 18th/19th November. The programme will include an introduction to the Court and its procedures, attendance at a session of the Court, meeting with officials of the Court and lectures on certain aspects of EEC Law with particular emphasis on recent legislation and judgments. It is hoped that this programme will enable participants to familiarise themselves with the Court, its officials and procedure and up-date their knowledge of certain areas of EEC Law.

Arrangements have been made for participants and their travelling companions to visit Paris for the weekend before returning to Ireland.

Full details have been circulated to all members of the Incorporated Law Society.

ADDRESS TO MEMBERS OF THE AUSTRALIAN BAR ON THEIR VISIT TO IRELAND — FOUR COURTS, DUBLIN, JULY 12th, 1976

by Hugh O'Flaherty, Senior Counsel

Introduction

Some short time ago when I agreed to address you I did so in ignorance of something that Sir Robert Menzies had written :-

,'I have no doubt, and most lawyers would, I think agree, that the High Court of Australia, is and has been for a long time, composed of a body of judicial lawyers which has no superior in the English-speaking world".[1]

Ideally you should be addressed by somebody with an academic or jurisprudential turn of mind but I must define my area of competence. It is concerned with active practice within this building, or its environs. My remarks, therefore, will centre around some aspects of our common profession.

I will attempt to delineate some aspects of Irish law but in so far as a comparison is to be made with Australian law you will have to fill in the lacuna.

We all share the inheritance of the Common Law.

In the year before American Independence, Edmund Burke had delivered his famous speech on Conciliation with America.. One of the things that he high-lighted as pointing to the "untractable spirit" of the Americans was their education in law. He said that in no country in the world was the law so generally studied. "The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to the Congress were lawyers". He said that as many of Blackstone's Commentaries were sold in America as in England.

The Australian settlers appear to have taken to the law with as much relish as the American Founding Fathers and, to this day, it appears that the law and politics there go hand in hand. It appears that the three parties in the centre of the Constitutional storm in 1975 were lawyers, namely, the then Prime Minister Mr. Whitlam; the Attorney General and the Governor General.

After you leave here you go to England, the home of the Common Law where, too, they have a high opinion of their judges. "If justice had a voice, she would speak like an English Judge". This was quoted unblushingly by Lord Denning in 1955.[2] We think as highly of our judges but we do not express our sentiments so effusively.

Historical Evolution

It is essential first to consider the historical evolution of the State. Before 1920 the Imperial Parliament at Westminster exercised legislative power over the whole of Ireland. The Government of Ireland Act, 1920, made provision for a Parliament of Northern Ireland with limited jurisdiction over the counties of Antrim, Armagh, Down, Fermanagh, Derry and Tyrone and the parliamentary boroughs of Belfast and Derry. It tried to set up a Parliament of Southern Ireland with jurisdiction over the other 26 counties.

Articles 11 and 12 of the Treaty between Great Britain and Ireland which was signed on December 6, 1921, were given the force of law in the 26 counties — the Irish Free State (Saorstat Eireann) now known as the Republic of Ireland,[3] — by the Constitution of the Irish Free State (Saorstat Eireann) Act, 1922. This Act was passed by Dail Eireann as a Constituent Assembly on October 25, 1922. Article 43 provided that laws actually in force at the coming into operation of the Constitution should continue to be of full force and effect to the extent to which they were not inconsistent with the Constitution and subject, of course, to the power of the Oireachtas (Parliament) to repeal or amend them.

The original intention was that the Parliament should have the power to amend the Constitution for a period of 8 years from the date of its coming into operation, and that, after that, a referendum would be required. But the very provision limiting the time to 8 years was itself extended to 16 years as the period in which the Oireachtas was to be entitled to amend the Constitution by ordinary legislation.[4] There were 27 Acts in all expressed to be Acts to amend the Constitution in the 15 years of its existence. With the accession of Mr. de Valera to power, after the general election of 1932, the appeal to the Privy Council was removed, as was the oath of allegiance to the British Crown and the way was paved for the enactment of a new Constitution which was put to a plebiscite and was enacted on the 1st July, 1937, and came into force on the following 29th December. It, too, contained power for the Parliament to make amendments but only for a period of three years and that Article was, itself, incapable of amendment. In other words, on this occasion, it was made absolutely clear that once the three years had elapsed from its enactment, the Constitution could only be amended by way of referendum.[5]

Article 50 of the Constitution provided that to the extent to which they were no inconsisent therewith the laws in force immediately prior to the coming into operation of the Constitution should continue to be of full force and effect until they should be repealed or amended by enactment of the Oireachtas.

Article 34 of the Constitution provided for a Court of Final Appeal to be called the Supreme Court and Courts of First Instance which should include a High Court "invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal".[6] In fact the new Courts were not formally established until 1961.[7] Article 58 of the Constitution[8] provided that the existing Courts with their pre-existing jurisdiction should continue but when you read in the Irish Reports references to the "former" Supreme Court or High Court it is a reference to the Court (consisting of the same personnel) which held sway prior to the enactment of the Courts (Establishment and Constitution) Act 1960. There are six members of the Supreme Court presided over by the Chief Justice.[9] There are 8 members of the High Court Bench presided over by the President who ranks second only to the Chief Justice in the judicial hierarchy. High Court judges are available to sit on the Supreme Court if required and *vice versa*.

It would be the reverse of historic fact to say that the Common Law, having been planted here, has had an uneventful progress ever since. During the last century, for example, jury rigging was taken for granted. The

1. Sir Robert Menzies: *Afternoon Light.* (London: Penguin Books Ltd., 1969).
2. *The Road to Justice* (London: Stevens & Sons Ltd.).
3. The Republic of Ireland Act 1948 (No. 22 of 1948).
4. See Constitution (Amendment No. 16) Act 1929 (No. 10 of 1929) and *The State (Ryan and others) v. Lennon and others* (1935) I.R. 170.
5. Article 51 of the Constitution (omitted from every official text of the Constitution published after the expiration of the 3 years).
6. Article 34. Sec. 3.
7. Courts (Establishment and Constitution) Act 1961 (No. 38 of 1961).
8. This was also one of the transitory provisions of the Constitution which does not appear in any text printed since 1942.
9. Mr. Justice Walsh is also President of the Law Commission.

House of Commons passed an average of one Irish Coercion Act per year — each permitting the suspension of some part of the regular process of the Common Law. John Mitchell was prompted to ask: "Which is the palladium of English liberty, is it *habeas corpus* or the suspension of *habeas corpus*?"[10] Nevertheless, the basic ideas have survived and certain essential features of the Common Law have been embodied in the Constitution of 1937, viz.

* Trial by Jury;[11]
* Equality before the law;
* Trial "in due course of law".

Personal Rights

Mr. Justice Kenny in our High Court* has referred to the difficult and responsible duty of ascertaining what are the personal rights of the citizen which are guaranteed by the Constitution. "In modern times" he said "this would seem to be a function of the legislative rather than the judicial power but it was done by the Courts in the formative period of the Common Law and there is no reason why they should not do it now".[12]

There is a division of the legal profession in the Republic between barristers and solicitors. Since 1971 solicitors have had a right of audience in all the Courts co-equal with barristers.[13] Barristers, in turn, are divided into Junior Counsel and Senior Counsel and the rules and practices governing the two tiers at the Bar are much the same as yours. Thus, as with the New South Wales Bar Association, a Senior Counsel may not appear for a party without a Junior Barrister but he may, if he chooses, appear without a Junior in a criminal trial or indictment of a person. Again, where he appears elsewhere than in a Court as an advocate (for example before administrative tribunals) there is no rule of the profession requiring him to have a junior. The new title "Senior Counsel" came about with the arrival of the Irish Free State and the setting up of the first Courts thereafter. In the issue of the Irish Law Times of July 19, 1924, it was noted: "The new Senior Counsel have been granted Patents of Precedence ranking next after the existing King's Counsel. No explanation was given why this new order of Counsel has been created, but for all practical purposes the new seniors will rank equally with King's Counsel both as to emoluments and privileges".[14] The report refers to it as an "interesting ceremony"; thus was the transition made from the old title to the new.

If Mr. Justice O'Connor was a member of your first High Court then, by coincidence, one of the last Lord Justices of Appeal in Ireland was also an O"Connor, Sir James O'Connor and his story is an interesting one.[15] Sir James O'Connor was admitted a solicitor of the then Supreme Court of Judicature in Ireland on the 23rd November, 1894, and practised his profession up to 1900. By order of the Lord Chancellor of Ireland made on the 14th May, 1900, his name was at his own request struck off the roll of solicitors in order that he might apply for admission to the Bar. In 1900 he was called to the Bar and in 1908 became a King's Counsel. He was appointed Solicitor-General for Ireland in the year 1914 and Attorney-General in 1917, which office he held until the year 1918 when he was appointed to be a puisne Judge of the Chancery Division of the then High Court in Ireland and, a few months later, he was promoted to be one of the Lord Justices of the then Court of Appeal in Ireland. He continued to occupy the position of a Lord Justice of Appeal until 1924 when his office (by virtue of a change of regime) came to an end. He was not appointed to be a Judge of any of the Courts of the new Free State and accordingly he contended that his office had been terminated "compulsorily". He then went to England and was called to the Bar there in 1925 and became a King's Counsel but his health broke down and he returned to Ireland and sought to become a solicitor.

His application took the then Chief Justice Kennedy by surprise but, having heard argument, the Chief Justice ruled that in the particular circumstances of Sir James O'Connor's case he did not retire from the judicial office of his own motion or voluntarily. And as a sequel to a revolution, the office held by him was abolished and the whole system of Courts, of which he was a member, should be distinguished from the new system of Courts which had been created under the Constitution of the new State of 1922. Chief Justice Kennedy went on to say, however:-

"I feel that, in the interests of justice, Sir James O'Connor should not exercise such personal right of audience in the Courts. As Campbell said of Pemberton, he would still be regarded as laying down the law with judicial authority and he would tend to overbear inferior Courts, while it would be a scandal were he to explain his own judgments for the purpose of advancing a client's cause".

Accordingly, Sir James gave an undertaking that he would not seek personal audience in any of the Courts.

I will now attempt a synopsis of some of our legal developments. First, no doubt, you will be interested in the extent of the influence of Australian Case Law in our jurisdiction. It would be wrong, I think, to say that reports of Australian cases are cited in our Courts with the frequency they deserve. Rather do we tend to accept the reflected glow that they emit when they are quoted in judgments of the House of Lords or of the Privy Council. This may be due to a certain lack of mutuality in that while many Irishmen have occupied judicial office in Australia, as far as I can gather, no Australian has occupied any Irish judicial post! The first High Court consisted of Chief Justice Griffith, Mr. Justice Barton and, as I have said, Mr. Justice O'Connor — all of which names have had their Irish judicial or quasi-judicial equivalent at one time or another. In comparatively recent times Sir Frank Gavan Duffy was Chief Justice of Australia from 1932 to 1935 and almost contemporaneously with that Mr. Justice George Gavan Duffy was a member of our High Court from 1936 to 1951, having been appointed President in 1946.

(Part II will be published in the October Gazette)

10. Brown: *The Politics of Irish Literature from Davis to Yeats*. (London: George Allen & Unwin Ltd., 1971).
11. Article 38. Exceptions are minor offences, trial for those subject to military law and "special courts" which may be established where the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. Part V of the Offences Against the State Act 1939 (No. 13 of 1939) provides the machinery for the setting up of such special criminal courts. On May 26, 1972, the Government made a proclamation bringing Part V into operation and on May 30 set up a Special Criminal Court. It has operated continuously since. It consists of three members of the judiciary and broadly speaking deals with crimes by alleged subversives as well as certain scheduled offences under the Firearms Acts, Malicious Damage Act, Explosive Substances Acts and Prohibition of Forcible Entry and Occupation Act, 1971. See *The Special Criminal Court* by Senator Mary Robinson, Barrister-at-Law (Dublin University Press Ltd., 1974).
12. *MacAuley v. Minister for Posts and Telegraphs* (1966) *I.R.* 345 at 347.

* Mr. Justice Kenny was appointed to The Supreme Court in December 1975.

13. See Section 17 of the Courts Act, 1971 (No. 36 of 1971). In fact the right is rarely exercised in the Supreme or High Courts.
14. (1924) ILTR 178 and 180.
15. *In Re The Solicitors Act and Sir James O'Connor* (1930) I.R. 623.

COUNCIL OF EUROPE
FOURTH EUROPEAN CONFERENCE OF LAW FACULTIES

Strasbourg, 8 October 1976

CONCLUSIONS

Introduction

1. The Fourth European Conference of Law Faculties, arranged by the Council of Europe and having as its theme: "The contribution of comparative law to teaching, research and law reform" was held at the headquarters of the Council of Europe from 6 to 8 October 1976.

2. On the proposal of the Organising Committee, the conference elected as its Chairman Professor A. G. Chloros (London), and as its Vice-Chairmen Professors Ch Domonice (Geneva), R. Nerson (Lyons III), S. Jorgensen (Aarhus) and Mr. A. Huss, Honorary Attorney General (Luxembourg).

3. Those participating in the conference included teachers and research workers in legal sciences attached to law faculties or to research centres and institutes, lawyers with experience of legislative work appointed to represent member countries of the Council of Europe, and observers sent by Finland, the Holy See, Spain, the United States and certain European governmental and non-governmental organisations.

4. The subjects chosen within the framework of the conference theme were considered by three committees, namely:

Committee A: General teaching (1st cycle). Chairman: Professor R. Sacco (Turin).

Committee B: Specialised teaching and research (at the universities and at autonomous institutes). Chairman: Professor C. A. Colliard (Paris).

Committee C: Law reform. Chairman: Mr. C. Tornaritis, Attorney General (Nicosia).

5. The conference expressed its gratitude to the Council of Europe for offering it an opportunity to discuss those problems;

Expressed its gratification at the extremely fruitful exchanges of view which had taken place on those subjects in the aforementioned committees;

Conveyed to the Committee of Ministers of the Council of Europe the following conclusions at which it arrived as a result of its work;

Recommended that the competent bodies of the Council of Europe should

1. authorise the Secretary General of the Council of Europe to publish the proceedings of the conference and communicate them to the governments of member States with a request that they keep him informed of the follow-up action taken;

2. convene a 5th conference in due course.

A.
General teaching (1st cycle)

1. The Committee, being unanimous in its concern to promote the teaching of Comparative Law and the knowledge of foreign law in the European universities.

Considers that the teaching of Comparative Law, in the context of economic and social relations in the contemporary world, holds an obvious twofold interest:

(1) Knowledge of Comparative Law is an instrument of inestimable value to the student in the fields of general culture and legal training, since it enables him to gain an accurate understanding of his own national law and of European and international legal relations;

(2) The study of comparative law makes it possible to acquire the knowledge that is essential to the exercise of professional activities in both the public and the private sectors.

.. With these aims in mind, the Committee unanimously proposes the following measures:

Convinced that the understanding of foreign legal texts is essential to the teaching of comparative law.

Expresses the wish that, on the one hand, the student should already have acquired the basic knowledge necessary to such understanding through his secondary education and, on the other hand, that the Faculties should take steps calculated to develop knowledge of one or more foreign languages, if possible from the angle of legal terminology.

3. The Committee recommends the compulsory organisation of an introductory course in comparative law, leading to a terminal examination and including an outline of the major legal systems and initiation into comparative methods, as well as setting up a committee of experts whose task it would be to prepare a model syllabus for this course.

4. The Committee considers that, after this general introduction, knowledge of comparative law should be developed according to the particular fields of interest of each Faculty: teaching could be provided both in the form of specific instruction (by geographical sector, or by subject in the field of both private and public law) or in that of incorporating a comparative approach in the general teaching of different subjects (including historical subjects).

5. Encouraging the study of Comparative Law involves an increase in teaching staff. With this in view, the Committee would first recall the need to enhance the mobility of teaching staff (university professors and lecturers) between one country and another, and hopes that all the necessary steps may be taken to facilitate such exchanges.

The same mobility must likewise be guaranteed to students, in particular through the certification of studies carried out in a foreign university and leading to a terminal examination.

It considers that this twofold aim will be furthered by the establishment of effective twinning arrangements between foreign universities.

B.
Specialised teaching and research

Committee B's brief was to consider specialised teaching and research in the light of the reports submitted by Professors G Giugni and S. Keyman.

During the discussion the following conclusions emerged.

1. The Committee observed first of all how important it was that specialised university bodies should circulate each other with information about themselves.

It should also be made easier to gain information concerning national texts of legal significance.

The help which the Council of Europe could provide in this respect would be particularly valuable.

The existence of the Newsletter on legislative activities in the member States should not be forgotten. It provides a summary of legislative developments in the various Council of Europe member States and its circulation should be encouraged.

Similarly, other documents of the same type which were produced by the Council of Europe — such as translations of legal texts — should be made available to interested bodies.

2. The problems of methods were discussed extensively. The view was expressed that, generally speaking,

no single method existed and that methods could vary according to the problems involved. It was necessary to employ the method or methods which appeared the most suitable in each individual case. The Committee attached particular importance to the functional types of approach and to taking sociological factors into consideration.

It was noted that Common Law jurists and lawyers trained in Continental law had a tendency to approach problems in aw ay that was perhaps different, but it also became apparent that this did not constitute any basic difference. Indeed, it had been observed of late that there was a trend in the Common Law countries towards the adoption of legislative texts, whereas in the countries where written law prevailed, the existence of legal texts that were often old and no longer consonant with the established facts of modern life, made it necessary to adopt the most liberal case law solutions.

3. The Committee was obviously concerned by *linguistic impediments*. It considered that they should be overcome.

The view was expressed that teaching of a theoretical nature on foreign law should be accompanied by instruction in the legal terminology applicable to each of those legal systems. Such teaching should be extended wherever it existed and introduced where it did not. Teaching should be adapted to the needs of the theoretical instruction it was designed to support. If a student had acquired a good knowledge of a foreign legal terminology, that would moreover enable him to receive teaching in foreign law provided by a teacher who was a national of the State using the relevant legal system, and who would be able to express himself in his own language.

The Committee discussed the problem of dictionaries and approved of the work that had already been done in this field. It thought that the continued production of bilingual dictionaries would be useful so long as it was clear that such dictionaries should be of an institutional nature and should not confine themselves to single legal words in isolation.

4. The Committee studied the problems of teaching within the field allotted to it, i.e. specialised teaching.

Committee members thought that several types of specialised teaching could be distinguished.

For example, a distinction could be made between the teaching of a given system to foreign students by a teacher who was himself a foreigner and the teaching of foreign students by a teacher who was a national of the State which used the system in question.

It was also clear that specialised teaching could be provided not only for students at a given level of study (notably postgraduates) but also for people who were already working, in which case it would form part of a system of permanent education.

Using teachers to teach the law of their own country in foreign universities seemed an excellent idea. The Committee expressed the wish that the mobility of teachers should be ensured as effectively as possible.

It was desirable that States should remove any obstacles to such mobility, in particular by relaxing or removing any administrative or tax restrictions. The Committee thought that young research workers should benefit from the same uniformly advantageous arrangements, and using lecturers and lectors with a knowledge both of law and of languages seemed particularly desirable.

From among the various ways of developing the teaching of comparative law the Committee singled out a number of solutions which could be adopted.

One answer was to have twinning arrangements between two or more universities or other institutions. Another arrangement would pinpoint study and research themes which were being worked on jointly by several institutions and which led to symposia or seminars being organised in each of the participating institutions in turn.

5. The Committee wished to stress the importance of *research* in the field of comparative law. Members of the Committee described the various research institutes which existed in their countries. It was essential that the activity reports of these institutes and centres should be circulated among the various bodies.

The Committee was very much in favour of developing research centres in each of the member States, provided that such expansion did not result in overlapping. In States where national research institutes did not exist it seemed desirable to encourage the setting-up of such institutes. Having institutes or centres to co-ordinate activities in certain member States seemed a solution worth adopting on a larger scale. A flow of information between the various centres in one and the same State allowed for a maximum of research with a minimum of means. The international exchange of information between the various national bodies should also be stepped up.

To enab le foreign research workers to pursue their researches at another country's centre, the present scholarship systems should be expanded so that increased funds could be made available to a larger number of research workers. Work in international teams seemed to hold out promising prospects.

C.
Law Reform

The Commission agreed that an opportunity should be created for the discussion within the framework of the Council of Europe (as distinct from the narrower ambit of the EEC) of :

(a) the possibility of forming a group to consider the problems which should naturally go to a body of the nature of a European Law Commission; and

(b) the practical steps necessary for the formation and maintenance of such a group.

The Commission did not wish to formulate concrete proposals as it was not the correct body for this purpose, but does wish to put forward the idea for consideration and development by the appropriate persons and bodies.

It was thought that the suitable composition of such an assembly might consist of persons experienced in comparative law and persons experienced in related disciplines.

It was thought essential that such discussion should involve the representatives of the relevant governments.

It was thought that, without in any way pre-empting the discussions, the proposed working group might consist of a small number of experienced comparative lawyers, who would have the advice of persons experienced in national law and in related disciplines.

Two rather different proposals which commended themselves to the Commission were the possibility of restatements of parts of the law and secondly the production of precisely-drafted model laws on more specific topics.

It was thought that the first restatements might be concerned with the law of contracts and other obligations.

It was not intended that either of these activities should result in binding obligations as the activities were intended as catalysts for the historical process of unification of law where that was both practical and useful.

EXAMINATION RESULTS

FIRST LAW EXAMINATION

At the First Law Examination held in August, 1976, the following candidates passed:

Bowe, Helena M.; Brady, Brid; Brennan, Laurence; Breslin, Clare; Carroll, Christian; Carter, Martha; Clancy, Joseph B.; Condon, Anne Marie; Costello, Fidelma; Donaghy, Thomas.

Durand, Maria A.; Eagar, Robert J.; Foley, Declan M. J.; Friel, Margaret Mary; Gilvarry, Emer M.; Gogarty, Bernard; Hannigan, Brenda M.; Heffernan, Francis A.; Hegarty, Nancy Marie; Honan, Thomas E.; Hanahoe, Anthony T.

Horgan, Anne Teresa; Keane, Miriam; Keane, Paul M.; Law, Peter M.; Linnane, Martin; Loughnane, William; Lynch, Brendan G. T.; Maloney, Jacqueline; Moran, Charles A.; Morris, Kenneth D.

Murphy, Michael D.; McAllister, Rowena M.; McAuley, Christopher; McDermott, Moya; McEvoy, Clodagh; McGovern, Helen; McGuinn, Hilary; McKenna, Justin; MacMahon, Brian H.

McMyler, Patrick J.; McNally, Paul; McNulty, Seamus; McQuaid, Maeve M. P.; Nyhan, Francis G.; O'Boyle, Helen; O'Connor, John B.; O'Connor, John G.; O'Hagan, Niall J.; O'Higgins, Kevin D.

O'Kelly, Donal; O'Leary, John; O'Sullivan, Eugene F.; Parker, Liam N.; Petty, Michael; Quinlan, Barbara; Quinlan, Mary; Raftery, Winifred; Ryan, Gerard; Ryan, Michael J.

Sanfey, David; Shanley, John O.; Shee, Peter J.; Sheridan, Thomas; Sherlock, Declan; Stapleton, Susan R.; Tierney, Celine M.; Treacy, John J.; Turley, John D.; Turley, Patrick; Vahey, Valerie.

279 candidates attended.
71 candidates passed.

SECOND LAW EXAMINATION

At the Second Law Examination held in August, 1976 the following candidates passed:

Dermot C. Ahern, James Aitken, Michael Allen, Elaine Anthony, Valerie Archibald, Richard Bennett, Marcus Beresford, Michael Bolger, Kevin M. Bourke, Peter J. Boyle.

Patrick G. Brennan, Paul Buggy, John Callinan, Eugene Carey, Fionnuala Casey, Katherine E. Casey, Evanna Clinton, Helen Collins, Michael Condon, John E. Costello.

Catherine Craig, Bryan F. Curtin, Kevin Curran, Stephen J. Daly, Joseph Davies, Aidan Deasy, Kevin A. Doherty, Jane Dudley, Tom Duffy, Raymond Duggan.

Dermot Duncan, Colette Egan, Richard Evans, Gerard Fanning, John M. Farrell, Hope D. Fawsitt, Ivor Fitzpatrick, Desiree Flynn, Desmond Flynn, James Flynn.

Frank Friel, Irene M. Gleeson, Martin P. B. Grogan, Emmet Halley, Patricia Harney, James Hickey, Richard M. Hogan, Kevin Houlihan, Catherine Jordan, James H. Joyce.

John P. Kean, Patricia J. Keenan, Thomas Kelly, Patrick Kennedy, Denis Larkin, J. David Lavelle, Martin Linnane, James V. Long, Maeve Lynch, Margaret Mellotte.

Patrick Monahan, Roger Morley, Sheila Mulloy, James P. Murphy, Miriam Murphy, Richard Maguire, Robert D. Marshall, John W. McCarthy, Patrick McDonnell, Keyna McEvoy.

John P. McKenna, Ciaran McLaughlin, Brian McLoughlin, Denis McMahon, Barbara McNamara, Edward McPhillips, John Naughton, Stephen Nicholas, James D. O'Brien, Seamus O'Carroll.

Ciaran O'Donohoe, Irene O'Donovan, Clara O'Driscoll, Yvonne O'Gara, William O'Grady, Terence O'Keeffe, Anthony O'Malley, Michael O'Reilly, William O'Reilly, Patrick O'Sullivan, Kenneth Parkinson.

Kevin Rooney, James Scally, Pamela Sheppard, Ambrose A. Sharpe, William Smith, Conor Sparks, Jane Stewart, Mary Sweeney, Dorothy Tynan.

202 attended the examination.
100 candidates passed.

THIRD LAW EXAMINATION

At the Third Law Examination held in August, 1976, the following candidates passed:

Ahern, Dermot C.; Browne, Geoffrey; Carroll, Patricia; Collins, Aidan D.; Condon, John F.; Duncan, Anthony J.; Dunne, Cormac; Fogarty, Gerard; Grace, John R.

Griffin, Anne M.; Halpenny, Padraig E. S.; Hayes, Michael G.; Hederman, Mary; Horan, Paul G.; Howell, Eileen M.; Jordan, Andrew B.; Kehoe, Helen; Kelleher, Caitriona.

Lawlor, Florence C.; Lee, Muriel; Leyden, Joseph P.; Moore, Michael J.; Mulvey, Frank; Murphy, James T.; McBride, John G.; McCarthy, Patrick; McCormick, David P.

McEvoy, Michele M.; McGlynn, John; Nagle Elizabeth; O'Connell, Deirdre; O'Connell, Margaret V.; O'Doherty, Nial K.; O'Gorman, Anthony; Olliffe, Elizabeth Ann; O'Loughlin, Ann G.

O'Neill, Raymond St. J. Roundtree, Henry J. H.; Scully, Paula; Sexton, Henry; Sheery, Colman; Snowman, Jennifer (Mrs.); Toale, Mairead; Tyrrell, Michael W.; Walsh, Ann Catherine.

99 candidates attended.
45 candidates passed.

MEDICO-LEGAL SOCIETY

The following are the principal officers for the session 1976-77. *President*: Miss Thelma King, LL.B., Solicitor; *Hon. Secretary*: Dr. J. F. Harbison, School of Pathology, Trinity College, Dublin 7; *Hon. Treasurer*: Dr. Declan Kilsenan, Stepaside, Tel. 986422.

The Annual Subscription is £4. The following meetings will be held on the following Thursdays at 8.15 p.m. in the United Services Club, 9 St. Stephen's Green, Dublin 2.

28th November, 1976 — Alcoholism from a Medical and Social Viewpoint. *Speakers*: Dr. J. G. Cooney, M.R.C. Psych., and Colonel Adams, Director of the National Council for Alcoholism.

25th November, 1976 — Demoniac Possessions and Exorcism. Rev. Professor E. F. O'Doherty and Dr. Liam Daly, M.R.C. Psych.

27th January, 1977 — Russell V. Russell, 50 Years After, Peter Archer Q.C., Solicitor-General for England.

24th February, 1977 — Medical Ethics Governing the Treatment of Prisoners, General Report.

31st March, 1977 — Recent Decisions on the Welfare of Children, James O'Reilly, LL.M., U.C.D.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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, 1976.

N. M. GRIFFITH
Registrar of Titles

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

Schedule

(1) Registered Owner: John Reginald Whaley; Folio No.: 12958; Lands: (1) Hurdlestown, (2) Hurdlestown, (3) Bloomsberry, (4) Hurdlestown; Area: (1) 10a. 2r. 17p., (2) 9a. 3r. 35p., (3) 218a. 0r. 8p., (4) 79a. 1r. 28p. County: Meath.

(2) Registered Owner: William Lysaght; Folio No.: 22198; Lands: A plot of ground containing 0a. 1r. 0p., situate on the east side of Mill Road in the Parish of St. Patrick and City of Limerick.

(3) Registered Owner: Joseph Dorrian; Folio No.: 41844; Lands: Glencar Scotch; Area: 1a. 0r. 37p.; County: Donegal.

(4) Registered Owners: The Most Reverend William McNeely, The Reverend John McMenamin and Daniel McMenamin; Folio No.: 35939; Lands: Cloghan Beg; Area: Oa. 3r. 4p.; County: Donegal.

(5) Registered Owner: Patrick F. Cunningham; Folio No.: 61R; Lands: Meelick; Area: 1a. 0r. 19p.; County: Mayo.

(6) Registered Owner: Philip Ronayne; Folio No.: 10569; Lands: Part of the land of Creevaghmore with the cottage thereon situate in the Barony of Shrule; County: Longford.

(7) Registered Owner: John Keane; Folio No.: 36170; Lands: (1) Derrylea, (2) Ballinlough, (3) Bocullin; Area: (1) 16a. 2r. 4p., (2) 10a. 2r. 4p., (3) 55a. 3r. 4p.; County: Mayo.

(8) Registered Owner: John Keane; Folio No.: 17244; Lands: Knockychottaun (part); Area: 12a. 0r. 29p.; County: Mayo.

(9) Registered Owner: John Keane; Folio No.: 27181; Lands: (1) Cuiltrean, (2) Knockmuinard, (3) Cuiltrean; Area: (1) 21a. 0r. 10p., (2) 10a. 0r. 32p., (3) 1a. 3r. 8p; County: Mayo.

(10) Registered Owner: John Hayes; Folio Nos.: 1365, 1561 (now Folio No. 3469F) and 3300; Lands: Dromsallagh; Area: 67a. 1r. 6p., 12a. 1r. 6p. and 34a. 0r. 27p. respectively; County: Limerick.

(11) Registered Owner: John Carey; Folio No.: 11315; Lands: Aghafin; Area: 50a 2r. 20p.; County: Westmeath.

12) Registered Owner: John Dwyer; Folio No.: 11473; Lands: Turraheen Lower; Area: 71a. 3r. 6p.; County: Tipperary.

(13) Registered Owner: William Desmond Dohertv; Folio No.: 18501; Lands: A plot of ground containing 0a. 0r. 18p. 6 sq. yds., situate on the west side of Mill Mount Road in the town of Mullingar; County: Westmeath.

(14) Registered Owner: James Lynch; Folio No.: 13787; Lands: Castletobin West; Area: 44a. 2r. 32p.; County: Kilkenny.

(15) Registered Owner: Patrick Barry; Folio No.: 2678R; Lands: (1) Galbolie, (2) Tanderagee; Area: (1) 47a. 1r. 8p., (2) 0a. 1r. 18p.; County: Cavan.

(16) Registered Owner: John Walsh; Folio No.: 38126; Lands: Farravaun (parts); Area: 44a. 0r. 14p.; County: Galway.

(17) Registered Owner: John Walshe; Folio No.: 38126; Lands: Part of the townland of Bantis with the cottage thereon situate in the Barony of Ormond Upper; County: Tipperary.

(18) Registered Owner: Patrick Murphy; Folio No.: 725; Lands: Cloonagh; Area: 2a. 3r. 33p.; County: Longford.

(19) Registered Owner: James Carter; Folio No.: 15427; Lands: (1) Painstown (E.D.), 2() Tuiterath, (3) Tuiterath; Area: (1) 27a. 1r. 9p., (2) 3a. 2r. 7p., (3) 0a. 2r. 10p. County: Meath.

(20) Registered Owner: John Murphy; Folio No.: 1010F; Lands: A plot of ground with the house thereon situate to the south side of Collectors Lane or Lucan Street in the Town of Castlebar; County: Mayo.

(21) Registered Owners: Thomas Enda Kelly and Patrck J. Cambell; Folio No.: 19511; Lands: Wilkinstown; Area: 2a. 0r. 0p.; County: Dublin.

(22) Registered Owner: Patrick Hanevy, Folio No.: 12806; Lands: (1) Aghanashanamore, (2) Ardyduffy, (3) Carn Park; Area: (1) 5a. 2r. 37p., (2) 4a. 0r. 16p., (3) 3a. 1r. 22p.; County: Westmeath.

(23) Registered Owner: John McGrath; Folio No.: 1214L; Lands: The leasehold interest in the property situate in part of the townland of Blackcastle and Barony of Navan Lower; Area: 0a. 0r. 12p.; County: Meath.

NOTICES

Timothy Lynch, deceased, late of Knockawaddra, Aherla, Co. Cork. Would anybody having knowledge of any Will of the above named, deceased, please contact: Eoin C. Daly & Co., Solicitors, 17 South Mall, Cork.

Winifred Brown, deceased, of 2 Dargle Road, Blackrock Co. Dublin, late of 40, York Road, Rathmines, Dublin 6. Would any solicitor, or other person knowing the whereabouts of a Will post dating 17th February, 1958, made by the deceased please get in touch with Messrs. James M. McGolderick & Co., Solicitors, 52 Ranelagh Road, Dublin 6.

Alice May McGrath, late of The Diamond, Belturbet, deceased. Would any solicitor or other person knowing the whereabouts of a Will made by the above deceased since 1950 who died recently, please get in touch with Messrs. P. J. F. McDwyer & Co., Solicitors, Main Street, Belturbet, Co. Cavan.

Anna Mary Rorke, deceased, late of 'Rockingham', Clarinda Park East, Dun Laoghaire and formerly of Flat No. 2, Blackrock Lodge, Newtown Avenue, Blackrock, Co. Dublin. Would any solicitor having knowledge of a Will executed by the above-named deceased who died on 6th April 1976, please communicate with Messrs Arthur Cox & Company, Solicitors, 42/45 St. Stephen's Green, Dublin 2.

Lost Title Documents. Would any person having knowledge of the whereabouts of any Title Documents the property of Winifred Murphy, 99 Swords Road, Dublin, or of her late husband Michael Murphy, please contact Oliver J. Conlon & Co., Solicitors, 93 Upper Leeson Street, Dublin 4. (Telephone 683163).

Law Student, graduate, seeks Master. Replies to Mr. David McClelland, 24 Wellington Park, Whitehall Cross, Terenure, Dublin 6. Telephone 500493.

Old established busy practice in a very good midland town immediately requires able young assistant solicitor to take over a wide range of work including court work. Excellent salary and prospects. Box No. 139.

Assistant: Just qualified solicitor seeks position. Aged thirty, with good working apprenticeship and previous commercial experience. Box No. 140.

Dublin solicitor with long established practice desires amalgamation. Replies to P. Griffin & Co., Chartered Accountants, 79 Merrion Square, Dublin 2.

Morris Green, deceased. Would any solicitor, banker or other party holding Title Deeds of premises 26, Upper Abbey Street, Dublin 1, the property of the above named deceased, please communicate as soon as possible with S. G. Rutherford & Company, Solicitors for the Executor, 13, Upper Leeson Street, Dublin 4.

Terence Larkin, deceased. Would any solicitor holding any Will or Documents or papers of the above named deceased who formerly resided at The Nurseries, Wyatteville Road, Ballybrack, Co. Dublin, and was a native of Crossmaglen, Co. Armagh, who died on 11th August, 1976, please communicate as soon as possible with Reddy, Charlton & McKnight, Solicitors, 12, Fitzwilliam Place, Dublin 2.

Wanted, set or part set of Acts of the Oireachtas. Good market price paid, postage and carriage. Replies to Box No. 141.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street,Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

OCTOBER 1976 VOL. 70. NO. 8

Annual Report of the Council 1975-76

THE PRESIDENT REPORTS

1.1 The Reports of the Council and its Committees have been circulated in accordance with the arrangements established and followed by my predecessors in office. This arrangement of communicating with members of the Society appears to be satisfactory and informative of the activities of the Council in the year under review.

1.2 The work load of the Council is increasing in volume and complexity from year to year by reason of the demands on our services and also our membership of the European Community, in addition to the continuous flow of Legislation in the Taxation, Economic and Social fields.

1.3 The Chairmen of the Committees of the Council and indeed the members of the Council are deserving of our best thanks for the time, energy and thought they have put into the many problems entrusted to them for research and report to the Council. The Council is also indebted to our colleagues in all age groups who, while not elected members of the Council, have served on the many Committees, and have thus placed their experience and expertise at the disposal of the Society. It is only correct to record the Bar Associations, the Young Solicitors' Society and other groupings of our Profession who have always provided their unstinting support and help on all occasions to the Society.

1.4 There has been considerable activity during the year both on the National and International fronts as will be gleaned from the Reports of the Committees of the Council charged with responsibility in these areas.

The President
Patrick C. Moore

1.5 I was the guest during the year of the Law Society of Scotland in Aviemore in May, and I also enjoyed the hospitality of the Northern Ireland Law Society at Gatehouse-of-Fleet in Scotland. In addition, I had the opportunity of being the guest of the European Court in Luxembourg, and special reference must be made to the gracious hospitality of the Honourable Mr. Justice Andreas O'Keeffe on this particular occasion. Mr. Walter Beatty and Mrs. Beatty represented the Society as the guests of the Lord Chancellor at the opening of the Legal Year Ceremonies in London and our Vice-President, Mr. Bruce Blake and Mrs. Blake represented the Society at the English Law Society Conference at Torquay in October. I also wish to thank the Bar Associations and their Representatives and other colleagues, groups and organisations for the courtesy and kindness and hospitality which they extended to me and to my wife when I had the opportunity to visit them as their guest.

1.6 As President I now have an opportunity of thanking my Vice-Presidents and the members of the Council for their encouragement and wonderful loyalty to me during my period of office, and I wish to place on record my gratitude to them for their help and support. In addition I wish to thank the Director General and all the Society's staff who were ever ready and willing to assist and resolve in their own inimitable way the many problems that arose from time to time.

P C Moore

President

How to invest your clients' funds

The most important factor

When it comes to investing client funds, and particularly so in the current economic climate, safety and security must be paramount considerations. Placing funds on deposit with a reputable and sound institution undoubtedly provides as near maximum safety as one can get.

Guinness + Mahon were founded in 1836, *and now form a part of the Guinness Peat Group, whose interests embrace not only merchant banking but commodity broking, merchanting, insurance, food, shipping and aviation. Guinness + Mahon are a Scheduled Bank under the Solicitors Regulations Act, and are therefore an authorised recipient of clients' funds. Deposits with Guinness + Mahon also qualify as Authorised Investments under the Trustee (Authorised Investments) Act.*

Profitable growth

Seeking sound growth undoubtedly forms part of the protection you can give your client's funds. Deposit interest rates with financial institutions can vary significantly, both from house to house, and according to the form of deposit selected. It pays to make certain that you are getting the best possible terms available at the time.

Guinness + Mahon offer extremely keen deposit rates for various types of deposits, and also go to great lengths in helping you choose the type or length of deposit that suits you best. A specific enquiry to Ian Kelly, the Deposits Manager, Dublin, or Tim Howard, Manager, Cork, will give you an up-to-the-minute quotation, and any advice you might require.

Professional expertise

As a professional yourself, you will undoubtedly appreciate a skilled, personal approach to your own problems. The whole area of deposits and money markets is highly skilled, and it pays you to choose an institution whose expertise and connections reflect this.

Guinness + Mahon, as Merchant Bankers, can offer a particularly satisfactory service in this area. Deposits have always formed a significant part of their total business, and they have built up a formidable reputation for the skill and personal attention they can provide to each of their depositors.

Flexibility

The essence of merchant banking lies in the flexibility and variety which merchant bankers can bring to the business of banking, and each transaction is treated on its individual merits.

Guinness + Mahon pride themselves on the imaginative and personal approach they can take to each problem. This important element of flexibility allows them to tailor your investment solution to your exact requirements.

Reciprocality

Business is a two-way affair. The institution you choose should be prepared to provide finance for your clients in appropriate cases.

Guinness + Mahon are conscious that this is a perfectly legitimate requirement on your clients' part, and are very willing to consider proposals on a selective basis, provided in general that amounts exceed £10,000 *and that the need is for short term working capital or finance of a bridging nature.*

GUINNESS+MAHON LTD

If you would like to receive further details on Deposit Rates, or information on our full range of services,

please ring Ian Kelly at Dublin 782444
17 College Green, Dublin 2. Telex 5205;
or Tim Howard at Cork 54277
67 South Mall, Cork. Telex 8469.

COUNCIL

Patrick C. Moore
President

Bruce St. J. Blake,
Gerald Hickey,
Vice-Presidents

2.1 The year under review was a continuation of the work initiated by the Council in previous years and it is gratifying to be able to record satisfactory progress in most areas and achievement of our targets.

2.2 The Law Society's new headquarters at Blackhall Place will shortly reach the stage when the administration of the Society will move to its new abode. There is just one final difficulty awaiting solution, namely the provision of telephones. As will be seen from the report of our energetic Premises Committee, stage 2 of the development is well in hand which makes provision for students and the accommodation of the members. Our professional advisers have been most helpful and co-operative and have devoted a great deal of time and effort to the solution of the many difficulties and problems arising in the adaptation of the development in order to cater for our special requirements.The financing of the development and adaptation of the building for our special purposes has been given consideration in detail and in depth both by the Policy Committee and Finance Committee of the Council, and in this area we are indebted to Mr. W. Osborne who is our current Chairman on the Finance Committee.

2.3 Our Educational and Student requirements are areas of particular complexity at the present time because of the transition from the old to the new system and procedures so vitally necessary in consequence thereof. The increasing number seeking entry into the profession, the provision of facilities at University level and at other levels in order to achieve realistic inflow and to man proper standards are problems requiring special attention. Special mention must be made of the work undertaken and achieved by the Education Committee and the Advisory Sub-Committee under the Chairmanship of Mr. John Buckley.

2.4 The enquiry into Solicitors' remuneration initiated by the National Prices Commission will it is understood be available for consideration by the Council and other interested parties in the form of an occasional paper published by the N.P.C. The Consultant appointed by the Commission, Professor Denis Lees has it is understood made and presented his report, and naturally further comment and submissions must await the availability of this Report and the occasional Paper promised by the Commission.

2.5 The provision of Civil Legal Aid is still the subject of consideration by the Committee appointed for that purpose by the Minister for Justice under the Chairmanship of Mr. Justice Pringle. Criminal Legal Aid was brought into operation by the provisions of the Criminal Justice (Legal Aid) Act, 1962, and in pursuance of the Regulations made under this Act, Criminal Legal Aid became operative in a very limited way as and from the 1st April, 1965.

2.6 Many difficulties arose in connection with the provision of services due to a withdrawal by members of the Bar from all Criminal Legal Aid cases,thereby placing a heavy responsibility on those Solicitors, members of the current Legal Aid Panel,who undertook to provide services on the basis of an interim increase suggested by the Prices Commission pending the Report in this area by a Committee specially appointed by the Minister for Justice as a result of representations by the Society. In the meantime, there has been an amelioration of the situation whereby the fees payable to defendng Counsel are placed on a parity with the fees paid to prosecuting Counsel. As a result of representations and due to the good offices of the Minister, Solicitors acting as advocates are also on a parity with prosecuting Counsel under and by virtue of The Criminal Legal Aid Amendments Regulations 1976 (No. 236 of 1976). There are many problems from the Society's point of view still to be resolved, but no progress can be made pending the publication of the Prices Inquiry Report. When it is available the whole question of remuneration both on the Criminal and Civil side will be urgently pursued and placed, it is hoped, on an acceptable and realistic basis.

2.7 The Society's new form of Contract has already been made available, and the new Requisitions on Title are in an advanced stage of completion, and it is hoped to have them available early in the New Year. The Committee is also considering the publication of precedents for the leasing of flats and ancillary documents acceptable to lending Insitutions and the structures necessary to create an acceptable and viable Scheme.

2.8 A further Committee is also sitting and dealing in depth with the whole question of Solicitors' Undertakings.

2.9 On the International side, the implementation of a draft Directive making provision for limited service by Lawyers in the member States has had the active consideration of the E.E.C. and International Affairs Committee dealing with these matters.

2.10 On the Parliamentary side there has been considerable activity particularly in relation to the following legislation: the Family Home Protection Bill; the Mergers, Take-overs and Monopolies Control Bill; the Building Societies' Bill; the contemplated Landlord and Tenant Consolidation Bill; the Criminal Law (Amendment) Bill; the Emergency Powers Bill; the Anti-Discrimination (Unfair Dismissals) Bill; the Consumer Information Bill and the Town Planning Bill, to mention a few.

2.11 The vexed problem of Professional Indemnity Insurance has also been engaging the urgent attention of the Council and comprehensive realistic proposals will be explored and negotiated in the interests of the Profession. It is hoped that such proposals will be acceptable to the vast majority of our members.

2.12 Progress has also been made in the provision of a growing fund for Pensions and Superannuations. The results are satisfactory and the Scheme is receiving good support.

REGISTRAR'S COMMITTEE

David R. Pigot,
Chairman

Walter Beatty
Donal G. Binchy
Maurice R. Curran
Miss Carmel Killeen
Patrick F. O'Donnell
William A. Osborne
Mrs. Moya Quinlan
Thomas M. D. Shaw

3.1 The responsibility of the Registrar's Committee is to investigate complaints brought against Solicitors, and in appropriate cases, to take the necessary action to ensure compliance by Solicitors with their statutory and ethical obligations both to their clients and fellow members of their profession.

3.2 For the greater convenience both of the members of the Committee and those Solicitors required to appear before it, an Interview Board was established by the Council of the Law Society on a six months experimental basis in January 1976. The members of this Board consist of the Chairman and two other members of the Committee, the Director General, and one other member of the Society's Secretariat. The main purpose of the establishment of the Interview Board was to allow more time to be spent by members of the Committee in considering (and where possible assisting individual Solicitors in resolving) matters which are the cause of complaint.

3.3 The establishment of the Interview Board has in fact eased the burden on the Registrar's Committee, enabling it to function more expeditiously and effectively, and it was felt that the greater informality of the Interview Board was welcomed by those Solicitors who appeared before it. At the Meeting of the Council of the Law Society on 29th July last the continuance of the Interview Board for a further experimental period of 12 months was approved.

3.4 The Secretary of the Interview Board since its institution has been Mr. Fintan Burke who joined the Society in January 1976. One of Mr. Burke's specific duties has been to assist in a practical manner, on request, in the running of a member's practice in certain circumstances for a limited period only. This innovation by the Society was availed of on two occasions in the period up to 30th September 1976. In one instance, the Solicitor suffered a fatal accident, and in the other, became suddenly ill.

3.5 At the request of the Council, the Registrar's Committee proposed new procedures for the purpose of ensuring that Solicitors obliged to do so would take out their Practising Certificate in every year and that their Accountants' Certificates would at no time become more than 12 months in arrears without appropriate action being taken by the Society to ensure their production. This procedure was approved of by the Council at its last half-yearly Meeting. Details of the procedure which will henceforth be followed appear in the September *Gazette*.

3.6 On three occasions in the year under review, it came to the attention of the Society that Accountants' Certificates had been furnished without qualification notwithstanding that the Solicitor member was in fact in breach of the Solicitors (Accountants) Regulations. In two instances, the Society has withdrawn its approval of the particular Accountant with the result that any Certificate furnished signed by this Accountant in the future will not be accepted. The third instance is under enquiry.

3.7 The type of complaints received by the Society against Solicitors remains substantially unaltered, delay in dealing with clients' business being responsible for the greatest number of complaints. In some cases, the delay is not that of the Solicitor, and in others, it appeared clear to the Committee that the complaint had been made initially, not by reason of the mere fact of delay, but of persistent failure on the part of the Solicitor to respond to enquiries addressed to him by his client for information regarding the particular matter.

3.8 It may be helpful to note that a very high percentage of the complaints received by the Society are against Solicitors or Firms who have only one (or at the most two) principals. While not within the province of this Committee, it would appear that the explanation almost certainly is the vastly increased complexity of our Law today and the only solution a much greater degree of specialisation achievable possibly by amalgamations of small practices or perhaps some form of working arrangement between them. Arguments in favour of (and against) amalgamations may be found on pages 16-17 of the Society's Report furnished to Professor Lees in relation to the enquiry by the National Prices Commission into Solicitor's remuneration.

3.9 In the period from 1st January to September 30th 1976, the Society received a total of 344 complaints about Solicitors. Some of these on investigation proved to be without foundation, the remainder being referred to the Interview Board or the Committee for consideration. The Interview Board in fact carried out 96 interviews (of 70 different Solicitors) and 46 Solicitors attended before the Registrar's Committee, some on more than one occasion.

David R. Pigot,
Chairman

3.10 During the year the Society's Accountant, Mr. Connolly, completed 13 investigations of Solicitor's Clients Accounts. Following these investigations reports were made by him to the Registrar's Committee and, where required, appropriate action taken. The Committee is very appreciative of the assistance afforded to them by Mr. Connolly throughout the year.

3.11 The guidance and assistance of the Director General where required, and his participation as a member of the Interview Board, and the willing co-operation and assistance at all time received from Mr. Basil Doyle, Mr. Fintan Burke, Miss Margaret Casey, and other members of the Secretariat, were greatly appreciated by the Committee.

3.12 Finally, as Chairman of the Committee, may I express my personal thanks to all of my colleagues on the Committee, some of whom travelled not inconsiderable distances to spend lengthy periods on Committee business and for the very considerable and practical assistance afforded by them to me throughout the year. My particular thanks are due to Mr. Tom Shaw and Mr. Tony Osborne, who also attended Meetings of the Interview Board, and to Mr. Gerry Doyle who was kind enough to chair Meetings when I was unable to be present.

COMPENSATION FUND COMMITTEE

David R. Pigot,
Chairman

Walter Beatty
Donal G. Binchy
Maurice R. Curran
Miss Carmel Killeen
Patrick F. O'Donnell
William A. Osborne
Mrs. Moya Quinlan
Thomas D. Shaw

4.1 The Society is obliged by Statute to provide full indemnity to members of the public who suffer actual financial loss as a result of defalcation by any practising Solicitor.

4.2 The contribution of each member of the Society to the Compensation Fund in 1976 was fixed at £25.00.

4.3 Payments from the Fund in respect of ascertained losses and other expenses during the year to 30th April 1976 amounted to £42,148.

4.4 The book value of the Compensation Fund as at 30th April 1976 was £442,809.00.

4.5 The help and co-operation of the Society's Accountant, Mr. Patrick J. Connolly, throughout the year was of great assistance to and much appreciated by the Committee.

4.6 As Chairman, may I express my personal thanks to my colleagues on the Compensation Fund Committee for their help and co-operation to me throughout the year.

PRIVILEGES COMMITTEE

Michael P. Houlihan
Chairman

William B. Allen
John B. Carrigan
Nicholas Comyn
Gerard M. Doyle
Thomas Jackson
John B. Jermyn
Miss Carmel Killeen
John Maher
Brian Russell
Thomas M. D. Shaw

Michael P. Houlihan, Chairman

5.1 During the past year your Committee met on twelve occasions and among the matters considered were the following:

1. Problems between a member of the profession and the taxing master's office.
2. Various disputes as between different firms in relation to undertakings.
3. The question of compulsory registration of wills.
4. The problem of acting for residents associations.
5. Problems entailed in handing over files from one solicitor to the other.
6. The form of accountable receipts from banks and lending institutions.
7. The problems of obtaining certificates of compliance with the Planning Regulations with various local authorites.
8. The question of conflict of interests.
9. The problems encountered by members of the bar settling cases direct with insurance company claims personnel without instructions.
10. Problems encountered with Irish Underwriting Agencies Limited.
11. Company formation by non-qualified persons.
12. Professional etiquette involved in recording telephone conversations.
13. The requirement imposed on purchasers to pay the vendors' solicitors' costs.
14. The question of booking deposits on sales and the format of the preliminary agreements prepared by auctioneers in certain areas.
15. The question of missing land Certificates.
16. The failure by members of the profession to pay fees to Counsel.
17. The Free Legal Aid Advice Centre at Coolock.
18. Various disputes between insurance companies and members of the profession.

5.2 During the year also your Committee and various sub-committees thereof held meetings with the Irish Medical Association to consider the question of fees, co-operation, medical reports, availability of medical witnesses and the entitlement of doctors and surgeons to treatment fees in certain cases. Your Committee also met with Mr. Joseph Moore and Mr. Dore of the P.M.P.A. Insurance Company to review practices between members of the profession and the company. A sub-committee also had a meeting with the Building Societies Association and with the Banks Law Agents to smooth procedures with regard to bank loans, letters of undertaking and accountable receipts. Various members of your Committee were involved in discussions to resolve disputes between different members of the profession and your Committee considered many complaints of unprofessional conduct alleged by various members of the profession one against the other. Your Committee also gave detailed consideration to the N.A.C.L.P. and Mr. Brian Bell, and established a procedure for dealing with complaints lodged through this organisation. The Committee also had for consideration various newspaper and television criticisms of the profession and indeed dealt with many other matters of a strictly confidential nature.

5.3 Throughout the year members of this Committee gave unselfishly of their time in the interests of the profession and their colleagues, and I have pleasure in thanking the members of this Committee whose efforts deserve the acknowledgment of the profession.

PARLIAMENTARY COMMITTEE

William A. Osborne,
Chairman

William B. Allen
Donal G. Binchy
Adrian P. Bourke
Joseph L. Dundon
John J. Nash
James W. O'Donovan

William A. Osborne, Chairman

6.1 The function of the Parliamentary Committee is to examine all new legislation introduced by the Oireachtas and to consider same fully and, where necessary, to inform the profession of the legislation and the extent to which same has altered general practice or procedures and also, where necessary, to make representations to the particular Government Department sponsoring the legislation. The Committee also from time to time looks at existing legislation and procedures, with a view to making representations to appropriate authorities and State and other Departments with a view to obtaining amending or other updated legislation.

6.2 During the year under review in particular, the Succession Act 1965 has been considered, having regard to experience gained since the Act was introduced and became law and a paper of suggested amendments was prepared by Mr. Don Binchy, Committee Member, and correspondence has taken place with various interested parties and the general views of Bar Associations have been requested as a preliminary to preparing representations for alterations and amendments in the Act.

6.3 The Building Society's Bill 1975 was fully considered by the Committee and a very helpful and useful memorandum was prepared by the President, Mr. P. C. Moore and submitted to the appropriate Department in relation to the suggested amendments and alterations in the Bill.

6.4 The Rules for the Government of Prisons Regulations (S.I. No. 30 of 1976) were fully considered by the Committee and by reason of decisions come to by the Committee and subsequently approved of by the Council, this matter is sub judice at present.

6.5 The Emergency Powers Bill 1976 and the Criminal Law Bill 1976 were studied in detail by the Committee immediately on the introduction of the Bills in question and after a very full and thorough examination by the Committee and discussions as to the provisions of certain Sections in the Criminal Law Bill 1976, representations were made to the Department of Justice, particularly in relation to the right of search of members of the legal profession entering a prison for the purpose of interviewing a client. The legislation in question was fully debated in the Dáil and the Committee hope to meet with the Minister for Justice for the purpose of discussing the Sections in respect of which representations have been made to the Department of Justice and the outcome of discussions will be notified to the members when these discussions have concluded.

6.6 The Anti-Pollution (Waters) Bill 1976 is presently being examined by Mr. Adrian Bourke and the White Paper on nullity is being examined by Mr. Bruce St. John Black, Vice-President and when their reports are to hand, the legislation in question will be finally considered by the Committee.

6.7 The Family Home Protection Act of 1976 is also being fully considered by the Committee, with the exception of the aspects of the Act which affect conveyancing matters which have been left by the Committee to be dealt with by the Conveyancing Committee.

6.8 Apart from some special meetings which have taken place during the year, the Committee has met regularly each month and as Chairman, I would like to express my appreciation of the work carried out by the Committee in the examination of the legislation in question and, in particular, the work of the Committee members who individually have taken on the separate task of examining specific Acts and legislation during the year.

FINANCE COMMITTEE

William A. Osborne,
Chairman

Walter Beatty
Peter Murphy
Peter D. M. Prentice
Patrick F. O'Donnell

7.1 In the year to April 1976 the Finance Committee has had to contend with increasing overheads in all areas and this fact is borne out by the audit accounts of the Society for the period in question.

7.2 The Budget for the coming year indicates that overheads will increase and will continue to increase during the next few years. Apart from the increase anticipated in overheads, provision must also be made for the funding of the expenditure on Blackhall Place and to some extent the cost of providing the new educational programme, when the scheme comes into full operation.

7.3 This additional expenditure was forecasted by Mr. Gerald Hickey, Chairman of the Finance Committee in 1974 and at the half yearly meeting in Westport in May 1975 and at the Annual Meeting in November 1975. To meet these obligations, it is necessary to increase from January 1977 the members' subscription and the Practising Certificate fee by a total of £25, and it is anticipated that further increases will be required next year.

7.4 The compensation fund has stood at a figure ranging between £350,000 and £400,000 for the past few years. To guard against the continuing inflationery trends the Council have decided that the fund should be built up gradually in the coming years and hence, the Council has increased the compensation fund contribution by a sum of £25 from January next. At the 30th April 1976 the compensation fund stood at a figure of £442,809. Ascertained losses and other expenses for the year ended in April last amounted to £42,148.

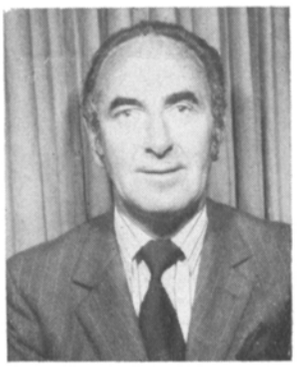
7.5 The additional expenditure involved in the completion of Blackhall Place and in the new educational programme, are investments for the future. The contract work on Blackhall Place is proceeding satisfactorily. Stages 1 and 2 of the contract are well advanced. Stage 1 relates to the refurbishing of the centre or administration block and has been completed. This part of the building will be available to the Society's staff as soon as telephones are installed. Work is well advanced on Stage 2, which relates to Accommodation for Students, Canteens, Reading Rooms and Members Rooms and Facilities, to include the Library. To date a sum of £152,070 has been paid to the contractors and the estimated cost of completing Stages 1 and 2 is £463,000.00. It is anticipated that by January 1977 a sum of £225,000 will have been paid on account of the contract cost. Stage 3 is in the final stage and relates to work which is required to the Chapel area and it is anticipated that the commencement and completion of work on Stage 3 will not be unduly delayed. A Bank term loan has been arranged which, with the addition of funds already transferred to premises reserve, will provide the greater part of the money required to complete the contract.

7.6 The Society holds a very valuable asset in the Solicitors' Buildings. No decision has yet been taken as to the future of these premises. A decision will be necessary in the next few months. Any sum arising from a sale or leasing of the Solicitors' Buildings, either in whole or in part, would provide a valuable source of capital or revenue towards the expenditure incurred on Blackhall Place. The Finance Committee is conscious of the fact that, with interest rates remaining high, it is essential to keep borrowings as low as possible. Interest must be funded gross by members subscriptions and from revenue. Hence, the Committee has decided to initiate a Private Funding Scheme, which if successful, will go towards the required capital, and thus will substantially reduce overdraft interest and the annual call on members. The scheme will be limited to members of the Society who will be requested to participate and the full co-operation and whole hearted enthusiasm of the members will be essential to its success.

COURT OFFICES AND COSTS COMMITTEE

Ernest J. Margetson,
Chairman

Laurence Cullen
Francis Daly
Christopher Hogan
Nicholas S. Hughes
Francis J. Lanigan
Patrick J. McEllin
William D. McEvoy
Dermot G. O'Donovan
William A. Osborne
John J. Nash
Patrick Noonan
Robert McD. Taylor



Ernest J. Margetson, Chairman

8.1 During the past year the usual wide range of topics and problems came before the Committee for consideration. As usual the question of delays in Government Offices occupied a considerable amount of time and at the present time the Committee is again in communication with the Land Registry regarding the delays in first registration cases and we are also trying to resolve problems that have arisen in the Mapping branch.

8.2 Since the last report of the Committee, after several meetings, agreement was reached with the Accident Claims Association for a new scale of fees to be paid by Insurance Companies for defence and reports arising out of District Court prosecutions and Inquests. Particulars of these new fees were published in the January-February, 1976 issue of the *Gazette*.

8.3 The President of the High Court referred to the Committee difficulties which have arisen in cases where Solicitors on record for a party in an action wish to withdraw. There is an established procedure under the Rules and Members' attention is particularly drawn to this and the Presidents' observations have been published in the *Gazette*.

8.4 General advice was given to members during the course of the year on various issues arising as to the scale costs to be charged in leases of new houses and in certain Land Commission matters. Recommendations were also made for a new scale of charges on debt collection.

8.5 Discussions took place with the Probate Registrar regarding difficulties and delays members were encountering in the Probate Office. The Probate Registrar, Mr. Waldron, was most helpful and co-operative in all these matters and it is hoped that the position has improved although it is only fair to report that members and their own staff were very often responsible for difficulties encountered.

8.6 The Committee is always ready to advise and report to the Council on any matters relating to costs and Court Offices. Finally as Chairman I would like to thank all my colleagues on the Committee for their attendance and valuable assistance during the year.

EDUCATION COMMITTEE

John F. Buckley,
Chairman

Adrian P. Bourke
Maurice R. Curran
Joseph L. Dundon
Roderick D. O'Donnell
James W. O'Donovan

9.1 Following on the great influx of Apprentices during the last few years the work load imposed on the Society's Staff and on the Education Committee has increased greatly. As soon as the Education Advisory Committee had been formed the Education Committee delegated to it the task of giving primary consideration to the arrangements for the Society's New Education System and in particular the establishment of the Society's Professional Law School in 1978. subject to the over-riding control of the Education Committee.

9.2 The Education.Committee itself has concerned itself primarily with the present system of Education and in doing so has continued its policy of regular Meetings with the University Law Faculties. The Deans of the Faculties have been of considerable assistance to the Society in accepting large numbers of Apprentices for the Special Courses given in the Universities but in the year under review the Universities were unable to provide places for all the Applicants and some Apprentices had to be postponed until the Academic Year 1976/77. Happily, the Universities were in the Current Year able to take all those who had been postponed from the previous year and also to accommodate all those who had been Apprenticed before the 1st of October, 1976.

9.3 The number of Candidates presenting themselves for Apprenticeship after the 1st October 1975, was greater than that which had been anticipated by the Society and suggests that University Graduates, finding other employment outlets closed to them, had turned to Apprenticeship instead.

9.4 The Committee has kept in particular review the situation in the Law Faculty in University College, Galway, which the Society has for some years considered to be unsatisfactory, particularly in relation to Staffing. Following the referral to the Higher Education Authority of the request from University College, Galway, for additional Staffing in the Law Faculty the Chairman and Director General attended upon the Higher Education Authority to support the request from U.C.G. No announcement has yet been made as to whether the additional Staffing will be approved. The Society has not therefore been able to see its way to change its position that it will not recognise the U.C.G. Law Degrees as sufficient for the Society's purposes after 1978.

9.5 The Committee is particularly concerned at the high failure rates in recent Examinations which appear to suggest that the Educational requirements for entry to Apprenticeship may have been too low in recent years. Analysis of the results shows a disturbing trend in that Candidates who have received Exemptions in a number of Subjects in the Examinations appear to have a poor pass rate on repeating the Examinations in the other Subjects.

John F. Buckley,
Chairman

9.6 The Committee received representations from its Examiners that they were under continuing pressure from Candidates who had failed in the Examinations to review their marks and discuss their papers with them. The Committee's ruling in relation to this matter was that no Candidates failing an Examination on the first occasion should be entitled to a re-check or advice but that if a Candidate had failed a particular Examination three times the Examiners'advice in relation to that particular Candidate might be sought. Where a Candidate has failed a particular Subject in an Examination on a number of occasions the advice of the Examiner may be sought.

9.7 The work of the Committee is onerous, particularly as Members tend to be the recipients of representations made by various parties in relation to the progress or otherwise of Apprentices and because of the growing number of Applications from Apprentices requesting some favourable treatment or other. In many cases these Applications are pointless because the Committee is operating within the stringent terms of the Solicitors Act and has no power to grant the favours requested. The Committee would be grateful if Members of the Profession would check the provisions of the Act to see if the Committee is in fact empowered to grant the favour requested before making representations to Members of the Committee.

EDUCATION ADVISORY COMMITTEE

John F. Buckley,
Chairman

Adrian P. Bourke
Maurice R. Curran
Dr. Bryan McMahon
David Moloney
Roderick D. O'Donnell
Brian K. Overend
Henry Sexton
Laurence Shields

10.1 The Education Advisory Committee was established under the provisions of the Statutory Instrument bringing the Society's New Education System into operation and was appointed in December of 1975. It is composed of four Members of the Education Committee of the Society, one Representative of the Society's Lecturers and Examiners, Dr. Bryan McMahon of the Law Faculty University College, Cork, an Apprentice and two ordinary Members. By agreement with the Education Committee the Advisory Committee has confined its activities to matters concerned with the introduction of the new Education System and has not involved itself in advising on the old system.

10.2 The Committee has met monthly and in addition had two Special Meetings in the month of August on the occasion of the visit of Mr. Kevin O'Leary of the Legal Workshop of the Australian National University at Canberra to the Society. The chief concern of the Committee throughout the year has been the establishment of the Society's new professional course which will commence in 1978 and it was to that end that Mr. O'Leary was invited to meet the Society to discuss the operation of the Legal Workshop at Canberra which is similar in concept to the Society's Professional Law School and for Mr. O'Leary to advise generally on the Society's proposals. Much valuable information and assistance has been received by the Society from Mr. O'Leary and following his visit the Committee recommended to the Council that Mr. Harry Sexton be appointed as a full time Education Officer with responsibility to assist in the establishment of the new course and that he should visit and participate in the operation of the Legal Workshop at Canberra and visit similar Schools in other Australian Cities. Mr. Sexton's visit to Australia is planned to commence in mid-October.

10.3 Among the other major topics which have concerned the Committee since its establishment have been:

(1) The establishment and monitoring of the Society's new Preliminary Examination which was held for the first time in July of 1976.
(2) The monitoring of Courses which Regional Technical Colleges are establishing for School Leavers who wish to train as Law Clerks. This is an area of considerable concern to the Committee who would wish to ensure that the products of such courses would be suitably trained and that the requirements of the profession would be paramount.
(3) The provision of courses in the Universities for Apprentices in the new system who are not qualified to enter the Society's Law School and who must pass the Society's First Law Examination in the "core subjects" (6 Law Subjects).
(4) The provision of Day Release courses for existing Law Clerks. As the Society will in the future have adequate premises and substantial quantities of teaching materials, as well as more qualified instructors available, it has been suggested that some pilot schemes for Day Release courses for Law Clerks in the Dublin area should be established. It is also hoped to provide concentrated courses for Law Clerks from outside the Dublin area.
(5) The development of the facilities in the portion of the Societys new premises which will be given over to Education.

10.4 As will be seen the range of the Committee's activities is considerable but I am pleased to say that a good deal of progress has been made on many fronts and for this the Members of the Committee deserve the considerable thanks of the profession for their exemplary attendance at Committee Meetings and the diligence with which they have participated in the work of the Committee.

PUBLIC RELATIONS COMMITTEE

Walter Beatty,
Chairman

Michael P. Houlihan
William D. McEvoy
Brendan A. McGrath
Peter Murphy
Thomas M. D. Shaw
Mrs. Moya Quinlan

Walter Beatty, Chairman

11.1 During the year a number of articles, critical of the profession, appeared in National and Provincia Newspapers. These were considered by the Committee, and where the substance of any article appeared to have some foundation the matter was pursued either with the writer or the newspaper concerned, and as a result the profession's point of view was projected, and those concerned were encouraged to approach the Society in future rather than to rush into print without checking their facts.

11.2 In a number of cases it was decided to ignore the critical approach of some articles, where they were obviously motivated by bias and were patently ill-researched. As a result of the necessity to follow up adverse publicity without delay, the Committee met at short notice with a view to making an immediate response, and the Society's consultant, Mr. Maxwell Sweeney, was invaluable in his assistance on these occasions.

11.3 As a result of the necessary expansion in the secretariat's staff dealing with complaints, it is felt that the number of genuine causes for complaint has been reduced, and if this trend continues it is obvious that the volume of criticism will reduce, and hopefully appear mainly as the "crackpot" variety in the future.

11.4 The Committee feels that the news sheet which started in the previous year has helped as a means of communication to all the members of the profession. However, continuous concentration is necessary to expand and improve the communications media of the Society, and, with this end in view, the Society of Young Solicitors have agreed to contribute to the Society's *Gazette* in future issues. It has been arranged that their comment and articles will generally run into two pages, and when required further space will be provided. Their first contribution will deal with family law and they have put together a very interesting programme dealing with the law concerning marriage, which may be issued as a separate publication when the series ends.

11.5 Mr. John F. Buckley, at the suggestion of the President of the High Court, approached the Committee with a view to reporting unreported judgments in the *Gazette*, and this has now commenced and is on the basis that the pages carrying these judgments can be extracted from each issue and kept by members on an easy reference file.

11.6 The Committee approved of a leaflet concerning the future educational requirements of apprentices and this was, in fact, circulated with the application for practising certificates in January 1976. In the same month, Mr. Preben Scheel lectured on E.E.C. Agricultural Law in the Society's library.

11.7 F.L.A.C. suggested that a leaflet might be sponsored by the Society in relation to flats and, subject to the Society's prior approval, this is now in the course of being done. The question of the Registration of Wills, and Professional Privilege under the Guardianship of Infants Act 1964 was referred to the Committee and the former will be brought before the meeting of the Bar Associations to be held on the 11th November next, whilst the latter, as the result of a report from an ad hoc committee, will be considered further with a view to deciding whether representation should be made to the Department of Justice or not.

11.8 This year the Committee was involved in receptions which were held to launch the publication of J. C. W. Wylie's excellent book on Land Law and Mr. Robert Johnston's equally excellent book on Wealth Tax. Judge Kenny spoke, when the former publication was launched, and the Chairman of the Revenue Commissioners addressed the meeting to launch Mr. Robert Johnston's book.

11.9 During the year the Committee had the distinct feeling that the media was approaching the Law Society for comment more than ever before, which is part of what a Public Relations exercise is all about. The profession then obtains the first-hand opportunity to represent its viewpoint before the issue is clouded by comment which takes a damaging headline without any reference whatsoever to the views of the profession. In no small way has this goal been assisted by the voluntary donation by a number of the members of the Society of their spare time to take a Radio and Television Course. R.T.E. has been informed that there is a panel of speakers who will be available to discuss aspects of the law and matters concerning the profession as they arise, and the authority is now aware that if they approach the secretariat, and if the matter is of concern to the profession, that they will get a response.

11.10 Having been reasonably optimistic in this report, it is important to emphasise that there is no cause for complacency, and that public relations is an on-going operation, and that the goodwill that is built up with the media must not be allowed to falter because of failure to follow up and renew satisfactory contacts that have been made with persons who when they hear the profession's point of view find that the Law Society is indeed a responsible body, with highly convincing arguments, and is, therefore, at all times worthy of being heard.

11.11 I would like to take this opportunity of thanking the members of this Committee who devoted many hours and splendid dedication to the work which came before us during the year.

PREMISES COMMITTEE

Moya Quinlan,
Chairman

Joseph L. Dundon
Thomas Jackson
William D. McEvoy
Ernest J. Margetson
Patrick F. O'Donnell
Peter D. M. Prentice

Mrs. Moya Quinlan, Chairman

12.1 Members will remember that last year when reporting on the commencement of work at the Kings Hospital School, the hope was expressed that the first stage of the development would be completed within eighteen months. In fact it has been completed within twelve months and provided the requisite number of telephone lines are made available, it is hoped that the administrative section of the Society will be in occupation of the building by Christmas.

12.2 Work has commenced on Stage Two of the development which comprises the South wing of the huilding. It is hoped that the work here will proceed as rapidly as on Stage One, since it is of this section of the building that the greatest use will be made by both members and students.

12.3 The Committee has during the year made the fullest possible use of the Solicitors' Buildings, both for Consultation and Arbitration rooms. It is intended to continue to make available to members these facilities for which there appears to be such a demand.

12.4 Committee members have again shown their awareness of the importance of the work to be done for the Society, by their diligent attendance at the meetings called during the year.

DISCIPLINARY COMMITTEE

Thomas A. O'Reilly,
Chairman

Thomas H. Bacon
Bruce St. J. Blake
James R. C. Green
John Maher
Francis J. Lanigan
Patrick Noonan
Thomas Jackson
Roderick J. O'Connor
Robert McD. Taylor

Thomas A. O'Reilly,
Chairman

13.1 Since 30th September 1975 the Disciplinary Committee met 21 times.

New cases commenced after 30th September, 1975	29
OF THE 29 NEW APPLICATIONS	
(a) No prima facie case decided	3
(b) Prima Facie case found	26
OF THE CASES NOW AT HEARING	
(a) Findings of misconduct	11
(b) Findings of no misconduct	2
(c) At or awaiting hearing ...	29

13.2 Twelve Reports have been presented to the President of the High Court (three are outstanding). Of these:
(a) One Solicitor was struck off the Roll of Solicitors.
(b) One suspension from practice was extended for a further six months.
(c) Six cases are before the High Court.
(d) One case was disposed of on an Order of "costs only".
(e) One Solicitor was fined and censured.
(f) Freezing orders were obtained against the accounts of two Solicitors.

13.3 Mr. P. C. Moore resigned on being appointed President. Mr. James Green filled the vacancy thereby created.

E.E.C. and INTERNATIONAL AFFAIRS COMMITTEE

Anthony E. Collins,
Chairman

Adrian P. Bourke
John F. Buckley
John G. Fish
John B. Jermyn
Brendan A. McGrath
Gerald J. Moloney

Anthony E. Collins,
Chairman

14.1 At the end of last year Ireland was the host Country for the Meeting of the Commission Consultative des Barreaux de la Communaute Europeenne. This influential group of Lawyers from all the Countries of Europe had two and a half days in session and a full social programme. The success of the meeting was largely due to the work of John Moloney and the work of the Secretariat of the Law Society, especially Margaret Byrne.

14.2 Throughout the year numerous discussions were held with the Department of Justice in connection with a Directive concerning the Freedom to Provide Limited Services by Lawyers. This Directive regulates the conduct of Lawyers practising in otherCountries throughout the E.E.C. While the principle of freedom to practise throughout Europe has considerable appeal, the reality is quite different. There are obviously dangers both to the Solicitor and the client where, for example, an Irish Lawyer wishes to give advice and provide services in Germany or a French Lawyer wishes to do likewise in Ireland.

It had been expected that a considerable time would elapse before this Directive would come into force but at a recent meeting in Brussels a considerable number of points were disposed of and it now looks as though the Directive might come into force in the reasonably near future.

14.3 The Committee is very anxious to have an E.E.C. Central Library but it seemed for a while that there was no possibility of such being available because of the current recession. However, there have been certain developments lately and we are hopeful that it will be possible to establish such a Library in the near future.

14.4 Last year we had a Meeting with the E.E.C. Committee of the Northern Ireland Law Society for the purpose of exchanging information and seeing the extent to which we could co-operate regarding E.E.C. matters. It was agreed that they would contact us again and arrange meetings of the Sub-Committee but in fact they have not yet done so.

14.5 We continued to provide commentary and liaise with the Departments on various Directives and Conventions including those relating to Bankruptcy, Consumer Credit and Protection, Security over Moveable Goods, Insurance, Judgments, and Suretyship. In addition a Questionnaire was answered on the matter of Product Liability in the Pharmaceutical Industry and the Committee was represented at a Meeting on this subject at the International Bar Association in Stockholm.

14.6 Members of the Committee continue to represent the Society at Meetings of the Commission Consultative and the Union Internationale Du Notariat Latin.

14.7 A letter was received from the English Law Society inviting the Bars and Law Societies of this Country, as with all other European Countries, to enter into discussion with a view to concluding inter Bar Conventions. Such an Inter Bar Convention has already been entered into between the Bar in Paris. and the Solicitors and Barristers in London. We have agreed in principle to participate in such discussions

14.8 A considerable amount of work has been done on all these matters during the year. Unfortunately due to the very considerable amount of new Draft Legislation that arrives from Brussels, most of the work of this Committee consists of reacting to such new Legislation. We hope that at some future time it will be possible to take the initiative in more matters.

COMPANY LAW COMMITTEE

Brian O'Connor,
Chairman

Walter Beatty
Anthony E. Collins
Francis D. Daly
Michael G. Dickson
Mary Finlay
Houghton Fry
Patrick C. Kilroy
James M. O'Dwyer
Laurence K. Shields

15.1 The main activities of the Committee comprised surveys of an comment on, proposed national and European legislation affecting companies and their activities. In the national sphere the committee made further observations on the Mergers and Monopolies (Control) Bill re-emphasising but with greater detail the critical comments which they made last year (and which are set out in this committee's report for 1974-75). The government's Worker Participation (States Enterprise) Bill was also examined in detail and a memorandum thereon was prepared for the Society's parliamentary committee. This bill provides for the appointment of one-third of the directors of certain state bodies on election by employees. While the Bill is of course strictly confined to certain State Companies, it might be that its provisions when enacted would be used at some time in the future as models for the private sector. Such decision would, of course, be a radical political one. However, there are certain legal matters which the Committee felt could be raised on the Bill. These related chiefly to the possible conflict by the directors elected by the employees between their duties to their company and the duties which they might hold they had to those who elected them. It was felt by the Committee that this matter had not been satisfactorily resolved in the Bill and recommendations were made which would do so. The Committee also made a report to the Parliamentary Committee on the impact of the Anti-Discrimination (Unfair Dismissals) Bill which is of course of great significance outside the boundaries of mere Company Law. The Bill adds compensation for unfair dismissal to the ever growing list of preferential creditors under section 285 of the Companies Act, 1963. The Committee also noted that once the Bill becomes Law it will be necessary to insert into all written Employment Contracts for a fixed period (e.g. a managing directors service contract) a term that it is not to apply to such contracts on their expiry. It is a matter which practitioners will have to pay careful attention to even before the Bill is enacted as this part of it is to operate retrospectively to the 16th September, 1976.

15.2 The Committee has also put in hand a brief review of the Companies Act, 1963 with a view to submitting to the Department of Industry and Commerce recommendations on short technical amendments which might be useful and this has just been completed. The chairman has attended meetings with the Institute of Chartered Accountants in Ireland to consider any changes in Company legislation which may be necessitated if Current Cost Accounting is to be widely adopted.

15.3 The Committee's activity on the various pieces of Company Law Legislation emerging from the European Economic Community continued. The Committee were pleased to be invited by the Oireachtas Joint Committee on Secondary Legislation to make itself available for discussion on E.E.C. legislation relating to Company Law. A constant review of draft legislation dealing with or affecting companies has been maintained. The second draft directive dealing with the Maintenance Increase in Reduction of a Company's Share Capital and the Payment of Dividends has not yet been adopted by the Council of Ministers. It is expected this should take place within the coming twelve months and if so it will then have to be implemented by legislation in this country. The Committee will take steps to ensure that the Profession is kept advised as to this and its meaning is suitably explained. A major activity of the Committee this year has been the preparation of a comprehensive report on the draft of the Statute of the European Company which has been submitted to the Department of Industry and Commerce. This envisages that a special form of European Company will be able to carry on business in any country in the Community. It seems unlikely that such Companies would be availed of very much in Ireland. The probability is that it will be some years before the Statute is adopted as a regulation. The Committee considered however that it was important that the Department of Industry and Commerce should be given legal assessment by members of the profession on the Statute particularly as it contains some principles which may find their way into E.E.C. Company Law applicable to National Companies over the coming years.

Brian J. O'Connor,
Chairman

15.4 Members of the Committee continued to assist the working parties of the Community in Brussels in conjunction with officials of the Department of Industry and Commerce. The directive which is most advanced after the Second Directive is, not surprisingly, the Third which deals with internal mergers and the machinery in relation to these for the protection of those directly interested. Similar work is proceeding on a Convention dealing with International Mergers within the Community. The Committee has not been directly concerned with the Fourth Draft directive which deals with the form of Annual Accounts which is of more direct interest to the accountancy profession. Working parties of the Commission Experts have just completed discussions on a draft Directive dealing with Takeovers by way of share acquisition and a complex Directive dealing with the Rights of Shareholders and Creditors of Groups of Companies. It is not expected that recommendation will go from the Commission to the Council of Ministers on these matters for some time. So, they are not likely to be part of National Legislation for some years.

15.5 The Committee has also considered a very important draft Directive dealing with the Rights of Employees who have to be consulted in the cases of Mergers and Takeovers of whatever kind. While the

Committee considered this Directive mainly from the point of view of Companies it should certainly be noted by members of the Profession that, in its present draft form, it is likely to cover any mergers or amalgamations of whatever kind including those of firms of solicitors. Comments on this draft directive were given on behalf of the Committee to the Departments of Labour and Industry and Commerce.

DIRECTIVES, REGULATIONS AND CONVENTIONS BEING EXAMINED BY THE COMPANY LAW COMMITTEE

INDEX TO NUMBERED HEADINGS

1. Description and Rome Treaty Basis
2. Study for Commission
3. Commission for Working Party of Experts
4. Publication of Draft by Commission for submission to the Council.
5. Opinion of Economic and Social Committee
6. Opinion of European Parliament
7. Latest Draft
8. Council Working Party.
9. COREPER (Committee of Permanent Representatives)
10. Council of Ministers' Sanction
11. Implementation of Directives or Conventions in force in Ireland
12. Notes
13. Law Society Committee comments

1	2	3	4	5	6	7	8	9	10	11	12	13
DIRECTIVES 1st Directive 68/151 Ultra Vires, pre-incorporation contracts and publicity requirements				1964	1966				1968	S.I. No. 163 of 1973		Memo to Oireactas Committee in 1974
2nd Draft Directive Formation of companies, maintenance, increase and reduction of capital			1970	1971	1971	1975	1976					1975 Memo sent to Dept. of I & Co.
3rd Draft Directive on Internal Mergers Article 58(2)			1970	1971	1975	March 1974	2nd Reading 1976					Memo sent to Dept. of I & Co. 1976
4th Draft Directive Annual Accounts			1971	1973	1972	1974	3rd Reading 1976					
5th Draft Directive Structure of Companies and obligations of their organs Article 54(9)			1972	1974	1976							
6th Draft Directive Content, supervision and distribution of prospectuses			1972	1974	1974						First Reading in Council	
Draft Directive on Groups of Companies Article 54	1974 Working Paper Dr. Hans Wurdinger	1976 Second reading Completed									Formal Proposal expected in 1977 from Commission	
Draft Directive on Takeover Bids Article 58	Report of Professor Pennington 1974	1976 1976 First Reading Completed									Formal Proposal expected from Commission in in 1977	
Draft Directive on Co-ordination of Unit Trust legislation			1976								European Parliament in 1976	
Draft Directive on Group Accounts											Council's second reading in 1976	
Draft Directive on the Rights of Employees in the case of Mergers Takeovers and amalgamations			June 1974		April 1975							
Draft Directive on Commercial Agents	Draft Directive circulated by Commission 1974										It is understood that the Commission is now consulting with individual Member States	Memo sent to Dept. of I & C. 1974
Avant project on harmonisation of listing requirements	December 1974										Draft Directive at end of 1976	
REGULATIONS Draft Regulations for a European Company Statute Article 35			1970	1972	1974						Council Working Groups to start from October 1976	Memo sent to Dept. of I & C. 1976
Draft Regulation for a European Co-operation Grouping Article 235			1973		Considering the draft						Parliament	
Draft Regulation on the Control of Concentrations			1973	1974	1974						Discussion in Council	
CONVENTIONS Draft Convention on International Mergers Article 220	Goldman Working Paper	Meeting still in progress	1973									
Draft Convention on Bankruptcy and Winding-up Insolvent companies		Meeting still in progress										
Convention on the Mutual Recognition of Companies											Ratified by all the original six except the Netherlands. No immediate likelihood of Ireland adopting it.	

LIBRARY

Colum Gavan Duffy
Librarian

16.1 The services provided by the Library have been expanded. Efforts have been made to increase the number of copies of students' textbooks to cope with their increasing number. The process of photo-copying has greatly reduced the number of books lent, as most Courts now accept photocopies without question. Intricate queries continue to be received, mainly from abroad, dealing with the tracing of ancestors who were solicitors.

16.2 Progress is being made in gradually re-issuing the unreported judgments of the High and Supreme Courts by subject, instead of in chronological order, as heretofore. The object is to facilitate inquiries about judgments on a particular subject. Some of the judgments of Circuit Judge McWilliam, before he ascended the High Court bench, have become available, and it is hoped that this will induce other Circuit Judges to part with their written judgments. Mr. Wylie's book on Irish Land Law, and Mr. Johnston's book on the Wealth Tax, published during the year, have been welcomed by all.

16.3 Since June, 1976, a short list of written judgments, issued monthly, containing a summary of all 1976 written judgments of the High Court and Supreme Court, has been issued as a pink page supplement to the *Gazette*; this has proved a great boon to practitioners as has also the fact that unreported judgments are now printed on green paper, and thus easily traceable.

16.4 New editions of standard legal textbooks, as well as of new textbooks and issues of periodicals have been acquired. These were listed in the August, 1976, *Gazette*. There is unfortunately little space for the planned expansion of the Reference Section at the moment, but it is hoped to make this a priority, when the Library is transferred to Blackhall Place during the Summer Vacation of 1977. Appreciation and thanks are expressed to Mr. Desmond Clarke, former Librarian of the Royal Dublin Society, who has given invaluable assistance in the planning and design of the new library, and to the members of the Blackhall Place Commiteee for discussing these plans.

16.5 The total amount spent on the purchase of books for the year ending 30th April, 1976, was £3,310 and on the purchase of periodicals was £418, making a total of £3,728. The total amount spend on binding was £583. The corresponding amounts last year in respect of books were £1,567, periodicals, £307, and binding, £310. In view of inflation, there is an inevitable tendency for these prices to rise, but it is essential for the Library to provide essential books for the needs of members.

Colum Gavan Duffy,
Librarian and
Editor of the Gazette

16.6 The legal publications of the European Communities, consisting of the daily Legislation and Information Sections of the Journal, the Bulletin, the Annual Report of the Council, and the judgments of the Court, have been received. Arrangements were made, upon my visit to Strasbourg, to receive the legal publications ot fhe Council of Europe.

16.7 The Librarian attended the Annual Conference of the British and Irish Association of Law Librarians in Oxford in September. He also took part, with 25 other Irish Librarians of the Special Libraries Section of the Irish Library Association, in a visit to the institutions of the European Economic Community—the Commission and the Council of Ministers in Brussels, and the European Parliament, the European Court of Justice and the Official Office of Publications in Luxembourg. As an academic lawyer, I was awarded a Bursary by the Council of Europe to attend the Fourth Conference of Professors of Law on the teaching of Comparative Law in Strasbourg in October, and out of 140 participants, was the only Irish representative. Appreciation is expressed to the Council and to the Director General for their assistance.

COSTS COMMITTEE

Gerald J. Moloney,
Chairman

Denis J. Bergin
Thomas Callan
Laurence Cullen
John J. Dockrell
Dominic Kearns
William D. McEvoy
Robert Pierce
John Rochford
Raymond M. Walker

17.1 Since the last Report a year ago the Cost Committee met on a number of occasions to complete the preparation of the Society's Submission to the Consultant appointed by the National Prices Commission. With considerable measure of help from the Society's Accountants, Messrs. Cooper & Lybrands, a final draft of the Submission was achieved which the Committee thought was the best they could reasonably hope to produce having regard both to the limited time at their disposal and the practical difficulties of acquiring any further statistical information or drawing further conclusions from that information within the time available.

17.2 The Submission was completed and presented to Professor Lees in February. Subsequently the Committee answered some queries which he raised on it particularly in relation to the basis for the minimum charge of £50.00 in Conveyancing matters referred to in paragraphs 16. (i) (b) (ii) and (iv) and the proposed abolition of the Land Registry half scale fee.

17.3 The Committee understand that since receipt of the Submission Professor Lees has submitted an interim Report to the National Prices Commission and that his final Report should be in the hands of the Commission by the time this Report is published.

17.4 Despite Submissions by the Society the Commission has declined to deal with any proposed increase before Professor Lees' final Report is available.

Gerald J. Moloney,
Chairman

17.5 The Council caused copies of the Submission to be circulated confidentially to members of the profession in August and the Committee, who have suggested to the Council that a permanent Costs Committee might be formed, think that it would be helpful to them or their Successors if any member wished to make any constructive criticism or suggestion arising either out of matters covered in the Submission or any other matter in relation to costs.

CONVEYANCING COMMITTEE

William A. Osborne,
Chairman

John F. Buckley
Maurice R. Curran
John Maher
Francis J. J. Murphy
Roderick D. O'Donnell
Mrs. Moya Quinlan

18.1 This Committee was established in November, 1974 to consider amendments required to the Society's Contract for Sale, the Society's Requisitions on Title and also to design a scheme for the sale of Flat Dwellings and to examine generally areas of conveyancing practice where up-dating and change was deemed necessary or desirable.

18.2 It was a rather daunting brief and indeed when the Committee applied itself to its task, the very wide area involved became only too apparent.

18.3 As its first priority the Committee set to the difficult task of amending and up-dating the Society's Contract for Sale. After much consideration and spearheaded by Messrs. Buckley and Curran, Committee Members, the creation of a Contract in a format which could be adopted for Sales either by Private Treaty or Public Auction was undertaken. Ultimately the draft Contract was presented at a Seminar of the Society of Young Solicitors in Killarney in April 1976. Later the final draft was presented at the half-yearly meeting in Tralee in May, 1976. Comments and suggestions from each of the meetings were considered and the final Contract went into print in July of this year and is now available to the profession and in general use. The Contract is designed to meet with a sale by Private Treaty or Public Auction and its terms were designed to create a fair balance between a Vendor and a Purchaser.

18.4 Preparation of the new Requisitions on Title have been delayed by reason of the many changes in legislation which have taken place in the past eighteen months in the field of taxation, planning and family law. A draft of the new Requisitions on Title has been prepared and this draft is presently with Counsel for approval. It is hoped to complete the draft at an early date so that the new Requisitions in final form will be available to the profession in the early part of next year.

18.5 The creation of a scheme for the Sale of Flats has been processed to an advanced stage. Understandably there are many problems in the relationship between the Developer, the Lessor, the Management Company or Agency and the Lessee Owner. The draft scheme of documentation has received approval in principle from solicitors acting for Lending Institutions and the draft documents are presently with Counsel for final approval. Again, it is hoped to have the finally approved documentation made available to the profession in the early part of next year. In relation to this project I would like to express appreciation of the help and assistance which the Committee has received from the Society of Chartered Surveyors who have made a very useful contribution, to the solicitors acting for Lending Institutions who have also put forward useful and helpful comments and in particular, to the Sub-Committee comprising Mrs. Blanaid O'Brolcháin, Martin Clarke, John Fish and Brian O'Flaherty, who spent many useful hours in preparing the initial draft documentation which was a most onerous task.

18.6 In relation to the Society's Building Contract, the Committee have had useful meetings with the Federation of Builders and discussions are still in progress with a view to having an amended form of Building Contract accepted by the Federation of Builders and for general use in building schemes.

18.7 Mr. Rory O'Donnell has been dealing with the problem of Architect's Certificates which are being sought in respect of new houses and has had meetings with the Architects Association and with the solicitors for Lending Institutions with a view to the preparation of a form of Certificate acceptable to the Association of Architects and to the Lending Institutions. The assistance of Counsel has been sought in this matter and it is hoped that a Certificate in final form, acceptable to all parties concerned, will be available at an early date.

18.8 The most difficult piece of legislation introduced during the year proved to be the Family Home Protection Act. The Act was introduced in the Dáil and became law within a matter of weeks. On the passing of the Act the Committee met, as a matter of urgency, to consider the implications of the Act from a conveyancing point of view and having considered the sections in question, issued a preliminary memorandum by way of warning to the profession as to the problems created by this legislation. Since its introduction it has become only too apparent that the Act has created many involved problems in the Sale of a Family Home from a conveyancing point of view. The various implications of the legislation are still under consideration by the Committee and Counsel's Opinion has been sought in relation to some of the problems which exist and a further memorandum will be issued to the members as soon as the Committee's deliberations have concluded. The Committee may be obliged to make representation to the Minister for Justice seeking some amendments. The Committee will, however, deal with this matter as one of urgency and will communicate with the members further as soon as possible.

18.9 Members of the Committee have since its inception had meetings with the Associated Banks in relation to the practice adopted by the Banks in lending for house purchase and further meetings will be held until an acceptable procedure in this matter has been reached. Various Committee members have from time to time been in contact with the Land Registry and the other Government Departments in relation to problems which have arisen in the conveyancing field and will continue to do so. The Committee is grateful to the officials involved in these areas for their co-operation and consideration in meeting Committee members and discussing problems which arose. In the above circumstances I would like to express my full appreciation of the enthusiasm of the Committee members and thank them for the very valuable contribution which they have made to the work of the Committee in the interests of the members of the Society.

LAW SOCIETY REPRESENTATIVES

Bruce St. J. Blake
Francis X. Burke
Laurence Cullen
Gerard M. Doyle
Joseph L. Dundon
P. McEntee
Enda C. Gearty
Gerald J. Moloney
Robert McD. Taylor

19.1 During the year one full meeting and one sub-committee session of the Law Clerks Joint Labour Committee were held in the offices of the Labour Court, Mespil Road, Dublin.

19.2 A Motion was proposed by P. J. O'Brien of the Worker's representatives: "that the current Employment Regulation Order be revised as follows to take into account the inadequacy of the present rates and the requirements of the Anti-Discrimination (Pay) Act 1974:

1. Managing Clerks:
   £65.00 per week.
2. Conveyancing Clerks and Cost Clerks:

1st	Year of	Employment	£50.00	per	week.
2nd	,,	,,	,,	£50.00	,, ,,
3rd	,,	,,	,,	£60.00	,, ,,

3. General Law Clerks (Male & Female):

1st	Year of	Employment	£28.00	per	week
2nd	,,	,,	,,	£30.00	,, ,,
3rd	,,	,,	,,	£33.00	,, ,,
4th	,,	,,	,,	£36.00	,, ,,
5th	,,	,,	,,	£39.00	,, ,,
6th	,,	,,	,,	£42.00	,, ,,
7th	,,	,,	,,	£45.00	,, ,,
8th	,,	,,	,,	£48.00	,, ,,
9th	,,	,,	,,	£52.00	,, ,,

After hearing arguments from both parties, the Chairman, Mrs. Yvonne Murphy agreed to defer the meeting pending the report of a sub-committee, comprising three members from both sides, on the question of revision of categories of employees listed in the E.R.O.

19.3 A second meeting was scheduled for 18th November, 1976, to consider the report of the sub-committee and also the motion proposed by Mr. O'Brien at the first meeting. The consensus of opinion at the sub-committee was that the six existing categories should be reduced to four:

1. Managing Clerks,
2. Conveyancing and Cost Clerks,
3. General Law Clerks and Bookkeepers,
4. Typists, Receptionists and Messenger Boys.

19.4 The Council expressed concern that any Solicitor should fail to pay the Statutory Minimum. However, as no specific names had been forwarded to the Law Society and the Department of Labour was not prepared to disclose names of the firms concerned the Council regretted that no useful action could be taken by them. Council was of the opinion that the individual Bar Associations, with the benefit of superior local knowledge, could help to ensure that Solicitors in their area would not pay less than the Statutory Minimum Wage.

19.5 Council warns members that failure to pay the prescribed minimum rate will leave the particular member open to prosecution. The Department of Labour intends to prosecute without further warning in all cases of non-payment of the prescribed minimum rate.

SOCIETY OF YOUNG SOLICITORS

Guidelines - Family Law

1. MARRIAGE

Principal Statutes

(1) Marriages Act 1537
(2) Marriages Art 1542
(3) Lord Lyndhurst's Act 1844.
(4) Marriages (Ireland) Act 1844.
(5) Marriages (Ireland) Amendment Act 1846.
(6) Marriages (Ireland) Amendment Act 1849.
(7) Marriages (Ireland) Amendment Act 1863.
(8) Registration of Marriages (Ireland) Act 1963.
(9) Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870.
(10) Deceased Wife's Sister Act 1907.
(11) Deceased Brother's Widow Act 1921.
(12) Adoption Act 1952.
(13) Marriages Act 1972.

Principal Statutory Instruments

Marriages Act 1972

1. S.I. No. 12 of 1973 – Commencement Order.
2. S.I No 175 of 1973 – Commencement Order.
3. S.I. No. 374 of 1974 – Commncement Order.

Who can marry?

Subject to the following requirements any person over *21* **years** of age can marry:

(i) They must be of sound mind;
(ii) They must freely consent to the marriage;
(iii) They must be unmarried at the time of their marriage;
(iv) They must not be related to each other within the prohibited degrees of consanguinity.

A person *under 21* years but over 16 years of age, being neither a widower or widow nor a ward of court requires: *either*

(i) The consent of both his parents or surviving parent or all his testamentary guardians or sole guardian as apropriate;

or

(ii) Where any surviving parent or any surviving testamentary guardian does not give consent or if he has either a surviving parent nor a surviving testamentary guardian the consent of the President of the High Court

to the marriage.

Any such marriage without either of the above consents is *illegal.*

A person under 16 years of age cannot under any circumstances marry without the consent of the President of the High Court. Any marriage without such consent is *void.*

An infant who has been taken into the wardship of the Court also requires the consent of the President of the High Court to the marriage and any marriage without such consent is likewise *void.*

Form of Application to President of the High Court

An application may be made by or on behalf of either party to the intended marriage and without the intervention of a next friend. It may be made informally through the Registrar of Wards of Court in accordance with rules of procedure directed by the President of the High Court.

Where the party is *under 16* application for consent must be made under Section 1 of the Marriages Act 1972.

Where the party is *over 16* but under 21 application for consent must be made under Section 7 of the Marriages Act 1972.

Where the party is a *Ward of Court* application for consent must be made by notice of motion in accordance with the rules of procedure relating to wards of Court.

Special forms can be obtained from the Registrar of Wards of Court (Form No. 1 for persons under 16, Form No. 2 for persons over 16 but under 21) which requires to be completed by the applicant and filed with the Registrar when a date will be fixed for the hearing. The hearing before the President will normally be fixed for a date within two weeks of the date on which the application is filed but this will depend on the number of applications before the President at any given time.

Form of Hearing

The application is heard and determined by the President of the High Court in private. It is informal and it is not necessary for the applicant to have legal representation. The President will be particularly concerned to interview, personally, the parties to the intended marriage and interview, or receive submissions from, any other person who feels are in a position to be of assistance to him in determining whether or not the requisite consent should be given.

Costs of Application

No court fees are charged in relation to the application. The applicant will, however, be liable for the professional fees of any legal, medical or other advisers whose services he obtains and any expenses which he incurrs in attending at the hearing.

Appeal

The Marriages Act 1972 does not provide for any appeal from the decision of the President of the High Court but it would appear from general principles that a right of appeal to the Supreme Court exists.

FORM OF MARRIAGE

All marriages must be solemnised before a Minister of Religion licensed by the State to officiate at marriages or upon the authority of a licence or certificate issued by the Registrar of Marriages.

(i) *Religious Marriages*

Marriage may either take place in accordance with the rite of the Catholic Church or in the case of other denominations in accordance with the Marriage Act relating to the licensed Ministers of such denomination. Such religious marriages are recognised by the State as valid and the officiating Minister of Religion acts as the civil registrar for the purpose of recording the marriage.

(ii) *Civil Marriages*

Persons intending to be married must serve notice of the marriage upon the Registrar of the district in which they reside and if they reside in different districts notice must be served on the Registrar of each district. Where the marriage is to be contracted in the Registry Office the Registrar is required at the expense of the parties to the marriage to publish notices at least once in two consecutive weeks next after receiving the notice in a newspaper circulating in the district in which the marriage is intended.

Where the parties wish to have a State wedding only, the marriage will be solemnised on the authority of a licence or certificate issued by the Registrar of Marriages.

(a) *Marriage by Licence*

In the case of marriage by licence it is necessary for each party to have resided within the district of the Registrar on whom notice is given for the *fifteen days* immediately preceding the service of notice.

The party giving notice is required to declare that there is no lawful impediment, that the parties have during the month immediately preceding the notice usually attended Divine Worship in the building named in the notice, that one of them has resided for at least fifteen days in the district of the Registrar on whom the notice is served, and, in the case of minors, that the requisite consents have been obtained. Where the parties have not been attending Divine Worship the form of declaration requires to be amended. On the *eighth day* from the day of entering the notice, a licence may be issued by the Registrar provided that the marriage has not been forbidden or a Caveat entered against it.

(b) *Marriage by Certificate*

In the case of marriage by certificate, it is necessary for each party to the marriage to have resided within the district of the Registrar to whom the notice is given for the *seven days* immediately preceding the service of the notice. A declaration similar to that for marriages by licence, except as to length of residence should be made at the time of giving notice by the party serving the notice. On the twenty-second day a certificate may be issued by the Registrar if the marriage has not been forbidden or a Caveat entered against it.

The costs of a Civil Marriage are, apart from the publication of the requisite notices in the newspapers, minimal.

Foreign Marriages

The State will generally recognise marriages contracted abroad if they are recognised in the State in which they are contracted although such recognition may be affected by the laws of the State relating to the recognition of foreign divorce.

Case Law

R. v MILLIS (1943) 10 Cl. and Fin. 534 (Validity of Marriage, Presence of Priest);

PIERS v PIERS (1849) 2 H.L. 331 (Presumption in Favour of Validity);

BEAMISH v BEAMISH (1861) 9 H.L. Cas. 274 (Validity of Marriage, Absence of Independent Priest);

COURTNEY v MILES (1877) Ir. R. 2 Eq. 284 (Validity of Marriage, Compliance with Requirements);

USSHER v USSHER (1912) 2 I.R. 445 (Validity of Marriage, Application of Canon or Pre-Reformation Law);

LORD ADVOCATE v JAFFREY (1921) 1 A.C. 146 (Domicile of Dependency);

MULHEARN v CLEARY (1930) I.R. 649 (Presumption of Validity in Case of Cohabitation);

TILSON v TILSON (1951) I.R. 1 (Religious Upbringing of Children);

PEOPLE (A.G.) v BALLINS (1964) Ir. Jur. Rep. 14 (Validity of Registry Office and Church Marriages);

CORBETT v CORBETT (1970) 2 All E.R. 33 (Requirement to be of opposite sex).

Bibliobraphy

1. "Bromley's Family Law" (4th Edition) (Butterworths). (Supplement to the 4th Edition published in 1974).
2. "Principles of Family Law" (1st Edition: Sweet and Maxwell), by S. M. Cretney.
3. "The Law and Practice of the Court for Matrimonial Causes and Matters" by W. H. Kisbey.
4. "The Marriage Law of Ireland" by W. Harris Faloon.
5. "Family Law" by Margaret Puxton.
6. Series of five successive articles in the Irish Times from 12th March, 1974 to the 16th March, 1974 by William Duncan and James O'Reilly.
7. "Fundamental Rights in Irish Law and Constitution" (Chapter IX, 2nd Edition) by J. M. Kelly.
8. Society of Young Solicitors Lectures:
   (a) Lecture No. 33 "Family Law" delivered by Donal Barrington, S.C., March 1968.
   (b) Lecture No. 46 "Some Aspects of Family Law" delivered by Mr. Justice Kenny, March 1970.
   (c) Lecture No. 69 "Family Law in the High Court in the Irish Republic" delivered by Robert Barr, S.C., November 1972.
9. "The Family and the Law" by Goldstein and Katz.
10. "The Formation and Annulment of Marriage" by J. Jackson.

A SUPPLEMENTARY ASSESSMENT OF THE LATE MR. JUSTICE GEORGE GAVAN DUFFY AS JUDGE

by Thomas Conolly, S.C.

I am prompted to write a footnote to Mr. Frank Connolly's admirable "Interim Assessment of the late Mr. Justice Gavan Duffy as Advocate and Judge" published in the *Gazette* of August, 1976. (The late Judge was so well known to us practising barristers as 'Gavan' that I maye be excused for referring to him simply as 'Gavan Duffy').

I believe that I have certain qualifications to write on the subject. I was the first (in time) of a number of 'devils' who enjoyed the inestimable advantages of his tuition during Gavan Duffy's days of practice as a Junior Counsel at the Irish Bar. As a consequence I remained in close contact with him after he took silk and I owe much to his advice and encouragement as a Senior Counsel. I had the pleasure of fairly frequent appearances in his Court after his elevation to the Bench.

It would be hard to better the substance or style of Mr. Frank Connolly's appreciation of Gavan Duffy's achievements as barrister and Judge. My hope is to supplement the latter's appreciation, and perhaps suggest some change of emphasis. Firstly, my memory vividly suggests that Gavan Duffy's passionate devotion (I do not eraggerate,) to the advancement of human rights in the eyes of the law, and to the rights of the private citizen in confrontation with executive authority, were his most clearly distinctive features as a lawyer. Certainly during his career at the Bar, and for much of his career on the Bench, he dealt with a generation of lawyers trained in a different tradition, and who in general approached the interpretation of the law in another spirit. The widespread recognition of the fundamental nature of human rights, now a commonplace in the legal world, did not receive such general acceptance during Gavan Duffy's early career at the Bar. It was to my knowledge always a first priority in his mind. Indeed such criticism of Gavan Duffy (I would not say obloquy,) as existed in legal circles, affecting the estimation in which he was held as a jurist, which Mr. Connolly seems to attribute in part to his activities in the field of politics, and in part to his inclination to change the settled (if archaic) law too much, in fact stemmed, in my view from the new outlook and legal philosophy which I have mentioned. I believe it is true that an older generation of lawyers casts a cold eye on this inclination (now notably displayed on the British Bench by Lord Denning, Master of the Rolls) to depart from law said to be settled, but which Gavan Duffy considered as obsolete and no longer binding on our Courts. I would not agree that the estimation in which Gavan Duffy was regarded by his brethren was affected in any material degree by old political controversies. Rather it was that as a lawyer he was ahead of his own time, nd that he was inspired by liberal principles which practically every genuine lawyer now regards as paramount.

I suggest that the two paragraphs cited from the late Judge's judgment in the *Tilson Minors* case (1951), as examples of the Judge's occasional use of Johnsonian idiom, strongly support the view here expressed, and deserve close examination and appreciation for their remarkable content rather than the mildest criticism of the language in which they are couched.

No practising lawyer welcomed more enthusiastically the enactment of our Constitution in 1937, in particular its guarantees of the fundamental personal rights of the family, of parents, and of the citizen. (I do not know if he had any part in the formulation of the Constitution, but it certainly expressed his conviction that there are fundamental rights which derive from the natural law and his emphasis on the fundamental rights of persons simply as human beings, as rights which transcend all positive law).

I think a further reference to two particular decisions of the late Judge is desirable in this context, because I believe that the paramount importance of the Constitution on the minds not alone of legal practitioners, but of the average citizen began to have effect largely as a result of these decisions, so that proceedings to enforce Constitutional rights are now almost an everyday occurrence in our Courts.

First was the case of *The State (Burke) v. Lennon and the Attorney General* (1940) I.R. 141. This case arose under Section 55 of the Offences against the State Act, 1939, purporting to enable the Minister for Justice to issue a warrant, upon being "satisfied" that a person was engaged in certain activities, to issue a warrant for the arrest and detention of individuals concerned. The late Judge held in granting *habeas corpus* that a law for the internment of a citizen without charge or hearing, outside the protection of criminal jurisprudence and even the Special Criminal Court, did not express the constitutional right to personal liberty; further, that a Minister of State, in signing a warrant under Section 55, was not only acting judicially, but was purporting to administer justice, which was also unconstitutional.

The following striking sentences occur in the judgment: "There is no provision enabling the Oireachtas

or the Government to disregard the Constitution in any emergency short of war or specific armed rebellion. The Constitution contains no express provision for any law endowing the Executive with powers of interment without trial.

"I am quite seriously asked to hold that this internment was not punishment at all, but merely a 'deterrent'. I shall refrain from painting this lily of speech. The document which the Act calls a 'warrant' is really a combination of a conviction, an order to arrest, and a warrant of committal. The Constitution, with its most impressive Preamble, is the Charter of the Irish People, and I will not whittle it away. In my opinion, the Conststitution intended, while making all proper provisions for times of genuine emergency, to secure his personal freedom to the citizen as truly as did Magna Carta in England. The rights to personal liberty were most deliberately drawn up in a national Constitution, drawn up with the utmost care for a free people; consequently the pomer to intern on shspicion or without trial is fundamentally inconsistent with the Rule of Law as expressed in our Constitution."

The consequences of this decision, by which many internees had to be released, and particularly of a raid on the Magazine Fort in the Phoenix Park, on Christmas Eve, in which much ammunition was stolen, but most of it was subsequently recovered, led to the introduction of the *Offences against the State (Amendment) Bill, 1940*, where the alteration was made from the 1939 Act that the mere personal "opinion" of the Minister was sufficient to enable the latter to issue the warrant, in place of the Minister "being objectively satisfied" as to the matters in question. This Bill was referred by the President to the Supreme Court under Article 26 of the Constitution and its constitutional validity was upheld by a majority of the Supreme Court with the result that such validity could no longer be challenged in any proceedings. The appeal against the late Judge's decision under the 1939 Act was held by the Supreme Court to be inapplicable, as no appeal against a habeus corpus decision was then valid. In the result, the latter decision remained good law, and it has been frequently cited as a valid authority in subsequent cases. The circumstances mentioned indicate that the late Judge's decision was an embarrassment to the Government of the day, by whom he had been appointed. Plainly, whatever Gavan Duffy's political activities had been before his Bar career opened, this case and the Buckley case demonstrate that his judicial integrity and independence were never in question.

The second decision to which I particularly refer is that in *Buckley & Others v. the Attorney General*, (1950) I.R. 69, generally referred to as the Sinn Fein Funds case. A Statute of 1947 provided that certain funds lodged in Court by Trustees should be paid out to the Attorney General on an *ex parte* application by the latter, that is, without notice to the Trustees of the funds. The Trustees had commenced action claiming entitlement to the funds before the Statute was passed. On application being made *ex parte* to the late Judge on behalf of the Attorney General, a surprised Counsel for the latter was met with a fully reasoned judgment to the effect that the Sinn Fein Funds Act, 1947, under which he moved the Court, was unconstitutional. The grounds were that the Statute provided for an infringement of the citizen's private property rights guaranteed by the Constitution, and further that it contemplated an unconstitutional interference by the Legislature with Judiciary's jurisdiction over proceedings already instituted when the Statute was passed. This decision was unanimously upheld by the Supreme Court.

At an advocate, the late Judge enjoyed, to my personal knowledge, an extensive Chancery practice, frequently being briefed by solicitors whose political views were poles apart from his own. Here his immense industry and capacity for research work stood him in good stead. I have known him, in the effort to elucidate a difficult problem in chancery (or in State side) law, to trace the law to its inception in the Norman French of the Year Books. I speculate whether these are perused to any extent by practitioners of the present day!

Gavan Duffy was a popular figure in the Law Library, with friends of all shades of political thought among his colleagues at the Bar, and remarkable both for his ready wit and friendliness. He was distinguished also by his marked willingness to help any colleague in difficulty with a knotty point of law – his great talents were readily made available to any barrister wishing to avail of his powerful aid.

Mr. Connolly concludes with the opinion that it may be too early to pronounce a definitive assessment of Gavan Duffy as an advocate and as a Judge. I would say that the merits and standing of an advocate are ephemeral; it is only his contemporaries who can speak with authority. This is not true of the written decisions of a Judge. The written word endures, and it is necessary only to note the keen attention paid up to the moment by the Bench to judicial decisions of the late Judge, and the abundance of citations of these in modern judgments, to assess his merits from the judicial aspect. In this respect, I would compare the position to that of a younger Judge, Mr. Justice Kevin Dixon, now long deceased, whose decisions are also treated with a respect that surpasses the normal. I doubt if the future will lessen this degree of regard, in the case of either of these brilliant men.

OBITUARY

Mr. Terence B. Adams, B.A., LL.B., died on 11th August, 1976. Mr. Adams was admitted in Hilary Term, 1943, and was the senior partner of the firm of Adams, Farrell & Co., in Tullamore and in Ferbane, Co. Offaly.

Mr. Thomas . Gannon, B.C.L., died as a result of a flying accident on 28th September, 1976. Mr. Gannon was admitted in Michelmas Term, 1959, and practised under the style of Messrs. J. Delany Gannon & Co., in Mohill, Co. Leitrim.

Mr. Patrick C. Markey died on 24th October, 1976. Mr. Markey was admitted in Trinity Term, 1909 and practised at Quay Buildings, South Quay, Drogheda, Co. Louth.

Mr. Hugh B. Naughton died on 3rd Novemger, 1976. Mr. Naughton was admitted in Hilary Term, 1930, and practised at Hynes Buildings, St. Augustine Street, Galway.

Mr. Maurice F. Noonan died on 6th August, 1976. Mr. Noonan was admitted in Trinity Term, 1922, and was the senior partner of the firm of Maurice Noonan & Son in Newcastle West, Rathkeale and Adare, Co. Limerick.

Mr. Eamonn O'Carroll died on 1st October, 1976. Mr. O'Carroll was admitted in Michelmas Term, 1950, and practised with the firm of Michael Buggy & Co., in Kilkenny.

Mr. William T. White died on 17th October, 1976. Mr. White was admitted i nEaster Term, 1922 and was the senior partner of Messrs. White & Co., who practised at Abbeyleix, Portlaoise and Rathdowney.

COUNCIL RECOMMENDS ABANDONMENT OF APPRENTICESHIP PREMIUMS

The Council of the Society has made a strong recommendation that members should cease charging premiums to intending apprentices. The decision was made after considerable thought had been given to the matter and after discussions at several Council Meetings in the context of the introduction of the new system.

The Council recognises that its decision will not meet with unanimous approval, as being a departure from a tradition and practice stretching back several hundred years. The practice of charging premiums originated at a time when the only qualification necessary for admission to practice as what would now be called a Solicitor was the service by an apprentice under articles of apprenticeship to a practising solicitor for a fixed period of years and then receiving a certificate from a solicitor of his being a person qualified to practise as a solicitor. It is clear that at that time the duty imposed on the Master was a fairly onerous one but perhaps in those more leisurely days a Solicitor had sufficient time available to him to devote to the education of his apprentice. The introduction of examinations as a replacement for the final certificate of a Master as a pre-requisite for admission to practise did not immediately diminish the effect of the apprenticeship system. Indeed it was not until the re-organisation of the Law Schools in the National University of Ireland onto a full time basis in the 1950's that the apprenticeship system finally showed signs of strain. It is perhaps ironic to note that the improvement of the academic side of education led to difficulties on the practical side but the committment of hours required of under-graduates under the new system made attendance at a Master's Office at least during the undergraduate years of little use. (This breakdown of the apprenticeship system was one of the spurs to various suggestions made for reforming the education system for apprentices which ultimately led to the introduction of the new system).

Another effect of this development was to cause some Masters to search their consciences to see whether in fact they were justified in charging an apprentice a premium, the consideration for which was presumably the instructing of the apprentice in the arts and crafts of the Solicitor's profession when, in practice, the apprentice was not able to attend regularly in his Master's Office until he had acquired his law degree. Many Masters abandoned the practice of charging premiums and the practice appeared to be on the wane.

At least one local association made a rule fixing the premium at a reasonably modest figure and arranging for the re-fund of the premium to the apprentice by instalments during the period of his apprenticeship. During the last few months before the introduction of the new education system on the 1st of October 1975 the Council was concerned to receive reports of very substantial premiums being sought by Masters including several reported cases of four figure sums being asked. The Council accordingly found it difficult to escape the conclusion that such sums were being asked not because they were felt to be reasonable premiums for the instruction which the Master proposed to give the apprentice but because of the scarcity of prospective Masters. In view of the long standing tradition of premiums and the arrangement that already existed in certain local bar assosiations the Council decided not to recommend any alteration in the existing system but to recommend strongly that premiums be not charged to apprentices after the 1st of October 1975 and reference to this decision was made in the speech of the President at the half yearly general meeting of the society in Westport in May of 1975.

It is not difficult to discern the reasoning behind the Council's disapproval of apprenticeship premiums in the new system since it represents a radical change from the old position. The Master will no longer find himself presented with a novice fresh from school but with university graduates, the majority of whom will be law graduates and once the society's new professional course is in operation the apprentice presenting himself to his Master for service in the Master's Office will also have undergone a sophisticated course of training in the practical aspects of a Solicitor's work. In these circumstances it would be difficult to justify the charging by a Master of any premium to the apprentice. Indeed, in other jurisdictions where similar training systems exist, it is the experience that the law firms seek out prospective apprentices during the apprentice's university studies and pay salaries to the apprentices while they are serving under their articles.

It would indeed be difficult in present circumstances to justify the charging of a premium for apprenticeship to a person who has completed his studies in third level education. So far as the Society is aware there is no other profession in Ireland whose members maintain such a practice. It would not appear to be in the interest of any profession to debar any suitable candidate for entry on purely financial grounds and this is particularly the case in our profession where a vast majority of the members are in private practice and are dependant, for the successful practice of their professions, on the continuing influx of competent practitioners into the profession not merely as a means of supplying themselves with assistants and future partners but of insuring that the colleagues with whom they have to deal are equally well supplied.

Accordingly the Council is optimistic that the profession will recognise the wisdom of the Council's recommendation and that the practice of charging premiums will die out promptly.

LAW EXAMINATIONS

The Education Committee has decided that students will not be permitted in future to enter for the 3rd Law Examination until they have completed their 2nd Law Examination.

Book Review

Archbold, J. R., Pleading, Evidence and Practice in Criminal Cases. 39th edition; edited by Stephen Mitchell, John Huxley and T. Fitzwalter Butler. cxcviii, 1823p. plus 100 blank pages for notes. 26 cm. London: Sweet & Maxwell, 1976. Cloth ed. £30.00.

The thirty-ninth edition of Archbold is hot off the presses and comes complete with one supplement. Criminal law is rapidly expanding at the moment and this is evidenced not alone by the editor's note of despair in the Preface but also by the increase in the size as well as in the pages of the book. There are more than 200 pages than before, the length and breadth of each page is significantly increased, and unusually, a comprehensive table of contents is now prefaced to some of the more detailed chapters.

A new chapter appears on the mental element in crime. Recent cases have brought the concept of the guilty mind to the surface for re-examination and there seems to be a discrepancy between the old decision *R v. Tolson* (1889) 23 Q.B.D. and the *mens rea* definition given in such text books as Smith and Hogan. In *D.P.P. v. Morgan*, (1975) 2 All E. R. 347, a famous rape trial, the trial Judge had insisted that it should have been reasonable for the accused to believe the woman was consenting before the defendant could be acquitted. On appeal, Lords Cross, Hailsham and Fraser held that this was wrong and Lords Simon and Edmund-Davies held it was right. Lord Cross agreed with the minority that the Tolson rule still applied. The inconsistency remains however, and the editor is doubtful of the majority decision.

The case *Hyam v. D.P.P.*, (1975) A.C. 55, focuses on the matter of intent. It will be recalled that the appellant set fire to the house of her lover's new mistress; two children were killed in the fire and she was convicted of murdering them. Here the editor considers the majority view, as expressed by Lord Diplock, to have been that foresight of the probable consequence of a voluntary act constitutes an intent to cause those consequences, whether they are desired or not. The conclusion reached is that at Common Law and, as a general rule under a statutory provision, a man intends the consequences of his voluntary act (i) when he desires it to happen whether or not he forsees it will probably happen, and (ii) when he foresees it will probably happen whether he desires it or not.

Still on the mental element there are many good paragraphs under insanity and automatism. In *R. v. Quick*, (1973) *Q.B.D.* 910, where a defence of automatism from an inbalance of insulin was raised the Judge ruled that this amounted to a defence of insanity. On appeal it was held that the alternative of automatism should have been left to the jury, unlike the Northern Ireland case of *Bratty*, (1963) A.C. 386, where automatism was disallowed. This case also makes clear that the fundamental underlying concept is a malfunctioning of the mind caused by disease — thus a transitory change of mind induced e.g. by alcohol or even violence would not qualify. This distinction between untrained mind as against diseased mind is commented on in the earlier case of *R. v. Kemp*, (1957) 1 Q.B.D. 399. No developments are noted under irresistible impulse—it would seem this defence would not yet be as readily accepted as it was in Ireland in *People v. Hayes*, noted in Irish Jurist (N.S. Vol. 3 (1968), p. 61. Both the book and the first supplement just missed the case of *D.P.P. v. Majewski* (1976) 2 All E. R. 142, where the House of Lords dismissed the appeal of assaulting police officers on the ground that the appellant had taken a surfeit of drugs and alcohol, because alcoholism was not a disease of the mind which required proof of intent. In the matter of drunkenness the editor makes a valuable comment when he considers *R. v. Sheehan and Moore*, (1975) 2 All E.R. 960, as a more correct statement of the law than certain other recently decided cases, notably *Lipmans* case, (1970) 53 Cr. App. R. 600. In *Sheehan's* case the appellants, while the worse for drink, threw lighted petrol over the deceased and killed him; this was held to be manslaughter. In *Lipman*, the appellant was guilty of manslaughter as a result of an unlawful and dangerous act, as he had so many drugs taken at the time that he did not know what he was doing.

Where offences against property were concerned practitioners did not consult Archbold beyond the 36th edition but now this has changed and the new book will be a necessary complement to the 1976 legislation which so substantially altered the Larceny Act which had served the community so well for so long and which will undoubtedly continue to do so. Similar facts and corroboration are two recent legal watersheds which are more than adequately dealt with in the new edition. The case *D.P.P. v. Boardman* (1974) 3 All E. R 887, is very resourceful on the similar facts concept and in particular Lord Wilberforce's comments are well worth reading as also are Lord Hailsham's remarks in *D.P.P. v. Kilbourne*, (1973) A.C. 729. Indeed the latter case is very pertinent to corroboration and Lord Reid's remarks on the rule that one accomplice cannot corroborate another are interesting—he does not see the rule as absolute and would be selective as to category to which it would apply. The first Supplement gives details of identification and the Devlin Report.

It is noteworthy that Archbold's pedigree goes back to 1822, older than even the Vagrancy Act. This is an achievement and the necessary ingredient has been the element of continuity in the work. Much of the recent continuity came from T.R.F. Butler who has been on the editors panel, with only one exception, since 1931 but whose unhappy demise occurred prior to the publication of this volume. He has left a fitting memorial in the book and one can trust with confidence that Archbold will continue its high standard for many decades yet.

BRENDAN GARVAN.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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, 1976.

N. M. GRIFFITH
Registrar of Titles

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

Schedule

(1) Registered Owners: James Field, Catherine Field, Patricia McGuirk, Margaret McNally; Folio No.: 1482; Lands: Ticknock; Area: 10a. 0r. 21p.; County: Dublin.

(2) Registered Owners: Ellen Cooney and Patrick Farrell; Folio No.: 6987; Lands: Gortgallen; Area: 20a. 0r. 0p.; County: Roscommon.

(3) Registered Owners: Ellen Cooney and Patrick Farrell; Folio No.: 1848; Lands: Gortgalla; Area: 6a. 3r. 34p.; County: Roscommon.

(4) Registered Owners: Henry George Smyth and Hannah Jane Smyth; Folio No.: 2785; Lands: Ridge; Area: 119a. 2r. 3p; County: Carlow.

(5) Registered Owners: Henry George Smyth and Hannah Jane Smyth; Folio No.: 2795R; Lands: Ridge; Area: 7a. 1r. 0p.; County: Carlow.

(6) Registered Owner: Thomas Griffin; Folio No.: 1123; Lands: Killerk East; Area: 23a. 2r. 13p.; County: Clare.

(7) Registered Owner: Kathleen Coakley (The Land Certificate of Denis Coakley); Folio No.: 1008L; Lands: The Leasehold Estate in the dwellinghouse and premises known as No. 8, Seafield Avenue, situate on the East side of said Avenue in the District and Parish of Clontarf; County: Dublin.

(8) Registered Owner: Donal A. Bourke; Folio No.: 32360; Lands: Kippagh (E. D. Rosnalee); Area: 36a. 1r. 0p.; County: Cork.

(9) Registered Owner: Charles Francis Smyth; Folio No.: 26600; Lands: Moynalty; Area: 9a. 1r. 4p.; County: Meath.

(10) Registered Owner: Michael J. Walshe; Folio No.: 1071F; Lands: (1) Kilmacredock Upper, (2) Kilmacredock Upper; Area: (1) 1a. 0r. 8p., (2) 0a. 0r. 11p.; County: Kildare.

(11) Registered Owner: Elizabeth Condron; Folio No.: 10129; Lands: Coan East (part); Area: 0a. 1r. 2p.; County: Kilkenny.

(12) Registered Owner: Patrick Donald Sisk; Folio No.: 2478L; Lands: The leasehold interest in the property situate at Ashleigh Gardens in the Parish of St. Finbars and County Borough of Cork; Area: 0a. 0r. 12p.; County: Cork.

NOTICES

Assistant Solicitor required for conveyancing and probate by Nolan Farrell & Goff, Newtown, Waterford.

Permanent position sought in general practice by person with only one final year paper to pass. Replies to Box No. 143.

LOST WILLS

Estate of William Connolly, deceased, late of Glenagragra, Athea, Co. Limerick, Bachelor, Retired Bank Official. Would anyone having knowledge of a Will of the above named deceased kindly contact James J. Dennison, Solicitor, Abbeyfeale, Co. Limerick.

Kilkenny Solicitors require qualified Assistant. Newly qualified Solicitor might suit. Replies to Box No. 144.

Mrs. Anna M. Coster deceased otherwise Hannah M. Coster deceased, late of 28 Whitworth Road, Drumcondra, Dublin 9. Would any Solicitor or other person knowing the whereabouts of a Will made by the above deceased, who died on the 16th day of October, 1976, please contact Messrs. M. J. O'Connor & Company, Solicitors, No. 2, George Street, Wexford, who act on behalf of the next-of-kin of the deceased.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street.Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

NOVEMBER 1976 VOL. 70. NO. 9

RECOMMENDATION OF THE CONVEYANCING COMMITTEE OF THE INCORPORATED LAW SOCIETY OF IRELAND WITH REGARD TO REGISTRY OF DEEDS SEARCHES

Condition 22 of the 1976 Edition of the General Conditions of Sale provides as follows:—

"The Purchaser shall be furnished with the searches (if any) specified in the Third Schedule hereto and any searches already in the Vendor's possession will be furnished with the copy documents of title. Any other searches required by the Purchaser must be obtained by him at his expense. The Vendor will explain and discharge any acts appearing on searches made for the period within the time from the date stipulated or implied for the commencement of the title to the date of actual completion. Where the Special Conditions provide that the title shall commence with a particular instrument and then pass to a second instrument or to a specified event the Vendor shall not be obliged to explain and discharge any act which appears on a search made for a period prior to the date of the second instrument or specified event, unless such act goes to the root of the title".

As from 1st January 1977 the Committee recommends that Dublin practitioners should, in sales of individual properties, adopt the practice presently followed in the remainder of the country, namely that the vendor furnishes only such Registry of Deeds searches as are in his possession and the Purchaser makes any other searches, including a search against the Vendor that he requires. The Purchaser of course, already makes Land Registry, Judgment, Bankruptcy, Sheriff and other searches required and in the opinion of the Committee it is logical that he should also make his own Registry of Deeds Searches. Where as in a Building Estate, a number of properties are being sold by the one Vendor it will probably be more logical for the Vendor to a Solicitor to continue the present practice of lodging a Master Search and distributing the certified copies in due course.

Society of Young Solicitors

The 2nd Article

in the series

on Marriage Law

appears on page 195

THE ANTI-DISCRIMINATION (UNFAIR DISMISSALS) BILL, 1976

Address to the Solicitors' Apprentices' Debating Society of Ireland by Mrs. Mary Matthews, LL.M., at a Meeting of the Society on 9th November 1976.

To date, our Statute Law has contained a very serious omission in respect of the individual's right to fair treatment by his employer in circumstances where the employer either contemplates or decides that he should be dismissed.

There is of course a vast area of law involved concerning involuntary dismissal. Up to now in Ireland an employee's recourse lay only through common law in actions for wrongful dismissal. The remedy available was damages as the action basically was a contractual one. Judges tended to favour employers. Lord Justice Scrutton was honest enough to admit in 1923 that 'The habits . . . the people with whom you mix, lead to your having a certain class of ideas of such a nature that—you do not give as sound and accurate judgments as you would wish. This is one of the great difficulties at present with Labour. Labour says 'Where are your impartial Judges? They all move in the same circle as the employers. How can a labour man or a trade unionist get impartial justice?' It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class'.

Similar sentiments were expressed in an Irish case by Gavan Duffy J. where he lamented that labour questions had to be decided by the conceptions of individual judges as to what may or may not be lawful in the 'milky way of the common law and some such judgments are by no means a certain guide'. **(Cooper v Millea** [1938] I.R. 749, 755 High Court).

Workers in fact are generally used to relying on trade union strength — collective bargaining — as the best means of obtaining the kind of standards they want in their lives. This may originate in the fact that workers were operating in organised fashion long before the electoral franchise was extended to them. But whatever about the origins of it, the fact is that workers expect nothing from the law or lawyers as an act of charity. The Irish Rights Commissioner, set up under the Industrial Relations Act, 1969, opposes the presence of lawyers at his hearings. This of course can have its disadvantages. A prominent trade union leader once explained how he protected the interests of his members in redundancy tribunals—'I speak loudly' he said. 'I bang the table' and 'I get my way'. But the same man, because of his ignorance of the law, has often lost cases for his members.

The point is that there are inherent defects or limitations in the role of law with regard to worker protection—arising chiefly out of a suspicion on the part of workers concerning law, (it's wax nose?) and also out of the actual composition of the bench and of the legal profession. Things of course are changing; (see for example Kenny J.'s decision in **Glover v. BLN** [1973] I.R. 388); they must change; but the process is a slow one.

The role of law in worker protection is in fact potentially great. The father of labour law in Britain, Prof. Otto Kahn Freund in *Labour and the Law* (p. 92, described law as 'a technique for the regulation of social control'.

In a labour context, law regulates the balance of power between worker and employer, between unions and management—It may tip the balance one way or the other. At any one moment in time the extent to which the law helps or hinders trade unionism is itself largely a reflection of the balance of power in society as a whole.

Bearing this in mind, the appearance of the present Unfair Dismissals Bill is indeed welcome.

The statutory concept of unfair dismissal might be described as a further step along the path, already signposted by the Minimum Notice and Terms of Employment Act, 1973, and the Redundancy Payments Acts 1967-'71, towards recognition of a man's property interest in his job. This concept is already recognised to some extent by the law of many advanced industrial countries; it restricts the hitherto largely unlimited authority of an employer to dismiss his employees for whatever reason he thinks fit. In fact it has been said that objectification of jobs, and hence a diminution of their contractual nature is a long term consequence of the development of large scale industries and the nationalisation of production. Certainly job ownership is frequently talked about in the United States (see F. Meyers: *Ownership in Jo*bs [UCLA 1964]) and it is becoming more so in Britain.

The Irish Bill takes a line broadly similar to the provisions of the UK Industrial Relations Act, 1971. That Act has since been largely repealed, replaced by the Trade Union and Labour Relations Act, 1974; it is fair to say however that the 1971 sections on unfair dismissals were more or less retained. The recent Employment Protection Act, 1975, in the UK represents the second stage of the present British Government's promised programme of reform in the field of collective and individual employment. This act forms an interesting basis for comparison with the Unfair Dismissals Bill in Ireland—how far the Act takes one along the road to reform in employment rights and how far it is leading to employer ruin is a matter of judgment. (Cynics are calling it (the Trade Union (Protection from Everybody) Act. 'The Employer Bashing Act' or other such titles).

Apart from EEC influences, there is no doubt that the Irish Bill, as the UK Acts, take their tenor from ILO Recommendation no. 119 on the Termination of Employment which was approved at Geneva in 1963.

The basic principle (of the Recommendation) is that termination of employment shall not take place unless there is a valid reason for termination connected with the capacity or conduct of the worker or based on the operational requirements of the enterprise. Certain reasons are always to be invalid reasons for termination: participation in union activities or membership; the taking in good faith of legal proceedings against an employer alleging a breach of some legal obligation; race, colour; sex; marital status; religion; political opinion; national extraction or social origin. Workers who feel aggrieved by an unjustifiable dismissal are to be entitled to a right of appeal. Workers given notice should be given time off from work to look for alternative employment. A dismissed worker should be en-

titled to receive a certificate from his employer specifying the dates of his employment and the nature of the work done, without containing anything unfavourable to the worker concerned. Dismissal for serious misconduct should take place only where the employer could not reasonably be expected to take any other course. Proper rules should be laid down for the selection of workers to be dismissed where economic necessity requires a reduction in the labour force. Reinstatement of workers unfairly dismissed appears to be the Recommendation's preferred solution where an invalid dismissal occurs. In the absence of reinstatement, adequate compensation is to be paid'. (Hepple & O'Higgins: *Encyclopedia of Labour Law*, 1-382).

The Irish Government indicated at the time that they accepted the provisions in the Recommendation subject to some minor reservations. The British delegation voted for the Recommendation. The ICTU on a number of occasions made it known that they would like to see appropriate legislation.

As neither the Irish Bill or the present UK Acts go nearly as far as the Recommendation in the protection of workers against unfair dismissal, those parts of the Recommendation not yet implemented are relevant, as they indicate the possible, if not probable, content which future amendments of the law are likely to take.

A number of criticisms might be made in relation to the present Bill.

Excluded categories. Section 2

The Bill does not cover Civil Servants, members of the police or the Army and several other categories of Government employees. It does not apply to employees at retiring age, or to close relatives. This latter exclusion may be based on an ingrained belief in the sanctity of the Irish family structure, and an unwillingness to interfere with this type of institutional situation encountered in particular in Irish rural and domestic life. This exclusion will undoubtedly result in hardship and unfair discrimination on grounds which could be regarded as repugnant to the equal protection articles in the Constitution. Apart from this, the actual wording of this exclusion is curious. One is tempted to ask—what if an employee is employed by a combination of these persons?

It is interesting to note that in the UK Employment Protection Act, 1975, employees who are close relatives of the employer are not excluded any longer (but the husband or wife of the employer is still excluded).

Except for pregnant women, the provisions of the Bill do not apply to persons with less than one year's service, apprentices, people of normal retiring age or people who are probationary under the terms of their contract of employment.

The British approach which gives the benefit of the Act to employees employed for 26 weeks is surely preferable. There is no reason why a period of one year should be preferred. (In the UK the one-year figure did appear before the Trade Union and Labour Relations Act 1974).

Pregnancy — S. 6(2) (g)

The provisions of the Bill on pregnancy are ambiguous. It says that dismissal shall be deemed unfair where it results wholly or mainly from the pregnancy of the employee or matters connected therewith unless the employee was unable by reason of the pregnancy to do adequately the work for which she was employed *or* to continue to do such work without contravention by her or her employee of a provision of a statute or instrument made under statute *and* there was not at the time of her dismissal any other employment with her employer that was suitable for her and in relation to which there was a vacancy *or* the employee refused an offer by her employer of alternative employment on terms and conditions corresponding to those of the employment to which the dismissal related, being an offer made so as to enable her to be retained in the employment of her employer notwithstanding pregnancy.

First of all, to refer to pregnancy 'or other matters connected therewith' is unacceptable as it gives far too much rope to an employer. Again in the UK in this connection much better rights are afforded under the Employment Protection Act. There is an entitlement to six weeks maternity pay which will come into force in 1977. (Certain conditions exist for this entitlement—the woman must have been continuously employed for more than two years up to the 11th week prior to date of her expected confinement. She must inform her employer in writing if he so requests, at least three weeks before her absence begins, and again on request, must produce a certificate from a registered medical practitioner or a certified midwife stating the expected week of confinement). The maternity pay will last for six weeks starting after the 11th week prior to the expected confinement date and will consist of 9/10th of a week's pay less the maternity allowance whether or not she is entitled to it. Finally, an employee who has been away on maternity leave of absence will be entitled as of right to return to work within 29 weeks of the actual date of confinement. She is entitled to return to her old job on terms and conditions no less favourable than those which would have been applicable had she not been absent.

The Irish Bill noticably makes no provisions for sick leave during confinement. The question of whether or not absence for the birth is a justifiable absence remains unanswered.

Burden of Proof — S. 6 (1)

In general, dismissal will be considered unfair, unless there are grounds for justifying it. The burden of proof is borne by the employer who has to show that dismissal was not unfair. This is one of the more welcome provisions in the Bill as it bears on the concept of *proprietas* in employment. If an employee may be said to possess or own his job, this necessitates an assumption that the worker has committed no act warranting his dismissal unless the employer proves otherwise. In this way, control over continued possession is seen to remain in the employee's hands.

Grounds for Unfair Dismissal — S. 6

The old contractual freedoms in relation to hiring and firing cannot be said to exist any longer in the same way as they did before. Under the Bill unfair dismissals can result from firing a person because of

trade union or staff activities either outside of working hours or during permitted working hours; religious or political beliefs; refusing to join a trade union unless a closed shop already existed at the time of recruitment —this seems to presume the constitutionality of the closed shop—something which cannot be done by any means. (It may be what Mr. O'Leary meant when he said that the Bill may be tested for constitutionality in regard to freedom of association. If this provision, which is in s.6(2)(c) of the Bill is left standing, it could well be challenged on a future occasion); civil or criminal proceedings against the employer which involve the employee as a party or witness; the race or colour of the employee; pregnancy; unfair selection for redundancy.

Dismissal however shall not be considered unfair for capability, competence, or qualifications for the work for which a person is employed to do; conduct; redundancy; if the employment contravenes other statutory requirements.

The last two grounds are straightforward enough. But the first two are likely to cause problems to both employers and employees alike. The British legislation was accompanied by the publication of a Code of Industrial Relations—rules of the road, as it were, of employee-employer behaviour. We would need guidelines as to what 'conduct', 'competence' means. Some employers still insist on female employees wearing skirts, a Victorian hangover no doubt. Could a girl be fairly dismissed for wearing slacks to work? Or a man for not wearing a tie? Who is to decide? Of course the Minister is not blind to these deficiencies. During the Second Stage Reading on the Bill (5, xi 1976) he said that 'It is my belief that in addition to procedures at the level of the firm there should also be a National Code of Agreed Disciplinary Procedures relating to dismissals. On the enactment of the Bill it is my intention to initiate discussions with representatives of trade unions and employers with a view to agreeing such a Code'.

It is obviously vital that such a code be produced as soon as possible.

Remedies — S.7

The remedies provided are re-engagement or damages. This term re-engagement occurs throughout the Bill, particularly in s.7. It is interesting to refer back to the wording of ILO Rec. no. 119 at this stage. It refers to 'reinstatement' not 'reengagement', and this is a crucial point where the Irish Bill differs from the ILO Recommendation. This is, in my view, one of the major defects of the Bill—a Bill which according to the official government statement about it, will be a 'charter for workers' rights' if passed by the Oireachtas. In the Government Statement the matter is very carelessly described by saying an employee found to be unfairly dismissed would either *get his job back* or be awarded compensation of up to two years pay' (Emphasis mine). This sort of phrase no doubt resulted in the term reinstatement being used in explanatory comments in the daily press on the Bill (see e.g. *The Irish Times*, 21 Sept. 1976).

The point is that, Re-engagement is not the same thing as getting your old job back; it is not the same thing as reinstatement. The term reengagement means getting a job again with the former employer not necessarily the same job or, if the same job, not on the same terms and usually it involves loss of seniority rights. (Note the misleading use of *'His job . . .'* in the government statement above—this suggests reinstatement).

In Britain the remedy was once confined to reengagement; now an Industrial Tribunal there may award reinstatement or reenagement. Such remedies are presently awarded in 2-4% of the cases. Under the new Employment Protection Act it is expected that there will be a significant increase in that percentage number in line with the present mood of the trade union movement to seek to retain jobs rather than obtain compensation. The mood in Ireland will very probably be similar.

True protection of a worker's interests in relation to unfair dismissal demands reinstatement, in my view. Constitutional arguments are sometimes raised in opposition to re-engagement (even) of employees; it is alleged, *inter alia*, that an employer cannot be forced to take a man back to work. A few brief remarks may be made on the topic.

First of all, a statutory concept of unfair dismissal severely undermines the contractual nature of the employment situation. Secondly, a recent case in the High Court enumerated as a personal constitutional right 'The right to continue to earn a living, a right which could be forfeited only if the procedure concerned is clearly lawful: **Gleeson v. Minister for Defence and the AG** (Dec. 1975). Taking 'procedure' in a wide sense one interpretation of this case could be that an unfair dismissal, because it is also the breach of constitutional right, must be deemed null and void. Reinstatement

would then in fact be the natural, if not the only remedy for the grievance. (Damages might also be awarded for breach of the right **per se: Meskell v CIE** [1973] IR 71).

The alternative remedy is damages. Section 7 (1) (b) is about compensation and it is clearly not for loss of the job *per se*. There is an upper limit. Why? And why should damages be consequential? The level of compensation is far too low. No compensation might be payable to an unfairly dismissed employee who had been given proper notice and had got a new job at reasonable rates of pay. We do not know if **Glover's** case ([1973] IR 388 High Court) will apply to unfair dismissal. If so, it will mean that damages awarded for breach of the statutory concept will be subject to chargeability to income tax etc. And, as we know, this operates in favour of the employer—the tax is deducted at source; the Revenue do not get the amount of the tax.

The dissatisfaction of the Royal Commission which sat to consider the effects of **Gourley's** *case* [1956] AC 185, upon which **Glover** was based, should be taken into account. In particular, the concluding paragraph of the Commission's report should be heeded (Cmnd. 501, 1958).

In Britain the situation is again better. The aggrieved employee is always entitled to a *basic award* which is equivalent to 2 weeks pay or an amount equivalent to what he would have received had he been dismissed for redundancy instead of unfairly dismissed—(whichever is the greater). The maximum amount of the basic award is £2,400. *It is payable whether or not the worker has suffered any financial loss due to the dismissal.* In addition then, if he has suffered financial loss, the worker is entitled to a *compensatory award* of up to a maximum of £5,200. Compensation here is normally awarded under different heads.

Procedure — S. 8, 9, 10

The *procedure* is that a claim must be lodged by a dismissed person within six months of the date of dismissal with a Rights Commissioner or the new Employment Appeals Tribunal. Either party may object to a hearing before the Rights Commissioner. A Rights Commissioner may make a recommendation in relation to a claim and if this recommendation is not carried out, the employee may then bring his claim to the Employment Appeals Tribunal for a determination. Hearings will generally be in private. From the EAT, in certain circumstances, appeal lies to the Circuit Court.

This procedure is, as the Minister remarked during the Second Stage Reading of the Bill, 'a little complicated'. However we should perhaps be assured as he intends, he says, to 'produce literature when the Bill becomes law which will leave employees and employers in no doubt about the procedures they should follow'.

The three stages for seeking redress under the Bill seem unnecessarily cumbersome. The Rights Commissioner can only make recommendations which are not binding. Further he cannot force parties to attend his hearings. A party can send him *written* objections if he does not wish to take part in proceedings before the Commissioner; this is in the Industrial Relations Act 1969. The Rights Commissioner has developed a convention whereby if he hears absolutely nothing he goes ahead and conducts the hearing. Will this apply if, as is likely, an employer refuses to co-operate? And where a recommendation is made in such circumstances, will there be a stalemate situation or will an employer be likely to appeal to a tribunal?

It is quite clear that the Rights Commissioner's recommendation would not carry any particular weight if there is a right of appeal to the EAT. This would presumably be taken in virtually all cases, particularly by the employee if he is dissatisfied with the Rights Commissioner's recommendations. He will almost certainly be, if the recommendation is unfavourable to him.

In the last analysis, if an employer is refusing to obey a tribunal award, the Minister may within 6 weeks take the matter to the Circuit Court (s. 10) This is to secure 'the appropriate redress' according to the Act. But suppose the redress was re-employment, what could the Court do about it? Difficulties clearly arise here in view of objections in Equity to the award of injunctions, specific performance, etc. where personal supervision is required by the Courts.

But an even more fundamental objection exists. An aggrieved employee cannot bring enforcement proceedings against an employer who fails to carry out a determination of the Appeals Tribunal. The option of bringing proceedings is left solely to the Minister? This however cannot explain the omission: the Bill could have arranged for costs to be paid by the Minister indepently of his bringing the action himself. The fact that the Minister pays costs in such cases is welcome of course (s. 10.3).

Natural Justice—

Section 6 of the Bill says that the dismissal of an employee shall be deemed to be unfair unless having regard to all the circumstances, there were grounds justifying the dismissal. Again in s. 6 (5) it says that in determining whether the dismissal was unfair the employer has to show that the dismissal resulted wholly or mainly from one or more matters specified in the Bill or that there were other substantial grounds justifying the dismissal. Later, in dealing with the notice that must be given to employees of grounds for dismissal, the Bill says, at s. 14: the employer shall, if so requested, furnish to the employee within 14 days, particulars in writing of the grounds for the dismissal but in determining whether the dismissal was unfair there may be taken into account 'any other grounds which are substantial grounds and which would have justified the dismissal'.

Throughout there is the omission of an important qualifying phrase that the grounds for dismissal should have 'existed at the time of dismissal' (S. 14 is particularly horrifying in its implications). **Carvill v Irish Industrial Bank Ltd.** [1968] IR 235 laid down the welcome and surely proper approach that an employer could not rely on grounds existing after the actual date of dismissal as justifying dismissal. In this way it differed from the British case of **Boston Deep Sea Fishing and Ice Company v Ansell** (1888) 39 Ch. D 339 which held that an immediate dismissal for misconduct may be justified on grounds coming to light after dismissal. Natural or constitutional justice

alone dictate the contrary and indeed Kenny J. extended *Carvill's* case in *Glover's* case (see ante). Are we now to verge towards the bad stream of influence of cases like **Ridgway v. Hungerford Market Co.** (1835) Ad. & El. 171 which held that there need only be an adequate ground for dismissal and it is sufficient if this ground comes to light after dismissal. (In this particular case, a clerk who was dismissed had the misfortune to enter a protest relating to his dismissal in the books of his firm regarding his dismissal as an injustice. This was held to justify his dismissal at common Law).

I think it is vital and essential that a proviso be added where appropriate in all the cases mentioned that in conformity with natural justice the reasons justifying dismissal must have existed at the time of dismissal itself.

Conclusion —

The importance of the Unfair Dismissals Bill resides in the fact that it concerns the whole notion of equal justice, however nebulous a phrase that may be. Claims are psychologically a primary notion in any concept of justice and the nature of a claim will often determine the quality of the justice. *Le premier sentiment de la justice ne nous vient pas de celle que nous devons, mais de celle qui nous est dûe* (J. J. Rousseau-Emile).

The nature of the claim therefore that may be made under the Bill is all-important.

One is aware of the fact that more man-days are lost through strikes over dismissal than anything else (as the Minister pointed out in Dail Eireann); one knows that over a quarter of a million man-days were lost in industry between 1972-1975. And the importance of that sort of argument cannot be denied. But the issue is surely a far more fundamental one. The reason why legislation should provide the best claims possible for workers who are unfairly dismissed is because such workers have been deprived of a property-right, of something which is theirs, of what Goethe called 'the orbit of (one's) activity?' Specifically referring to a worker's job as the orbit of his activity it was once written that:

'Here and only here is the property of the individual spiritual or material, a circle, great or small, but a circle which is *his* because he has created it, a world for which the community may fix certain rules for the sake of other circles, but an orbit whose essence no community can violate with impunity for then the kindled fires of this society will be extinguished'.

V. Kruse: *The Right of Property* (translated from the Danish by P. T. Federspiel, Oxford University Press, 1939).

The message in these words is quite clear. One hopes it is the sort of message our legislators will appreciate.

ADDRESS TO AUSTRALIAN BAR ON RECENT IRISH CASE LAW, 12 JULY, 1976

by Hugh O'Flaherty, S.C. (Part II)

(Part I appeared in the September Gazette, p. 152)

The case of *The People (Attorney General) v. Dwyer*[16] is, I think, our best example of following the Australian influence. The facts of the case as stated by Mr. Justice Butler, in giving the majority judgment of the Supreme Court, were that Christy Dwyer was convicted of murder as a result of a street brawl in the Central Criminal Court on the 10th November, 1969. At the trial part of the defence was a plea that he had acted in self defence on the occasion of the killing. On the 13th April, 1970, his appeal was rejected by the Court of Criminal Appeal. The two recognised methods of appeal to the Supreme Court in the case of a criminal conviction are by leave of the Court of Criminal Appeal or the certificate of the Attorney General (now the Director of Public Prosecutions)[17] that the case involves a point of law of exceptional importance.

Counsel for the appellant was convinced of the correctness of the Australian decision in *R. v. Howe* (1958) 100 CLR 448. The practice by which a certificate of the Attorney General is applied for is that the counsel in the case makes a personal application in writing setting out the grounds therefor. The Attorney General was persuaded that there was a point to be argued and certified a point of law as follows:-

> "Where a person, subjected to a violent and felonious attack, endeavours, by way of self defence to prevent the consummation of that attack by force, but in doing so, exercises more force than is necessary but no more than he honestly believes to be necessary in the circumstances, whether such person is guilty of manslaughter only and not murder".

The answer given was in favour of manslaughter. It was held that the accused's intention fails to be tested subjectively and, the Court held, that it would appear logical to conclude that, if his intention in doing the lawful act was primarily to defend himself, he should not be held to have the necessary intention to kill or cause serious injury. "The result of this view would be that the killing while unlawful, would be manslaughter only. This is the view adopted by the High Court of Australia in *R. v. Howe* where the Court upheld the judgment of the Supreme Court of South Australia to the effect that such a case of self defence was 'a case of unlawful killing without malice aforethought, for although the killer may clearly intend to inflict grievious bodily harm on his assailant, and if necessary, to kill, his state of mind is not fully that required to constitute murder' " - per Mr. Justice Butler.

On the civil side I would point to the recent Supreme Court case in *McNamara, an infant v. E.S.B.*[18] where the Court reached the same conclusion as had been reached by the High Court of Australia - though in this case, the Court was content to adopt the decision as found by the Privy Council; in this regard it is interesting that Lord Reid pays high tribute to the judgment of the Australian High Court where he says that the whole matter was summarised by Chief Justice Barwick at the end of his judgment in the case — *Southern Portland Cement Limited v. Cooper.*[19]

The effect of McNamara's case together with a previous decision of the Supreme Court[20] was to decide that the occupier of premises could not claim exemption from liability on the grounds that the person injured by the occupier's acts or omissions was a trespasser and that his duty extended beyond the mere duty to act with reckless disregard of the trespasser's presence or of his safety. The test now is: the fact of a danger on the premises having been established, should the defendant reasonably have foreseen that a child trespasser might be injured.

Since this was a case where the Supreme Court did not follow a previous decision[21] it might be an appropriate moment to say something about the doctrine of *stare decisis*. The Supreme Court first broke from this doctrine in the case of *Attorney General v. Ryan's Car Hire Limited*[22] on December 11, 1964 and thus preceded the decision of the House of Lords given on July 26, 1966, in the same regard and thus put itself on the same footing as the United States Supreme Court and the ultimate courts of most European countries and of Canada, South Africa and Australia as stated therein by Mr. Justice Kingsmill Moore.[23] However, the power has been rather sparingly exercised since then and it has been used in only a few cases — most notably in allowing the State to appeal from a decision of the High Court granting *habeas corpus*.[24]

The decision not to be bound by *stare decisis* was a symptom of the liberal swing that took place in the Supreme Court from the early nineteen sixties, and which led to many interesting departures. In the criminal law sphere one of the most notable decisions was the necessity for a trial judge to give a stringent warning in the case of visual identification.

The People (Attorney General) v. Casey (No. 2)[25] lays down that where the verdict depends substantially on the correctness of an identification the jury's attention should be called in general terms to the fact that in a number of instances such identification has proved erroneous, to the possibilities of mistaking the case before them and to the necessity of caution. Juries are to be told that if their verdict as to the guilt of the prisoner is to depend wholly or substantially on the correctness of such identification they should bear in mind that there have been a number of instances where responsible witnesses, whose honesty was not in question and whose opportunities for observation had been adequate, had made positive identifications on a parade or otherwise, which identifications were subsequently proved to be erroneous. Accordingly they should be specially cautious before accepting such evidence in the light of all the circumstances, and with due regard to all the other evidence of the case,

and they must feel satisfied beyond reasonable doubt of the correctness of the identification before they are at liberty to act upon it.

You will be aware that this has been the subject of a great deal of discussion in England and elsewhere, for many years. As a result of the increasing unease caused by miscarriages of justice that had come to light the British Home Secretary appointed Lord Devlin to lead an inquiry into identification evidence. The report has appeared recently.[26]

In the case of *The People (Attorney General) v. O'Callaghan*[27] the Supreme Court narrowed the grounds on which bail could be refused to two viz., the likelihood that the accused would not stand his trial and the likelihood of his interference with witnesses if allowed bail. It was specifically decided that bail could not be refused merely because there was a likelihood of the commission of further offences while on bail and it was held that that was a form of preventive detention. Mr. Justice Walsh said (at p. 516 of the report:–

> "In this country it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in this respect of any matter upon which he has not been convicted or that in any circumstances he should be deprived of his liberty upon only the belief that he will commit offences if left at liberty, save in the most extraordinary circumstances carefully spelled out by the (Parliament) and then only to secure the preservation of public peace and order for the public safety and the preservation of the State in the time of national emergency or in some situation akin to that".

Those I would single out as the outstanding developments in the criminal law in that period. At the moment the concept of "loitering with intent" and whether on a charge or motion to attach for contempt of Court an accused should be entitled to a jury – and, indeed, the whole concept of what should be embraced by the notion of contempt of Court – are on the fringes of judicial consideration here and in this regard, too, I believe, that there is a rich lode of Australian authority.

Turning to the civil side, we retain juries to try civil cases where the amount of the claim is likely to exceed £2,000 and the right is confined to cases of negligence, nuisance, defamation and the like. There is an appeal to the Supreme Court if the findings of the jury on the liability issue are unwarranted or unreasonable. There can also be an appeal as regards damages if they are such (being either too high or too low) as no reasonable jury, properly directed, should award. Furthermore, the Supreme Court has power either to order a re-trial on any or some issue or, itself, to make findings. Increasingly, it is exercising its power to substitute a different award from that given by the jury where the expense of the re-trial would be out of proportion to the amounts involved: Section 96 of the Courts of Justice Act, 1924, (No. 10 of 1924) permits the Court to enter "such judgment as it considers proper".

As regards the assessment of damages, the Supreme Court has laid down repeatedly[28] that where there is a substantial element of future loss of earnings involved in any claim, the evidence of an actuary is not merely desirable but necessary. It is immaterial whether the prospective losses are in respect of a long period or in respect of a short period, and whether the period is already commenced or whether it will arise at some stage in the future.

The appropriate actuarial evidence is necessary in all these cases to enable the jury to arrive at a reasonably accurate mathemathical computation of the present value of the actual loss which they will find will be incurred.[29] In a case where there is a diminution of earnings, then that is the amount to be calculated and evidence can be called from an employer or a person familiar with the employment situation to state what the plaintiff's potential earning capacity would be if he could get a job.[30]

Until this year juries in this country were in practice composed exclusively of men. There was also a property qualification. While women were eligible to act they had to apply to be put on the register and, needless to say, many did not avail of that "privilege". However, two ladies challenged the constitutionality of the relevant legislation. The Supreme Court in a decision delivered on the 12th December, 1975[31] laid down that the absence of women from juries was unconstitutional. As Mr. Justice Henchy said:– "Firstly, it fails the test of representativeness because it means that some fifty per cent of the adult population will never be included in the jury lists. Secondly, and of even greater importance, that narrowed choice means that a woman's experience, understanding and general attitude will form no part in the jury processes leading to a verdict. Whatever may have been the position at Common Law, or under statute up to recent times, it is incompatible with the necessary diffusion of rights and duties in the modern democratic society that important public decisions – such as voting, or jury verdicts involving life or liberty – should be made by male citizens only. What is missing in decisions so made is not easy to define, but reason and experience show that such decisions are not calculated to lead to a sense of general acceptibility, or to carry an acceptable degree of representativeness, or to have the

necessary stamp of responsibility and involvement on the part of the community as a whole. Juries recruited in that way fall short of minimum constitutional standards no less than with juries recruited entirely from female citizens."

The result of that is that the Parliament passed a new Juries Act 1976 which must be one of the most democratic in the world, I should think, because it opens jury service potentially to all on the voting register and the voting age is 18!.[32] There are, of course, circumstances of exemption viz., those ineligible, for example barristers and solicitors actually practising as such; members of the police and prison services and members of the defence forces. Further, those incapable through inability to read, deafness or other permanent disability are deemed unfit to serve on a jury and are excluded. Then there is a category of persons excusable as a right such as members of Parliament and persons in Holy Orders.

Finally, I think I should say a word about judicial review of our statute law. The Constitution makes the Supreme Court the final arbiter of whether laws are repugnant to the Constitution or not. Thus, any Act, whether enacted before or after the Constitution came into force, is subject to judicial scrutiny. With regard to enactments "carried over" by the broad sweep of the Constitution, to the end of 1937, there is no presumption of constitutionality in their favour,[33] but legislation enacted from 1938 since the Constitution came into effect enjoy the presumption of constitutionality.[34] At first, the Courts were slow to interfere since the idea of a written Constitution as the idea of a Bill of Rights was foreign to judges brought up to believe in the supremacy of Parliament. The first Chief Justice of the Irish Free State, Chief Justice Kennedy, had referred to Dicey as "an evangel accepted reverently and without criticism or question in our schools."[35]

Beginning, however with Mr. Justice Gavan Duffy's judgment in the *Sinn Fein Funds Case*[36] the Court have increasingly asserted their right to get involved in the social and economic aspects of the Personal Rights Articles of the Constitution. Article 40 (3) provides that the State guarantees in its laws to respect and, as far as practicable, by its laws to defend and vindicate the personal rights of citizens. The Supreme Court, interpreting this section, has notably struck down legislative proposals which directed the Courts to deal with trust funds in a particular way;[37] State immunity for torts;[38] a provision in the Statute of Limitations, 1957, which rendered an infant plaintiff vulnerable in a case where his father's insurance company had pleaded the Statute against him[39] and a provision limiting the right to use contraceptives.[40]

My colleague, Mr. Donal Barrington S.C., has written a most penetrating analysis of these developments in an article entitled "Private Property under the Irish Constitution",[41] which I recommend to you.

Mr. Justice Walsh has summed up the effect of these personal rights articles best when he said in *McGee's case*:-[42]

> "(These Articles) of the Constitution all fall within the section of the Constitution which is entitled 'Fundamental Rights'. (The Articles) emphatically reject the theory that there are no rights without laws, no rights contrary to the law and no rights anterior to the law. They indicate that justice is placed above the law and acknowledge that natural rights or human rights are not created by law but that the Constitution confirms their existence and gives them protection".

Chief Justice O Dalaigh, as he then was, said in *re Haughey*[43] that it is the duty of the Court to underline that the words of Article 40, Section 3, are not political shibboleths but provide a positive protection for the citizen and for his good name.

There is another form of judicial review which is rather unique. The President[44] may refer any Bill to the Supreme Court for a decision as to whether it is repugnant to the Constitution or any provision thereof.[45]

The Supreme Court consisting of not less than five judges has sixty days from the date of referral to consider the matter and to pronounce its decision, which unfortunately must be a single decision pronounced by "such one of those Judges as the Court shall direct, and no other opinion, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed".[46]

By the operation of Article 26 and Article 34, section 3 sub-section 3 of the Constitution a decision of the Court is a constitutional determination on all points in respect of the Bill or a provision of the Bill, as the case may be, which is referred to it. As Mr. Justice Walsh pointed out in *The State (Quinn) v. Ryan*[47] the Court gives an advisory opinion the reason for which was "to avoid the anomaly of a judicial review of legislation which only became law upon the advice of this Court after an unrestricted examination of the measure which thus acquired validity from the judgment of this Court".

Lawyers, in general, are unhappy that the doctrine of stare decisis gets this particular recognition since the Court, is forced to review this type of legislation in a theoretical setting, it must have regard to the *possibility* of repugnancy in hypothetical circumstances.

There have only been 5 such references in all: *In re Article 26 of the Constitution and the Offences Against the State (Amendment) Bill, 1940;*[48] *In re Article 26 of the Constitution and the School Attendance Bill, 1942;*[49] *In re Article 26 of the Constitution and the Electoral (Amendment) Bill, 1961*[50] and **in re** *Article 26 of the Constitution and the Criminal Law (Jurisdiction) Bill, 1975*[51] *and In Re Article 26 of the Constitution and the Emergency Powers Bill 1976.* In all, except the School Attendance Bill case, the constitutionality of the measures was upheld.

One of the most recent judgments relating to the Criminal Law (Jurisdiction) Bill may be of interest to you. Broadly speaking the Bill (now an Act) provided for the prosecution within the area of jurisdiction of the Republic of Ireland of certain subversive or terrorist-like offences committed in Northern Ireland. It went further by providing that the Court (the Special Criminal Court consisting of three judges) should be enabled to journey to Northern Ireland and there take evidence on commission. The accused should have the opportunity of attending at the taking of such evidence or commission either in person or by solicitor and counsel. The main thrust of the argument against the constitutionality of the measure was that it permitted the operation of unfair trial procedures and failed to provide for trials in due course of law and in that and other respects it failed to defend and vindicate the personal rights of the citizen in accordance with Article 40 3.1° of the Constitution. The right to be present was sub-

Fully State Guaranteed.

When you open a deposit account with ACC, you immediately experience the feeling of real security. The security of a State Guarantee! It covers the sum you invest and the interest you earn. Get in touch with us today and find out how much you can earn on a State Guaranteed investment.

The Agricultural Credit Corporation Ltd.

Head Office: ACC House, Upr. Hatch St., Dublin 2 Tel. (01) 780644

Offices at: Athlone, Ballina, Carlow, Cavan, Clonmel, Cork, Dublin, Dundalk, Ennis, Kilkenny, Letterkenny, Limerick, Longford, Monaghan, Mullingar, Naas, Navan, Portlaoise, Roscommon, Sligo, Thurles, Tralee, Tuam, Tullamore, Waterford, Wexford and Wicklow.

ject to the pre-condition that the accused would have to surrender himself in custody to the security forces of Northern Ireland. If he were a fugitive from that jurisdiction this is a "right" that he might be loathe to exercise. Should he waive the right to be present either personally or through solicitor and counsel, nevertheless, the evidence can be taken and may be admitted in evidence before the Court when it returns to resume its proceedings within the jurisdiction. Chief Justice O'Higgins, delivering the judgment of the Court, posed the question: "Does the fact that he can be present only whilst in custody frustrate the exercise of that right?" He answered: "If all the evidence of his trial were to be given at the trial his freedom of movement would in any event be restricted because he would be in the custody of the Court. That he should also be in custody when it is necessary for part of the evidence to be taken outside the State in his presence seems to be a reasonable compromise. Does the fact that in order to exercise his right he is obliged to go to Northern Ireland and put himself beyond the protection of the State in itself constitute too high a price to pay for the exercise of that right? It cannot be overlooked that he is to be in the custody and therefore under the protection of the police of Northern Ireland, and that he is guaranteed immunity from detention or legal process while so there. As in any event, his solicitor or counsel may represent him, the Court is of the opinion that in this respect the provisions of this section do not offend the provisions of the Constitution and are not repugnant thereto in the manner submitted".

This brief review, therefore, will demonstrate that for the past 10 to 15 years we have had a period of judicial dynamism. Compared with the inertia that had often surrounded the courts prior to that in this regard we appeared at times to be on a forensic roller-coaster. There has been a retreat in other parts of the world from this particular type of dynamism. The question has been asked: Do we have the same trend here? When you are in the arena, you know the state of play but there is hardly time to ask the category to which the particular match conforms. However, if I were to guess I would say there is a judicial drawing of breath before an attempt is made to scale further heights.

Perhaps, that, in itself, is no bad thing. There are always protagonists for both sides. As Lord Devlin has said recently:-

> "There is always a host of new ideas galloping around the outskirts of a society's thought. All of them seek admission but each must first win its spurs; the law at first resists, but will submit to a conquerer and become his servant. In a changing society (and free societies that are composed of two or more generations are always changing because it is their nature to do so) the law acts as a valve. New policies must gather strength before they can force an entry; when they are admitted and absorbed into the consensus, the legal system should expand to hold them, as also it should contract to squeeze out old policies which have lost the consensus they once obtained".[52]

I hope that you will not think us too chauvinistic in claiming strong links of history and a common legal system with you. Many of those who took part in the 1848 rebellion made their way, by accident or design to Australia.

John Boyle O'Reilly spent a year on a road gang in Bunbury in Western Australia in 1868. He left, or rather absconded, in early 1869 but he brought with him a fond memory of Australia and of the bright reign that it would have in the coming years.

16. (1972) I.R. 416
17. Prosecution of Offences Act 1974 (No. 22 of 1974). There have only been 22 appeals from the Court of Criminal Appeal to the Supreme Court; see Mr. Justice Walsh's review of them all in *The People (Attorney General) v. Giles* (1974) I.R. 422.
18. (1975) I.R. 1.
19. (1974) 1 All E.R. 87.
20. *Purtill v. Athlone UDC* (1968) I.R. 205.
21. *Donovan v. Landy's Ltd.* (1963) I.R. 441.
22. (1965) I.R. 642.
23. *Ibid* at 652.
24. *The State (Browne) v. Fearon* (1967) I.R. 147.
25. (1963) I.R. 33.
26. Report to the Secretary of State for the Home Department of the Departmental Committee on Evidence of Identification in Criminal Cases, H.C. April, 26, 1976. See Dr. Glanville Williams's critique of the Report: *Evidence of Identification: The Devlin Report* (1976) Criminal Law Review 407.
27. (1966) I.R. 501.
28. *e.g., Burns v. Irish Fibres Ltd.* (1967) I1TR 172; *Sexton v. O'Keeffe* (1966) I.R. 204; *O'Leary v. O'Connell* (1968) I.R. 1949. In contrast to the English position illustrated in *Mitchell v. Mulholland* (1972) 1 Q.B. 65 C.A.
29. *O'Leary v. O'Connell* (1968) I.R. 149 per Mr. Justice Walsh at p. 156.
30. *Hurley v. Imokilly Co-Operative Limited* (Supreme Court; 29th March, 1973 — unreported).
31. *Mairin de Burca v. Attorney General* (unreported).
32. Juries Act, 1976 (no. 4 of 1976).
33. *The State (Quinn) v. Ryan* 1965 I.R. 70.
34. *McDonald v. Bord na gCon* (1965) I.R. 217 and *East Donegal Co-Operative v. Attorney General* (1970) 317.
35. Foreward in Dr. Leo Kohn's *The Constitution of the Irish Free State* (London 1932). See essay "The Courts and the Constitution in Catholic Ireland" in *Judicial Review* by Edward McWhinney (University of Toronto Press 4th Ed. 1968).
36. *Buckley and others (Sinn Fein) v. Attorney General and another* (1950) I.R. 67.
37. *Buckley and others v. Attorney-General* — (1950) I.R. 67.
38. *Byrne v. Ireland* — (1972) I.R. 241.
39. *O'Brien v. Keogh* (1972) I.R. 144.
40. *McGee v. Attorney General* (1974) I.R. 284.
41. See Vol. VIII "The Irish Jurist" (University College Dublin).
42. 1974 I.R. 284 at 310.
43. (1971) I.R. 217.
44. The President is largely an honorary office. The two powers that he can exercise in his absolute discretion are the power to refer Bills to the Supreme Court, discussed above and the right to refuse to dissolve the Dail (House of Representatives) at the request of Prime Minister who has ceased to retain a parliamentary majority.
46. The single judgment rule applies also where the validity of a law having regard to the provisions of the Constitution is challenged in the Courts in the ordinary way. Article 34 4. 5°. This applies only to legislation enacted since the Constitution came into force; with regard to pre-constitution legislation there is no such restriction; see, for example *The State (Quinn) v. Ryan* (1965) I.R. 70.
47. (1965) I.R. 70 at 127.
48. (1940) .I.R. 470.
49. (1942) I.R. 334.
50. (1961) I.R. 169.
51. Judgment delivered 6th May, 1976; as yet unreported.
52. Judgment delivered 15th October 1976, as yet unreported

SOCIETY OF YOUNG SOLICITORS

2. BREAKDOWN OF MARRIAGE

PART I

(a) NULLITY

In considering Decrees of Nullity, it is important to clarify the distinction between void and voidable marriages.

Void Marriages

A void marriage is a marriage which is void *ab initio*. It is never a marriage in fact or in law. Consequently, no Decree is necessary to set it aside. Either party to a void marriage may lawfully contract a valid marriage to someone else without having the first marriage formally annulled, provided they inform and satisfy the relevant authorities that their former marriage was void. Although the parties have been through the ceremony of marriage, they never have acquired the status of husband and wife owing to the presence of some impediment. Accordingly, a Decree of Nullity of such a marriage will only be declaratory and cannot effect any change in the status of the parties.

If a marriage is void, any person with an interest in so doing may prove, as a question of fact, that there has never been a marriage at all.

A void marriage cannot be turned into a valid marriage by the ratification of either party.

Voidable Marriages

A voidable marriage is a marriage which is at its inception a valid and subsisting marriage and remains so until a Decree of a competent Civil Court, and not an Ecclesiastical Court, pronounces it to be void. The effect of an impediment is to empower one of the spouses to take steps to have it turned into a void marriage. A voidable marriage may only be set aside by a Decree of Nullity. Once this has been done, the Decree has a retrospective effect, so the parties are deemed in law never to have been married at all. No one but the parties may challenge the validity of voidable marriage. Hence, a voidable marriage can never be challenged when one of the parties is dead.

GROUNDS ON WHICH A MARRIAGE WILL BE DEEMED VOID

1. LACK OF CAPACITY

(a) Defect in Formal Requirements

If for example either party is under age, or already married, or the parties are related to one another within the prohibited degrees of relationship, or are both of the same sex, the marriage will be declared void.

(b) Formal Defect

The marriage will be void, if, for example:

(i) There is failure to comply with the relevant provisions of the Marriage Act 1972.

(ii) The marriage is solemnised in a place other than a church or chapel in which the banns were published, or

(iii) The marriage was not solemnised before the Registrar or other appointed priest or clergyman.

2. ABSENCE OF TRUE CONSENT

As the marriage is a contract, the absence of true consent will invalidate the ceremony. The factors which may negative a party's consent are:

(a) Insanity

If either party was so insane at the time of the ceremony as to be unable to understand the nature of the contract he was entering into, the marriage can be declared void. The burden of proof lies with the party impeaching the validity of the marriage.

(b) Drunkenness

The effect of drunkenness will be the same as that of insanity. If the drunkenness induced temporary insanity of such a nature as to make the marriage void, or for that reason or otherwise, rendered the party incapable of understanding the nature of the contract he was entering into, the marriage would be deemed void. The effect of addiction to drugs would probably be the same as the effect of drunkenness.

3. MISTAKE

Mistake will make the marriage void in two cases only:

(a) If there is mistake as to the identity of the other party.

(b) If there is mistake as to the nature of the ceremony.

If each party appreciates that he is going through a form of marriage with the other, no other type of mistake can make the contract void.

4. FRAUD AND MISREPRESENTATION

The principle of fraud or misrepresentation will only make the marriage void if the misrepresentation induces an operative mistake (for example as to the nature of the ceremony that was being performed).

5. FEAR AND DURESS

For example, if one of the parties is induced to enter into a marriage which, in the absence of compulsion, he would never have entered into at all, the marriage will be declared void. However, the fear must be unjustly imposed.

GROUNDS ON WHICH A MARRIAGE WILL BE VOIDABLE

Non-Consummation

A marriage is said to be consummated as soon as the parties have sexual intercourse after solemnisation. The inability to consummate the marriage may be due

to psychological or physiological causes. The inability of one spouse to consummate the particular marriage makes the marriage voidable at the option of the other. Sterility of either spouse is not of itself a ground for a Decree of Nullity.

Procedure

The procedure in obtaining a Decree of Nullity is clearly set out in Order Number 70 of the Rules of the Supreme Courts. The Rules also contain precedents of the forms required and these are set out in Appendix L of the Rules. The general outline is that the proceedings are commenced by way of Petition accompanied by an Affidavit of the Petitioner. The Petition is signed by the Petitioner and his Counsel. An *ex parte* application is made before the Master for leave to issue the Petition. When leave is granted, the Petition is served on the Respondent with the grounding Affidavit and the Pleadings then issue in accordance with the Rules. The Master settles the mode of Trial, and then the matter is set down in the Judge's List for hearing.

Medical Inspection

In proceedings for nullity on the grounds of non-consummation, incapacity or impotence, a Petitioner may apply to the Master (after the filing of the last Petition) to appoint Medical Inspectors. The Master appoints two Medical Inspectors, and the place and time of the medical inspection. A Registrar will attend at the place fixed for the examination, as will the Solicitors for each party who will be called upon to identify the parties to be examined.

ALIMONY PENDENTE LITE

Alimony pendente lite can be claimed by a wife being a Petitioner in nullity proceedings under the procedure laid down in Order 70 Rule 47 and subsequent Rules of the Superior Courts. It should be noted that the wife is entitled to be supported by her husband until a formal Decree of Nullity is made by a competent Court, because, until that happens, the marriage continues to exist at law, with all resulting obligations.

COSTS

All costs in matrimonial proceedings are taxed by the Taxing Master. After direction is given to the mode of trial, the Court may on the motion of the wife make an Order directing the husband to pay her costs of the case up to the date of the application, and further costs "de die in diem" up to the trial, and direct taxation of the costs and at the time of taxation to ascertain and clarify what is a sufficient sum of money to be paid into Court as security for costs.

CASE LAW

C (otherwise H) v C—LR (1921) p. 399—(Lord Birkenhead reviews all previous cases on Nullity).
(Absence of real consent—Fear induced by threat).

McK v McK 1936 I.R. p. 177 (Impotence and non-consummation).

R.M. v M.M. 1942 ILTR p. 165 (Physical Impotency Petition dismissed)

E.M. v S.M. 1943 ILTR p. 128 (Impotence of Respondent—undefended).

Mehta v Mehta (1965) AER I, p. 690 (fraud).

Buckland v Buckland (1967) AER, II, 300. (Fear induced consent).

Szechter v Szechter (1970) AER, III, 905. (Duress).

Corbett v Corbett (1970) AER, p. 33 (Defect in formal requirement).

Baxter x Baxter, 1948 AC 274 (Consummation).

S v S (Impotence, Ecclestical Decree of Nullity affirmed)—Gazette, June-July 1976, Green Page 19).

BIBLIOGRAPHY

1. Tolstoy "Void and Voidable Marriages" 27 MLR (1964) 385.
2. Bromleys Family Law (5th Edition 1976) Butterworths.
3. "The Formation and Annulment of Marriage" by J. Jackson.

REPORT OF THE SOCIETY OF YOUNG SOLICITORS' AUTUMN SEMINAR, WATERFORD

In the last issue of the Gazette you will recall that in our introductory paragraph a slight reference was made to the record attendance at the Society of Young Solicitors' Spring Seminar in Killarney. However, in this article we are going to risk that most serious of all literary faults i.e. repetition, and face severe editorial rebuke by telling you that the Autumn Seminar of the Society of Young Solicitors held in the Ardee Hotel, Waterford in November, far exceeded all previous record attendances. It was most unfortunate and regrettable that some late registrations had to be rejected but this was quite simply due to the fact that there was not a bed left in Waterford that was unoccupied by a Solicitor.

As usual the topics for the Seminar aroused much interest both before and after the lectures were delivered.

Many would agree that Frank Daly had the most unenviable task of all in having to deliver a lecture on one of the most controversial pieces of legislation at the moment; namely, the Family Home Protection Act 1976. But in the words of that immortal poet "Anon", "Corkmen are a divil for punishment" and Frank Daly further undertook to speak on the new Contract for Sale in an all-embracing lecture entitled "The effect on conveyancing practice of the new Law Society Contract for Sale and the Family Home Protection Act 1976" (Lecture 97).

After the comments by John Buckley and Maurice Curran on the new Contract for Sale in the previous Seminar, it was interesting to have the views of a member of the profession who was not connected with the drafting of this document. On the Family Home Protection Act there has to date been very little agreement, but it was the view of the Lecturer that what ever the conflicting opinions of eminent Counsel on the Act, it was certainly advisable to have the spouses' prior written consent to the sale of the family home for

full value and that this consent was obligatory in the case of a mortgage where full value consideration can rarely be proved. It was interesting to note his opinion that technically the statutory requirements were not fulfilled where the consent of spouse was endorsed after the sale. The resulting discussion after the lecture revealed all too clearly that there are too many uncertainties existing in this badly drafted piece of legislation. You may wish to note that the Act is presently under review by the Legislature.

Robert Johnston's lecture on the Drafting of Wills (Lecture 95) was as he himself said 'as different as chalk is to cheese' from the contents of his earlier lecture on Wills (Lecture 37) delivered some 8-years earlier. His latest lecture comprised a most helpful and exhaustive guide to the points to be borne in mind in the light of recent Statutes and Case Law when obtaining a client's instructions and drafting his Will and this lecture itself must be deemed compulsory reading for newly qualified Solicitors and should not be ignored by our most experienced brethren. Certainly, the two Solicitors at the Conference who were overheard to say that they would not, because of the call of the golf links, be able to attend this lecture, missed an invaluable opportunity of enriching their knowledge on this important area of the law. Many useful guidelines were to be derived from the lecture together with a most helpful general precedent draft Will.

Following Robert Johnston's lecture James J. Geoghegan of the Capital Taxes Branch, spoke on the subject of accounting for and paying Inheritance Tax under the Capital Acquisitions Tax Act 1976 (Lecture 94). This lecture contained a most useful guide to the regulations concerning the filling out of the multitude of new forms that will be furnished in connection with the payment of inheritance tax on death. The proportion of this tax payable and the cases in which it must be paid, were very clearly outlined and the complicated arithmetic deliberations of the Revenue Commissioners were most comprehensively outlined. In the question time which followed, Mr. Geoghegan rather rashly invited several Solicitors to submit their particular *bêtes noires* to him personally and his enthusiasm in this respect was very much welcomed by the audience.

Eamonn Mongey of the Probate Office lectured on Sunday on current Probate Office problems and procedure (Lecture 96). Students of probate will certainly find this as invaluable a guideline to their studies as their offices will find it a good basic reference. The lecture provided an illuminating insight into the workings of the probate mind and Eamonn Mongey covered most comprehensively the general requirements of the Probate Office on application for a Grant. The talk contained some very useful precedents for delivering title on the Oath for Administrator and we will welcome the publication of his new book on Probate topics generally, which we believe will shortly be forthcoming. It is perhaps unfortunate that some of Mr. Mongey's amusing anecdotes delivered during the course of the lecture do not appear in the typed script, but they certainly made for a most entertaining and useful talk. Only the fear that this Gazette may fall into the hands of innocent but inquisitive youth prevents their reproduction in this article.

It is hoped that the Spring Seminar will be held either late in March or early in April of next year. Unfortunately, because of the welcome problem posed by our ever-increasing attendance, a suitable venue has not yet been decided on.

FLAC ——

We have been asked by F.L.A.C. to spread the word that they are in great need of Solicitors to attend their centres.

The practice is to have one solicitor attend each centre each evening it is open. Each centre has a panel of solicitors upon whom it can draw and normally the solicitors on that panel are required to attend the centre once every 2 months. The solicitor is present to give advice to any of the students who may require it.

Any one who would like to have their names put on the panel for a F.L.A.C. centre should give their name to either of the following: —

Muriel G. Lee,
6 Palmerstown Gardens,
Dublin.
978428.

Ann FitzGerald,
16 Clyde Road,
Dublin 4.
684921.

Listed below are the F.L.A.C. Centres and the nights on which they are open: —

Tuesday: Finglas, Molesworth Street.
Wednesday: Ballyfermot; Mountjoy Square; Rialto and Dun Laoghaire.
Thursday: Cabra, Ballymun and Coolock.
Saturday mornings: Coolock.

THE HIGH COURT

Numbering of Courtrooms

The Courtrooms hitherto designated as "The President's Court" and "Court Number 12" will be designated (from the commencement of Hilary Sittings) as "Court Number 7" and "Court Number 8" respectively.

J. K. WALDRON
Registrar

2nd December 1976.

THE CIRCUIT COURT

Numbering of Courtrooms

The Courtrooms hitherto designated as Court 7, Court 8, Court 9 and Court 10 wlil be designated (from the commencement of Hilary Sittings) as Court 14, Court 15, Court 16 and Court 17 respectively.

County Registrar,
MICHAEL T. NEARY.

Note : This will take effect on 11th January, 1977.

INCORPORATED LAW SOCIETY OF IRELAND

Please note that the Society's examinations will commence on the following dates and the Closing Dates are as shown:

Examination	*Date of Commencement*	*Closing Date*
First Irish	Wednesday, 12 January 1977	3 January 1977
Second Irish	Thursday, 13 January 1977	3 January 1977
Law Examinations	Friday, 25 March 1977	10 March 1977
Accountancy	Wednesday, 15 June 1977	31 May 1977

Entries received after 4.00 p.m. on the specified closing date will not be considered.

All Entry Forms shouldbe accompanied by the appropriate fee as specified in the Solicitors Acts 1954 and 1960 (Apprentices Fee) Regulations, 1975, which are as follows:

Examination		*Repeat Entry*
First Irish	£ 5.00	£ 3.00
Second Irish	£ 5.00	£ 5.00
First Law	£10.00	£10.00
Second Law	£15.00	£10.00
Third Law	£15.00	£10.00
Accountancy	£ 5.00	£ 5.00

Applications received without the Entry Fees will not be accepted.

The Education Committee will only consider applications for exemption from sitting the First Law Examination from those who have entered for the examination, paid the prescribed fee and furnished the appropriate evidence of their degree qualification.

December, 1976.

JAMES J. IVERS (DIRECTOR GENERAL)

SOLICITORS ANGLING SOCIETY

It is proposed to form an Angling Club for members of the profession if there is sufficient interest in the project.

It is proposed that the Club would hold one or more not too serious competitions in different areas each year.

It is proposed that the activities of the Club should cover both fresh and salt water angling.

Will any member interested please get in touch with:

JOHN B. JERMYN,
CLONLEIGH,
KINSALE,
CO. CORK.
Tel. 021/72553.

CORRESPONDENCE

DANGEROUS LAND CERTIFICATE

Centaur Street,
Carlow, 29 October 1976

Dear Mr. Ivers,

Recently I obtained from a client's Bank his Land Certificate on Accountable Receipt with a view to selling the property contained herein. The Land Certificate showed my client registered as Full Owner with Absolute Title and the only prohibition was sub-letting or sub-division specified in Section 12 of the Land Act, 1965 and the provision restricting the vesting of interests specified in Section 45 of the same Act.

I prepared a Contract and was about to have it signed when a certificate copy Folio which I had bespoken became available. On reading this document I was amazed to see that it contained an entry not contained in the Land Certificate restricting the transfer of the property without the consent of the Land Commission. by reason of the provisions of Section 6 of the Land Act. 1946 which impose a restriction on an original holding when the owner thereof has obtained an additional holding from the Land Commission on the division of an Estate elsewhere.

It would accordingly appear that our Profession cannot rely on the Land Certificate as containing the true title of any lands. If, for example, I had acted for a Purchaser of the lands in question without looking at a Folio, I could be in serious trouble.

Incidentally the Bank from whom I got the Land Certificate would appear to have had little or no security. I think this should be brought to the notice of the Profession.

Yours sincerely,
Frank Lanigan.

MEMORANDUM

Re: Liability of new houses which are exempt from stamp duty to ad valorem stamp duty

Changes in the conditions under which newly built houses qualify for Certificates of Reasonable Value (and as a consequence are exempt from Stamp Duty on the first assurance of such houses) have resulted in a notable reduction in the number of houses qualifying for such exemption.

There are two key factors which affect the position. The first is the nature of the contractual relationship between the builder and the purchaser and the second the stage of completion of the house at the date such contractual relationship is entered into.

If, under the contract for the sale or lease of the site, the purchaser is entitled to an assurance of the site, then *ad valorem* duty will be calculated only on the purchase price of the site together with the Stamp Duty on any Ground Rent (subject to what is said later about the stage of construction of the house at the date of the contract). This is so, even if the assurance includes a covenant by the Purchasers to erect a dwellinghouse on the property to plans and specifications to be approved of by the Grantor/Lessor and to enter into a building contract with John Doe & Co., Ltd., Building Contractors to build a house on the said site at a price of £ . . .

If the Contract for Sale or lease provides that the obligations of the Grantor/Lessor are subject to compliance by the purchaser with the terms of a particular concurrent Building Contract, then *ad valorem* duty will be charged on the total consideration contained in both the Contract for Sales/Lease and the Building Contract, e.g. if there is a clause providing for the forfeiture of the right to the assurance if the builder is not paid on foot of the building contract.

If there is a clause in the Agreement for Lease/Sale providing for forfeiture of the right to the assurance if the Builder is not paid on foot of the Building Contract, *ad valorem* stamp duty will be paid on the price in the Building Contract. Such Duty would not be payable if the Agreement for Sale/Lease only provided for such forfeiture if the house is not built on the site within a specified time.

Many builders combine Building Agreements and Agreements for Lease in the one document. It is possible to do this without attracting a liability for *ad valorem* duty on the Building price but it is probably safer to use Agreements.

Even if the Contract for Sales or Lease and the Building Contract are not linked in any way, *ad valorem* duty will be chargeable if at the time the Contracts or agreements were entered into, the house was "substantially completed". The test is not so much the amount of work done but whether there are "substantial works" to be completed on the house before it is finished.

We have made inquiries from house builders and are advised that the usual stages of building of a dwellinghouse on a Building Estate are:—

1. The pouring of foundations.
2. The completion of the sub-floor and drains and construction of walls to damp-proof course level.
3. The construction of walls to the wall plate level (ready to take the roof).
4. Roofing (including the completion of tiling and guttering).
5. First fixing (this includes the first fixing of carpentry electrical wiring and plumbing).
6. Glazing (which may sometimes be postponed until after the plastering).
7. Plastering (both inside and outside).
8. Second fixing of carpentry plumbing and electrical wiring.
9. Decorating and finishing.

The Revenue Commissioners accept that prior to roof level there would be no question of *ad valorem* duty being payable, subject of course to evidence satisfactory to them being produced to that effect. The Revenue Commissioners do not have any hard and fast rule as to what exact stage they will decide that there is no longer substantial work to be completed on any particular house.

Certainly if three quarters of the amount of money relating to any house had already been expended (excluding the site value) they say that there will no longer be substantial work to be completed and *ad valorem* duty would be payable on the entire price. In between roof level and this stage, each case will be dealt with on its merits.

Evidence of Stage of Construction

The Adjudication Office were seeking evidence from Solicitors by way of Statutory Declaration as to the stage of construction of houses. The Law Society made representations to the Revenue Commissioners in this connection that it was inappropriate to insist upon declarations from Solicitors. The Revenue Commissioners have now indicated that for the future, they will accept the Certificate of such independent professional person as would be acceptable to them. A Chartered Engineer or Architect who is a member of the Institute of Architects or has satisfied the Revenue Commissioners that he is a practising Architect in good standing will be acceptable to them. Such Certificates would have to state specifically that it was being given on foot of inspection made personally. If the house had not been roofed, the content of the Certificate will be obvious. If it has been roofed, it would be advisable to give the greatest possible detail of the stage of construction of the house, detailing the work done and the work to be done. It would be helpful also to give particulars of the value of the work done as a proportion of the total.

The Revenue Commissioners may require certificates to be verified by Statutory Declaration or other evidence in any particular case. Solicitors who act for builders who are purchasing lands for building development or are embarking on any project involving the building of houses in respect of which certificates of reasonable value are unlikely to be obtained, should advise their clients fully of the need to arrange for satisfactory evidence of the nature mentioned above to be available. The ideal way would be for the Estate Architect or Engineer to inspect each house at foundation level, wall plate level, roofing and completion so as to be able to furnish detailed certificates if required.

There are two other categories of cases involved.

The first are the cases currently coming up for adjudication where the evidence which the Revenue Commissioners are now seeking is not available, and it is now too late to obtain same. The Revenue Commissioners have indicated that they feel that some independent evidence should be furnished, but that a reasonable view would be taken of such cases, provided of course that there was nothing on the face of the docu-

THE DUBLIN SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the Association, held at Solicitors' Building, Four Courts, Dublin on Monday the 25th October 1976, the following Council was elected for the ensuing year:

President: John P. A. Hooper.
Vice-President: Thomas Jackson.
Hon.-Secretary: Andrew F. Smyth.
Hon.-Treasurer: Mrs. Maeve Breen.
Hon.-Auditors: Patrick Glynn and Peter Maher.

Other members of the Council: John F. Buckley, Stephen Maher, Vivian Matthews, Charles Meredith, Rory O'Donnell, Colm Price, Laurence Shields, Mrs. Moya Quinlan and Miss Mary Cantrell.

Although the business of the Annual General Meeting tends, necessarily, to be of a formal character, a number of matters of interest to the profession were discussed, including difficulties which members were experiencing with the City and County Sheriffs; delays in the Registry of Deeds, and legal aid.

Stephen Maher was instrumental in suggesting that the Association should initiate during the coming year a series of regular Meetings of an educational nature and it was agreed that this proposal should be implemented.

The Annual Dinner was also discussed and, on a show of hands, it was resolved that the date of the Dinner should be changed from December to February.

The next Annual Dinner will be held in February 1977, at a place and time yet to be decided.

DUBLIN SOLICITORS' BAR ASSOCIATION

At the monthly Council Meeting of the Association held on Wednesday, 3rd November, 1976, the following Sub-Committees were appointed for the year 1976/77:

(a) **Court Practice and Procedure:** D. R. Pigot (Convenor); Vivian Matthews; Rory O'Connor.

(b) **Landlord and Tenant and Conveyancing:** Rory O'Donnell (Convenor); John F. Buckley; Colm Price; Charles Meredith; Steven Maher.

(c) **Family Law:** Laurence Shields (Convenor); Mrs. Maeve Breen; Mrs. Moya Quinlan; Miss Thelma King.

(d) **F.L.A.C. Liaison Officers:** Thomas Jackson; John F. Buckley; Gerard M. Doyle.

(e) **Publicity:** Charles Meredith (Convenor); David Pigot; Steven Maher; Laurence Shields.

(f) **Activities Committee:** Miss Mary Cantrell; Steven Maher.

(g) **Dinner Sub-Committee:** Thomas Jackson; David R. Pigot; John F. Buckley; Laurence Shields; Mrs. Maeve Breen.

(h) **Nominees to Incorporated Law Society:** Thomas Jackson; Rory O'Donnell; Andrew F. Smyth.

Various matters were discussed, which are the subject of investigation or attention from appropriate Sub-Committees, including the following:

1. Representations to improve the service given by the Dublin City and Dublin County Sheriffs' offices.
2. The possibility of the re-publication of the Garda Siochana Guide.
3. Representations being made to Mr. Michael Neary, County Registrar, in relation to the improvement of the performance of the Dun Laoghaire, Civil Bill Officer.
4. Representations to the Department of Justice and to the Registrar of Deeds, Henrietta Street, with a view to improving the present service in the Registry of Deeds which has been deteriorating in recent years through lack of staff.
5. Agreement as to a standard form of Architects' Certificate of Compliance with Planning Permissions which would be acceptable throughout the profession and in particular, to solicitors acting for lending agencies.
6. Representations to the Department of Justice and to the appropriate local authorities with regard to the improvement of the procedure relating to Malicious Injury Applications.

The appropriate Sub-Committees will report in due course.

MEMORANDUM RE CONTENTIOUS PROBATE PROCEEDINGS IN THE CIRCUIT COURT

Having regard to the provisions of the Courts (Supplemental Provisions) Act 1961 and the Succession Act 1965 the requirement contained in Order 34 Rule 12 of the Circuit Court Rules of 1950 that a certified copy of the affidavit as to jurisdiction, required to be lodged in the Principal or District Probate Registry be lodged in the Circuit Court in a contentious probate proceedings, does not any longer apply.

The practice therefore which heretofore was followed of lodging such an affidavit in the Principal or District Probate Registry and obtaining from the Registrar a Certificate to be transmitted to the Circuit Court has been discontinued. Proof of the jurisdiction of the Circuit Court to hear such contentious proceedings will, as in any other type of action, be a matter for evidence in the Circuit Court itself.

T. A. Finlay

President of the High Court

(Continued from overleaf)

mentation furnished or otherwise to give them cause for believing that the evidence furnished was not accurate. The Certificate of compliance with building covenant having been signed and dated a month after a house was supposed to have been roofed is an example of the sort of case that would be regarded with suspicion.

The second type of case is that of old leases which for one reason or another were not adjudicated. In these cases it is obvious that the evidence mentioned above for current cases simply will not be available. At the time most of these leases were granted, evidence was available from the Local Authorities as to the dates of inspection of the houses at foundation level, wall plate level, roof level and completion. These records are no longer available. Most of these old cases are ones that could easily have been adjudicated at the time. The Revenue Commissioners have indicated that they will take a reasonable view of old cases from the point of view of the evidence of the stage of completion at the date of the agreements and the date of completion of the mortgages on the new house. The other is, where the person seeking to adjudicate the Lease is himself the original purchaser and can furnish a detailed declaration verifying the stage of construction at the date of signing of the Contract. In such a case of course such a declaration would not be any use if for example the property had been mortgaged say 3 weeks after the date of the Building Agreement and Agreement for Lease.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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 31st day of December, 1976

N. M. GRIFFITH
Registrar of Titles

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

Schedule

(1) Registered Owner: Michael Crehan; Folio No.: 926 (Rev); Lands: Creeveroe (Ffrench); Area: 11a. 3r. 18p.; County: Galway.

(2) Registered Owners: Joseph Sherman and Katherine Sherman; Folio No.: 481; Lands: Kyle; Area: 10a. 0r. 38p.; County: Queens.

(3) Registered Owner: John Keohane; Folio No.: 57642; Lands: (1) Carhoogarriff, (2) Ballinoroher, (3) Ballinoroher, (4) Ballinoroher; Area: (1) 30a. 1r. 18p., (2) 30a. 1r. 15p., (3) 6a. 3r. 10p., (4) 48a. 2r. 13p.; County: Cork.

(4) Registered Owner: John Patrick Leahy; Folio No.: 1813L; Lands: The leasehold interest in the property situate on the north side of Glendale Drive in the Parish of St. Finbar and County Borough of Cork containing 0a. 0r. 10p.; County: Cork.

(5) Registered Owner: Patrick Hayes; Folio No.: 13727; Lands: Maulmane; Area: 29a. 1r. 17p.; County: Cork.

(6) Registered Owner: Martin Hayes; Folio No.: 9503; Lands: Boskill; Area: 41a. 2r. 26p.; County: Limerick.

(7) Registered Owner: Patrick Connor; Folio No.: 7250; Lands: Carhoo (E.D. Kilkerranmore); Area: 29a. 3r. 6½p.; County: Cork.

(8) Registered Owner: Thomas Carew; Folio No.: 5647; Lands: Glenough Lower; Area: 23a. 1r. 31p.; County: Tipperary.

(9) Registered Owners: Michael Heffernan and Mary A. Heffernan; Folio No.: 5953; Lands: Srahaverella; Area: 81a. 3r. 8p.; County: Tipperary.

(10) Registered Owners: Michael Heffernan and Mary A. Heffernan; Folio No.: 4177; Lands: Clonoulty Curragh; Area: 4a. 2r. 24p.; County: Tipperary.

(11) Registered Owners: Michael Heffernan and Mary A. Heffernan; Folio No.: 5957R; Lands: Srahavarella; Area: 16a. 2r. 39p.; County: Tipperary.

(12) Registered Owner: Patrick Devanny (Junior); Folio No.: 17282; Lands: (1) Ardkeenagh, (2) Castleland; Area: (1) 10a. 1r. 10p., (2) 1a. 0r. 25p.; County: Roscommon.

(13) Registered Owner: Patrick Devanny; Folio No.: 3721; Lands: Corbally; Area: 19a. 3r. 21p.; County: Roscommon.

(14) Registered Owners: James K. Martin and John Doris (the Land Certificate of John Darcy and John Bailey); Folio No.: 2280; Lands: Moymet; Area: 0a. 3r. 10p.; County: Meath.

(15) Registered Owners: Patrick Haughton and Helen Haughton; Folio No.: 4549F; Lands: Part of the Townland of Pollerton Big situate in the Barony of Carlow; County: Carlow.

(16) Registered Owner: William Deacon; Folio No. 614F; Lands: (1) Garraun Lower, (2) Townamulloge, (3)Rathflylane, (4) Garraun Lower (E.D. Castleboro); Area: (1) 9a. 2r. 33p., (2) 80a. 0r. 20p., (3) 80a. 2r. 15p., (4) 25a. 2r. 30p.; County: Wexford.

(17) Registered Owner: Brigid Anne Ryan; Folio No.: 29813; Lands: (1) Attimonmore South, (2) Attimonmore South, (3) Attimonmore South; Area: (1) 9a. 2r. 9p., (2) 0a. 3r. 8p., (3) 5a. 3r. 0p.; County: Galway

(18) Registered Owners: Michael Kelleher and Kathleen Elizabeth Kelleher; Folio No.: 10468; Lands: A plot of ground with the house thereon situate in the town of Ballygar containing 0a. 0r. 26½p.; County: Galway.

(19) Registered Owner: Percy Giles; Folio No.: 27283; Lands: (1) Burgatia (part), (2) Burgatia; Area: (1) 53a. 3r. 35p., (2) 44a. 1r. 23p.; County: Cork.

NOTICES

Assistant Solicitor required with conveyancing experience. State experience and salary expected. Replies to Box. No. 146.

Solicitor wishes to purchase practice. Any area considered. Reply in confidence to Box No. 147.

Assistant Solicitor required in office in West of Ireland near Galway. Some experience an advantage. Salary negotiable. Contact Box No. 148 for appointment re Interview as soon as possible.

LOST WILL

Medeleine Tracy late of 11c, Blessington Lane in the City of Dublin. Widow. Would any Solicitor or other person having knowledge of any Will of the above-named deceased please contact Gerard J. Lyons, Solicitor, 19/20, Lower Baggot Street, Dublin.

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street.Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. Tel: 742283 Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

THE INCORPORATED LAW SOCIETY OF IRELAND

GAZETTE

DECEMBER 1976 VOL. 70. NO. 10

The President, Mr. Bruce St. J. Blake (See page 208)

SOCIETY'S OFFICERS

At the meeting of the Council held on 16th December, 1976, the following were elected Officers of the Society for the coming year:

President: Mr. Bruce St. John Blake, Dublin.

Senior Vice-President: Mr. Joseph L. Dundon, Limerick.

Junior Vice-President: Mr. Walter Beatty, Dublin.

SUMMER MEETING

6th - 8th MAY, 1977

WHITE'S HOTEL, WEXFORD

GUEST SPEAKERS :

Mr. N. Griffith, Registrar of Title
Land Registry Practice

Mr. A. Shatter, Solicitor,
Family Law in Ireland

PROGRAMME INCLUDES :

Trade Display, Golf Competition, Visits to Local Centres of interest, Social Functions.

BOOKING FORMS WILL ISSUE WITH THE NEXT GAZETTE

ANNUAL GENERAL MEETING

The President, Mr. Patrick C. Moore, took the Chair at 2.30 p.m. on Thursday, 25th November, 1976, in the Library of Solicitors' Buildings, Four Courts.

The President suggested that the Notice of the Meeting, and the Minutes of the Ordinary General Meeting, which had been held in Tralee in May, 1976, and which had been circulated, be taken as read and signed. This was agreed to unanimously.

The President moved that the Council's Balance Sheet which had been circulated, should be adopted. The adoption of the Balance Sheet was proposed by Mr. Maurice Curran, seconded by Mr. W. A. Osborne, and passed unanimously. Mr. W. B. Allen proposed, and Mr. John Maher seconded the motion that Messrs Coopers & Lybrand be appointed Auditors for the coming year. This was agreed to unanimously.

REPORT OF THE SCRUTINEERS

A meeting of the scrutineers appointed at the Ordinary General Meeting of the Society, held in May, 1976, together with ex-officio scrutineers was held on 18th November, 1976. Nominations for ordinary membership of the Council were received from 38 candidates all of which were declared valid and scrutineers directed that their names be placed on the ballot paper.

The following candidates were duly nominated as Provincial Delegates in accordance with bye-law 29 (a) of the Society, and were returned unopposed :

Ulster : Peter Murphy
Munster: Edward P. King
Leinster : Christopher Hogan
Connaught : Patrick J. McEllin

A meeting of the scrutineers was held on Thursday, 18th November, 1976. The poll was conducted from 10.00 a.m. to 8.00 p.m. and the scrutiny was subsequently held. The result of the ballot was as follows :

The valid poll was 911. The following candidates received the number of votes placed after their names, and were elected.

John F. Buckley 668; Bruce St. J. Blake 626; Patrick C. Moore 611; William A. Osborne 606; Mrs. Moya Quinlan 598; Joseph L. Dundon 566; Walter Beatty 565; Michael O'Mahony 552; Anthony E. Collins 532; John Carrigan 526; Adrian P. Bourke 522; David R. Pigot 518; Donal G. Binchy 499; Thomas D. Shaw 492; Peter D. M. Prentice 489; Robert McD Taylor 487; Gerald Hickey 483; John Maher 482; William D. McEvoy 477; Patrick Noonan 473; Maurice R. Curran 468; Patrick F. O'Donnell 462; William B. Allen 455; Sarah C. Killeen 443; Michael P. Houlihan 442; John J. Nash 426; Francis J. Lanigan 424; Raymond T. Monahan 419; Laurence Cullen 416; John B. Jermyn 404; Gerald M. Doyle 398.

The foregoing candidates were returned as ordinary members by the Council for the year 1976/77. The following members also received the number of votes placed after their names : Eamonn P. King 389; Brendan A. McGrath 387; James W. O'Donovan 384; Ernest J. Margetson 361; John Rochford 341; Philip E. McCourt 321; Brian M. Gallagher 249. The President declared the result in accordance with the ballot.

REPORT OF THE COUNCIL

The President stated that the Annual Report of the Council and of the Committees had been printed in the October Gazette. The position arising from the Reports was very satisfactory, as it conveyed to members the multifarious activities of the Committees. He did not intend to make a presidential speech as such, but merely wished to express his appreciation to the members of the Council, the staff, and the members generally. It was intended this year that all the Reports of the Council and of the Committees should be discussed en bloc. Mr. David Pigot formally proposed that "the Report of the Council and of all the Committees for 1975/76 be adopted", and Mr. John Jermyn seconded this resolution.

Mr. T. D. McLoughlin wished to have the advantages of Blackhall Place, as regards library facilities and meetings, spelled out.

Mr. Quentin Crivon inquired when telephone facilities would be available in Blackhall Place, and whether photocopying facilities would be available in the Four Courts.

Mr. John Gleeson stated that, to the best of his knowledge, there was disquiet at the idea of removing the Library to the new premises in Blackhall Place, as he thought it would make the books inaccessible. The big tables which had formerly been in the Library had disappeared to the inconvenience of members (These have now been replaced), and there was no coat rack. (This has also been replaced).

In reply to **Mr. John Donovan** who asked why the Four Courts Hotel had not been considered at the time of the purchase of Blackhall Place the **President** stated that, at that time, those premises were not for sale, but only became available since. In any event, the President was doubtful whether the Four Courts Hotel would be a suitable premises for the Society, and he understood it had now been acquired by the Board of Works.

Mrs. Quinlan, in further replies to queries, stated that tables and coathangers would be provided. There would be ample facilities of all kinds in Blackhall Place. It may be possible to arrange limited Library facilities in the Four Courts. On the occasion of the meeting of Presidents and Secretaries of Bar Associations recently, a conducted tour of the King's Hospital had been arranged for them. Mrs. Quinlan invited the members to inspect the premises, and stated that the Clerk of Works would show them around.

The **President** stated that at the moment, they were carrying on the full functions of the Council with tremendous difficulties, as their activities were constantly expanding and escalating. It was essential for them to have space to carry on.

The students had suffered considerable inconvenience in the past years, as they had to be sent for lectures in various buildings. A serious problem for the students would have been caused if it had not been decided to establish a Law School in Blackhall Place, and he had to earnestly congratulate them on their forebearance.

This building in the Four Courts is not being sold, and full photocopying facilities will remain here. The decision that the Library should be moved to the King's Hospital was however irrevocable, but the possibilities of providing an auxiliary Library service here would be explored.

Mr. John Gleeson mentioned that he knew a solicitor who had to conduct a case alone in the Supreme Court. In the course of argument the Judge might mention cases, and, if the Library were not here, the solicitor could not produce them in a hurry, **Mr. T. C. G. O'Mahony** also considered that it was vital that the Library should be available beside the Courts.

In reply to Mr. Crivon, the **President** stated that no

decision had yet been taken as to how the funding of the expenses of the King's Hospital was to be undertaken. The President stated that the members had been fully consulted on this subject at the Ordinary General Meeting in Westport in 1975.

FINANCE

The President then requested Mr. Osborne as Chairman of the Finance Committee to make a statement. **Mr. Osborne,** in reviewing the financial position of Blackhall Place, said that the cost of acquiring the premises of King's Hospital had actually been paid more than 3 years ago. A Reserve Fund for Blackhall Place had been established, and as a result of wise investments, had produced £200,000. In addition the Bank of Ireland had made available a term loan of £250,000 which would be repayable in 7 years. As it would have cost more to create a viable unit in the Four Courts, they were absolutely committed to the Blackhall Place scheme. Stage I, which comprised the central block, had now been completed, and Stage 2, which comprised the South Wing, was in process of erection. The total cost for Stages 1 and 2 would be £463,000, of which £150,000 had already been spent.

It was essential that the Bank term loan should be funded from revenue, and it was therefore proposed to have a private Funding Scheme similar to annual Prize Bonds; however the interest rate would be much less than that of a term loan. He appealed to the profession to support the Funding Scheme.

As regards Stage 3—the former Chapel area in the North Wing—it was hoped that this hall would be made available for outside functions when completed. The Four Courts premises was very valuable, and only the parts of it which would not be required would be disposed of gradually.

Mr. Crivon, referring to the proposed increase in the subscription to the Society, emphasised that the profession had not yet received any increases in costs, as a result of which it became impossible for individuals to run practices.

The resolution "That the Report of the Council and the Reports of the Committees for 1975-76 be adopted" was then passed unanimously.

Mr. John Carrigan proposed, and **Mr. Robert McD Taylor** then seconded the following resolution:

> "1. That bye law 3 of the Society be revoked and that the following bye law be substituted:—
>
> "The annual membership shall be £20 for a member who has been admitted to the roll of solicitors for three years or upwards and £10 for all other members or such sum as the Society in General Meeting may from time to time determine, and shall be payable in advance on 6th January, in each year or on acceptance as a member, provided that a new member accepted and joining the Society for the first time after 1st July in any year shall be required to pay only half the appropriate subscription to the following January 5th, and such new member shall be entitled to vote at the then ensuing election for the Council, provided that he shall have been a member at least one week before the date of the election".

Mr. Crivon's objection to the Reports not having been discussed in detail was duly noted.

Mr. Donough O'Donovan stated although he was a retired Chief State Solicitor he wished to continue his membership of the Society, provided special financial arrangements could be made in cases like his.

Mr. Bruce St. John Blake stated that this matter had been discussed in Committee, and that he would consequently propose an amendment, whereby the new subscription rate would apply to "practising members", and that the reduced rate of £10 per annum, which it was proposed to apply to practising members of less than three years standing, would also apply to all non-practising members. Mr. O'Donovan seconded the amendment. The **President** stated that, in these days of inflation, they had checked what many other organisations charged as Annual Subscriptions, and that, in the light of that information, an annual subscription of £20 was not excessive.

The proposed Amendment to the Resolution was that the annual membership subscription shall be £20 for practising members. The annual membership subscription for non-practising members and for those who have not been admitted for three years shall be £10. In either case, the General Meeting may from time to time determine the sum payable.

The amendment was then put to the meeting and passed unanimously. The substantive motion, as amended, was then put to the meeting, and passed unanimously.

Under the heading 'Any other business', **Mr. John Gleeson** stated that a large body of opinion of the members opposed and deprecated the increasing practice of canvassing for membership of the Council. Many modest men of standing would never think of getting anyone to propose them, if they knew this campaign would have to be sustained by canvassing.

Mr. Frank O'Donnell stated that there had been a complete lack of communication between the Society and its members, which up to recently had been shown by the low poll for the Council. One of the methods of communication was canvassing, and it was necessary for unknown members to make themselves known.

The **President,** in reply, stated that the problem of canvassing had never been considered by the Council. It was not proposed to effect a change, unless the general body of members asked for it. He was personally open-minded about the matter, and thought it was a matter for every individual to determine for himself.

The date of the next Annual General Meeting was fixed for Thursday 24th November, 1977.

Mr. F. X. Burke then referred to some provisions of the Anti-Discrimination (Unfair Dismissals) Bill, 1976. He pointed out that, up to a period of six months after an employee had been dismissed, he may claim his salary for wrongful dismissal. The onus is thus placed on the employer to compensate him long after his dismissal. He was frankly amazed that the Bill had gone to Committee Stage without opposition and thought that the Society should look into it urgently.

Mr. Osborne pointed out that this Bill had been considered by the Parliamentary Committee, but that it was difficult to make representations to the Minister concerned in time, before the Committee Stage reached the Dail.

Mr. Crivon, referring to the Education Committee Report, criticized the present low standards of recently qualified solicitors and requested that steps be taken urgently to improve them. He considered the requirements for entry into the profession too low. He doubted whether the appointment of an Education Officer at £10,000 per annum would improve matters substantially.

If the increases to legal staff contemplated by the

Law Clerks Joint Labour Committee are passed, the overheads will be practically wiped out, due to office expenses. Consequently Mr. Crivon felt it would be necessary to consider charging apprenticeship premiums.

Mr. Buckley said that they were unhappy that the standards had not been raised earlier. After seeking much advice, the current thinking seemed to be that education should pay for itself.

Mr. W. B. Allen then proposed a vote of thanks to the President for the services he had rendered the Society during the past year. This vote was passed unanimously.

The **President,** replying, expressed thanks to all who had helped him.

The meeting then terminated at 4.15 p.m.

APPOINTMENT OF COMMITTEES FOR 1976/77

Registrars & Compensation Fund
D. Pigot, Chairman; D. Binchy, A. Smyth, Miss C. Killeen, T. D. Shaw, P. F. O'Donnell, W. B. Allen, M. V. O'Mahony, W. D. McEvoy, A. E. Collins, Robert Flynn.

Finance
G. Hickey, Chairman; D. Binchy, P. Murphy, P. D. M. Prentice, W. A. Osborne, T. D. Shaw, P. C. Moore.

Privileges
W. B. Allen, Chairman; G. Doyle, J. Carrigan, T. Jackson, J. B. Jermyn, Miss C. Killeen, J. Maher, A. Smyth, T. Shaw, P. C. Moore, Mrs. M. Quinlan, Robert Flynn.

Premises
Mrs M. Quinlan, Chairman; T. Jackson, G. Hickey, P. C. Moore, P. D. M. Prentice, R. F. O'Donnell, G. J. Moloney, W. A. Osborne.

Education
M. Curran, Chairman; J. Buckley, R. O'Donnell, A. Bourke, M. V. O'Mahony, Frank Daly.

Court Officers & Costs
M. P. Houlihan, Chairman; P. Murphy, F. Daly, C. Hogan, G. J. Moloney, P. McEllin, W. D. McEvoy, R. McD. Taylor, F. Lanigan, R. Monahan, L. Cullen, P. Noonan, J. J. Nash, D. Pigot, R. O'Donnell, John Maher.

Publin Relations
W. D. McEvoy, Chairman; A. Smyth, D. Binchy, M. V. O'Mahony, M. P. Houlihan, P. Murphy, John Buckley, Mrs. M. Quinlan, R. T. Monahan, W. A. Osborne, F. Daly.

Policy
B. St. J. Blake, P. C. Moore, J. Carrigan, P. D. M. Prentice, F. Lanigan, J. Maher, J. J. Nash, P. Noonan R. McD Taylor, J. Dundon, W. Beatty, G. Hickey, W. A. Osborne, and Chairman of Committees.

EEC & International Affairs
A. Bourke, Chairman; J. B. Jermyn, G. J. Moloney, A. E. Collins, R. T. Monahan, M. V. O'Mahony, P. C. Moore.

Parliamentary
D. Binchy, Chairman; W. B. Allen, J. J. Nash, R. Monahan, W. A. Osborne, P. F. O'Donnell, A. E. Collins, A. Smyth, Brian Russell, A. Bourke.

Company Law
B. O'Connor, Chairman, P. Kilroy, W. Beatty, M. G. Dickson, F. Daly, L. Shields, H. Fry, A. Collins, Miss M. Finlay, J. O'Dwyer, M. Irvine.

Disciplinary
T. A. O'Reilly, F. Lanigan, R. McD. Taylor, J. Maher, P. Noonan, T. Bacon, T. Jackson, R. O'Connor, P. C. Moore.

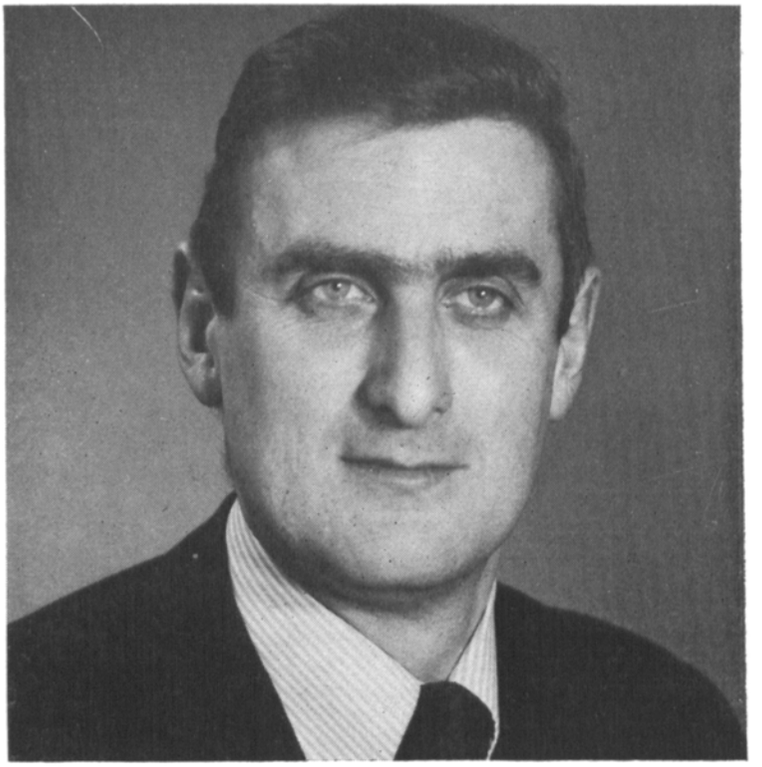
Incorporated Law Society of Ireland

CHANGE IN DATE OF

ACCOUNTANCY EXAMINATION

Please note that the date of the Accountancy Examination as published in the November, 1976, Gazette, has been changed. The Accountancy Examination will be held on 8th June, 1977, and the closing date for receipt of entries is the 20th May, 1977.

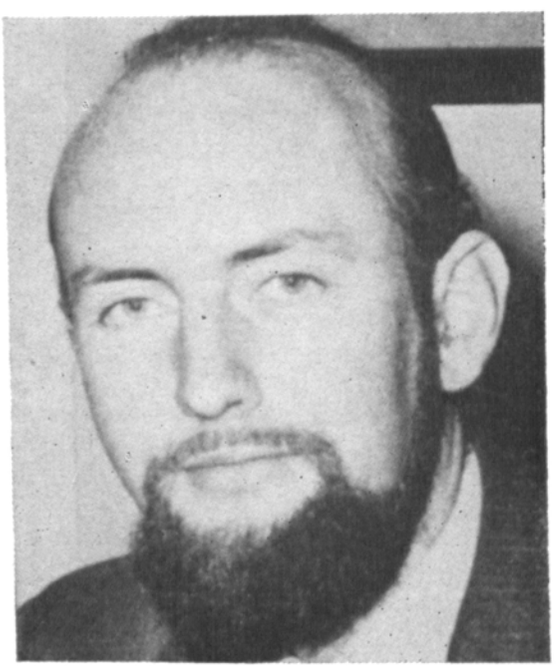
THE PRESIDENT, MR. BRUCE ST. JOHN BLAKE



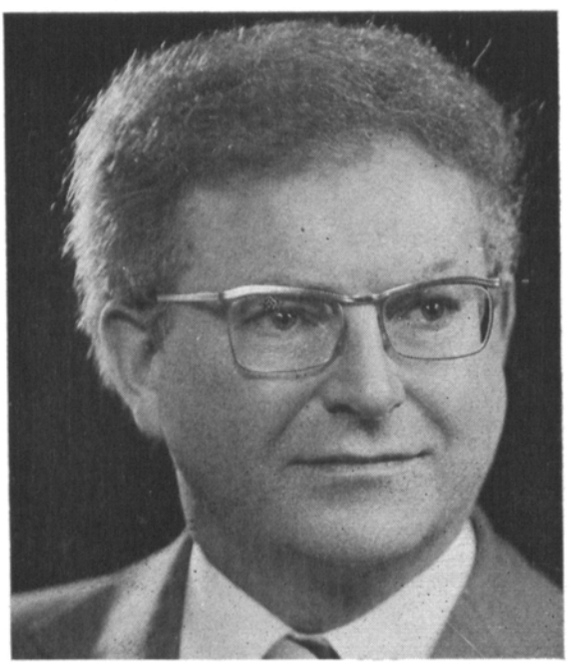
Mr. Bruce St. John Blake (40), a Galwayman, has been elected President of the Incorporated Law Society of Ireland. His father, Mr. Henry St. John Blake, was the Society's President in 1946/47.

The New President who is a graduate in Arts and Law of the National University of Ireland from University College, Galway, was Auditor, Solicitors' Apprentices Debating Society, 1960/61, and was a founder-member and first Chairman of the Society of Young Solicitors, 1965/67. He was first elected to the Incorporated Law Society's Council in 1966 and was senior vice-President for the past year.

Mr. Blake's wife, Mary Grace, is also a solicitor.



Mr. Joseph Laurence Dundon (36), the Senior Vice-President, is a son of the former Law Agent of Limerick Corporation. Mr. Dundon was educated at Clongowes Wood College and University College, Dublin. He qualified as a solicitor in 1962, and was appointed a Notary Public in 1963. He has been practising in Limerick since 1962, and amalgamated with P. E. O'Donnell & Son to form the firm of O'Donnell, Dundon & Co. in 1969. Mr. Dundon was first elected to the Council of the Law Society in 1967 and is President of the Limerick City and County Bar Association for 1976/77.



Mr. Walter Beatty (43), the Junior Vice-President, was educated at Xavier's School, Donnybrook, and obtained a B.A. Degree in University College, Dublin, in 1953. He was admitted in Easter Term, 1955, and has been practising since with the firm of Vincent & Beatty in Dublin. Mr. Beatty was first elected to the Council in 1967.

THE FAMILY HOME PROTECTION ACT 1976

by GARRETT GILL, S.C.

By now most practitioners will be familiar with the terms of this short Act, passed on the 12th July, 1976, and will be aware that it creates many problems for Conveyancers. The Act creates a new kind of property right or equity affecting the "family home" and the household chattels of a married couple. In this country the family home and most of the household chattels generally belong to the husband, and for convenience in this article it will be assumed that this is always the case, but the Act is so framed as to protect the interests of whichever spouse is not the legal owner of the property in question. This article only deals with the Act as it affects title to land.

The first point to note is that "Conveyance" is defined by Section I as including a mortgage (legal or equitable), lease, assent, transfer, disclaimer, release and any other disposition of property otherwise than by will or *donatio mortis causa*, and also an enforceable agreement to make any such conveyance. "Family home" means a dwelling in which a married couple ordinarily reside and also a dwelling in which a "spouse whose protection is in issue" ordinarily resides, or, if that spouse has left the other spouse, ordinarily resided before so leaving. "Dwelling" includes a building or part of a building occupied as a separate dwelling and the ground occupied with it or required for its amenity. Bearing in mind these definitions, we come to Section 3, which is the section of most concern to the lawyer dealing with conveyancing, title to land, and contracts for the sale of land.

Section 3, subsection (1) provides that "Where a spouse, without the prior consent in writing of the other spouse, purports to convey any interest in the family home to any person except the other spouse, then, subject to subsections (2) and (3) and Section 4, the purported Conveyance shall be void". Subsection (2) merely excludes from this provision a conveyance made pursuant to an enforceable agreement entered into before the marriage. Subsection (3) says that a Conveyance shall not be void by virtue of subsection (1) if:

(a) it is made to a purchaser for full value;
(b) it is made by a person, other than the spouse making the purported Conveyance referred to in Subsection 1, to a purchaser for value; or
(c) its validity depends on the validity of a conveyance in respect of which any of the conditions mentioned in subsection (2) or paragraph (a) or (b) is satisfied.

"Full value" is defined in subsection (5) as such value as amounts or approximates to the value of that for which it is given. "Purchaser" is defined in subsection (6) as a person who in good faith acquires an estate or interest in property. Subsection (4) says that if any question arises in any proceedings as to whether a conveyance is valid by reason of subsection (2) or (3) the burden of proving validity shall be on the person alleging it.

The difficulties created by Section 3 of the Act are very considerable. In the first place it should be noted that there is a "family home" on most farms, and the farm cannot be disposed of or mortgaged without the prior written consent of the owner's spouse unless Land Commission Consent to subdivision is obtained. The owner of business premises frequently has his family home overhead and will not be able to sell or mortgage the building without his wife's prior written consent. So Section 3 has a wider effect than may at first be appreciated. As "Conveyance" includes an "enforceable agreement" to convey, it appears that neither party to a Contract for the sale of land will be bound by the Contract unless the prior written consent of the vendor's spouse was given. It is difficult to see how in such a case the agreement could be called an "enforceable agreement", but presumably this is to be read as "enforceable apart from the provisions of this Act".

At first sight it may seem that Section 3, subsection (3) (a) will in most cases solve the problem: this says that subsection (1) shall not render a conveyance void if it is made to a purchaser for full value. But the purchaser must be one who acquires the property "in good faith" and "full value" must be such value as equals or approximates to the value of that for which it is given. We are all familiar with the general principles applicable in deciding whether or not a person is a purchaser "in good faith", and relating to notices or construction notices of equities; they are stated in *Halsbury* (3rd Edit., Vol. 14 at pp. 542-549). Section 3 of the Conveyancing Act, 1882, modifies somewhat the principle of construction notice, but subsection (7) of Section 3 of the present Act reduces the protection given by Section 3 of the Conveyancing Act, 1882. To be a purchaser "in good faith" one must, as a general rule, investigate the vendor's title, make all appropriate enquiries and receive satisfactory replies. If, for example, a material title deed is missing, its absence must be accounted for and it will be desirable to have the explanation verified by a statutory declaration: otherwise the purchaser's title may be affected by an equitable mortgage.

Now what are the enquiries that ought reasonably to be made in connection with this new Act? In the first place, does the property for sale consist of, or include, a dwelling or part of a dwelling, or land that is an amenity of a dwelling? Then, is that dwelling a "family home"? This raises the question of whether or not the Vendor is married: if so, has he a spouse "whose protection is in issue"? What is meant by this phrase? If there is no legal issue in being at the date of the Conveyance is the dwelling not then a "family home", or does the phrase cover the case where such an issue subsequently arises? In many cases the "issue" will arise only when the purchaser seeks to complete the purchase and obtain vacant possession. If the wife is away from home at the time no "issue" may arise until she returns, to find a purchaser in occupation. It would seem that, on any transaction involving a dwelling, or part of the grounds of a dwelling, an intending purchaser should ask (even before signing a Contract) and an intending mortgagee or lessee should ask, "Are you married?" "Did your spouse ever reside on the property or in any dwelling in respect of which the property in question was an amenity?" If the request is in writing and the reply satisfactory, this may be sufficient to constitute the "purchaser" one who has dealt in good faith in the transaction, since Section 15 imposes heavy penalties on a person knowingly giving false information in reply to such a request: but it will not protect a purchaser who (or whose agent) has notice of facts indicating that the replies are incorrect. If a couple are living together as husband

and wife, must one ask to see their marriage certificate? No doubt it will be a question of fact in each case whether the "purchaser" made such enquiries as the Court may consider reasonable in the light of the surrounding circumstances.

The main difficulty in Section 3 of the Act arises from the use of the word "void" in Section 3 subsection (1). To a lawyer this word has a very definite meaning: it means "of no effect whatsoever". If a vendor executes a void conveyance, the property remains vested in the Vendor (subject to any equity that the purchaser may have under a pre-existing contract). If the "Conveyance" in question is itself the Contract to sell, then both legal and equitable interest remain in the vendor. Having regard to this fact what is the meaning of Section 3, subsection 3(b)? This clause says that a Conveyance shall not be void by reason only of subsection (1) if made, by a person other than the spouse making the purported Conveyance referred to in subsection (1), to a purchaser for value. This seems completely illogical. In the first place, if the second Conveyance is made by a person other than the spouse in question it will not be made void, in itself, by subsection (1), which applies only to a Conveyance by the spouse. In the second place, if the Conveyance by the spouse was void, the person who purportedly took under that conveyance did not in fact acquire by it any estate or interest, since it was a void document. Having taken no estate or interest he has none to convey. The intention of the draftsman to the Act seems to have been to enable (for example) a person buying from a mortgagee, selling under his power of sale, to dispense with enquiries as to the validity (so far as Section 3 of the Act is concerned) of the mortgage. But if the mortgage was void then the mortgagee (or, rather, the purported mortgagee) has no interest in the land and no power of sale over it. Similar reasoning applies to Section 3, subsection (3) (c). These difficulties are made considerably worse by Section 3 subsection (4), which puts the burden of proving the validity of a Conveyance, by reason of subsections (2) or (3) of Section 3, on the person alleging it, and this "in any proceedings", whether or not the "other spouse" is a party to those proceedings.

Let us consider the position of a solicitor acting for the purchaser of a dwellinghouse, or of a farm which includes a dwelling, ten years hence. There may have been several transactions on the title since the 12th July 1976. If any one of those transactions was void then the vendor to his client has no estate or interest in the property and what he has not got he cannot convey. It will be necessary to require proof, in respect of each transaction, that all proper enquiries were made, with satisfactory results, and that no purchaser, mortgagee or lessee, has notice (personally or by his agent) of anything that might have prevented him from being a "purchaser in good faith". If the client buys the property and is subsequently engaged in any ligitation concerning it, no matter with whom, he has the burden of proving the validity of his Conveyance (which entails proving the validty of all prior transactions since the 12th July, 1976).

Section 4 of the Act enables the Court to dispense with the consent of a spouse as required by Section 3, subsection 1, or to give consent on behalf of a spouse who is of unsound mind or cannot be found.

It is not clear whether or not this can be done retrospectively. Nor is it clear whether or not the consent of a spouse under twenty-one years of age will be sufficient, or whether or not separate advice would be required in such a case.

Section 12 of the Act provides that a spouse may register notice in the Registry of Deeds or Land Registry of the fact of his or her marriage, but that non-registration shall not give rise to any inference as to the non-existence of a marriage.

This article is intended to deal only with those parts of the Act that most concern Conveyancers. It is clear that some amendments are urgently necessary in this connection. Accepting the principle that some protection of a wife's right to occupy the family home is desirable, what sort of amendments are required? It seems unlikely that the Legislature intended that a man whose principal asset is his farm or his business premises should have to obtain his wife's consent to any sale or mortgage of this property, but this may be the practical result of the definition of "family home". It should be possible to except such properties from the definition, or to require the wife's consent only if a right of residence in the dwelling on the property is not reserved to the wife for her life (or during the joint lives of herself and her husband). It seems essential to alter the word "void" in Section 3, subsection (1), of the Act to "voidable at the suit of the other spouse" and to specify a short time limit within which application must be made to the Court to have the "Conveyance" declared void. The word "prior" might well be deleted from Section 3 subsection (1): Surely it will be sufficient if the wife consents in writing at any stage. But even if "void" is changed to "voidable" there remains the difficulty that neither a purchaser nor his bank will be willing to pay out a large sum on a voidable title, and if, for one reason or another, the consent of the other spouse cannot be got, there will have to be an application to Court for an order dispensing with consent or giving consent on behalf of an absent spouse or one of unsound mind. From a purchaser's point of view the most satisfactory solution would be a provision on the lines of Section 45 of the Land Act, 1965, whereby Section 3, subsection (1), would have no application to a "Conveyance" containing a Certificate by the Vendor, mortgagor or lessor that the prior consent in writing of his spouse had been given, or that he was not married, or that the property did not consist of or include a "family home" as defined by this Act: heavy penalties could be provided for giving a false certificate. There are two problems; first the question of what can be done to protect the wife (or, as the case may more rarely be, the husband) while also enabling a purchaser (mortgagee or lessee) to complete the original transaction in a case where, so far as the purchaser is aware (although the facts are otherwise) the vendor (mortgagor or lessor) is not married or no "family home" is involved; and, secondly, the question of whether subsequent purchasers should be burdened with the obligation of enquiring into the marital status, etc., of a succession of prior vendors or mortgagors. If "voidable" is substituted for "void" in Section 3, subsection 1, of the Act, and there is a fairly short time limit for an aggrieved spouse to apply to the Court to have the transaction set aside, after which it is no longer voidable, that should solve the second of the problems. Unless the suggestion of following the analogy of Section 45 of the Land Act, 1965, is adopted, it is difficult to see a satisfactory answer to the first problem, other than requiring the vendor, in all cases where

the written consent of the other spouse is not available, to make a statutory declaration on the lines of the suggested certificate. Presumably the purchaser would then be considered to have purchased "in good faith". It would seem only logical to amend Section 12 of the Act by adding what may be called "the marital equity" under this Act to the list of burdens which affect registered land under Section 72 of the Registration of Title Act, 1964, although not registered as burdens: presumably it is not intended that registration of a transfer by a husband to a purchaser should in all cases over-ride claims by his wife: or is the onus of ensuring that there is no possibility of such a claim to be put on the Land Registry officials?

In England, an analogous Act was passed some years ago, namely the Matrimonial Homes Act, 1967 (amended by the Matrimonial Proceedings and Property Act, 1970). The Act of 1967 provided that where one spouse had the legal right to occupy the home and the other spouse had not such right, such other spouse could not be evicted, save by order of the Court and this right should be a charge on the legal right of the first-mentioned spouse. But, to be valid as against a purchaser for value, this right has to be registered. It was held in *Rutherford v Rutherford* (1970) 3 All E.R. 422 that this right had to be declared by the Court to assist before it could be registered as a charge, but this decision was over-ruled by the Court of Appeal in *Watts and Another v Waller and Another* (1972) 3 All E.R. 257. Unless the Charge was registered under the Land Charges Act, 1925, it would not prevail against a subsequent purchaser or registered chargeant. Hence the problems created for conveyancers by our Family Home Protection Act, 1976, cannot arise in England. In this country the Legislature in its anxiety to protect one section of the Community, has created serious problems for other and possibly larger Sections including house purchasers, banks and building societies and lawyers dealing with questions of title to land.

CORRESPONDENCE

13 Northumberland Road,
Dublin 6.
31st December, 1976.

Re: ANTI-DISCRIMINATION (UNFAIR DISMISSALS) BILL 1976

Sir,

Mrs. Matthews is to be complimented on her comprehensive paper on the above Bill and related topics in the November issue.

I am, however, a little surprised that she should describe as "one of the more welcome provisions in the Bill" Section 6 (1) which puts on an employer the onus of proof that dismissal was not unfair.

Even more surprising is the reason given that ". . . an employee may be said to possess or own his job . . ."

What about the employer, whose capital and enterprise have created the job opportunity? (It is currently estimated that it costs £10,000 to create one job).

Quite apart from that aspect, it is a cardinal principle of our legal system that the onus of proof rests on a claimant. To legislate otherwise surely requires more consideration than the present Bill is receiving in the Dail. Not a single reference was made in the debates, so far, to this radical and highly controversial provision.

It must not be overlooked that the Bill protects not merely the worker on the shop floor, but the entire hierarchy of "employees", including top executives of our largest organisations. To give to such "employees" the protection proposed in this Bill could cause most difficult problems. Possibly it is this very fact that has resulted in the deafening silence from those organisations which might have been expected to be most concerned at the provisions of this Bill.

I write to express concern, less the prominence given to Mrs. Matthews' otherwise excellent paper — and the absence of comment — might lead the profession to assume that it represents the Society's viewpoint.

Fortunately, the Bill is deferred until late January when, hopefully, the constitutionality of this provision may come under closer scrutiny.

Yours faithfully,
F. X. Burke,
Solicitor.

22, Kildare Street,
Dublin 2.
21st December, 1976.

GUIDE LINES — FAMILY LAW

Dear Mr. Gavan Duffy,

I read with interest the article which appeared in the October edition of the Gazette under the heading of Guide Lines Family Law. In an otherwise accurate summary of the position it is stated under the subheading of "Civil Marriages" that "where a marriage is to be contracted in the Registry Office the Registrar is required at the expense of the parties to the marriage to publish notices at least once in two consecutive weeks next after receiving the notice in a newspaper circulating in the district in which the marriage is intended."

The above requirement only applies where neither party attends any place of worship. If one or both parties attends a place of worship the Registrar forwards a copy of the Notice of Marriage to the clergyman for the church and no notice is required in a daily paper.

Yours faithfully,
Raymond V. H. Downey,
Registrar for the City & County of Dublin

DAIL QUESTION, 16 December, 1976

JUDICIAL APPOINTMENTS

Mr. Moore asked the Minister for Justice if he will make a statement on the call by the President of the Incorporated Law Society for an adequate increase in judicial appointments to help clear the number of cases before the Courts and for the re-organisation of the Courts.

Minister for Justice (Mr. Cooney): I have seen Press reports of the statement to which the Deputy refers. The case-volumes in the various Courts are the subject of continuous review in my Department. One of the objects of this exercise is to ensure that the ratio of judges to case-volumes is maintained at an adequate level.

The recent unprecedented and rapid development of arrears in the disposal of Court cases, especially in the Dublin Circuit Court, has been the subject of a special study in my Department. As a result, I have already initiated discussions with the various interests involved in the processing of Court cases with a view to seeing whether certain proposals that have emerged from the study can be implemented so as to eliminate the arrears as quickly as possible.

The problem in Dublin cannot be solved quickly by simply increasing the number of judges. Additional courtroom accommodation must first be made available, and while the study revealed that more intensive utilisation of existing courtrooms in Dublin could enable more judicial time to be devoted to the disposal of the arrears in the Dublin Circuit Court, what is really needed is additional courtroom accommodation suitable for jury trials. The problem of providing such additional accommodation is far more complex than it may appear to be. It is not just simply a question of finding large rooms in which cases can be heard; it also involves the provision of essential ancillary accommodation such as retiring rooms for juries and so on. It is also desirable for the convenience of legal practitioners and, hence, for the convenience of people appearing before the Courts, that such accommodation be located fairly close to the Fourt Courts.

The Committee on Court Accommodation, set up some time ago, have found that there is no suitable and suitably located premises available that would serve as a temporary solution to the problem. However, on the committee's recommendation, the hotel site which adjoins the Four Courts complex is in the process of being acquired and the necessary legal steps to complete the acquisition are now being taken. The purpose of acquiring this site is to erect on it an office block which will form an integral part of the Four Courts complex and will permit the redevelopment of the existing accommodation within the Four Courts so as to provide a number of additional courtroms.

The provision of at least one additional jury courtroom for the Dublin Circuit Court cannot await the redevelopment of the hotel site. Accordingly, a lease of office accommodation close to the Four Courts is in the final stages of being negotiated and plans are well advanced for the transfer of some courts' staffs to this accommodation and the redevelopment of their present quarters as a jury court complex.

I do not know precisely what was intended by the suggestion that, apart from the excellent work done by the Committee on Court Practice and Procedure, there has been no specific investigation or inquiry into the overall organisation of the Courts but it seems to me that, if the Law Society have any proposals to make in that regard, the most appropriate thing for them to do is to submit their proposals to that committee which, of course, is still in existence and to whose excellent work I join with the Society in paying a well-deserved tribute.

Mr. Moore: I should like to thank the Minister for his most comprehensive reply. What worries a layman is the possibility that a person could be remanded in custody for a lengthy period just because the courts cannot reach his case. Is that the position?

Mr. Cooney: It is possible but unlikely because one of the factors the court takes into account in deciding whether to grant bail is the possible length of remand. It is my understanding that if there is a likelihood of a long remand bail is given by the courts. However, it is a matter for the courts and I am not saying that what I have indicated is an absolute rule.

The First Bayside Village Development Society Limited Residents Association

The Management Committee of the First Bayside Village Development Society Ltd. would like to draw solicitors' attention again to Item 19, 4th Schedule Lease of Bayside, which deals with transfer of shares of this Society.

Failure by solicitors to comply with this Item in the conveyancing of a number of sales in Bayside is viewed in a very serious light as it is the custom of the above Society to ensure that all monies owing to it are paid before any transfer is approved.

Any queries regarding the above should be sent to: Mrs. Deirdre Spendlove, Secretary, 42 Sutton Downs, Sutton, Co. Dublin.

SOLICITOR, GRADE I

Dublin Corporation (2 posts)

Salary: £5,998 - £6,817. (Entry above minimum possible).
Essential: Admission and enrolment as a Solicitor in the State and three years experience, including experience of Court work.
Maximum age limit: 55 years.

SOLICITOR, GRADE II

Dublin County Council (2 posts)
Salary: £4,402 - £5,998.
Essential: Admission and enrolment as a Solicitor in the State and satisfactory experience.
Age limits: 23 - 45 years.

Further vacancies if they arise may be filled from these competitions.

For application forms and further details write to: **The Secretary, Local Appointments Commission, 1 Lower Lower Grand Canal Street, Dublin 2.**

Closing Date for above: 24th February, 1977

SOCIETY OF YOUNG SOLICITORS

3. SEPARATION AGREEMENTS

A Separation Agreement is essentially an agreement between a husband and wife to live separately and apart. Like any other agreement it is governed by the general Law of Contract and can, therefore, be in written or oral form. Advisedly, however, if such matters as the maintenance of the wife, the welfare of the children and the division of the matrimonial property are to be provided for then the Agreement should be reduced to writing and incorporated in a Deed.

The whole subject of Separation Agreements was very comprehensively dealt with in the lecture entitled "The Drafting of Separation Agreements" delivered by Michael V. O'Mahony to the Society in Galway in November 1975 (Lecture 93) and his paper merits careful consideration. For those who have the misfortune not to possess a copy of his paper the following is a brief summary.

(For further details, see Gazette, March 1976, page 33).

Drafting of Separation Agreements

Any agreed terms, provided they are legal, can be included in a Separation Agreement but the most common clauses in a Separation Agreement would cover the following:—

1. Introductory Recitals. These should include a recital that the husband and the wife have agreed to live apart as the agreement to live apart is a prerequisite of all Separation Agreements.
2. Non-Molestation whereby each party agrees not to molest, annoy, disturb or interfere with the other.
3. The Maintenance of the Wife. This should have particular regard to:—
   (a) The extent of the husband's liability for maintenance;
   (b) Whether the maintenance payments should cease or vary:—
      (i) in the wife's lifetime or widowhood.
      (ii) in the event of a change in the husband's income.
      (iii) in the event of inflation.
      (iv) in the event of an intervening Court Order for maintenance.
      (v) In the event of an intervening Judicial Separation or the resumption of cohabitation.
      (vi) In the event of the wife's breach of the "dum casta" clause or the breach of any other clause of the Agreement.
4. The custody and maintenance of the children, the rights of the access and the extent of each spouse's responsibility.
5. The division of the matrimonial property having particular regard to the matrimonial home and its upkeep.
6. The mutual renunciation of rights under the Succession Act 1965.
7. Arbitration in the event of dispute as to the terms or the implementation of the terms of the Agreement.

Termination of Separation Agreements

The discharge of Separation Agreements is governed by the law relating to discharge of contracts generally and would normally take effect either by (a) agreement between the parties or (b) breach by one of the parties of one of the fundamental provisions of the agreement.

Taxation

Tax problems can arise on the maintenance payments by the husband to the wife and careful consideration should be given to the liability for tax on such payments and to the precise wording of the maintenance clause in the agreement.

Legality of Separation Agreements

A Separation Agreement, like any other form of Contract, may be void or voidable. It may, for example, be void on the grounds of mistake or voidable on the grounds of undue influence.

Representation of Husband and Wife

It is to be strongly recommended that the husband and the wife be separately advised in negotiating the terms of the Separation Agreement.

Costs

The costs of a Separation Agreement will naturally depend on its complexity but it is wise to include a clause as to liability for payment of costs in the Agreement.

4. DIVORCE A MENSA ET THORO

Since the Matrimonial Causes and Marriage Law (Ireland) Act, 1870, the Civil Courts have jurisdiction in petitions for divorce *a mensa et thoro*. Again, it must be remembered that a Decree of Divorce *a mensa et thoro* is not a dissolution of marriage and therefore does not give the parties to the divorce the right to re-marry. A Decree of Divorce *a mensa et thoro* is often described as judicial separation, as it separates the parties to a marriage rather than dissolving the marriage.

The grounds for obtaining a divorce *a mensa et thoro* are:

a. Adultery.
b. Cruelty.
c. Desertion.
d. Failure to comply with an Order for the restitution of conjugal rights.

The jurisdiction of the Courts is the domicile of the husband. Under Irish Law, the domicile of the wife is automatically the domicile of her husband and she is incapable of having a separate domicile.

Procedure: The procedure is contained in the Rules of the Superior Courts Order 70, and the procedure is by petition and is the same as the one used in petitions for nullity.

Interim Relief: Often during the proceedings, an interim application for alimony *pendente lite* is brought. This usually takes the form of the Petitioner/

Wife bringing an applicaton against her Respondent/ Husband for financial support. The application is by Notice of Motion, and the Notice often seeks leave to call the Respondent in person for cross examination. It is also common practice to claim in the Motion that an Order be granted to the Petitioner for the costs incidental to the suit to be taxed *de die in diem* and that the costs be paid by the Respondent. The Motion is supported by Affidavit and it is normal to have a Replying Affidavit before the final Motion is heard and alimony *pendente lite* is granted or refused. The substance of the Affidavit is mainly concerned with the financial position of the parties.

Simultaneous Proceedings: It is common for other ancillary questions to be heard at the same time as divorce proceedings such as maintenance, guardianship and Married Women Status Act cases. When this is intended, it is necessary to ensure that both or all proceedings are set down for hearing on the same date.

BIBLIOGRAPHY

1. "Bromleys Family Law" (Fifth Edition) (Butterworths) 1976.
2. "Principles of Family Law" (First Edition: Sweet & Maxwell), S. M. Cretney.
3. "Family Law" by Margaret Puxton (Penguin paperback 1971).
4. Society of Young Solicitors Lectures:—
   a. Lecture No. 33 "Family Law" delivered by Donal Barrington, March, 1968.
   b. Lecture No. 46 "Some Aspects of Family Law" delivered by Mr. Justice Kenny, March, 1970.
   c. Lecture No. 69 "Family Law in the High Court in the Irish Republic" delivered by Robert Barr, S.C.,
   d. Lecture No. 93 "The drafting of Separation Agreements" delivered by Michael V. O'Mahony, November 1975.
   e. Butterworth's Encyclopaedia of Forms and Precedents (Fourth Edition) 1968, Volume 10.

VISIT TO THE COURT OF JUSTICE, LUXEMBOURG

The Society organised a visit to the European Court of Justice in Luxembourg on the 18th and 19th of November. About 50 Solicitors participated. Most reported to have found the visit interesting, entertaining and worth while.

The Court is situated just outside the city of Luxembourg. The building viewed from the exterior is modern, stark and steel girded. This is in contrast to the interior which has an air of opulence and luxuriousness which is not a familiar feature of our Courts. There are three courtrooms. The Court of Nine Judges sits in plenary session and in Chambers of three or five. Each courtroom is well appointed with colourful if not attractive murals, wall to wall carpeting and individual comfortable seats for those attending. It is difficult to imagine the cut and thrust of a good cross-examination in such surroundings.

In addition, in the Court building each Judge has a suite of offices for himself, his legal secretary and their two secretarial assistants. There are conference rooms, a deliberation room for the Judges, a library and offices for the administrative staff.

The programme at the Court consisted of six lectures and a visit to a Chamber of the Court in session. We were welcomed at the Court by Mr. Justice O'Keeffe who devoted almost his entire time during our visit to us. This was much appreciated by all. The lectures given were all interesting with a useful blend of introductory and detailed material to take account of the differing levels of familiarity of the participants with EEC Law. It was a significant help that the lectures were commenced by an extremely lucid account by John Usher, the legal secretary to Advocate General Warner, of the Role, Function and Procedure of the Court.

The hospitality of the Court was generous. We were entertained to a lunch which was so plentiful in its solid and liquid refreshment that the first lecture of the afternoon session had to be cancelled. We should like to point out that this was not at the request of the participants. Prior to the lunch we had been entertained to an aperitif at which we met some of the Judges, Advocate Generals and Legal Secretaries. The latter group of people are a type of functionary unknown to our system. Each Judge and Advocate General has a legal secretary who is a young qualified Lawyer. He does much of the research work connected with cases being heard and some initial drafting of Judgements.

One remarkable feature of our visit was the obvious and deliberate Public Relations policy of the Court. It has a high level official as an information officer. He and his assistants work full time towards promoting awareness of the Court and its activities in the Member States. They do this by organising visits such as ours, travelling to give lectures and by providing a good written information service free in some respects and otherwise at relatively low cost. They view with great pride the increasing number of cases being referred to the Court.

The serious part of the programme ended in Luxembourg. We flew to Paris on Friday afternoon for the week-end. A failure by the Hotel Commodore to honour all our bookings slightly marred the first evening. However, the tolerance of the group overcame the problem. Professional loyalty prevents an account of the events of the week-end. Suffice to say it would appear that the pleasures of Paris were sampled in their many and differing forms.

ANNUAL SUBSCRIPTIONS

The Committee of the Society of Young Solicitors has considered the question of membership of the Society and has decided that in the future annual subscriptions will be incorporated in the registration fee payable at seminars. Consequently, all persons at present paying subscriptions by Bankers Order or otherwise are asked to arrange for these to be cancelled. It should be noted that all persons who are members of the Incorporated Law Society will receive all circulars issued by the Society.

PRESENTATION OF PARCHMENTS

At the Presentation of Parchments to newly qualified solicitors in Solicitors Buildings, Four Courts, Dublin on 2nd December 1976, the President, Mr. P. C. Moore, delivered the following address:-

Ladies and Gentlemen, it is my privilege to welcome you on this happy and very special occasion.

Firstly I must congratulate the students on their achievements and qualifications for entry into the Profession after so many years of hard work and endeavour. Secondly I congratulate your parents and friends and it must indeed be a great joy for them to join and participate with us in the happiness that an occasion like this creates for all.

I welcome you as colleagues into the Solicitors' Profession and I am certain that you will maintain the high professional standards of service and dedication that is the aim and ambition of the Profession to provide adequately for all who entrust their problems to our care.

It is also usual on an occasion like this to speak on some matters of interest and concern to the Profession and perhaps to the public generally, but only in a limited way, as this is really a social occasion primarily.

Suggestions for new entrants

To the new entrants into the Profession, I would like to make a few suggestions;

(a) If at all possible do not go into practice on your own immediately but instead seek a couple of years experience in an established practice and not necessarily in Dublin Offices. There are I understand opportunities for such activities available throughout the country, and you will be well advised to avail of this experience;

(b) It is also important that you become a member of your local Association and if setting up practice in Dublin develop an association with the Dublin Solicitors' Bar Association and the Young Solicitors Society; I might say that it is hoped at some future date to provide lectures and discussions on special topics from time to time so that we can all be updated in new and existing Law, and particularly the practice and procedure consequent thereon.

It is hardly necessary to indicate that we are living in an ever changing Society and it is not a cliche to say that your student days have not ended but in fact that they are only beginning;

On a previous occasion, I indicated the desirability or in fact the necessity for all Young Solicitors to create now their own Library. Your beginnings in this area may be small, but once started it is remarkable how it develops and grows. You will find it an invaluable asset and a source of confidence and strength when confronted with the many problems presented to you for resolution.

I will now mention some matters of concern to the Council of your Society and no doubt of considerable importance to the public generally.

The provision of adequate Court services at Circuit and High Court Level

1. With the advent of Civil Aid and Criminal Legal Aid the Council anticipates an escalation in the demand for Court services on a more expeditious and less costly basis than that presently available. There are only I understand about sixty four Judicial Personnel available for the administration of Justice from District Court to Supreme Court level and it is quite clear that no re-organisation of the Courts will be sufficient unless accompanied by an adequate increase in Judicial Personnel to man the additional Courts and help clear the backlog and maintain an up-to-date, efficient and economic service so necessary for the public generally. Apart from the excellent work done over the years by the Committee on Court Practice and Procedure, there has been no specific investigation or enquiry into the overall organisation and re-organisation of our Courts. In my view there is an urgent need for re-examination of the present structures and an extension of the services presently available. It is recognised that our Judiciary and our Court Officials are making a valuable contribution within the limits of the structures at their disposal.

2. Briefly I will now mention some matters in the non-contentious area of legal practice. The provision of legal services by the Dublin Corporation and Dublin County Council is of concern to all and in particular the sealing of documents, the availability of Titles, the registration of Titles and the provision of Title in the large areas for building development recently acquired by the Dublin Corporation. The staff of the Legal Departments while most co-operative and helpful, can only operate within the limitations of personnel available to them. In this connection the decision of the Corporation to employ Firms of Solicitors in private practice to deal with certain aspects of their activities is noted with satisfaction. The compulsory Registration of Titles by Local Authorities has indeed added to the burdens in this area.

Land Registry

This perennial topic is always with us and will no doubt be on our Agenda for a number of years to come. The Compulsory Registration Provisions of the Registration of Titles Act, 1964 which came into operation on the 1st January 1967 has only been extended to three Counties, Carlow, Laois and Meath and it is unlikely that there will be any further extension of compulsory registration to other Counties until there is a solution of the many problems that still beset the Land Registry system. It is only right to say that the Registrar of Titles and his Officials are doing their best with the personnel, and space at their disposal. The Mapping situation which is the foundation of a Land Registration system is engaging special attention, and there appears to be no immediate hope of the Land Registry Map being annexed to the Certificates of Title or official copies of Folios in the foreseeable future. It is understood that large sums of public money must be expended if the system is to be equated to the service it is intended to give.

Another comment is the imposition of Land Registry fees on Purchasers in addition to the burden of heavy Stamp Duties at the three and four per cent levels. There appears to be no reason why there should not be a substantial reduction in these areas, and the present discrimination between Purchasers of new houses and secondhand houses is an anomaly which should be examined especially where secondhand houses are purchased up to the threshold of say £15,000. There is no reason why the Land Registry should be a self-supporting system thereby imposing an unneccessary burden on Purchasers in addition to stamp duty.

Undertaking and Bridging Finance

The nature of the obligations implicit in a Solicitor's Undertaking is not universally understood or appreciated.

1. The entire area of bridging finance is totally dependent and based upon Solicitors' Undertakings. What is bridging finance? It is in fact the provision of moneys by way of loan or advance by Bankers to facilitate the completion of transactions between the date of the sanction of a loan by a lending Institution until availability of the cheque on perfection of the security offered; in other words, the Bank bridges this gap.

The basic documents appear to me to be the following;

(a) A Contract to purchase

(b) Loan sanction from the lending Institution

(c) Irrevocable Authority and retainer from the Client

(d) The Undertaking by the Solicitor authorised, appropriate to the situation viz.

(i) To hold the Documents of Title on trust for the Bank and lodge same with the Bank on demand, on completion of stamping and registration;

(ii) To lodge with the Bank the proceeds of the advance by the lending Institution immediately same is available and to hand.

An Undertaking is in effect a guarantee by a Solicitor acting in his professional capacity. Failure to comply with such an Undertaking may render him liable to the serious consequences of professional mis-conduct for its breach, in pursuance of the Disciplinary procedures of the Law Society. The reliance placed on Solicitors' Undertakings by Bankers and other financial Institutions involving as they do many millions of Pounds annually is a tribute to the integrity of the Profession and the provision of a service in the area of house purchase, for which there is no substitution. The Council of the Society has established a special Committee to deal with this very important service, and it is hoped to publish their findings and recommendations in the near future.

Solicitors Services

The Services which the Solicitors' Profession are called upon to undertake are constantly increasing in all areas in the non-contentious field, and reference need only be made to the implications of the Family Home Protection Act, 1976; the Taxation code placing as it does obligations on Solicitors to account directly to the Revenue not alone in respect of their own taxable Income but also the taxable income of Clients both resident and non-resident in many areas. The accountancy obligations, in order to comply with these requirements, are heavy and onerous, and place an increasing burden on the overheads of Solicitors for which no remuneration whatsoever has been provided. I have always taken the view that the servant is worthy of his hire, and it is hoped that the National Prices Commission whose report has not yet been made available to this Society will and must have due regard to the obligations imposed upon Solicitors, involving the custody of very large sums of moneys on behalf of their Clients, and the obligations undertaken in the handling of substantial funds not alone in single transactions but in double, treble and multiple transactions, and dealings with the discharge of loans, the creation of new loans as indispensable arrangements for completing chain-linked Conveyancing transactions. Only those members of the public who experience the hazards involved in chain-transactions appreciate and understand the situation. *The Conveyancing skills and techniques are very often the lesser of the problems with which a Solicitor is confronted in Conveyancing procedures. The essence of the transaction is the provision of the finance, and the efficient handling of substantial funds, and there appears to be no way in which Solicitors can relieve themselves of the heavy obligations, which they must undertake in this area in the interests of their clients.*

I feel that I may have dealt at too great a length on this occasion with these matters that concern the Profession, but it is well that new entrants into the Profession and even the public generally should be informed of what exactly is the role of their Solicitor, when they consult him, with a view to the establishment and purchase of a family home, or a business premises. I take this opportunity once again of thanking you for your patient hearing of what I had to say, and once again to congratulate you, your parents and relatives on your enrollment this day as members of the Solicitors' Profession.

The following 89 newly qualified solicitors then received their parchments

Dermot Ahern, Rock Road, Blackrock, Dundalk, Co. Louth.
Michael Ahern, Upper Tullig, Caragh Lake, Co. Kerry.
Vincent Beirne, 52 Templeogue House Estate, Dublin 12.
Geoffrey Browne, 3 Victoria Place, Eyre Sq., Galway.
Roderick Buckley, 1 Palmerstown Gardens, Dublin 6.
Francis Burke, 40 Dargle Rd., Blackrock, Co. Dublin.
Paul Byrne, 13 Fernvale Drive, Crumlin, Dublin 12.
Marian Campbell, 35 Shrewsbury Lawn, Cabinteely, Co. Dublin.
Patricia Carroll, Seaspray, Sandycove Point, Co. Dublin.
Brian Casey, 3 Kilrush Rd., Ennis, Clare.
Niamh Casey, Cusack Rd., Ennis, Co. Clare.
Joseph Caulfield, Main St., Castlerea, Co. Roscommon.
Therese Clarke, Muireadreen, 36 Woodbine Rd., Blackrock, Co. Dublin.
Terence Coghlan, The Anchorage, Church St., Howth, Co. Dublin.
Aidan Collins, 24 St. Helens Rd., Booterstown, Co. Dublin.
Helen Collins, St. Fachtnas, Tawnies Lower, Clonakilty, Co. Cork.
Joseph Comyn, 11 Burrow Rd., Sutton, Co. Dubllin.
John Condon, 10 Ely Place, Dublin 2 (Allied Irish Banks Prize for Company Law).
Eugene Cush, 5 Monkstown Ave., Blackrock, Co. Dublin
Randal Doherty, 14 Fortfield Ave., Terenure, Dublin 6.
Andrew Dunne, 51 Henley Pk., Churchtown, Dublin 14.
Cormac Dunne, St. Annes, Butlersbridge, Cavan.
Karen Erwin, The Mews, St. Thomas, Rathfarnham, Dublin 14.
Josephine Fair, Roundfort, Hollymount, Mayo.
Patrick Goold, South Sq., Macroom, Cork.
Alan Graham, 22 Templeville Rd., Templeogue, Dublin 6.
Timothy Hallissey, Moyfield, Bandon, Cork.
Ita Harvey, Lacaduv, Lee Rd., Cork.
John Hayes, Dublin Rd., Singland, Limerick.
Michael Hayes, 61 Merrion Rd., Ballsbridge, Dublin 4.
Mary Hederman, 12 Doonsalla Pk., Cabinteely, Co. Dublin.

Paul Horan, 23 Eyre St., Galway.
Eileen Howell, 5 Roebuck Rd., Clonskeagh, Dublin 14.
Brendan Hyland, Sart, Freshford, Co. Kilkenny.
Denis Jacobson, 21 Villa Nova, Mt. Merrion Ave., Co. Dublin.
Andrew Jordan, Milltown, Kilbride, Carlow.
Joseph Jordan, Creagh, Ballinasloe, Galway.
Philip Joyce, Kilbennal, Ballynonty, Thurles, Co. Tipperary
Patrick Judge, Newtown Villa, Newtown, Waterford.
Ellen Kehoe, Rathwinden, Leighlinbridge, Carlow.
Florence Lawlor, 52 The Stiles Rd., Clontarf, Dublin 3.
Joseph Leyden, 3 Marine Parade, Kilkee, Clare.
Sheila Lynch, 71 Tritonville Rd., Dublin 4.
Derek Mathews, 69 Ailesbury Rd., Dublin 4.
Michael Moore, 164 Howth Rd., Killester, Dublin 3.
Patrick Mulvey, 15 College Pk., Newbridge, Co. Kildare
James Murphy, 4 Oriel Tce., Demesne Rd., Dundalk, Louth.
Lorna McCarthy, Mount Foran, Oranmore, Co. Galway
David McCormack, 18 South Circular Rd., Dublin 8.
Michele McEvoy, 18 Annesley Pk., Rathmines, Dublin 6.
John McGlynn, 4 Killakee Drive, Green Pk., Dublin 12
Thomas Nally, 14 Grange Park, Foxrock, Co. Dublin.
Sheila Neary, Mallard Hse, Fair St., Drogheda, Co. Louth.
Gerard Neilan, Dunferne, Abbey St., Roscommon.
Margaret O'Connell, Eden Ville, Ballinacurra, Limerick.
Niall O'Doherty, Knockashee, Portumna, Galway.
Hugh O'Donoghue, 5 Foxrock Ave., Melbourne, Bishopstown, Cork.
Stephen O'Dwyer, 25 Mitchel St., Clonmel, Tipperary.
Annthony O'Gorman, 22 Ballydowd Grove, Lucan, Co. Dublin.
David O'Keeffe, Abbeyhouse, Ennis, Co. Clare.
Constantine O'Leary, Newtown, Bantry, Cork.
Mona O'Leary, 19 Kilbarrack Rd., Dublin 5.
Raymond O'Neill, Carbery, Woodview, Douglas Rd., Cork.
Francis O'Riordan, 3 Shrewsbury Pk., Ballsbridge, Dublin 4.
Thomas O'Sullivan, Lower Hse., Hospital, Limerick.
Patrick Rogers, Suffolk St., Kells, Co. Meath.
Henry Roundtree, 7 Esker, Lucan, Co. Dublin.
Paula Scully, 17 Fortfield Ave., Terenure, Dublin 6.
Charles Colman Sherry, Clarebridge, Galway.
Peter Smyth, Carrick St .,Kells, Co. Meath.
Anne Sweeney, Dereen, 13 Home Farm Rd., Drumcondra, Dublin.
John Territt, 25 Marley Ave., Rathfarnham, Dublin 14.
Vincent Toher, Garvally, Highfield Lawn, Model Farm Rd., Cork.
David Turner, 8 College Pk., Castleknock, Dublin.
Valentine Turnbull, Marsala, Beaumont, Ballintemple, Cork.
William Twohig, St. Colmans College, Fermoy, Cork.
Michael Tyrrell, The Shrubbery, Greystones, Co. Wicklow.
Veronica Watchorn, Dilkhusha, Ballinclea Rd., Killiney, Co. Dublin.
Margaret Wren, 16 Main St., Castleisland, Kerry.

THE CONSTITUTIONALITY OF THE EMERGENCY POWERS BILL, 1976

The Facts

On 1st September, 1976, Dail Eireann passed a resolution in the following terms:— "That Dail Eireann hereby resolves, pursuant to Article 28 (3) (3) of the Constitution,

(a) That the National Emergency created by the armed conflict referred to in the Resolution, pursuant to Artile 28 (3) (3), of Dail Eireann and of Seanad Eireann of the 2nd September, 1939, had ceased to exist.

(b) That, arising out of the armed conflict now taking place in Northern Ireland, a National Emergency exists affecting the vital interests of the State.

On 1st September, 1976, Seanad Eireann passed a resolution in identical terms. On 16th September, the Emergency Powers Bill, 1976, was passed by both Houses of the Oireachtas. On 24th September, President O'Dalaigh, having consulted the Council of State, referred the Bill to the Supreme Court under Article 26 of the Constitution to decide whether any provision of the Bill was repugnant to the Constitution. The Court duly heard arguments on behalf of the Bill by the Attorney General, Mr. Declan Costello, S.C., and Mr. Kevin Liston, S.C., and against the Bill by Counsel assigned by the Court, Mr. Niall McCarthy, S.C., and Mr. Hugh O'Flaherty, S.C. from 11th to 13th October, 1976.

Preamble

The Preamble of the Bill is entitled "An Act for the purpose of securing public safety and the preservation of the State in time of an armed conflict in respect of which each House of the Oireachtas has adopted a resolution on 1st September, 1976, pursuant to Article 28 (3) (3) of the Constitution. The full text of Article 28 (3) (3) of the Constitution which was passed in September, 1939, at the beginning of the Second World War, is then quoted. The effect of this Sub-Section is:

(1) Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is stated to be for the purpose of securing the public safey and the perservation of the State in time of war or armed rebellion.

(2) Nothing in this Constitution shall be invoked to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of such law.

(3) "*Time of war*" includes a time when there is taking place an armed conflict in which the State is not a participant, but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interest of the State.

(4) "*Time of war or armed rebellion*" includes such time after the termination of any war, or of any previously mentioned armed conflict, or of an armed rebellion as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency ocacsioned by such war, armed conflict, or armed rebellion has ceased to exist.

Editor's Note: The definition of "Time of War" was passed to emphasise the neutral status of the State declared at the beginning of the Second World War, and is contained in the First Amendment to the Constitution Act, 1939. The definition of "Time of War and armed rebellion" was one of the amendments passed in the Second Amendment to the Constitution Act, 1941, when it was uncertain when the war would end. While most emergency legislation was repealed in 1946, the resolution ending the state of emergency declared in 1939 was only passed by the Oireachtas on 1st September, 1976, before the enactment of the present Bill, although the all-party Committee on the Constitution had recommended that such a resolution should be passed in 1967.

The Chief Justice, speaking on behalf of the whole Court, at this stage made the important distinction, that, unless an *armed conflict* is taking place in which the State is not a participant, and that a law is passed for the purpose of securing the public safety and the preservation of the State in time of such armed conflict, such a resolution by the Oireachtas is not a condition precedent for the passing of a law for the purpose of securing the public safety in *time of war or armed rebellion*.

The Oireachtas resolution leading to the enactment of this Emergency Powers Bill states that there is an *armed conflict* taking place in Northern Ireland, and that a *national emergency* arising out of that armed conflict exists affecting the vital interests of the State. This Bill must therefore be confined to such armed conflict. There is no doubt that the President has power to refer this Bill to this Court. If the Court decides that any provision of this Bill is repugnant to the Constitution, the President would be obliged, according to Article 26 (3) (1) of the Constitution, to decline to sign this Bill.

The Attorney General contended that Section 2 of the Bill would be repugnant to the Constituion, if it were not saved by Article 28 (3) (3). The Court does not find it necessary to express an opinion on this question, as the matter was not discussed further.

It may be noted however that, when a law is saved from invalidity by Article 28 (3) (3), the prohibition against invoking the Constitution in reference to it, is only effectve if the invocation is for the purpose of invalidating it. It follows that a person detained under Section 2 of the Bill may not only question the legality of his detention, if there has been express non-compliance with Section 2, but may also rely on any provisions of the Constitution for the purpose of construing that section, and of testing the legality of what has been done in purported operation of it. **A statutory provision of this nature which makes such inroads upon the liberty of the person must be strictly construed. Any arrest sought to be justified by the Section must be in strict conformity with it.** No such arrest may be justified by importing into the Section incidents or characteristics of an arrest which are not expressly or by necessary implication authorised by that Section. The Section is not to be read as an abnegation of the arrested person's rights, constitutional or otherwise, in respect of matters such as the right of communication, the right to have legal and medical assistance, and the right of access to the Courts. If the Section were used in breach of such rights, the High Court might grant an order for his release under the Habaes Corpus provisions of the Constitution.

Editor's Note: These last two paragraphs appear to run counter to the views prevailing heretofore, namely that once Article 28 (3) (3) of the Constitution was invoked, it and any legislation arising from it could no longer be questioned in any Court. No distinction had previously been made between "time of war and armed rebellion" and "armed conflict".

The next submission by Counsel, in argument against the validity of the Bill, was that the immunity granted to the legislation contemplated by Article 28 (3) (3) against invalidation by any provision of the Constitution applies only to a law, which becomes so by virtue of being signed by the President. It is contended that when a reference of a Bill is made under Article 26 of the Constitution to the Supreme Court, then Article 28 (3) (3) should not be taken into account. If Article 26 stood alone, this submission would undoubtedly be correct. Unless Article 26 expressly excludes a particular type of Bill from reference to this Court, Bills, including those intended to be enactments in conformity with Article 28 (3) (3) may be considered by this Court. If a Bill enacted under legislation conforming to Article 28 (3) (3) is not referred to this Court, it must be signed by the President, and thereupon becomes law. Consequently this submission is invalid, and fails. When a Bill is validly referred to this Court under Article 26, the test of its repugnancy or invalidity is what its force and effect will be if and when it becomes law. If it is shown that the preliminary requirements and resolutions for the passing of the Bill under Article 28 (3) (3) have been complied with it is *ipso facto* incapable of being struck down on the ground of repugnancy to any provision of the Constitution.

It was then contended that the long title of the Bill — which expresses the purpose of the Bill — fails to conform to Article 28 (3) (3), in that the purpose of the Bill is not expressed to be for the preservation of the State *"in time of war"*. It is contended that, even though it is the existence of *"an armed conflict"* that is relied upon, nonetheless, the expression *"time of war"* must be used, because the latter includes the former. As against this the Attorney General submitted that in the Subsection it is indicated that *"a time of war"*, *"an armed rebellion"*, or *"an armed conflict"* in which the State is not a participant, are to be regarded as separate and distinct. Resolutions of both Houses of the Oireachtas are necessary to declare that a national emergency exists affecting the vital interests of the State when the occasion is one of *"armed conflict"* in which the State is not a participant, and such armed conflict is actually taking place. *Such Oireachtas resolutions are not required "in time of war or armed rebellion"*. The very existence of a *"time of war or armed rebellion"* is sufficient to bring into operation any law which is expressed to be for the purpose of securing the public safety and the preservation of the State. The Attorney General's submission that different formalities are required for the enactment of legislation for *'an armed conflict"* in which the State is not a participant, as distinct from legislation for *"a time of war or armed rebellion"* is well-founded. This submission fails.

What is the existence of the state of affairs necessary to permit the application of Article 28 (3) (3)? These are matters or statements of fact which are contained in the resolution of the two Houses of the Oireachtas. How far can the Court examine the correctness of these statements? The Court accepts the existence of the presumption submitted by the Attorney General that the facts stated in such resolutions are correct; consequently this presumption should be acted upon unless and until it is displaced.

The Court reserves for a future date the question whether, when the resolutions referred to in Article 28 (3) (3) have been passed, the Court would have jurisdiction to review the contents of these resolutions. For all these reasons, the Court decides that the Bill is not repugnant in any respect to any provision of the Constitution.

Editor's Note: No detailed examination appears to have been made of the contents of the Bill, although the constitutionality of the Bill was upheld "in every respect". For the uninitiated an important safeguard in Section 1 is that the powers contained in Section 2 may only be exercised in the first instance for a period of 12 months, but may be renewed thereafter for periods of 12 months. An order may be made at any time that Section 2 shall cease to be in force. Section 2 states that a Guard, even if not in uniform, may without warrant stop, search, question and arrest any person, if he suspects with reasonable cause that an offence is about to be committed under the Offences against the State Act, 1939, and may under the same circumstances stop and search any vehicle or vessel. In the first instance the person arrested may be detained for 48 hours and may further, on the direction of any Chief Superintendent, be detained for an additional 5 days — total 7 days; this follows closely Section 7 of the British Prevention of Terrorism Act 1974, save that, under British legislation, it is the Secretary of State who gives the direction, and not a police officer. It seems odd that this drastic provision does not appear to have been mentioned save indirectly in the judgment.

In Re the Constitution of Ireland and in Re the Emergency Powers Bill, 1976 — Supreme Court (O'Higgins, C.J., Walsh, Henchy, Griffin and Kenny, JJ.) per the Chief Justice — unreported — 15th October, 1976.

OBITUARY

Mr. William Armstrong died on 2nd December, 1976 Mr. Armstrong was admitted in Trinity Term, 1913, and practised under the style of Messrs. W. O. Armstrong & Co. in Kells and Oldcastle, Co. Meath.

Mr. Henry Harte Barry died in April, 1976. Mr. Harte Barry was admitted in Easter Term, 1928, and practised under the style of Henry Harte Barry & Son in Kanturk, Co. Cork.

Mr. Edward J. C. Dillon died on 30th December, 1976 in Dublin. Mr. Dillon was admitted in Trinity Term, 1955, and practised recently as the senior partner in Messrs. Porter, Morris & Co., of 10 Clare Street, Dublin 2.

Mr. Richard F. Gallagher died on 13th December, 1976. Mr. Gallagher was admitted in Easter Term, 1950 and had been the senior partner of Messrs. Richard F. Gallagher & Son, 11 Hume Street, Dublin 2, since his son, Mr. Brian Gallagher, joined the firm in 1971.

Mr. Martin A. Harvey died on 2nd January, 1977. Mr. Harvey was admitted in Michaelmas Term, 1936, and practised at 9, George's Quay, Cork. Mr. Harvey had been State Solicitor for Cork City.

Mr. Francis J. Farrell died on 11th January, 1977. Mr. Farrell was admitted in Michaelmas Term, 1930, and practised at Longford.

Mr. Joseph F. Kenny died on 15th November, 1976, Mr. Kenny was admitted in Hilary Term, 1935, and practised in Dungarvan, Co. Waterford.

Mr. Stephen Maher died on 13th December, 1976. Mr. Maher was admitted in Hilary Term, 1927, and practised at J.K.L. Street, Edenderry, Co. Offaly.

Mr. James Marshall died on 9th January, 1977. Mr. Marshall was admitted in Michaelmas Term, 1950, and practised at 2, Gardiner Row, Dublin 1.

Mr. Francis P. McDonnell, B.A. died on 28th October, 1976. Mr. McDonnell was admitted in Easter Term, 1947, and practised at 16 Dame Street, Dublin 2.

FEDERATION OF PROFESSIONAL ASSOCIATIONS

EVENING SEMINAR

The Federation of Professional Associations is holding a Seminar on:

Theme: The Role of the Professions in a changing Society.
Date: Tuesday, 15 February 1977.
Venue: Shelbourne Hotel.
Time: 7.30 p.m.
Speakers: Senator Mary Robinson
Mr. Niall Montgomery
Mr. Hugh Munro.

Those interested are very welcome to attend.

For further details contact:
The Secretariat of the FPA, 22 Clyde Road, Dublin 4.

THE IRISH SOCIETY FOR EUROPEAN LAW

(formerly The Irish Society for the Study and Practice European Law)

MEMBERSHIP

The Committee invites subscriptions to membership of the Society for 1977. Subscriptions to membership will be as follows:

Individual Membership £4.00
Full Time Students £2.00

Membership of the Society is open to lawyers belonging to all branches of the profession (judges, members of the bar, solicitors, academic lawyers, lawyers in public administration and business life) and to students proceeding to a University Degree in Law or Professional Qualilcation in Law and to other persons admitted in accordance with the Society's constitution.

The officers of the Society elected for the present session are:

President: The Honourable Mr. Justice Brian Walsh
Chairman: Vincent Landy, S.C.
Vice-Chairman: Mr. Finbarr Murphy
Hon. Secretary: Eoghan Clear, Solicitor
Hon. Treasurer: Eleanor McPhillips, Solicitor.

Publications of the Society are available (free of charge to members) from the undersigned:

Eoghan Clear
Hon. Secretary

51, Merrion Square,
Dublin 2.

THE REGISTER

REGISTRATION OF TITLE ACT, 1964

Issue of new Land Certificate

An application has been received from the registered owner mentioned in the Schedule hereto for the issue of a Land Certificate in substitution for the original Land Certificate issued in respect of the lands specified in the Schedule which original Land Certificate is stated to have been lost or inadvertently destroyed. A new Certificate will be issued unless notification is received in the Registry within twenty-eight days from the date of publication of this notice that the original Certificate is in existence and 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 28th day of February, 1976

N. M. GRIFFITH

Registrar of Titles

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

Schedule

(1) Registered Owner: Peter Conlon; Folio No. 22840; Lands: Shinnagh; Area: 0a. 0r. 18p.; County: Kerry.

(2) Registered Owner: David Waldron; Folio No. : 764; Lands: (1) Dawros Lower, (2) Dawros Lower—undivided part of other part; Area: (1) 14a. 3r. 8p., (2) 3a. 0r. 13p. County: Galway.

(3) Registered Owner: John Shanahan; Folio No. : 3374; Lands: Monatray East; Area: 24a. 2r. 24p.; County: Waterford.

(4) Registered Owner: Elizabeth Connaughton; Folio No. : 30668; Lands: Creggs; Area: 0a. 0r. 20p; County: Galway.

(5) Registered Owners: Arthur W. Magennis and Alida Koelman; Folio No. : 1327 F; Lands: Astagob; Area: 0a. 1r. 34½p.; County: Dublin.

(6) Registered Owners: Thomas Walsh and Anne J. Walsh; Folio No. : 7236 (This Folio is now closed and the property forms the land No. 1 on Folio No. : 20579, County Sligo). Lands: (1) Annagh; (2) Gortermone; Area: (1) 20a. 1r. 9p.; County: Sligo.

(7) Registered Owners: Thomas Edward Tynan and Catherine Tynan; Folio No.: 2055; Lands: Springhill; Area: 18a. 2r. 3p.; County: Laois.

(8) Registered Owner: Gerard Patrick McGovern; Folio No.: 13193; Lands: Virginia (part); Area: 38a. 2r. 17p; County: Cavan.

(9) Registered Owner: Edward Barry; Folio No.: 4507; Lands: Ballynanelagh; Area: 87a. 3r. 16.; County: Cork.

(10) Registered Owner: John Hayes; Folio No.: 4689; Lands: Garranbaun (part); Area: 55a. 3r. 0p.; County: Waterford.

(11) Registered Owner: Thomas Kealy (Junior); Folio No.: 9893; Lands: Lisduff; Area: 3a. 2r. 17p.; County: Tipperary.

(12) Registered Owner: Charles McCarthy; Folio No.: 6693; Lands: Maulrouga South; Area: 37a. 2r. 33p.; County: Cork.

(13) Registered Owner: The Hibernian Bank Limited: Folio No.: 8311; Lands: Marshes Upper; Area: 0a. 0r. 25½p.; County: Louth.

(14) Registered Owner: Frank Comiskey; Folio No.: 163; Lands: Tullanacrunat North; Area: 8a. 3r. 15p.; County: Monaghan. (This Folio is now closed and the property now forms the lands No. 1 on Folio 19931 County Monaghan).

(15) Registered Owner: Johanna Jacoba De Best; Folio No.: 1642F; Lands: Knockbaun; Area: 0a. 1r. 13p.; County: Wexford.

(16) Registered Owner: John Gardner; Folio No. : 13693; Lands: Farravaun (parts); Area: 44a. 0r. 14p.; County: Galway.

(17) Registered Owner: Peter Branigan; Folio No. : 5023; Lands: Lacystown; Area: 25a. 0r. 0p.; County: Meath.

(18) Registered Owner: Willitm Connolly; Folio No.: 40540; Lands: Part of the land of Cooleenagow with the Cottage thereon situate in the Barony of Carbery East; County: Cork.

(19) Registered Owners: Anna Maria Keating and John Keating; Folio No.: 1432L; Lands: The leasehold interest in the property situate in part of the townland of Grange (E.D. Douglas) containing 0a. 0r. 12p. and Barony of Cork; County: Cork.

(20) Registered Owners: William Butler and Kathleen Butler; Folio No.: 17399; Lands: Newrath; Area: 0a. 1r. 16; County Waterford.

NOTICES

Barrister's Secretary. Well paid part-time work in own home as personal secretary to Barrister. Dublin south side. Applicant should be expert dictaphone typist, preferably with legal experience, and prepared for interesting work needing high degree of confidence, responsibility and initiative. Applications and inquiries in strict confidence to Box No. 149.

Assistant Solicitor required with at least five years experience of Court work and with knowledge of Conveyancing for extensive practice in the South East, with a view, if suitable, to partnership. Salary negotiable. Box No. 150 for appointment re interview.

B.A. Legal Science Student seeks Master from July, 1977. Any part of the country considered. Martin Callanan, Bouladuff, Thurles, Co. Tipperary.

Retired Bank Manager would like position in Dublin City Office. Reply to Box No. 151.

LOST WILLS

John Drake Deceased—Will any person having a Will of the above named deceased who died on the 17th November, 1976, at St. Patrick's Hospital, Wellington Road, Cork, please get in touch with the undersigned. Jermyn & Moloney, Solicitors, Trinity House, 7, George's Quay, Cork.

Estate of Thomas Berry deceased. Thomas Berry late of 90 Merrion Road, Ballsbridge, Dublin 4, and Carrickfin, Glasson, Athlone, Co. Westmeath. Would any Solicitor or other person knowing the whereabouts of a Will which may have been made by the above named deceased who died recently please get in touch with Messrs. Fair & Murtagh, Solicitors, Athlone, Co. Westmeath.

JOHN CARTON, Deceased,

late of

3, CONNOLLY SQUARE, BRAY, CO. WICKLOW

Would anybody having knowledge of any Will of the above named deceased please contact:

GERRARD A. WALSH HARTE & CO.,
SOLICITORS,
10 PEMBROKE ROAD, DUBLIN 4.

JOHN WILLIAMSON REID, Deceased,

late of

25, ABBEY PARK, KILLESTER, DUBLIN 5.

Would anybody having knowledge of any Will of the above named deceased please contact:

GERRARD A. WALSH HARTE & CO.,
SOLICITORS,
10, PEMBROKE ROAD, DUBLIN 4.

GOLD KRUGGERANDS

A limited number of Gold Kruggerands are for sale. Each coin, in mint condition, contains one ounce of fine gold. Gross Weight 33.9311 grams. Diameter 32 63 mm.

As you are aware the price of gold varies from day to day. Offers will be considered on the basis of the offer price quoted in the Financial Times on the day of receipt of your cheque.

Replies to Box. No. 145

When your client says 'Building Society' we'd like you to say 'IRISH NATIONWIDE'

Are all Building Societies the same? At the Nationwide we feel we can offer you and your client something different, something better.

OUR HISTORY The Irish Nationwide, formerly known as the Irish Industrial Building Society was established in 1873 and is one of the oldest Building Societies in the country. Today it is fair to say that our reputation is second to none.

TOTAL SECURITY On the 31st December 1975 the Society's assets were in excess of £9,000,000 and own resources in the form of reserves were over £500,000. The Society's reserve ratio is one of the highest in the whole Building Society movement and when linked with our liquidity ratio of some 15% is indicative of the high level of security offered.

A CHOICE OF INVESTMENT ACCOUNTS

We offer a full investment service covering the whole range of investor requirements.

1 **INVESTMENT SHARE ACCOUNT** – Save what you like, when you like,with ease of withdrawal.

2 **TERM INVESTMENT SHARE ACCOUNT** – When clients invest a lump sum for a fixed period they gain a bonus in the form of additional interest.

3 **REGULAR INCOME SHARE ACCOUNT** – Should the Investor require a regular income for effective budgeting, interest can be paid monthly or quarterly.

GOOD INTEREST. The Society pays a highly competitive rate of interest and as Income Tax is paid by the Society the return is very much better than that of many other investments offering higher rates on which tax must still be paid.

TAX. The interest earned is completely free of income tax at the standard rate. The Society by special arrangement with the revenue commissioners pays the tax in full on all the interest paid to investors. The Society does not make any individual returns to the revenue authorities in respect of any Account holder. This obligation rests solely with each individual investor.

SERVICE. If your client invests with us we can guarantee, because of our size, a personal service that combines efficiency with discretion, and we are backed by a highly qualified management team. We have Branch and District Offices throughout Ireland and a by-return postal service to save elderly or remote clients, time and trouble.

CONFIDENTIALITY. Needless to say, the Irish Nationwide protects the absolute confidential nature of all dealings between the Society and it's members.

TRUSTEE STATUS. When trustee status is granted to the Building Societies the Irish Nationwide, because of its strong financial structure will obtain this important facility. In this event, the Society will welcome the investment of trustee funds.

MORTGAGES. The Society's funds are used solely for residential purposes and it has an unequalled reputation with the legal profession for the prompt and efficient manner in which it deals with clients loan applications and the subsequent payment of the loan cheque.

GROWTH. The Irish Nationwide is growing steadily. Our new Head Office is at No. 1, Lower O'Connell Street.Dublin **1.** Our new Southern Head Office is in Patrick Street, Cork with many Branch and District Offices throughout the country.

These are some of the reasons why we'd like you to say "Irish Nationwide" when your client says "Building Society". Maybe we can help you today?

IRISH NATIONWIDE BUILDING SOCIETY

Head Office: 1 Lower O'Connell Street, Dublin 1. **Tel: 742283** Branches throughout Ireland.
Managing Director: Michael P. Fingleton, B.Comm. F.C.I.S. A.C.C.A. Barrister-at-Law.
A member of the Irish Building Societies Association.

RECENT IRISH CASES

A dispute involving the refusal by a trade union to import Opel Motor Cars can only be decided in a full Plenary hearing.

The plaintiff was engaged in the assembly and distribution of Opel motor cars pursuant to a franchise granted by General Motors until October, 1974. Whitty is an employee of C.I.E. and is a shop steward of the Irish Transport and General Workers Union (ITGWU) in Rosslare Harbour. Donegan is a national official of the ITGWU. The Opel Assembly Plant was closed in October, 1974. The proposed closure was known beforehand and there were negotiations to relieve redundancies between ATGWU who represented the Car Assemblers, the Plaintiffs, and General Motors Overseas Corporation. The negotiations were abortive, and when the assembly plant was closed, the workers occupied the factory in a sit-in, which lasted 18 weeks. The 4 Unions concerned in the Motor Industry, ATGWU, ITGWU, AGE & MOU and AUEW, met on 21st September, 1974, and passed a resolution to fight unemployment by all means at its disposal, and that importation of F.B.U. vehicles be banned; this was confirmed at an inter-Unior meeting on 5th October, 1974, and a ballot of all members was subsequently held confirming this. On the 2nd April, 1975, the Trade Union Advisory Body to the Motor Industry recommended that a ban be imposed on the importation of fully built Leyland and Opel cars. The Executive of the Irish Congress of Trade Unions subsequently supported the Automobile Assembly Group of Unions in its efforts to protect the jobs of workers. The ITGWU notified each Section of its Docks branch of this decision on 11th April, 1975. The Assistant Branch Secretary of the ITGWU in Wexford notified Whitty in Rosslare, who duly notified the Port Manager of C.I.E. in Rosslare Harbour.

On 13th January, 1975, the plaintiffs informed their employers that they had received a letter from General Motors informing them of various job opportunities which would be occurring shortly in their plant in Tallaght. This pool would be chosen from men formerly employed by the plaintiffs and by McCairns. The sit-in of employees in the plaintiff's factory in Ringsend ended in February, 1975. Negotiations took place between the plaintiffs and the shop stewards of the ATGWU. On 4th June, 1975, the plaintiffs wrote to all their assembly workers, who had been employed up to October, 1974, proposing a redundancy scheme, which was accepted. The plaintiffs wrote to all redundant workers, offering alternative employment by General Motors in Tallaght, but not all applicant workers were employed. By letter of 10th July, 1975, to ATGWU the plaintiffs suggested a meeting to lift the ban of Opel cars. On 21st August, 1975, Mr. Browne, the Branch Secretary of the ATGWU, informed plaintiffs that the Union would consider lifting the ban, if the plaintiffs guaranteed to continue employment of workers at 1965 level up to 1984, or continuity of employment in a diversification situation.

On 10th October, 1975, the Minister for Industry and Commerce issued to the plaintiffs a special licence for the importation of 655 Opel cars from then until 31st December, 1975. A contract was made between plaintiffs, C.I.E., and British Rail, for the importation of Opel cars from Fishguard to Rosslare, and this could not be carried out because members of ITGWU would not handle these cars.

Peterson J's dictum in **White v. Reilly** — (1921) 1 Ch.D. — is quoted to the effect that the Court should not in these cases consider whether the conduct of the employers or workmen is considerate, wise, or expedient, but whether the act complained of is lawful or unlawful. The question is whether any of the defendants have committed the tort of interference with contractual relations.

The claim of the plaintiffs is for:

(1) An Injunction restraining Whitty, Donegan and the ITGWU from procuring any interference with the importation and distribution of Opel Motor Cars.

(2) An Injunction restraining Whitty, Donegan, and the ITGWU from procuring breaches of contract by C.I.E. and British Rail in the carriage and transport of Opel Motor Cars.

Having quoted Lord Evershed, M.R. in **Thompson v. Deacon** — (1952) 2 All ER—to the effect that it was a well established principle of law that if a man, acting lawfully and in all respects within his rights, causes, as a result of what he does, loss to another, even spitefully and maliciously, that other person has no remedy, no matter how great the loss, it was necessary for the plaintiffs to establish the essential ingredients of this tort—i.e. that

(1) the named defendants, Whitty, Donegan and the ITGWU did know of the existence of the contracts and intended to procure their breach.

(2) These defendants did definitely and unequivocally persuade, induce or procure the plaintiffs to break their Contracts of Employment, with the intention of breaching these contracts.

(3) Those employed, so persuaded or induced, did in fact break their contracts of employment.

(4) The breach of contract forming the subject of interference was the necessary consequence of breaches by the employees concerned of their Contracts of Employment.

Accordingly Hamilton J found:

(1) There was no conspiracy between the defendants to injure the plaintiffs.

(2) There was no breach of contract either by C.I.E. or by any of its employees who belonged to the ITGWU. The Port Manager of C.I.E. at Rosslare Harbour accepted the position and did not order his employees who were members of the ITGWU to handle Opel cars.

(3) There was no breach of contract by the Union itself — the ITGWU — since that Union had no contract with the plaintiffs. The Union merely asked for their member's support in ensuring that no F.B.U. cars were to be imported.

(4) Accordingly on 13th November, 1975, there was no trade dispute involving the plaintiffs. On the facts submitted, Hamilton J. had on 19th November, granted an Interim Injunction effective until 26th November but this was not extended. On that date, Counsel for plaintiffs indicated that he wished to have the application for an Interlocutory Injunction treated as the hearing of the action, and defendants consented. All the employees of the plaintiffs had accepted the redundancy scheme proposed by them in June, 1975, and consequently were no longer in the employment of the Company.

The plaintiffs appealed to the Supreme Court from the refusal of Hamilton J. to grant them an Injunction and requested a plenary hearing. Whitty, Donegan and the ITGWU cross-appealed against that part of Hamilton J's judgment which found:

(a) that no trade dispute was in existence at the material time.
(b) that a trade union of itself was not entitled to engage in a trade dispute with an employer.

The Supreme Court, having reviewed the evidence, found:

(1) That no injunction was sought against C.I.E. or British Rail, who had accordingly given no evidence.
(2) That the plaintiffs, though invited to do so by Hamilton J., had tendered no oral evidence.
(3) In the result, the composition of evidence in the case, which was partly oral, and partly on affidavit, has been unsatisfactory, particularly as no pleadings had been issued as to what exact points were to be tried.
(4) Although allegations were made of breaches of contract, the nature of these contracts was never disclosed, nor were particulars given of the parties who had signed them, or the extent of the obligations undertaken.
(5) There was a suggestion that C.I.E. and British Rail had been intimidated or coerced into a refusal to carry Opel cars.
(6) The evidence as to the existence of a trade dispute was very sparse.
(7) As the Court cannot in the circumstances decide anything, the plaintiffs are entitled to a Plenary Hearing, where all the issues will be examined in full.

Accordingly Hamilton J's findings are reversed, and the appeal is allowed for a full hearing.

Reg. Armstrong Motors Ltd. v. Coras Iompair Eireann, British Rail, Whitty, Donegan and the Irish Transport and General Workers Union
(1) Hamilton J. — unreported — 2nd December, 1975.
(2) Supreme Court (O'Higgins C. J., Walsh, Henchy, Griffin and Kenny JJ.) per the Chief Justice — unreported—16th December, 1975.

The Special Criminal Court cannot convict an accused of an offence other than one for which he has been indicted.

The accused seeks leave to appeal against his conviction in the Special Criminal Court for an assault with intent to rob; he had not been charged with this offence in the indictment, but with robbery with aggravation contrary to S.23 of the Larceny Act 1916. He was acquitted on this count, but S.44 (1) of the Larceny Act 1916 was invoked to convict him of assault with intent to rob. The accused contends (1) that the Court had no jurisdiction to invoke S.44(1), and (2) that certain fingerprint evidence which was the main foundation of the conviction, was an inadequate identification of the applicant.

Although robbery is not a scheduled offence under Part V of the Offences against the State Act 1939, the Attorney General had certified under S.47(2) of that Act that the ordinary Courts were inadequate to secure the effective administration of justice in relation to the trial of the applicant, and accordingly the Special Criminal Court was sanctioned to try the accused.

The net point is whether the alternative verdict of guilty allowed by S.44(1) of the Larceny Act 1916, can be said to be (1) part of the practice and procedure of the Central Criminal Court, or (2) whether it is a matter of jurisdiction, in which case the Special Criminal Court would have no power to bring in such a verdict. In **The State (O'Flaherty) v. O'Floinn** — (1954) I.R. 295 — the following broad definition of **"practice and procedure"** was given by Kingsmill Moore J.: "the manner in which, or the machinery whereby effect is given to a substantive power which is either conferred on a Court by Statute or inherent in its jurisdiction". The prosecution is required by S.41(4) of the Offences against the State Act 1939 to follow as far as practicable the same procedure as the Central Criminal Court. It is clear that S.41(4) is the machinery to enable a trial before the Special Criminal Court (including preliminary interlocutory and consequential matters) to proceed along known lines to a verdict of guilty or not guilty, including the form of indictments, the documents to be served, the procedure for securing attendance in Court, and the manner in which evidence is to be taken. However, the substantive jurisdiction is contained in S.43(1) of the Larceny Act 1916, which cannot be construed as part of the practice and procedure of the Central Criminal Court. As part of the determination itself, it is a matter of jurisdiction. S.41 of the Offences against the State Act 1939 does not endow the Special Criminal Court with a jurisdiction to convict the accused of an offence other than one for which he has been indicted. Accordingly the appeal is allowed, both as to conviction and sentence, which are quashed, and the accused is discharged.

People (D.P.P.) v. James Rice — Court of Criminal Appeal (Henchy, Murnaghan and McMahon JJ.) per Henchy J. — unreported — 12th November, 1975.

It is for the Special Criminal Court to decide on the evidence whether claims of privilege should be entertained, and whether the opinion of Garda Superintendent as to membership of an illegal organisation is justified.

The accused, a vocational teacher in Co. Meath, was convicted of membership of an illegal organisation, and sentenced to 12 months imprisonment by the Special Criminal Court. The appeal was taken on the grounds (1) whether the claim of privilege put forward and sustained by the Court was justified, and (2) whether the Court would convict on the restricted evidence permitted by S.3(2) of the Offences against the State Act 1972. It was necessary for the Court to consider carefully the evidence in relation to the documents concerned and that there should be an adjudication by the Court upon such evidence. The evidence related to confidential reports between the Chief Superintendent and the men under his command about subversives; the nature of these documents had been mentioned to the Court. In this case, the evidence of the Superintendent had not been challenged by the defence, and the Court had properly decided that the documents were privileged.

S.3(2) of the Offences against the State Act stated that the Court could act on the belief of a Chief Superintendent as to whether an accused belonged to an illegal organisation or not. This was the law of the land, and the Court could not apparently entertain any views with regard to the merits or otherwise of that Section. (The

constitutionality of the Section was not considered). The accused had an opportunity to deny belonging to such an association on oath, which he had not availed of.

Counsel applied for leave to appeal to the Supreme Court on the important question of how our Courts were to approach the question of privilege in a criminal trial, but the Court refused leave to appeal, the Chief Justice stating that the Court considered that in civil or criminal proceedings, the document must be decided in relation to it.

People (D.P.P. v. Desmond Ferguson — Court of Criminal Appeal — (O'Higgins C.J., Murnaghan and McMahon JJ.) per the Chief Justice — unreported — 27th October, 1975.

As Taxing Master has not exercised his discretion properly, counsel's fees would be allowed in full.

Motion for Review of Taxation of Costs awarded to the plaintiff. The action was to have admitted to Probate in solemn form the Will dated 15th May, 1961, of Josephine Heffernan, who died on 16th January, 1967. The plaintiff was the sole surviving executor, and the defendant claimed there had been undue influence. On the 5th day of the Trial, the defendant withdrew opposition to the Will and executed a Consent which was made a rule of Court, and the Court affirmed the Will.

The plaintiff's costs were duly taxed by the Taxing Master on 10th May, 1971. The solicitor for the plaintiff was dissatisfied with the quantum of allowances made, and duly applied for a review of taxation in respect of specified items. The Taxing Master considered most objections on 23rd November, 1972, but only considered items relating to solicitor's instructions, and to Counsel's fees and refreshers on 19th January, 1973, and duly issued a report on these matters on 2nd May, 1974. Notice of Motion to the High Court to review the taxation was lodged by plaintiff's solicitors on 26th February, 1974. It was contended that, as in the action the judge had directed the plaintiff's costs to be taxed on Solicitor and Client basis, these items should have been allowed in full, particularly as the outlay incurred had actually been paid.

As regards advice sought by Counsel, the Taxing Master thought that Junior Counsel was sufficiently competent to advise. He accordingly allowed him a fee of £5.25, and disallowed Senior Counsel's Fee. The Taxing Master reached the same conclusion with regard to the settlement of the Plenary Summons, and only allowed Junior Counsel's Fees. The Taxing Master disallowed any fee to Counsel for settling the Notice of Motion before the Master. He also considered that the General Instruction fee of the solicitor included the instructions and briefing of Counsel on a Motion before the Master. In regard to Fees paid to Senior Counsel on the brief, it was thought that £84.00 was reasonable in the circumstances, and corresponding fee of £56.00 for Junior Counsel. Refresher fees of £36.75 were allowed to Senior Counsel, and of £24.50 to Junior Counsel.

Gannon J. held that the Taxing Master had not exercised his discretion correctly in placing the onus on the solicitor for the plaintiff to justify in detail items of outlay, and of substituting his own assessment of the value of Counsel's work. All the items which the Taxing Master objected to should have been allowed until it was shown that they had been unreasonably incurred. The Taxing Master was incorrect in disregarding the fact that these fees to Counsel had been actually paid by the solicitors, in a taxation of costs on a solicitor and client basis, when the onus of objection is cast on the party opposing taxation. There is no evidence in this case that the party opposing the costs attempted to argue that the items in this case were of an unusual nature, or that the fees payable to Counsel were special fees. Accordingly the objections brought in by the solicitor for the plaintiff were well-founded, and the taxation did not properly accord with a taxation on the solicitor and client basis. The disallowance of any of these items would not be justified on this basis, and the numbered items listed in the judgment will accordingly be allowed in full.

Re Josephine Heffernan Decd. — Heffernan v. Heffernan — Gannon J. —unreported—2nd December, 1974.

Interlocutory Injunction restraining unlawful picket upheld.

Appeal from Parke J. who granted to the plaintiffs an Interlocutory Injunction restraining an alleged official picket of the Amalgamated Union of Engineering Workers (hereinafter called AUEW) from picketing the premises.

There is no statutory trade dispute in this case, as the strike was called on the sole authority of the District Committee, without any vote to strike being taken by the Union Members in the shop or plant involved. Insofar as the District Committee is authorised by the Rules to approve or disapprove of members in a shop leaving their employment in the case of a shop dispute, this presupposes that the members concerned must vote upon the issue. The union alleges a spurious national policy that, when a shop steward is dismissed, the District Council have the power to call a strike, but this is not contained in the Rules.

The plaintiffs are Union members who work in the factory and, in view of the probable closing of the factory if this picket continued, wish to safeguard their livelihood. It is essential for them that the *status quo* should be restored. As this picket is not official in accordance with the Union Rules, the appeal is unanimously dismissed, and the interlocutory injunction granted by Parke J. is affirmed.

Brennan and Others v. Glennon and Others — Supreme Court (O'Higgins, C.J., Henchy and Kenny JJ.) per the Chief Justice — unreported —26th November, 1975.

Declaration given that testator failed in his moral duty to make provision for his children, and direction given that half of the estate was to be distributed in accordance with specific percentages for the children.

The plaintiffs claim a Declaration that the Testator failed to make proper provision for them according to his means, and for a direction by the Court for proper provision under S.117 of the Succession Act 1965. As Kenny J. stated in **McNaughton Decd.** — (1973) I.L.T.R. 1 — normally it is not the duty of the Court to make a new will for a testator. If there has been a material change in the circumstances since the will was made, it is not proper for the Court to speculate upon the intention of the testator had he known the altered circumstances, and normally the Court should not necessarily strive to achieve equality between the children. But these principles cannot apply invariably.

The deceased, a rich cattle dealer, died on 16th March, 1973, having

made his last will on 15th February, 1962. He was survived by his widow and 8 children. The 4 eldest sons were respectively 14, 13, 11, and 9 years in March, 1963, the eldest daughter was 8, the youngest son was 6, and the elder of the two youngest daughters was 2 years in 1963, while the youngest daughter was only born in September, 1964, after the will was made. The provisions in the Will as to the lands were inoperative at testator's death, as he had sold most of them during his life-time; apart from that, the Testator had become very wealthy at his death, and, after payment of death duties, left an estate worth £335,000. In the circumstances prevailing at his death, the testator had undoubtedly failed in his moral duty to make proper provision for his children, but had not done so deliberately, as he could not have foreseen the high rise in the price of land.

Francis, the eldest son, is an accountant with bad health, but the other sons have pursued farming. Actuarial evidence has been given as to the needs of the daughters. The principle, however, must be that no child has a right to any portion of the estate. In the exceptional circumstances of this case, the widow is statutorily entitled to 50% of the estate. The remaining half of the estate will be be divided between the 8 children as follows: Francis—15%; Noel—12.5%; Thomas—12.5%; Peter—12.5%; Maria Olivia—12%; Kevin—11%; Bernadette Catherine—12%; and Lorena—12.%. As Estate Duty has already been paid, these percentages are to be paid net.

A declaration will accordingly be made that in the circumstances, the testator failed in his moral duty to make proper provision for his children, and a direction that half the estate be distributed in accordance with the specified percentages for the children.

Woods and others v. Doad and others — Parke J. — unreported — 28th May, 1975.

Upon hearing a Circuit Appeal, the High Court may not state a second case stated to the Supreme Court, but is entitled to hear further evidence until judgment.

The applicant applied for an order for a new tenancy under the the Landlord and Tenant Act 1931 relating to the Corn Exchange Building. The Circuit Court granted the application, and the respondents appealed. The appeal came before Butler J. in October, 1971, and, in pusuance of S.38 (3) of the Courts of Justice Act, 1936, Butler J. stated a case upon two questions for determination to the Supreme Court, who duly delivered judgment on 10th May, 1973 — see (1973) I.R. 269. When the case was subsequently resumed before Butler J., it was contended that the Judge should permit evidence to be given of the granting of full planning permission, which had occurred meanwhile. The Judge was inclined to this view, but stated a second consultative case of three questions for determination by the Supreme Court. The Supreme Court decided to determine as a preliminary point whether the High Court Judge on a Circuit Court Appeal could validly state a case to the Supreme Court for a second time, and was thus led to construe S. 38(3) of the Courts of Justice Act 1936.

Henchy J. delivering the majority judgment of the Court (**Griffin J.** concurring) stated that the main points of S. 38(3) were:

(1) The case must be stated by a Judge hearing a Circuit Appeal.
(2) It must be stated as a matter of judicial discretion on the application of either party.
(3) It must be stated on a point of law directly arising on such appeal.
(4) If a question of law is referred to the Supreme Court the Judge may adjourn for pronouncement of his judgment—not for the further hearing of the appeal. No power is given in the Section to adjourn the hearing of the appeal.

It follows that, upon the hearing of a Circuit Appeal, the High Court Judge may only state a case at the stage when he is actually adjourning the pronouncement of his judgment, and not at any stage of the hearing. If the Legislature has confined a case stated under S. 38 (3) to the stage when the hearing had come to the point of adjudication, it follows that it was not intended that there should be more than one case stated in any appeal. But even if the High Court Judge, in stating a case to the Supreme Court, must adjourn the pronouncement of his judgment, this does not mean that meanwhile he is deprived of his inherent jurisdiction to take such steps as are necessary to lead to a determination of the matter in accordance with law. Up to the issue of formal judgments, the Judge has jurisdiction to hear further evidence or legal argument. Accordingly the Court held that the second case was not maintainable, and should be struck out.

Walsh J., dissenting, would have held that it was open to the High Court Judge hearing a Circuit Appeal to state a case at any stage, including the preliminary stage, of the proceeding. He would have also held that the High Court Judge had power to state a second case, and was justified in doing so here, in view of the evidence.

Dolan v. Corn Exchange Buildings (No. 2) — Supreme Court (Walsh, Henchy and Griffin JJ.), Majority judgment by Henchy J. and dissenting judgment by Walsh J.—unreported —4th December, 1975.

Glasnevin Cemetery is not liable for rates

Glasnevin Cemetery, the property of the defendants since 1846, was transferred to a new Cemeteries Committee by the Act of 1970. On 29th September, 1970, the plaintiff Corporation issued proceedings for the recovery of £18,300 rates from the defendants in respect of Glasnevin Cemetery. O'Keeffe P. held that this amount was due as the Commissioner of Valuation had rated the defendant as occupiers of the premises. In **Dublin Cemeteries Committee v. Commissioner of Valuation,** (1897) 2 I.R., the contention of the plaintiffs that, as a charity, they should not be rated, was rejected. But by virtue of S. 63 of the Poor Relief (Ireland) Act 1838, it is abundantly clear that a cemetery is not to be rated, unless a private profit is made. It follows that an occupier of a cemetery cannot consequently be rated. If an alleged rated occupier proves that he is not the occupier notwithstanding that he is listed as such on the valuation lists, the action against him must fail. The defendants here have never been in receipt of any private profit, and the plaintiff's claim must fail. In this case the determination by the Commissioner of Valuation to rate the cemetery was made without jurisdiction. The appeal will consequently be allowed.

Dublin Corporation v. Dublin Cemeteries Committee — Supreme Court (Walsh, Henchy and Griffin JJ.)—Separate judgments by Walsh J. and Henchy J. — unreported — 12th November, 1975.

RECENT IRISH CASES

Apportionment for negligence under Civil Liability Act, 1961, varied verbally on appeal. (Contributed by Nathaniel Lacy, Solicitor, Castleknock.)

On 7th August 1971 plaintiff was riding a motor cycle and was in collision with a motor car, the property of the defendant near Dungloe, Co. Donegal, as a result of which he sustained personal injuries, loss and damage. Defendant's motor cover was fully insured and the case proceeded in the ordinary way on instructions to his solicitors from defendant's insurers.

The action duly instituted by the plaintiff for personal injuries, was tried before Mr. Justice Butler and a jury at the High Court, Dublin, on 5 and 6 February 1975. The jury found the defendant was 71 per cent negligent and the plaintiff was 29 per cent negligent. The jury awarded the plaintiff damages to the extent of £41,227. Having regard to the apportionment on negligence under the Civil Liabilities Act, 1961, the Judge gave judgment for the plaintiff for the sum of £29,271.17 and costs.

The defendant duly appealed to the Supreme Court against all the findings of the High Court.

The appeal came for hearing before the Supreme Court on 20 November 1975. The Court consisted of Henchy, J., Griffin J., and Kenny J. The appeal was opened and conducted on behalf of the appellant and defendant by Mr. Eamon Walsh, S.C. The respondent was represented by Mr. Noel Peart, S.C. The arguments on behalf of the parties finished at 12.15 p.m. Mr. Justice Henchy intimated that the judgment of the Court would be given at 12.45 p.m. Verbal unanimous judgment was delivered by Mr. Justice Henchy on behalf of his colleagues. He stated that the finding of the High Court would be reversed *in toto*. The Court had been requested by Mr. Eamon Walsh in the event of the Supreme Court deciding in favour of the appellant on the liability and/or quantum issue, not to send the case back for re-trial, but to deal finally with the case there and then. The last mentioned request was strenuously opposed by Mr. Noel Peart who requested the Court to send the case back for re-trial in the event of the findings of the Court below below being upset on any grounds by the Supreme Court. Mr. Justice Henchy stated that the members of the Supreme Court had decided that they were in a position to deal finally with the case and they apportioned liability on a 50/50 basis. The gross damages were assessed at the sum of £25,427, and the nett amount payable, having regard to the 50 per cent liability finding was £12,713.50. The Court accordingly gave judgment for that amount, having reduced it from £29,217. The costs were awarded to the respondent of the hearing in the High Court and each side was ordered to pay its own costs of the Supreme Court hearing.

The importance of the Supreme Court finding

It is to be particularly noted that the Supreme Court having found in favour of the appellant as regards the liability and quantum issues decided to deal with the case there and then and not to send it back for re-trial. This practical approach of the Supreme Court to appeals as to apportionment for negligence is to be commended. It is believed that the precedent set here may be followed in future cases. If the case had been sent back for re-trial, it would have raised numerous difficulties for the defendant, such as the increase in wages which had taken place since the accident occurred. There was always the possibility that a new jury might once more make a wrong apportionment of liability and might find excessive damages with a resulting second appeal to the Supreme Court. In this way, the case could become a "shuttlecock" between the High Court and the Supreme Court and heavy costs would inevitably be incurred.

Gallagher v. O'Donnell — Supreme Court (Henchy, Griffin and Kenny JJ.) — Verbal judgment by Henchy J. — unreported — 20 November 1975.

Plaintiff's damages reduced by verbal judgment on appeal.

Injuries were sustained by plaintiff in a collision between plaintiff's motor car and defendant's lorry. In answer to question submitted by Butler J. on 29 November 1974 the jury found the defendant lorry driver negligent in failing to keep a proper look-out and in driving on the incorrect side of the road. The plaintiff was found negligent in driving too fast, but not in driving on to the incorrect side of the road. The damages were apportioned as to 50 per cent each between plaintiff and defendant. The damages were apportioned as to £330 for special damages, and as to £12,700 for general damages, making a total of £13,030 damages. Having regard to the jury's apportionment, judgment was given for the plaintiff for £6,515 and costs.

On condition that the defendant paid the plaintiff £3,000 plus interest at 12 per cent per annum, the Judge ordered a stay of execution, in order to lodge a possible appeal. The Notice of Appeal was duly lodged on 17 December 1974, and it was contended by the defendant that the sum of £12,700 awarded by the jury in respect of general damages was excessive and unreasonable, and that there was not sufficient evidence upon which the jury could award such sum.

The appeal was duly heard in the Supreme Court before Henchy, Griffin, and Kenny JJ. on 5 November 1975. Henchy J. delivered a verbal judgment in which the Court unanimously allowed the appeal. The amount of general damages reduced from £12,700 to £10,000. The plaintiff was to be awarded a total sum of £5,165 in lieu of £6,515. Credit was to be given to the defendants in respect of the £3,000 already paid to the plaintiffs, and the defendants were accordingly ordered to pay an additional £2,165 at 12 per cent interest from date of trial. Each party will have to pay their own costs of the appeal in the Supreme Court, but the costs of the trial in the High Court were awarded to the plaintiff.

Harris v. Condensed Milk Co. of Ireland — Supreme Court (Henchy, Griffin and Kenny JJ.) — Verbal judgment by Henchy J. — unreported — 5 November 1975.

It is unconstitutional for a Contempt of Court case to be tried without a jury.

The plaintiff seeks to establish that the defendant is guilty of Contempt of Court in failing to obey an Order made by Butler J. on 30 July 1975, and is therefore liable to committal. A distinction has endeavoured to be made between Civil Contempt and Criminal Contempt but it is to be noted that in each case a punishment by way of deprivation of liberty is imposed, to wit imprisonment. The object of criminal contempt is punitive while that of civil contempt is to obtain compliance with a Court order. In order

to sustain a contempt charge, there must be wilful or inexcusable default. The following ingredients are accordingly necessary to sustain the charge: (1) the overt act of failing to obey a Court order; and (2) *Mens rea*, a guilty intent which precludes a lawful or innocent reason for the action. If guilty, a defendant can be sentenced to an indefinite term of imprisonment. Accordingly, the failure to obey a Court order is a crime, which cannot be deemed a minor offence. It follows that the issue whether or not a person is guilty of such contempt comes within Art. 38 (5) of the Constitution and must be determined by a jury. The case is referred back, in order that Counsel may have an opportunity of considering the matter.

McEnroe v. Leonard — unreported — Parke J. — 9 December 1975.

Due to mother's adultery, custody of three-year-old son awarded to father.

The plaintiff wife and defendant husband were married in a Catholic church in Dublin in June 1971 and an only child, a son, was born in October 1973. The plaintiff is the owner and manager of a hairdressing salon, and has been at all times better off than her husband, who is a barman in his father's licensed premises, and who is earning £50 per week. The plaintiff provided and furnished the matrimonial home, paid the greater part of the outgoings and provided a motor car. The degree to which either plaintiff or defendant now practises their religion is doubtful, but in accordance with **Re May** (1958) 92 I.L.T.R., it was impliedly agreed that any children should be brought up as Catholics.

Even before the marriage, the defendant drank to excess, and the plaintiff was aware of it; this continued after the marriage, with the result that the plaintiff was frequently violently assaulted and beaten, even after pregnancy. Evidence was given that strangely, though they had many rows, they were on very good terms between quarrels.

In 1974 the plaintiff went alone on a holiday to Tenneriffe, and she met a rich English Jewish businessman, Mr. G., and became enamoured of him. Mr. G. was married with one son, but Mrs. G. had obtained a *decree nisi* at this time on the ground of her husband's desertion. This acquaintance with plaintiff progressed rapidly, and they often arranged to meet for weekends in England without defendant's knowledge. One of these meetings in the summer of 1975 was in an Irish seaside resort, which the defendant discovered. Being addicted to drink and violence towards his wife, he threatened to shoot both her and Mr. G. In October 1975 proceedings were instituted by the plaintiff claiming interim custody of the child, and injunctions against the defendant. On 9 October 1975 Kenny J. made an order giving sole custody of the child to the plaintiff until further order.

The case now made by the plaintiff is that, by reason of his drunken conduct and the inadequacy of his financial resources, the defendant has forfeited the right to the custody of his child, or to the control of his education. She asks for the custody of the son, so that she can take him to the home which she and Mr. G. intend to set up in England; she is even anxious to adopt the Jewish faith, and intends to bring up her son as a Jew. In this situation, the right of the child to have access to his father, as laid down in **M. v. M.** — (1972) 2 All ER — received no consideration whatsoever. This is a very novel claim in the Irish Courts which operate under a Constitution laying such special emphasis on the institution of the family. The paramount consideration is the welfare of the child. Normally a child of tender years should be entrusted to the custody of his mother, unless she has so gravely failed in her moral duty as to forfeit this right. If the prime issue is one of custody, it is impossible to resolve it without taking into account the whole picture presented by the parties — see unreported Supreme Court judgments of **O'Shea v. O'Shea** (5 April 1974) and **Keogh v. Keogh** (31 July 1974).

As regards religious welfare, Davitt P. in **Re May** (1958) stated that an agreement was to be inferred on the marriage of two persons both practising the same religion that any children of the marriage would be brought up in that religion. Accordingly, the plaintiff has no right whatsoever to change the religion of the child against the wishes of the defendant.

In custody cases, the Court is not to prefer one religion against another. But the social welfare of the child should ensure making him a better member of the society in which he will live. If he were brought up in the Jewish faith, he would not be a member of the Jewish race, and would thus be an alien.

While a Court is not a Court of morals, in general it will not grant custody to a parent who has abandoned the matrimonial home and lives in an adulterous establishment. Under Irish law, no lawful union can take place between the plaintiff and Mr. G. during defendant's lifetime. Adultery is even prohibited under Jewish law. The intellectual and physical welfare of the child would be as good, if not better, if he went to England.

The defendant's parents live in a large house over the father's licensed premises, and they are willing to offer accommodation to him and his son. The son will be looked after by his grandmother, who, though less educated, would be a better example than his mother, who, by her conduct, has deprived herself of the custody of her son. Accordingly the custody of the child will be awarded to the defendant, and Kenny J.'s order will be varied. The mother can apply subsequently to have access to the child.

H. v. H. — Parke J. — unreported — 4th February 1976.

A Compulsory Purchase Order made by a local authority must relate strictly to lands acquired by that authority and by no other authority.

Appeal from Kenny J.'s decision, which quashed this Compulsory Purchase Order, that the lands now being acquired compulsorily were partly for the needs of Dublin Corporation, and partly for the needs of Dublin County Council for housing purposes. If the Corporation had wished to acquire lands in Dublin County Council for Corporation housing purposes, the Order would have been valid. The documentary and oral evidence fully support the inference which Kenny J. drew that the lands were required partly for Corporation housing purposes, and partly for County Council purposes. There was no evidence to support a finding that a possible alternative purpose of the acquisition was to satisfy only the housing needs of Dublin Corporation. The legal representative of Dublin Corporation attempted to argue before the Inspector that it was inherent in the purpose of acquisition that Dublin Corporation would be enabled, if they so decided, to hand over part of the lands to Dublin County Council for housing purposes. The objectors at the inquiry contended that the Minister would have no power, in view of the evidence, to

confirm the Compulsory Purchase Order, because the evidence showed that the lands were not being solely acquired for the purpose of enabling Dublin Corporation to carry out their statutory housing functions. But the Minister confirmed Dublin Corporation's original proposal, by which part of the lands were to be handed over to Dublin County Council for housing purposes. The Minister may act in such cases, if he is of opinion that there is a reasonable expectation that the land will be required at some time in the future by *one* local authority for its housing purpose. Under the Housing Act, 1966, land may be compulsorily acquired and allowed to remain idle until its use for housing becomes necessary.

Planning permission is not necessary in this case, as it would otherwise hinder development. However, under the Housing Act, 1966, compulsory acquisition is only permitted in respect of the local authority who applies for it for its own housing purposes. This Act does not permit an extension to allow another different local authority to apply acquisition for the purpose of attaining their own statutory housing functions. The Compulsory Purchase Order was therefore wrongly confirmed by the Minister, and should be quashed.

The appeal from Kenny J.'s decision is accordingly unanimously dismissed.

In Re Blanchardstown and Corduff Area Compulsory Purchase Order 1969 — Moran v. Dublin Corporation — Supreme Court (Walsh, Henchy and Parke JJ.) per Henchy J. — unreported — 13 November 1975.

Damages for alleged breach of copyright disallowed.

Plaintiffs are concerned with the protection of rights of authors and publishers in relation to musical and other works. The plaintiffs grant licences for reward for the performances of works, and distribute the proceeds amongst authors and publishers. The plaintiffs claim that the defendants performed eight musical items in May 1973 which it is alleged constitute breaches of copyright. The defendants provide multi-channel television, and hold licences from the Department of Posts and Telegraphs; all the authors named were aliens, belonging to one of the signatory countries of the Berne Convention. Plaintiffs have contended that they had a right to dictate to the defendants as to the selection of their repertoire. The Copyright Act, 1963, extended copyright to radio and television broadcasting, and gives protection to the rights of defined qualified persons. The aim of the Berne Convention is to provide that copyright enjoyed in one subscribing state shall be protected within the jurisdiction of each other subscribing state. S. 2 defines transmission as including the distribution of broadcast programmes. The defendants submit they do not transmit programmes, but pick up the free air transmission of programmes, in the same way as any private individual in the multi-channel programmes, and receive, as licensed receivers, what is already broadcast. They merely provide amplification. This contention is rejected, and in this respect Butler J. is affirmed.

But one must also consider whether Part VIII of the First Schedule to the Copyright Act, 1963, has the effect that that Act applies to a transmission by television outside the country, although no order of any kind applying any of the provisions of the Act of 1963 to any country has been made under S. 43 of the Act. S. 43 authorises the Government to apply any of the provisions of the Copyright Act, 1963, to any country in the world which is not a party to the Berne Convention if the Government is satisfied that provision has been or will be made under the laws of that country giving adequate protection to Irish owners of copyright. Paragraph 35 (2) of the First Schedule in Part VIII states that if, at any time after the 1963 Act comes into force, a provision referring to qualified persons has not been applied in the case of a country under S. 43, then as regards any preceding time before the Act, the reference is to be construed as if the provision to qualified persons did apply to that country. This clearly relates to a period of time after the 1963 Act has come into force; an order under S. 43 can then be made, so that a period before the making of the order can be provided for, and the Order itself will provide for a period after its making. The plaintiffs in effect rely on the Copyright (Foreign Countries) Order, 1959, which clearly does not give any protection under the 1963 Act, but is based on the protection given by S. 154 (2) of the 1927 Act. This provision only gives a right to make a record or cinematograph film of copyright material but does not extend to the kind of transmission provided by the defendants. The full benefit of the 1963 Act in relation to countries specified in S. 43 depends on the making of an Order under that Section which has not been made. Accordingly the appeal is allowed, and the damages payable by the defendants, upon which Butler J. suggested that the parties should reach agreement, are disallowed.

Performing Rights Society Ltd. v. Marlin Communal Aerials Ltd. — Supreme Court (O'Higgins, C.J., Griffin and Kenny JJ.) — Separate judgments by the Chief Justice and Kenny J. — unreported — 17 December 1975.

A residuary personal estate of a testator is only valid if it does not offend the Rule against Perpetuities, and that residuary estate must subsequently be distributed as personal estate amongst the next-of-kin.

The facts of this complicated case were summarised in the March 1973 *Gazette* at page 60. The net question is whether, on the true construction of the will of the testator, the defendant Walter Goulding, eldest son of Basil, is entitled absolutely to the residuary personal estate of the testator, or should this residuary estate be distributed amongst the next of kin.

Griffin J. in the majority judgment recalled that by his will, the testator, Sir William Goulding, gave the residue of his property "of every nature and kind" to his trustees upon trust to pay an annuity to his wife during her life. Sir William died in July 1925 and his widow died in 1934. After her death, the testator provided for the creation and disposition of a special fund of £20,000 called the Baronetcy Fund, with the intention of ensuring that the person who had the title, had sufficient funds to keep up the dignity of that title. His eldest son, Lingard, died leaving children in 1935, and the residuary estate then passed to his grandson, Basil. There then followed a complicated residuary clause in the will by which the personal residue was to be left in tail male in the first instance to Basil's eldest son, Walter, who was living within the perpetuity period, having been born in 1940, and to Walter's sons, grandsons, etc. As it was not certain whether Walter would legally marry at any time, i.e. whether within 21 years of Sir William's death or afterwards, it was inevitable that this personal bequest in tail would fail, as offending the Rule against Perpetuities. Undoubt-

edly Sir William intended to tie up this property, in so far as he could do so, in the same manner as the Baronetcy. It is contended that the life estate given by the will to Walter, followed by the implied gift to his male issue, as well as the limitations over in the event of future male issue, in the context of the will, should, by the application of the doctrine of *cy-prés,* be construed as an estate tail to Walter. The effect of this would have been to give Walter an estate in tail male after the life estate given to Sir Basil. Griffin J. held that the precatory words "but my desire is that such property shall go in tail to the holder of the said title" are to apply only if Walter could take absolutely — i.e. that Walter was not born within 21 years of the death of the testator in 1925. The *cy-prés* doctrine is to be applied, precisely because of the implied gift to the male issue of Walter and the subsequent limitations over offend against the Rule against Perpetuities. The *cy-prés* doctrine only applies to real estate, and cannot therefore be applied to personal estate, as in this case. Therefore the successive life estates given by the testator to Sir Lingard (his son), Sir Basil (his grandson) and Walter (his great-grandson) are valid, but the implied gift to the male issue of Walter is void. Kenny J. was correct in holding that, as the implied gift to the male issue of Walter is void, all gifts which follow are void. When Walter died, there will be an intestacy, and the residuary personal estate will be distributed amongst the next-of-kin of the testator. The majority of the Supreme Court (Budd, Henchy and Griffin JJ.) accordingly dismissed the appeal.

The **Chief Justice,** delivering the minority judgment, mentioned that, after legacies, Sir William's will established a residuary trust fund for the purposes therein declared, and it is clear that the testator intended to dispose of all his property. Having established the Baronetcy Fund of £20,000, he directed that the income be paid to the person for the time being entitled to the Baronetcy. Having disposed of his real estate in tail male, it is speculative whether the testator, in disposing of his personal estate, would realise that such personalty would vest absolutely in the ultimate donee in tail, i.e. Walter. In the clause bequeathing the male issue of Basil (the eldest of Lingard's sons) to the second son of Lingard, i.e. Ossian. But the general intent of the will was clearly to benefit Walter, the testator's great grandson and not Basil's brother, Ossian. In this respect, he agrees with Kenny J. Basil's eldest son, Walter, is given a life estate, if he is born within 21 years of Sir William's death, which he was. It seems that the testator was endeavouring, in so far as he could, to tie up this residuary personalty on the basis of primogeniture to his male issue, conscious of the fact that he would thereby further endow each succeeding holder of the title. In other words, succeeding Gouldings would benefit from these dispositions. The Chief Justice therefore held that the bequest of residuary personal estate after the final life estate in favour of Walter, was intended by the testator to continue down the male line, and then to go to the distaff side to its exhaustion, and then finally go to the testator's daughters as tenants in common. Kenny J. had followed *Re Hubbardd's Will Trusts* — 1963 Ch.D. — that, after the life estate in favour of Walter, the property was a gift to his male issue, and would thus offend the Rule against Perpetuities; accordingly the chain was broken, and all subsequent interests were automatically void. The Chief Justice disagrees, holding that the overriding intention of the testator was to create an estate tail, and it is the duty of the Court in relation to personal estate, to carry out the testator's intentions as far as possible. As the testator intended to give his residuary personal estate after two life estates to Walter as entailed property, which he could not do in the case of personalty. However, in this case the personal estate on the succession of the interest of Walter becomes Walter's absolute property. This was the view of the Chief Justice and Walsh J.

Bank of Ireland v. Sir Basil Goulding and others — Supreme Court (Full Court) — Majority judgment of Budd, Henchy and Griffin JJ. — Minority judgment of O'Higgins, C.J. and Walsh J. per the Chief Justice — unreported — 14 December 1975.

Injunction to restrain passing-off of trademark affirmed on appeal.

C & A Modes carry on a retail clothing business in a chain of 65 shops in the United Kingdom and Belfast, and use the trademark "C & A". The defendants, O'Toole and McClure, adopted "C & A" as a component of C & A (Waterford) Ltd., and used this symbol on their vans, thus causing confusion in the public mind between their business and C & A Modes, and defendants intend to open a "C & A" shop in Dublin, thus adding to the confusion. The submission of the defendants that the evidence did not support the finding that the conduct of the defendants is likely to lead to confusion, is rejected. The name "C & A" was plainly chosen to confuse the public. The contention, that, as plaintiffs have no direct retailing outlet in the Republic, they have consequently no protectable goodwill in the Republic is rejected. As the plaintiff's right to their goodwill had been violated by the passing off, the law assumes a resulting damage. As there was a continuous completed tort, the plaintiffs were entitled to the injunction sought. The appeal is consequently unanimously dismissed, and Finlay P. is affirmed. (See September 1975 *Gazette,* Vol. 69, No. 7, page 209.)

C & A Modes v. C & A (Waterford) Ltd., C & A (Finance Ltd.) and others — Supreme Court — O'Higgins C.J., Henchy and Kenny JJ. — Separate judgments by Henchy J. and Kenny J. — unreported — 16th December 1975.

CORRECTION—

January-February Gazette

Woods v. Dowd

It was inadvertently stated as follows in the second last paragraph of this judgment: "In the exceptional circumstances of this case, the widow is statutorily entitled to 50 per cent of the estate". This would have been correct if she had had no children. But under S. 111 (2) of the Succession Act, 1965, a widow who leaves children is only entitled to *one third* of the estate. Accordingly the words *"One third"* should be substituted for "50 per cent" in that sentence. The next sentence should read: "The remaining *two thirds* (instead of one half) of the estate will be divided between the 8 children as follows:". In the last paragraph, the words "and a direction that *two thirds* of the estate be distributed" should be substituted for "half the estate" as printed.

PRESIDENT
Patrick C. Moore
Vice Presidents
Bruce St. J. Blake
Gerald Hickey
Director General
James J. Ivers, M.Econ.Sc., M.B.A.
Librarian & Editor of the Gazette
Colum Gavan Duffy, M.A., LL.B. (N.U.I.)
Telephone
784533
The Editor welcomes articles, letters and other contributions for publication in the Gazette.

RECENT IRISH CASES

HOUSING

Under the Housing Act 1966, the date on which compensation is to be assessed for land compulsorily acquired is the Notice to Treat following a High Court decision. The Arbitrator under the 1919 Act should neither, in assessing compensation, take into account the Transcript of Evidence at a Public Inquiry, nor the Minister's attitude to the zoning of land.

The facts in this case were reported in the December, 1975, GAZETTE at page 299. It will be recalled that lands were acquired compulsorily by Dublin Corporation under the Housing Act, 1966, and that the Compulsory Purchase Order was confirmed by the Minister in January, 1969. The claimant then brought proceedings in the High Court to have this Order declared invalid, but the High Court found the Order valid on 1 March, 1973. On 12 March, 1973, Dublin Corporation served a Notice to Treat on Murphy, which is the first step by which the Housing Authority decides to acquire the relevant land. On 20 March 1973, a notice of appeal to the Supreme Court against the order of the High Court was served on the Corporation. In consequence, the Corporation served a second Notice to Treat on Murphy on 10 May, 1974, as they considered the first Notice to Treat of 12 March, 1973, to have been invalidly served, and the Supreme Court had only dismissed the appeal in April, 1974. The Special Arbitrator under the Acquisition Land (Assessment of Compensation) Act, 1919, Mr. Owen McCarthy, held an arbitration for the award of compensation, and referred a Special Case Stated for the High Court on the following two questions:—

(1) Whether the Notice to Treat related to the 10 May, 1974, or to the 2 May, 1973.

(2) Whether the Arbitrator was entitled to have regard to the Transcript of the Proceedings at the local Public Inquiry held prior to the confirmation of the Compulsory Purchase Order, for the purpose of assessing the potential value of the land.

Butler J. answered the questions as follows:—

(1) The Notice to Treat related to 10 May, 1974 —and

(2) The Arbitrator should have regard to the evidence at the Public Inquiry only so far as it may indicate that, in relation to a proposal by the Corporation to develop the lands for residential purposes, the Minister would consent to altering it from the zoning of land for agricultural purposes.

As regards the first question, the date on which compensation is to be assessed for land compulsorily acquired, may be of great importance if the market value of the land has changed, since the Compulsory Purchase Order was made. In this case, the value of the lands was falling. If the date of assessment were taken as that of the first Notice on 12 March, 1973, the value of the lands would have been £1,486,500. By 10 May, 1974, at the date of the second Notice, the value of the lands would have fallen by £379,400, and would consequently have only been worth £1,107,100. The claimant Murphy contends that the determination was made by the High Court in March, 1973; the Corporation contend that this determination was only made by the Supreme Court in May, 1974. It was held that under S.78(3) of the Housing Act, 1966, such determination necessarily refers to the decision of the High Court. There is no provision in the Act for withdrawal of one Notice to Treat, and service of a second one. "The date of determination" is clearly when a judicial determination has been given. Accordingly the effective service of Notice to Treat was effected on 12 March, 1973.

As regards the second question, the Arbitrator wished to have an authoritative ruling as to whether he could refer to the Transcript of Evidence given at the Public Inquiry. This must be answered in the negative, because it is not proper in an Arbitration to rely on evidence given in other proceedings for the purpose of proving facts relevant to the arbitration. The Transcript is part of a Report made by the Inspector for the Minister alone. The claimant contends that the Minister's approach to the present Compulsory Purchase Acquisition indicates that the land has a potential for non-agricultural purposes; consequently the Arbitrator should take that potential into account in fixing the compensation. But this argument is unsound, as the purposes of the Act are essentially within the province of a Housing Authority under the guidance of the Minister. If the Minister is willing to vary a development Plan, in order to effectuate a Compulsory Purchase Order for Housing Purposes, there is no guidance as to how the Minister might exercise his appellate powers, if a Development Application were made in respect of the same lands by a private person. Under the Rules issued in relation to the 1919 Act, there is furthermore a statutory prohibition, as the Rules state that no account is to be taken of the existence of Proposals for the development of the land or any other land by a Local Authority. It was specifically held in *Re Deansrath Investments* — (1974) I.R. — that, while the basic rule is that the measure of compensation is to be the open market value of the land, the arbitrator must leave out of reckoning of that value the existence of the proposed Local Authority development, so that that authority will not have to pay more for the land than would an ordinary purchaser. Accordingly the Arbitrator should not take into account, by reference to the Transcript of Evidence at the Public Inquiry, the existence of the Corporation's proposal for development, or any matter arising therefrom, such as the Minister's attitude to the zoning of land. The appeal is unanimously allowed by the Supreme Court and Butler J. is accordingly reversed.

In Re Poppintree — Balbutcher — Santry Area Compulsory Purchase Order 1967 and in Re Joseph Murphy — Supreme Court (O'Higgins C. J., Henchy and Griffin JJ.) per Henchy J. — unreported — 21 November, 1975.)

CONTEMPT OF COURT

The Constitution has not changed the previous procedure relating to contempt of Court.

Application for Habeas Corpus and Certiorari.

In July, 1974, Circuit Judge Fawsitt in Tipperary made an Order in the course of matrimonial proceedings, by which the prosecutor was restrained from all acts of interference with his wife in her use and enjoyment of lands in Tipperary. The prosecutor, though served with the order, disobeyed it, and, on a motion for committal, was sent to prison. He was subsequently released on purging this

contempt by giving undertakings to the Court, which he disobeyed. He was summoned before Judge Fawsitt at Waterford on 25th February, 1976, and his counsel referred to Parke J.'s decision in *McEnroe v. Leonard* (see March Gazette, Vol. 70, No. 2, 1976). The Circuit Court strangely refused to accept a valid decision of the High Court, and counsel withdrew. Thereupon Judge Fawsitt found the prosecutor guilty of contempt of Court, and committed him to Limerick Jail until his contempt was purged. On 26th February, an application was made for a conditional order of *habeas corpus* and *certiorari* and the prosecutor was released on bail.

It was submitted by the prosecutor first that, because the penalty imposed by Judge Fawsitt was indefinite imprisonment, the contempt could not be a minor offence, but a criminal offence, and that accordingly under Art. 38(5) of the Constitution, he was entitled to a jury. Secondly, it was submitted that, on a contempt of Court charge, the Court had no jurisdiction to impose anything other than a fixed term of imprisonment.

The position appears to be that, whatever the position was before the present Constitution of 1937 was enacted there is now no real distinction between criminal and civil contempt of Court. Every contempt of Court is a criminal offence, in that it is a breach of the law committed by an overt act requiring *mens rea* and punishable by imprisonment.

It was submitted by the respondents firstly that there is an inherent power in the Courts established under the Constitution to deal with both civil and criminal contempt by attachment and committal in a summary fashion. They relied on *A.-G. v. Sean T. (subsequently President) O'Kelly* — (1928) I.R. 308 and *A.-G. v. Ross Connolly* — (1947) I.R. 213. It was then submitted that there is a well recognised difference between contempt consisting of disobedience of an act committed outside the Court, and of an act committed in the face of the Court. In the first case, the purpose of the Court Order is to coerce the person imprisoned to obey the order of the Court, but it is not a punishment as such.

Parke J. had referred in *McEnroe v. Leonard* to *Comet Products v. Hawtex Plastic Products* — (1971) I All E.R., where, when a defendant has filed an affidavit in proceedings for commital in respect of a breach of an interim injunction, it was contended that the Court should allow that defendant to be cross-examined upon his affidavit. The Court of Appeal held that proceedings for the committal of a person to prison for civil contempt were in the nature of criminal proceedings. Accordingly a person charged with contempt could not be compelled to answer interrogatories, or to incriminate himself. In considering *Re Haughey*—(1971) I.R. — Parke J. construed that decision as meaning that, since the contempt alleged against Mr. Haughey (being a refusal to answer a question put to him before a Parliamentary Tribunal) could only be punished in the same way as a trial, and was a contempt otherwise than in the face of the Court, all such contempt must be tried before a jury. According to Finlay P. the offence alleged against Mr. Haughey was not contempt of Court; instead he would have committed a breach of a Statute which provided that it should be punished in the same manner as a contempt of Court; if guilty of anything, Mr. Haughey had merely been guilty of a breach of the Statute.

In *A.-G. v. O'Kelly* (1928) an application was made to attach the accused, editor of "The Nation" newspaper for making uncomplimentary remarks about the manner in which O'Byrne J. conducted specified cases in the Central Criminal Court; the High Court decided to deal with the attachment summarily and fined the accused £100 in view of the Court's inherent jurisdiction. The Supreme Court approved of the O'Kelly decision in *Re Earle* — (1938) I.R. In *A.-G. v. Connolly* (1947), the prosecutor was accused of writing an article contemptuous of the Special Criminal Court; a Divisional High Court fully confirmed the decision in O'Kelly's case and made him enter a bond of £50 to be of good behaviour. In *Keegan v. De Burca* (1973) I.R. — where the prosecutor committed a Contempt of Court by refusing to answer a question, the Supreme Court directed that the matter should be sent back to the High Court to be disposed of in a summary fashion.

If Parke J.'s contention were correct, it would mean that the Director of Public Prosecutions under the direction of the Attorney General would have to present an indictment and try the person alleged to have been guilty of contempt before a jury. If Art. 38 of the Constitution were to be construed thus, it seemed to Finlay P. that the Courts would be deprived of their right to enforce their own orders, and the idea of the fundamental tripartite division of powers which underlies the entire Constitution would be denied. Furthermore, by non-activity, the Director, as a servant of the Executive could paralyse the capacity of the Courts to enforce its will against him, which would be a vital infringement of the independence of the Courts. Accordingly the inherent jurisdiction of Courts of Record summarily to deal with contempt of Court has not been in any way altered or diminished by the Constitution, and Art. 38 must be qualified by Article 34.

The distinction between civil and criminal contempt was clearly expressed by O'Dalaigh C.J. in *Keegan v. De Burca* (1973). Criminal contempt consists in behaviour calculated to prejudice the due course of justice, such as contempt in the face of the Court, or words written or spoken to prejudice the due course of justice. Criminal contempt is a common law misdemeanour, and is punishable by fine and imprisonment at the discretion of the Court. Civil contempt arises when there is a disobedience to an order of the Court by a third party to the proceedings; in this case, there is no misdeamour, and the Court will not interfere unless requested to do so. It will be seen broadly that the system of retribution is identical. The cause shown will be allowed and the application to make the conditional orders absolute will be refused.

The State (Commins) v. Governor of Limerick Prison and Judge Fawsitt — Finlay P. — unreported — 19th March, 1976.

COSTS

Motion to review taxation of costs —Reduced fees for counsel disallowed, but reduced fees for solicitor's instructions on brief allowed.

The plaintiff's solicitor was dissatisfied with various allowances and disallowances on taxation, carried in objections, which were ruled upon on 15th October, 1974, relating mainly to fees paid to counsel. The action related to a licence to carry on business as bankers which was granted by the defendants subject to very stringent

conditions, which were disallowed by O'Keeffe P. (see Gazette, January, 1974, p. 19). The defendants have endeavoured to argue that Gannon J.'s decision in *Dunne v. O'Neill* — (1974) I.R. 180 — Gazette, May, 1974, p. 121—which restored Counsel's fees in full, was erroneous. As Gannon J. stated on page 189 — "It is no part of the function of the Taxing Master on a review of costs, to examine the nature or quality of work done by Counsel, or to assess the value of Counsel's work. The Taxing Master devotes 10 pages of his report to a review of a large number of cases which appear to contradict the decision in *Dunne v. O'Neill*. The propriety of a Taxing Master reporting to a High Court Judge that another Judge of that Court was wrong in law is very much open to question. This is not a case where the principle of *"Stare Decisis"* should be departed from. Almost all the cases cited in Court had been cited in Dunne's case. Parke J. is satisfied that he should follow the principles in *Dunne v. ONeill*.

The Taxing Master's discretion is a judicial one and is therefore exercisable only in accordance with judicial principles. The Taxing Master in his report has continuously emphasised the magnitude and public importance of this case.

The following decisions were made in relation to individual items on taxation:—

(1) Case sent to counsel before institution of proceedings. It is doubtful whether the plaintiff should make his own case at his own expense, but nevertheless this item will be disallowed.

(2) Counsel's fees for settling the Plenary Summons were reduced from £10.50 to £7.35. This reduction will be disallowed.

(3) Counsel's fees for settling the Statement of Claim — in this case the fee for two Senior Counsel was reduced from £26.25 to £10.50 each. As this case required the greatest care in pleading, this reduction will be disallowed.

(4) Counsel's fees for settling the Reply to the Defence. Here the Taxing Master only allowed the fee to one of two Senior Counsel, and reduced this fee from £10.50 to £5.25. Counsel were obliged to deal with various difficult points in the defence. Accordingly the fee of £10.50 will be restored in full, and will be payable to two Senior Counsel.

(5) Counsel's fee on settling Affidavit of Documents. Here the Taxing Master disallowed altogether the fees claimed by two Senior Counsel. In this case the defendants maintained serious allegations against an individual connected with plaintiff's bank, and it was necessary for plaintiff's solicitor to make a number of inquiries which brought many documents to light. The fee of £26.25 claimed for the necessary assistance of Senior Counsel, is the least that a reasonably careful or prudent solicitor would expect to disburse on obtaining the proper services of counsel. The reduced fee of £18.90 awarded by the Taxing Master to Junior Counsel will be disallowed, and the fee of £26.25 restored to Senior Counsel and to Junior Counsel.

(6) Counsel's fees on the brief, and instructions for a third Senior Counsel. The Taxing Master would not allow the fees of a third Senior Counsel, stating that two Seniors and one Junior Counsel were all that were required for the case.

The briefing of three Senior Counsel is unusual, but in view of the magnitude of this case, it should be allowed. The principle applicable is that if either party is confronted with an extremely difficult and complicated case presented on the pleadings by the other party, he is not obliged to cut his cloth to suit his opponent's purse. After a five-day hearing, despite defendant's imputations, the Court vindicated the plaintiff's rights. Much the greater part of the expense involved was due to the course unsuccessfully adopted by the defendants.

The fees claimed for instructions on the brief in respect of each Senior was £787,50 and £525 in respect of Junior Counsel. This was reduced by the Taxing Master in respect of each Senior to £440, and to £294 in respect of Junior Counsel. The fees originally claimed were reasonable in view of the magnitude of the case, and will be restored.

Refresher fees in respect of each Senior Counsel of £262.50 were first reduced by the Taxing Master to £140, and subsequently on the rehearing before him to £210. These refresher fees are moderate and will be fully restored.

(7) In the case of the solicitor's instructions fee, a Judge should not normally interfere with a Taxing Master's discretion in view of his wide experience. Despite the fact that the Taxing Master has cut the instruction fee considerably, Parke J. is not prepared to intervene, as no wrong principles have been applied. No solicitor however prudent and moderate could be allowed by a Court to set the standard for his own profit and remuneration where the Taxing Master rules otherwise. In *Lavan v. Walsh (No. 2)* — (1967) I.R. 129 — Kenny J. had criticised the inclusion of an elaborate Preamble in the Bill of Costs to the item relating to Solicitor's fees for instructions; Parke J. disagrees with this statement, and states that in a case of such magnitude, a detailed Preamble was vital to understand the issues. However the language of the Preamble could be modernised.

Irish Trust Bank Ltd. v. Central Bank of Ireland — Parke J. — unreported — 12th March, 1976.

CRIMINAL LAW

Convictions quashed by Supreme Court because District Justice convicted and sentenced the accused in the absence of their solicitor

The two accused were on the 29th day of January, 1975, convicted by District Justice P. O'Reilly in Rathfarnham District Court and sentenced to six months detention in Saint Patrick's Institution in respect of an offence of stealing a motor car to which they had pleaded guilty. They were also sentenced to six months detention in Saint Patrick's Institution in respect of an offence of causing malicious damage to a motor car which sentence was to run concurrently to the first six months. Both accused were also sentenced to six months detention in St. Patrick's Institution for stealing a motor car and this was to run concurrent with the first sentence imposed.

The accused Healy was on the 15th day of January, 1975, sentenced to 3 months detention in St. Patrick's Institution on a charge of breaking and entering with intent to steal to which he had pleaded guilty on the 12th day of June, 1974.

Both accused on the 30th day of December, 1974, before the Respondent District Justice at Kilmainham District Court applied for and were granted certificates for Legal Aid under the provisions of the Criminal Justice (Legal Aid) Act, 1962. A Solicitor was assigned to them but apparently at this

time the Solicitors had withdrawn the co-operation from the operation of the regulations under the Criminal Justice (Legal Aid) Act, 1962, and this was known to the Distirct Justice. He adjourned the matter to the 6th day of January, 1975, and subsequently to the 13th day of January, 1975, and then to the 29th day of January, 1975, on none of which occasions any Solicitor appeared. The District Justice thereupon proceeded to try and sentence both of the accused.

The accused Healy did not apply for Legal Aid under the provisions of the Act either on the occasion of his conviction or on the occasion of his sentence, nor was Legal Aid granted. On the 7th day of February, 1975, the Prosecutor Foran applied for and obtained Three Conditional Orders of Certiorari directed to District Justice O'Reilly in respect of each of the three orders of convictions of the Prosecutor which had been made on the 29th day of January, 1975. On the 21st day of February, 1975, the Prosecutor Healy applied for and obtained a Conditional Order of Certiorari in respect of the three Orders of District Justice O'Relly made on the 29th day of January, 1975. On the 4th day of March, 1975, the Prosecutor Healy applied for and obtained a Conditional Order of Certiorari in respect of the order made by District Justice Kennedy on the 15th day of January, 1975.

Upon Motion on behalf of both the Prosecutors to have the Conditional orders made absolute it was held by Mr. Justice Gannon as follows:—

1. Having granted a Legal Aid Certificate under the provisions of the Criminal Justice (Legal Aid) Act, 1962, a Trial proceeded with in the absence of Legal Representation is not conducted in due course of Law as required by Article 38.1 of the Constitution and a conviction resulting from such a Trial should be quashed.

2. An accused has no basic natural or Constitutional right to be informed of the procedures open to him under the Criminal Justice (Legal Aid) Act, 1962.

3. The said Act does not create any rights nor confer any entitlement on an accused person to be represented in Court by a legal practitioner.

4. In order that a Trial may be conducted in due course of law within the meaning of Article 38.1. of the Constitution there must be an application of the basic principles of justice inherent in the proper course of the exercise of the judical function.

Mr. Justice Gannon quashed all of the orders made by District Justice O'Reilly, but upheld the conviction made by District Justice Kennedy.

Upon appeal to the Supreme Court, in which Judgment was given on the 18th day of March, 1976, it was held that all convictions should be quashed. The full Supreme Court reserved their reasons for a later time.

The State (Anthony Foran) v. D. J. Thomas P. O'Reilly, The Governor of St. Patrick's Institution, & Ors; The State (John Healy) v. Ditto; The State (John Healy) v. District Justice Kennedy, The Governor of St. Patrick's Institution & Ors. — 18 March, 1976.

NATURAL JUSTICE

Order of Certiorari granted against Social Welfare Deciding Officer who deliberately fails to observe the principle of Natural Justice.

The Prosecutor, aged 39 years, a married man with a family of five children whose ages ranged from 4 to 14 years had always been in gainful employment (save for a very short period) until the 1st day of June, 1975, when he became unemployed. Since then he received Pay Related Benefit under the Social Welfare Acts, and subsequently unemployment benefit.

On the 27th day of February, 1976, when he called to the Labour Exchange at Werburgh Street he was handed a Notice of Disallowance which stated that it had been decided by a Deciding Officer that Unemployment benefit was not payable to him. At no time was the Prosecutor given any notice of the intention of the Labour Exchange the servant or agent of the Defendant, to disallow him the unemployment benefit as would have enabled him to have made representations in his own defence, nor was he in fact given any opportunity of making any representations in his defence. The Prosecutor stated in an Affidavit that without unemployment benefit he had no means of support whatsoever for his wife and his family, consequently his family and he must prepare for a very much reduced standard of living and indeed prospects of great hardship.

In his Affidavit the Prosecutor stated that he had been informed by his legal advisers that the functions and powers conferred upon the Defendant and his duly appointed deciding officers by section 42 of the Social Welfare Act, 1952, were of a Judicial nature and that the purported decision to disallow him benefit constituted a denial of natural and constitutional justice and was a serious infringement of his constitutional rights as an Irish Citizen.

Upon Motion on behalf of the Prosecutor the President of the High Court granted the Conditional Order of Certiorai against the Minister for Social Welfare to send the said decision and all records and entries relating thereto before the Court for the purposes of quashing the same.

This Conditional Order was granted on 1st day of March, 1976. On the 15th day of March, 1976, by Consent Mr. Justice Butler made absolute this Conditional Order of Certiorari.

The State (Frank Crummey) v. The Minister for Social Welfare & The Attorney General — No. 70 S.C. — 1976.

CRIMINAL LAW

Protest over jail visits

A Dublin High Court judge on 8th April, 1976, expressed the view that the hours during which a solicitor may see a prisoner on remand in Mountjoy Prison on weekdays were not reasonable and suggested that the Dublin solicitors, the Bar Association and the authorities should resolve the matter among themselves on a reasonable basis rather than ask him to make a formal ruling.

Mr. Justice Butler, was being asked by Mr. Patrick McCartan, a Dublin solicitor, to make absolute a conditional order already obtained by him against the governor of the prison directing that he be allowed see prisoners between 6 and 8 p.m., on the grounds that it was not always possible for him to get to the prison before 5.30 p.m.

Adjourning the application, by consent, until May 3, for mention, Mr. Justice Butler said he had read the affidavits of responsible members of the solicitors' profession, assisting the State in its criminal business, and asked: "Should they not be accommodated reasonably?"

Mr. Justice Butler said that in view of the affidavits of five solicitors the present attitude of the authorities would appear, prima facie, to be unreasonable.

RECENT IRISH CASES
PROHIBITION

Order of Prohibition made absolute, because preceding Order of Certiorari had quashed conviction and sentence.

The defendant prosecutor was charged in Dublin District Court in June, 1970, with offences of causing malicious damage. District Justice O'hUadhaigh convicted her of each offence, and imposed a sentence of *two months* concurrent imprisonment in respect of each offence. The Justice inadvertently entered up on the Charge Sheet in each case a sentence of **three months** imprisonment. The defendant then moved in the High Court to have the convictions and sentences as recorded quashed on *Certiorari*. In February, 1971, O'Keeffe P. made an absolute order of *Certiorari* quashing the sentences. *Inter alia,* O'Keeffe P. had stated (1) that it was the duty of the District Justice to make a correct entry in place of that quashed by him, and (2) if the District Justice refused to do so, it would be open to the prosecution to compel him by *Mandamus* to do so. On appeal to the Supreme Court against those observations, that Court held that O'Keeffe P.'s observations were made *obiter,* and dismissed the appeal. The prosecution then served on the defendant a Notice of Motion to apply to District Justice O'hUadhaigh in June, 1971, "to conclude this matter by making the correct entry". The defendant then applied in the High Court for a Conditional Order of Prohibition to prevent the District Justice from hearing that application. It was contended that the judgment of O'Keeffe P. had the effect of quashing both convictions and sentence. The High Court would not grant the Conditional Order of Prohibition, but, on appeal, the Supreme Court did so. The matter then went back to the High Court and Pringle J. held that the cause shown by the District Jusice should be allowed, and consequently discharged the Conditional Order of Prohibition. The defendant appealed to the Supreme Court against Pringle J.'s decision.

The argument in the Supreme Court acknowledged that O'Keeffe P. had made a valid order, but would it have the effect of quashing convictions and sentence, as contended by the defendant, or sentence only as contended by the prosecution? It was correctly contended that, since the sentences had been quashed on *Certiorari* that it follows, as a matter of law, that the convictions have fallen with them—see *The State (Kirwan) v. de Burca* (1963) I.R. 348. However, where *Certiorari* has been granted on the basis that the conviction and sentence are a nullity, there is no bar to proceeding afresh with a prosecution based on the original complaint; thus the statutory time limit will not defeat the prosecution. The appeal against the order of Pringle J. will accordingly be allowed, and the conditional order of Prohibition will be made absolute.

The State (Mairin de Burca) v. District Justice O'hUadhaigh — Supreme Court (Henchy, Griffin and Kenny JJ.) per Henchy J. — unreported — 5 April, 1976.

ROAD TRAFFIC

The caution under the 1969 Regulations does give a caution as to the possible effects of a refusal or failure to permit a blood sample to be taken.

The defendant was charged with refusing to take a blood sample, or to provide a urine sample, by a designated doctor, under S.30 of the Road Traffic Act 1968, in order to ascertain the content of alcohol in his blood. The defendant seemed to be driving on the highway under the influence of drink, was arrested by a Garda, and brought to a Garda station. The Garda Sergeant told defendant he was calling a doctor to examine him, and invited him to have a doctor of his own choice at his expense, which offer was declined. The sergeant then gave the defendant the requisite caution under the Road Traffic Act 1968 (Part V) Regulations 1969. The defendant, having opted for a blood specimen, expressed a wish to have his own doctor to be present; this doctor refused to come. The defendant then refused to permit the Garda doctor to take a blood specimen unless his own doctor was present, and thus, as a result of a clear refusal, no specimen was taken.

The defendant was duly convicted in the District Court. On appeal to the Circuit Court, Judge Sheehy stated a case to the Supreme Court that the caution given by the defendant which had been made in accordance with the 1969 Regulations, fell short of the caution required by S.36(1)(b) of the 1968 Act. Once the defendant was arrested, under S.49(4) of the Road Traffic Act 1961, he became liable, in a prosecution under S.30(3) of the 1966 Act, to a mandatory disqualification of his license if convicted. The prescribed caution, punctiliously given under the 1969 Regulations, gave no warning that such mandatory disqualification would attach to a conviction. Nevertheless this omission does not invalidate the caution. The 1969 Regulations, in providing for a caution, fully complied with what is required by S.36(1)(b) of the 1968 Act. The Regulation was made to complement the requirement laid down by the caution of the "possible effects" of a refusal or failure, not of the "possible consequences" of a refusal or failure. Consequently the words "possible effects" refer to the actual immediate legal situation under the Road Traffic Acts in which the arrested person may find himself in the sort of case contemplated by S.30(3) of the 1968 Act, namely the liability to prosecution. Judge Deale, in the *Attorney General v. Jordan,* 107 I.L.T.R. 112 (1974), had decided the contrary, but his judgment is erroneous, and should be overruled. Accordingly the caution laid down by the 1969 Regulation does give a caution as to the possible effects of a refusal or failure to permit a blood sample to be taken. The case will be returned to the Circuit Court to be dealt with accordingly.

Garda Grogan v. Byrne — Supreme Court (Henchy, Griffin and Kenny JJ.) per Henchy J. — unreported — 8 April, 1976.

CONTEMPT OF COURT

Circumstances under which an applicant is ordered by the Circuit Court to purge his contempt are not the subject of Habeas Corpus proceedings.

Application for Habeas Corpus. The prosecutor was defendant in proceedings instituted in the Galway Circuit Court in respect of ownership of lands and his brother was plaintiff. On 28 June, 1973, the Circuit Judge made an order restraining the defendant from entering the lands, and, on appeal, this order was confirmed by the High Court in October, 1973. The defendant, having been served with the order, disobeyed it. Having heard a motion for his attachment and committal, Mr. Justice Durcan, then Circuit Judge of Galway, committed the defendant to prison on 30th October, 1974, and, on 12 December, 1974, the defendant was duly imprisoned to purge his contempt. On 24th December, 1974, the Minister for Justice made an order transferring

the defendant from prison to the Central Mental Hospital in Dundrum.

The prosecutor, having obtained a conditional order, argued that he was entitled to trial by jury on the question of contempt of Court. This contention is not sustainable by reason of the judgment of Finlay P. in *The State (Commins) v. the Governor of Limerick Prison and Judge Fawsitt* just delivered. See April, 1976, Gazette, p. 9).

It was also contended that, at the time the prosecutor committed these acts of disobedience, and that he refused to be defended by solicitor and counsel in the subsequent proceedings, he was suffering from such a mental disease which prevented him from forming the necessary *mens rea* and that his mental state prevented him from purging his contempt. On an application of Habeas Corpus, it is not within the jurisdiction of the High Court to consider the merits of the issue tried by the Circuit Court Judge when he made the committal order for contempt. A psychiatrist had stated that the prosecutor had suffered for years from *paranoia* but nevertheless his mental condition does not prevent him from understanding the consequences of what he is doing. As a result of the relevant legislation, the purpose of a ministerial order of transfer to a mental institution is not an additional penalty, but is made to ensure that the person requiring treatment in a mental institution should be held there until he has sufficiently recovered his sanity.

If, therefore, the prosecutor is to impugn the validity of his present detention, he can only do so on grounds infringing his constitutional rights. As the prosecutor is not serving a prison sentence, his detention in the Central Mental Hospital is not dependant on any Court order. Consequently Finlay P. is satisfied that the cause shown by the respondent Governor of the Hospital against the conditional order is good, and that the application for Habeas Corpus must be dismissed.

The State (Heany) v. The Governor of the Central Mental Hospital — Finlay P. — unreported — 19 March, 1976.

VENDOR AND PURCHASER

Alleged drunkenness of Vendor in signing a contract of sale of licensed premises not sustained. Alleged low price of sale rejected.

The plaintiff's claim is to enforce specific performance by the defendant of a contract for sale of licensed premises in Monaghan Town. The defendant contends there was an agreement, and that, at the time of the making of the agreement, he was so drunk that he was incapable of contracting, and consequently the agreement made was unfair and unenforceable. The contract relied upon is a verbal agreement supplemented by a subsequent written agreement to comply with the Irish Statute of Frauds. The defendant further maintains that the written document, in which there is no reference to the publican's licence, is not a valid memorandum within the said Statute, and that there has been such a delay in seeking relief on the plaintiff's part, that it would consequently be inequitable to enforce the contract. A plaintiff coming into Court seeking equitable relief must be frank and forthright, and must not try to mislead by suppressing evidence. Having heard the evidence of both plaintiff and defendant, Gannon J. stated that, where there were conflicts in the evidence, he would prefer to accept the evidence of the plaintiff.

The oral contract was made in the dining room of Hayden's Hotel, Ballinasloe, on the evening of 3rd August, 1972. The defendant finally agreed to the sale of the Public House for £6,000, and the plaintiff took out his cheque book, and asked his secretary to write out a post-dated cheque for 1st September, 1972, when completion was supposed to take place. At the secretary's suggestion, the defendant wrote out a receipt on a piece of paper, produced in evidence. The defendant, who was having dinner with four friends in Hayden's Hotel, had allegedly no recollection of seeing the plaintiff, but said he was told by one of his friends, when he awoke on the following morning, 4th August, in the Imperial Hotel, Galway, that he had "sold a pub the night before". He alleged he first saw the cheque when he received it from a receptionist at the Skeffington Arms Hotel, Galway, later that same morning. A witness stated that the defendant had arrived in the hall of the Skeffington Arms Hotel staggering, and mumbling about having sold a pub; the defendant took the cheque out of his pocket, and witness gave it to the receptionist for safe keeping. There is little doubt but that the cheque was in fact written in Hayden's Hotel.

The plaintiff swore that in July, 1972, he had talked on three separate occasions about the sale of his public house in Dublin Street, Monaghan. Although at one stage in Ballinasloe the figure of £8,000 was mentioned, the plaintiff alleged that at no time did he offer more than £6,000, which the defendant finally accepted; it was also agreed, after some talk, that this sum would include the furniture of the licensed premises.

About 13th August, 1972, the plaintiff called to see the defendant at his Park Street premises, Monaghan, about the title. The defendant contended the price paid was too small, and this was repeated later. On 12th September, 1972, defendant told plaintiff to contact Mr. X., Solicitor, and to give more money. After that, the plaintiff put the matter into the hands of Mr. Y., his own solicitor. There is no doubt on the evidence that a memorandum in writing was made after the agreement was signed by the defendant. The plaintiff stated in evidence that he intended to pull down and re-erect the premises, and spend £10,000 on it. The transfer of the licence was not an express term of the agreement, and it was unnecessary to mention it in the memorandum.

The cross-examination of the plaintiff in relation to the licence, and the submissions made by the defendant that the terms of the Irish Statute of Frauds appear to have been based on the supposition that the defendant had a special property in the Seven Day Licence relating to the premises in Dublin Street, Monaghan, capable of being sold or withheld independently of the sale of the premises. O'Brien C.J. in *Murphy v. Cork Justices*—(1893) 2 I.R. 144—has settled the law that there can be no property in a spirit licence in Ireland apart from the premises in which the licensed business is carried on. In other words, the licence cannot be severed from the licensed premises.

The defendant claims he was so intoxicated that, at the time the contract was made, he was incapable of understanding the nature of the transaction, and that the contract was unfair because the defendant was in an uneven bargaining position. He alleged that the incident at Hayden's Hotel occurred on the third day of the Galway races, and that he had attended the races each day. By the time he reached Ballinasloe, he could not remember what he had to eat or drink. The plaintiff said that the defendant was sober, that his voice was normal, and he understood the transaction perfectly. The Court does not give credence to the defendant's story that he had

18 brandies and 22 glasses of Harp Lager on 3rd August, and that he was consequently intoxicated. The defendant's evidence is so heavily burdened with improbability that it must be rejected, and the plaintiff's version must be upheld.

The defendant further claims that the agreed price of £6,000 was so much below the fair price for the property that it was unfair and unconscionable. The onus of proof to establish this lies on the defendant, who is a publican. The defendant bought the premises in Dublin Street, Monaghan, for his son, then aged 18 years, for £7,000 in 1970, and made a few minor alterations. A local auctioneer gave evidence that the state of repair was below average. The plaintiff said that normally these premises were not open save on Saturday evenings. The furniture was old. The plaintiff would have to pull the whole inside out, take off the back wall, and put a new roof on. He expected to spend about £10,000 on it. He was basing his price on what he would have to spend. The Court considers that there is not such a disparity between the price of £6,000 agreed upon, and the price which the defendant might reasonably have expected from any other buyer. The defendant was anxious to get rid of the premises, and to be paid in cash in full, and there had been ample negotiation. The defendant was in no position, after his very short period to show any evidence of trading returns attractive to a prospective purchaser.

The defendant claimed there had been delay by the plaintiff; there was no evidence to show that the plaintiff intended to abandon his claim, nor is there evidence of any injury to the defendant. There is implicit in a contract of sale of licensed premises a term that, if the vendor is the occupier and licensee, he will not permit the licence to be lapsed or forfeited, nor will he surrender it. But the plaintiff claims an injunction, for which there appears to be no basis, instead of a declaration that the defendant is a trustee for him of the premises and of the licence. It is therefore proper in this case that the plaintiff should be awarded damages which in all the circumstances are estimated at £4,500, in order to enable him to carry out this purchase. The plaintiff is also entitled to the costs of the action.

White v. McCooey — Gannon J. — unreported — **26th April, 1976.**

VENDOR AND PURCHASER

Rescission of contract of sale of licensed premises and return of deposit to purchaser granted in view of misrepresentation.

The two plaintiffs claim rescission of an agreement made on 15th November, 1973, for sale by the defendant to the plaintiff for £95,000 in respect of licensed property in Roosky, Co. Leitrim. They also claim £20,000 deposit by them to the defendant as deposit for said agreement, and £4,700 auction fees, together with 13% interest on said sums from 15th November, 1973 to latest date. They also claim additional damages for misrepresentation, breach of warranty, fraud and deceit. The plaintiffs allege that prior to an auction in Dublin on 15th November, 1973, on the auction premises, the defendant vendor expressly warranted to a solicitor of plaintiff's firm that he had returned a turn-over of between £60,000 and £65,000 to the Revenue Commissioners in respect of the property. On the faith of the said warranty, the plaintiffs signed the memorandum, and paid the deposit and auction fees. The plaintiffs have since discovered that this warranty was untrue, inasmuch as the turnover was much lower. The plaintiffs accordingly repudiated the agreement by letter of 8th March, 1974. The defendant attempted to deny that he had quoted any figure of turn-over to the plaintiff, and attempted to claim a counterclaim that the deposit of £20,000 be forfeited to the defendant; he also attempted to claim the alternatives of specific performance, re-sale, interest on outstanding purchase money, and damages for breach of contract.

The two plaintiffs were anxious to purchase a licensed premises, and had ascertained that the going price was one and a half times the turnover, and that consequently the turnover was an important factor in determining the price. At a lunch before the auction, the plaintiff arranged for the solicitor to represent him at the auction. The defendant stated verbally at the auction to the solicitor that, according to the returns he had made to the Revenue Commissioners, the turnover was between £60,000 and £65,000. This statement induced the solicitor on behalf of the plaintiff to bid high, and the premises were finally knocked down for £95,000. The plaintiff stated that the defendant called to his house in January, 1974, and had assured him that he could prove that the amount of the turn-over was genuine. The plaintiff admitted that the cheque for £24,750 was cancelled by arrangement with the auctioneer. The second plaintiff stated he had visited the auction rooms some days before the sale, and had a discussion with the auctioneer about turn-over. Although no books were produced, the amount was stated to be about £50,000. At the auction, when the solicitor asked whether there were any records about turnover, he was told there were no figures available. An accountant practising in Co. Longford stated he dealt with defendant's income tax affairs for the two years ending 30th September, 1973, and the total turn-over for the two years was £32,000; the accountant said that he told the first plaintiff the turnover would be about £40,000. From all the evidence given, it is quite clear that the plaintiffs attached great importance to the question of turn-over. The Court accepts that the solicitor bid for the property up to £98,000 on the sole understanding that the defendant had stated the amount of the turn-over to be from £60,000 to £65,000. This statement was not only untrue, but was made knowing it to be untrue, and was thus a misrepresentation. Accordingly the plaintiffs are entitled (1) to rescind the contract, (2) to the return of the deposit and the auction fees, and (3) to stated interest. The irregularities in the bidding sanctioned by the defendant were an infringement of the Sale of Land by Auction Act 1867.

Airlie and Keenan v. Fallon — Hamilton J. — unreported — 27th January, 1976.

HABEAS CORPUS

Unruly prisoner subject to special restrictions is not undergoing inhuman and degrading treatment. Habeas Corpus refused.

Application to make absolute Conditional Order of Habeas Corpus. The applicant is detained in Mountjoy, having been convicted on a number of counts of breaking and entering and robbery with violence, was sentenced to two years on 28th February, 1975, and, if of good conduct, could be entitled to be released in July, 1976. Various psychiatric doctors have given evidence to the effect that the applicant is suffering from a socio-pathic personality trait disturbance. He is not specifically insane, nor is he a psychopath. He had been brought up

largely in institutions after a broken marriage of his parents. He has developed an agressive and continuous hostility to authority. He is also endowed with reckless physical courage, and can easily climb on to the roofs of prisons and hospitals. He has repeatedly swallowed metal objects, such as bed springs, which have seriously impaired his health. He militantly resists all forms of discipline and seeks by all available means to escape from detention. He has on a number of occasions been certified as insane, and been transferred for periods of a month to the Central Mental Hospital, Dundrum. While in prison, he has for most of the time been kept in solitary confinement, and is deprived of cutlery and a bed to sleep on. No effective therapy could be carried out in Dundrum, owing to his very violent behaviour there. Insofar as he is allowed to associate with other prisoners or patients, he has a bad effect on them. The only effective remedy would be compulsory detention in a specialised psychiatric unit which does not exist in Ireland.

(1) His counsel has submitted that the right to bodily integrity is an unenumerated constitutional right. This imposes on the Executive an obligation to protect his health as far as possible. This submission is established by the Supreme Court in *Ryan v. Attorney General* (1965) I.R.294. If the Executive, in exercise of a lawful warrant, imprisons an individual, the Executive has an undoubted duty to protect the health of all persons in custody as well as possible. The medical requirements of the applicant have at all times been met by the Governor of the Prison, and he is regularly visited by the Medical Officer. Any restraints placed on the applicant have been done so as to diminish the possibility of the prisoner harming himself.

(2) Counsel contended that even if the European Convention of Human Rights is not part of the substantive law of the State, the freedom from torture, inhuman and degrading treatment and punishment guaranteed by it is an unenumerated constitutional right. Accordingly the present detention of the applicant is unlawful.

If, as stated by Kenny J. in *Ryan v. Attorney General* (1965) I.R. at p. 313—the unenumerated personal rights guaranteed by Article 40 follow in whole or in part from the Christian and democratic nature of the State, it necessarily follows that these rights include freedom from torture, inhuman and degrading treatment and punishment. Finlay P. states that, despite the undoubted harsh conditions inflicted of necessity in this case on the applicant, these do not constitute inhuman and degrading treatment and he is satisfied that these restrictions are neither punitive or malicious. The entire concept of torture and of inhuman and degrading treatment is evil in its purpose and consequence, and is manifested by revenge and retaliation. But this concept cannot possibly be associated with the necessary steps to prevent self-destruction.

The application to make absolute the Conditional Order of *Habeas Corpus* will accordingly be refused.

The State (Crawley) v. The Governor of Mountjoy Prison — Finlay P. — unreported — 13th April, 1976.

CUSTODY

At the express request of the two boys, an order transferring their custody to the father is made.

The facts of this case before Kenny J. were fully reported in May, 1972, *Gazette* at page 147. It will be recalled that Kenny J. awarded the custody of the two boys, the only children, to the father. On 8th December, 1974, the Supreme Court awarded custody of the boys to the mother, due to the father's alleged misconduct. (See March, 1975, *Gazette,* p. 47). The boys in June, 1975, were aged 14½ and 11 years. The wife issued a summons to have the husband committed to prison for breach of the custody order. Apart from the parents, the boys were interviewed separately by the Judge, and expressed a strong desire to remain with their father. In view of the wife's hysterical behaviour, the application to commit the husband is dismissed and the custody of the two boys is awarded to the husband.

Waters v. Waters (No. 2) — Kenny J. — unreported — 8th June, 1975.

CUSTOMS

Direction given to accused in Customs offences because evidence of possession and control not provided.

The accused is charged with being knowingly concerned in a fraudulent evasion of Customs laws in relation to the importation of pig food, such importation being prohibited by the Agricultural Produce (Cereals) Act 1938, and at the same time being knowingly concerned in dealing with the said goods with intent to defraud. The accused lives on a farm near Dundalk contiguous to the Northern Ireland border. On 11th September, 1971, a Customs Officer armed with a search warrant visited his farm. The accused was not then at the farm, but his brother was interviewed by the Customs Officer, who produced the warrant, which merely empowered the Customs Officer to search the premises of the accused. The Customs Officer found 234 sacks of pig meal, which were taken and removed to the Customs Garage at Dundalk. The Customs Officer offered no evidence to show that the house and property concerned in fact belonged to the accused.

The solicitor for the accused, when the evidence of the prosecution was concluded, requested a direction for an acquittal on the grounds: (1) The absence of evidence of ownership or its contents; (2) the absence of evidence of the goods in question by the accused; (3) the failure to show that the goods were imported without a licence. If proof is not forthcoming to the title to the premises, which is conceded, the prosecution must prove that the goods were in the possession or control of the accused. Any slender evidence of control points not to the accused, but to his brother. The prosecution tried to contend that S.20 of the Finance Act 1930 was applicable. Under this Section, a Customs Officer may require any person in whose possession or control the goods are found to give to such officer all information relevant to the importation, and if imported, the person by whom and the place and time at which they were so imported. The evidence here does not establish conclusively that the accused should negative his guilt. Accordingly a direction will be granted, and the jury will be directed to acquit the accused.

People (A.-G.) v. Patrick Murphy — Doyle J., sitting in the Central Criminal Court — unreported — 14th January, 1976.

RECENT IRISH CASES

The ownership of the goods remains with German vendors even though they are in the physical possession of two Irish purchasing companies as no sale is deemed to have taken place.

Interview Ltd. is an Irish Company carrying on the retail trade of selling refrigerators and similar domestic electrical goods (known technically as "white goods"), and television and radio sets (known technically as "brown goods"). Interview had an authorised share capital of 1,500,000 shares of £1.00 each of which 1,150,000 had been issued. In September, 1971, Interview had given a debenture to Ulster Bank Ltd. as security for its debts. On 29th June, 1972, the Ulster Bank appointed Mr. Milliken as receiver of the undertaking, property and assets of Interview. On 11th April, 1973, Interview passed a resolution that the company be wound up voluntarily.

The next company concerned is *Electrical Industries of Ireland Ltd.* (hereafter called E.I.I.) which manufactured and imported all sorts of electrical goods in Dunleer, Co. Louth. Interview owned one third of the issued share capital of E.I.I.

The third company is *Irish Electronic and Appliance Co. Ltd.* (I.E.A.C.), incorporated in February 1972, which had an issued share capital of £2.00 This was a wholly owned subsidiary of Interview in order to carry on wholesale business in electrical goods. Interview sold the goods to I.E.A.C. for the purposes of resale to outlets and companies. The effective management of these companies was carried on by Mr. McCourt.

The fourth company is the German *Allgemeine Elecktricitaets Gesellschaft* Telefunken (A.E.G.) which manufactures electrical goods on a very large scale and which sells goods outside Germany on printed terms known as "terms for deliveries abroad".

The fifth company is Telefunken Fernsch und Rundfunk G.M.B.H ("Telefunken") which is a wholly owned subsidiary of A.E.G. It carries on the business of manufacturing and exporting television and radio sets and other electrical goods.

In June, 1970, negotiations took place in Hanover between representatives of A.E.G. and E.I.I., as E.I.I. wished to be appointed sole agents in the Republic by A.E.G. for the import and distribution of "brown goods". The terms of the agreement were set out in a letter of 28th October, 1970, from A.E.G. to E.I.I., whereby E.I.I. were to try their best to promote sales of the electrical goods of A.E.G. Although normally A.E.G. deal only in "white goods", the contract related solely to "brown goods" with the trade mark Telefunken. As regards the "terms for deliveries abroad", apart from German Law being the law applicable, Clause 15 sets out terms relating to preservation of ownership. It stated that normally the product supplied shall remain the property of the supplier until all debts arising have been paid in full by the purchaser.

On 10th February, 1972, there were further discussions in Hanover between Interview and Telefunken. The net effect of this agreement is that henceforth Interview, as well as E.I.I. was to be made a party to the agreement of June 1970. In March, 1972, a representative of the German companies visited Ireland. As a result of discussions E.I.I. transferred to Interview the goods originally sold by E.I.I. to them, and a purchase price of £205,935 was debited to Interview's account. The goods transferred by E.I.I. to Interview had been stored at Dunleer warehouse. In order to give effect to the transfer, it was agreed that the E.I.I. warehouse would be leased to Interview from 1st May, 1972 at a rent of £5,268. The lease was made on 17th May, 1972, for a term of 21 years. On 28th April, 1972, Telefunken wrote to Interview confirming these arrangements. It was stressed that Interview would be an active partner in importing and distributing Telefunken products within the agreement, and that the German merchandise would be imported and distributed by Interview's subsidiary "I.E.A.C." I.E.A.C. were merely considered by the Germans as importing agents for Interview.

A German lawyer gave evidence as to the German Law on the subject. Briefly if it is agreed that the passing of the title will take place only on payment of the goods, then the ownership of title of the goods remains in the vendor. The clause about "Reservation of Ownership" is a common one in German contacts and there is known as a "current accounts clause". The effect of it under German Law is that the supplier rmains the owner, even though the goods have passed to the purchaser. The purchaser is entitled to retain the goods until the vendor can prove delay in payment. The vendor may only obtain the goods back by serving a notice of rescission. When the goods are in the custody of the purchaser, though the title to them is in the vendor, the effect of a sale by the purchaser is governed, under German Law, by the *Lex Rei Sitae* which in this case is Irish law. In Irish law, the effect was that the two German companies, A.E.G. and Telefunken, remained owners of the goods; accordingly E.I.I. had custody of the goods for the purposes of Section 9 of the Factors Act 1889 (which provides that delivery of goods under any sale to a person receiving them in good faith and without notice of any right of the original seller shall have the same effect as if the person making such sale were the original mercantile agent), and Section 25 (2) of the Sale of Goods Act 1893 which is more or less to the same effect. Accordingly a purchaser in good faith from E.I.I. or Interview of the German goods which they had in their possession acquired the property in them.

It is quite clear that there was no sale in March, 1972, by E.I.I. to Interview of the goods valued at £105,935. E.I.I. could not agree to transfer the property in the goods delivered by the German companies because they did not have it. Interview cannot rely on the Factors Act 1889 or the Sale of Goods Act 1893 to validate the transaction as a sale, because they did not receive the goods in good faith, and they had notice of the original sellers, the German companies. Accordingly here there was a transfer of possession and custody of the goods, which were always the property of the German companies. Furthermore the appointment of a receiver is an equitable assignment of what the company owns; it is not a sale. Accordingly at all times ownership of the goods remain in the German companies.

Re Interview Ltd. — Application of Milliken — Kenny J. — unreported 7th March, 1975.

CUSTODY

The parents of a child resident in Africa are entitled to its custody, despite the fact that before her marriage, the mother had signed an adoption consent form which had transferred the custody of the child

to adoptive parents in Ireland. Adoption Board censored for not explaining form of consent to mother.

The plaintiffs, now husband and wife, were eventually married on 6th June, 1972. On 15th May, 1970, a son was born in the provinces to the mother who was then unmarried; the father admitted paternity of the child. On 12th June, the mother signified her desire to place the child for adoption through an Adoption Society, by signing an acknowledgment of the receipt of an explanatory memorandum from the Society dealing with the effect of an adoption order and the statutory provisions as to consent. This decision was arrived at by the mother after much anguish, and despite the fact that at all relevant times the father wished to marry the mother. The father finally broke off relations with the mother, and took up employment in West Africa. On 7th August, 1970, the adoption society placed the child with adopting parents for a probationary period. On 7th December, 1970, the adopting parents made a formal application to the Board for an adoption order. In the first months of 1971, the mother was pressed by the Board at various times to sign the form of adoption. On 5th July, 1971, the mother was duly visited by a priest and nun and on 9th July, the mother after much persuasion eventually signed and completed the adoption. On 9th July, prior to the signing the mother met the father who was on vacation from Africa, but did not inform him about the adoption. On 13th July, they reached a tentative agreement to get married. On 20th July, an Adoption Order was duly made by the Board, and only the adopting parents were notified. On 13th May, 1974, the plaintiffs instituted against the Board declarations that the child was their legitimate child, that Section 9 of the Adoption Act 1952 was unconstitutional, that Sections 14 and 15 of the said Adoptions Act had not been complied with, that the adoption order was null and void, and that the custody of the infant be returned to the plaintiffs. Butler J., refused these declarations on 25th October, 1974 (See Gazette, November, 1974, pages 247 - 249).

As Statutes of the Oireachtas normally enjoy a presumption of constitutionality their constitutional validity will only arise if the other grounds fail. Section 14 of the Adoption Act 1952, accordingly deals with consent, and provides that an adoption order shall not be made without the consent of every person being the child's mother or guardian, or having charge of or control over the child, unless the Board dispenses with such consent; mainly in the event of mental incapacity or if the person cannot be found. S. 15(3) of the Act provides that the Board will satisfy itself that every person, whose consent is necessary and has not been dispensed with, has in fact given consent and understands the nature and effect of the consent and of the adoption order. A failure to observe these statutory requirements must be regarded as being destructive of the power sought to be exercised.

It cannot be disputed that adoption was the last situation which the mother wished for her child. The father was clearly against such a course. The mother wavered only because of an apparent breach with the father. Despite the fact that it negligently failed to obtain all information available, the Board made the adoption order on July 20th, 1971. They also failed lamentably in their duty to explain to the mother the nature of the consent given, and that it could be withdrawn at any time before the Adoption Order. Under S. 15 (3) of the Act, it was the statutory duty of the Board to explain the nature and effect of the consent which they ignored, and it was quite wrong to leave the mother under the impression that the consent was final and irrevocable. The mother had stated that if she had known she could get the child back before the making of the adoption order, she would have done so. Consequently, the Board had no power to make the Adoption Order as it was made without jurisdiction, and was consequently null and void.

After their marriage in June, 1972, both father and mother went to reside in West Africa. Having resolved to do everything possible to try to recover their child, on their first return to Ireland in 1973, they consulted their solicitors, and after many inquiries, the proceedings were started without undue delay in May, 1974. However there are special facts in this case which are unlikely to recur. This was the view of the **Chief Justice** and **Griffin J.** and **Parke J.** concurred with him.

Kenny J. adopted the same view, and quoted Sections 14 and 39 of the Adoption Act 1952, the Form scheduled in the Adoption Rules 1965 (S.I. No. 19 of 1965) which stated that all the rights and duties of the parents in regard to the child would be permanently transferred to the adopters, and that the parents would have no right at any time to get it back late on. He also quoted the full text of the consent form signed by the mother. If the Board had considered the documents signed by the mother, they could not have satisfied themselves that she understood the nature of the consent. The Adoption Order was consequently given without jurisdiction as the matters to be considered under the nature of the consent which were:

(1) that it is free,
(2) that it is revocable until the Adoption Order is made, and
(3) that it becomes irrevocable after that,

had not been considered. Furthermore there has been no unreasonable delay in bringing the proceedings.

Henchy J. dissenting, would have dismissed the appeal, on the grounds:

(1) That the declaration sought by the parents was essentially a discretionary one for the Courts, which ought only to be exercised if the facts warranted it.
(2) That the boy concerned, now 6 years old, had been growing up with the adopted parents in an Irish provincial town, and had never known his parents. His father had never seen him, and his mother had last seen him when he was 5 weeks old. It would not benefit the child to be sundered from the adoptive parents and sent to West Africa.
(3) That there had been undue delay on the part of the parents in starting these proceedings. It was to be noted that no action had been taken by them, either when they became engaged in August, 1971 or when they married in June 1972, or when they visited Ireland in 1973.

The majority of the Supreme Court allowed the appeal, and reversed the order of Butler J. Order made that the child be returned to its parents.

McL. v. Adoption Board and the Attorney General — Full Supreme Court — unreported — 2nd June, 1976.

VENDOR AND PURCHASER

Due to their not understanding English, £18,000 deposited by Germans for purchase of farm must be returned to them.

Two Germans who had put down a deposit of £18,125 towards the purchase of a 117-acre farm on the shores of Lough Derg near Nenagh, Co. Tipperary, are to have the money returned to them under a judgment by the President of the High Court, Mr. Justice Finlay.

The plaintiffs, Rudi Siebel and Willi Seum, both described as chemical cleaners, of Ludwig Strasse, Dudenhofen, West Germany, had sued Donald Kent, farmer, of The Old Court, Terryglass, Nenagh.

They claimed that on March 21st, 1974, they discussed with Mr. Denis Gilmartin, auctioneer, the purchase of the property for £72,500. They were invited by Mr. Gilmartin to sign a document proporting to be a memorandum of a sale by private treaty and they did so.

Neither of them, they pleaded, had any knowledge of the English language and they were not made aware by Mr. Gilmartin of the meaning and effect of signing the document. In particular they did not appreciate that the document was intended finally to bind them to the purchase. They paid the deposit of £18,125 in two phases, the first of £2,000 and later the balance.

The Germans further pleaded that they believed that the discussion amounted to no more than a preliminary arrangement as to price and that no contract would be completed until consent to sub-division was obtained from the Land Commission.

They sought the return of the money with interest.

Mr. Kent denied that the plaintiffs had not any knowledge of the English language or that they had not been made aware by Mr. Gilmartin of the meaning and effect of the signing of the document. He claimed that they appreciated the document was intended finally to bind them and he counterclaimed for a declaration that the contract was a valid and binding one and that they should forfeit the deposit money.

In a reserved judgment, the President said that when the plaintiffs first arrived in Ireland in March, 1974, neither of them had any worthwhile knowledge of English. Before coming to Ireland they had ascertained from the Irish Embassy in Germany that if they wished to purchase a greater area than five acres the consent of the Land Commission would be necessary.

They were introduced by Mr. Taylor, auctioneer, Portumna, to Mr. Kent, and later ascertained that Mr. Gilmartin, auctioneer, Nenagh, was in charge of the sale. Mr. Gilmartin's brother, Michael, had a knowledge of German. Subsequently a lengthy discussion took place.

The President said that Mr. Denis Gilmartin was particularly concerned to ensure that all the parties fully understood the meaning and effect of Section 45 of the Land Act, 1965, which dealt with the purchase by a non-national of land in Ireland and a requirement for consent. In particular he was anxious that the purchasers should realise that if the consent of the Land Commission was refused the transaction must be cancelled.

He was satisfied that Mr. Denis Gilmartin conveyed that information clearly and unequivocally through his brother, Michael, to the plaintiffs, and that they fully understood it.

The President said he was impressed by the evidence of the Gilmartin brothers and was satisfied not only that they were witnesses of complete truth and accuracy but that they had acted in the entire transactions with a commendably high standard of integrity and respect for the rights of the plaintiffs as well as those of Mr. Kent.

He was also satisfied that it had been made known to the plaintiffs that it would be necessary for them to provide 25% of the purchase price.

The President said that although the plaintiffs had originally represented their interest in the purchase as being confined to the possibility of farming, either that was a pretence or they had in the meantime changed their mind and were not concerned with the possibility of developing the lands as a holiday resort, including the provision of holiday homes or chalets.

On May 19th, 1974, Mr. Sibel wrote to Mr. Kent's solicitor stating that after careful consideration of the political climate in Ireland and particularly in the light of recent developments they had agreed that they could no longer consider the purchase of the property or any other property in Ireland and asked to have the arrangement cancelled and to have their deposit returned.

The President said that the reference in their letter to "recent developments" was apparently a reference to a bombing in Dublin.

The solicitor replied on June 27th stating that he had been unofficially informed that the consent of the Land Commission would be forthcoming, indicating a discussion with Bord Failte with regard to the development at Old Court and stating that he believed there would be no problems. On July 3rd the Land Commission gave its consent.

The President said he was satisfied that Mr. Sibel, on a later visit to Ireland, had given to Mr. Kent a number of different reasons for his unwillingness now to complete the purchase but not one of them related to the political situation in Ireland. In particular he seemed to convey that Mr. Seum was unwilling to continue and that he himself would find it difficult from the financial point of view to continue on his own.

Some Hesitation

He said that notwithstanding a suspicion arising from the plaintiff's attempt to prevent the continued consideration by the Land Commission of their application for consent, he had finally and with some hesitation come to the conclusion that they did not understand that the monies which they had paid were by way of deposit on a binding agreement to purchase, and they were entitled to the return of their money with interest.

Sibel and Seum v. Kent — Finlay P. — unreported — 1 June 1976.

FAMILY LAW

Non-consummation of marriage – Ecclesiastical declaration of nullity affirmed.

A woman, who had already obtained a declaration of nullity in an eccleesiastical court, was granted a decree of nullity by the Supreme Court in Dublin, 30th June, 1976, when, in a reserved judgment, it upheld the 29-year-old woman's appeal against the refusal of the High Court to annul her marriage.

The judgment was announced in camera and the appeal and original hearing of the petition also were held in camera. The names and addresses of the husband and wife were not disclosed.

In the High Court, Mr. Justice Murnaghan had dismissed her petition, which alleged fraud on the part of her husband, in that he did not, at the time of the marriage, intend

to consummate the marriage. A second ground was the husband's incapacity to consummate the marriage by reason or some mental, or physical condition.

The second ground was relied on, almost exclusively, at the hearing of the appeal.

Short-lived union

Mr. Justice Henchy, in his judgment, said that the short-lived union between the parties, in this case, was but a marriage, in name, only. It did not seem to have been supported by any emotional, or other affinity, on the part of the husband.

The marriage took place in July, 1969. They had met two years earlier at a dance. The friendship that sprang up between them ripened quickly into intimacy. For a year-and-a-half they went out together every night of the week. Then, for six months before the marriage, they saw each other every night of the week, except Tuesday and Thursday, omitting those nights, because they felt they were seeing too much of each other. They also went away on camping week-ends. There was nothing in the evidence to suggest any lack, on his part, before the marriage, of emotional, or sexual commitment to her.

Cold and unaffectionate husband

The marriage proved a sad anti-climax for the wife. As a husband, he turned out to be cold, unaffectionate, alienated. The marriage was never consummated.

Mr. Justice Henchy said the couple had an eight-day honeymoon, but although they slept in the same bed, the man showed a total sexual disinterest in her. It was the same story when they returned from the honeymoon to the flat, where they slept in the same bed.

For six months they lived together in disharmony, and then he left her, for good. His sexual disinterest in her was, apparently, no perverse affection.

Shortly after the marriage, he told her that he had no affection for her, that in fact, she revolted him; that he had no interest in founding a family; that the marriage was a mistake; that the only reason he went through with it was because the arrangements were too far advanced, and he was too much of a coward to break off the engagement.

What the wife discovered after the marriage was that, some weeks before the marriage, he had met the woman with whom he had since gone to live .The wife learned from him that, both before and after the marriage, he had sexual intercourse with the other woman. According to the wife, he claimed to have spent the night before the marriage with the other woman, and to have had sexual intercourse with her that night.

Mr. Justice Henchy said it appeared to be the fact that, shortly after returning from the honeymoon, the man started to go out at night with other women. He admitted to the wife that he was in love with the other woman. Before he turned his back on this pseudo-marriage in January, 1970, by leaving to go off to live with the other woman, he disclosed that the other woman had been expecting a child by him, and had just then "lost it in England".

In the High Court, the case for the wife was put on the basis that she had been induced, by fraud, to marry the husband. The trial judge rejected that submission; so would he.

In the Supreme Court, the wife's case had been argued, primarily, on the basis that the marriage should be annulled because of the husband's sexual impotence vis-i-vis her.

The husband had not taken any part in the proceedings, so they had only the wife's version of things. The trial judge had not questioned her veracity.

Mr. Justice Henchy said he found the evidence cohesive of the conclusion that, while the husband's failure to consummate the marriage was not due to any general sexual incompetence, it was the result of an obliteration of his sexual capacity with her, from the time of the marriage or, possibly, from the time shortly before the marriage, when he became intimate with the other woman. This incapacity would seem to have been a corollary of his attachment to the other woman.

No medical evidence available to sustain case

His failure to consummate the marriage would seem to have been a part of the revulsion she claimed he said he had for her. The court had no medical evidence, or other expert evidence, to identify the psychological, or other factors, that produced the husband's condition, but the condition itself, seemed to have been one of sexual impotence in relation to the wife during the period they lived together, ostensibly, .as housband-and-wife.

That being so, the matrimonial law governing the position was not in doubt. Where a husband, while not generally impotent, was unable to consummate the marriage becaus of impotence vis-a-vis his wife, that was a good ground in the civil courts for an annulment of the marriage at the suit of the wife.

Mr. Justice Henchy referred to C. v. C. (1921) p. 399 in which Lord Birkenhead reviewed the authorities, showing the civil law to be to that effect, and pointed out that, in the Ecclesiastical Courts, both before and after the Council of Trent, the doctrine of the Church idmitted and, indeed, enjoined nullity on such a ground.

In fact, the wife here had obtained a declaration of nullity in an ecclesiastical court. In his judgment, the order on this petition should be to the same effect.

He would allow the appeal and issue a decree of nullity.

Mr. Justice Griffin, who agreed with the judgment of Mr. Justice Henchy, in his judgment, said the law applicable in this case was that administered by the old Ecclesiastical Courts, the jurisdiction of which was now vested in the High Court. The wife, would, in the circumstances of this case, under that law, clearly be entitled to have the marriage annulled.

Mr. Justice Kenny agreed.

The court made no order as to costs.

S. v. S. — Supreme Court (Henchy, Griffin and Kenny J. J.) — unreported — 30th June, 1976.

RECENT IRISH CASES

COMPULSORY PURCHASE

High Court says property firm should be paid lower compensation for compulsory purchase.

In a reserved judgement in the High Court Mr. Justice McMahon held that the compensation to be paid to a Dublin firm of developers in respect of lands in the Bray road area acquired by Dublin County Council should be determined in relation to an order served on the developers on April 14th, 1975—not in relation to an earlier compulsory purchase order served on December 14th, 1972.

The effect of the judgment is that the company, Green Dale Building Company Ltd., of Burlington Road, Dublin, is to be paid £60,000 compensation instead of £90,000 compensation as would have been the case under the earlier order.

The matter came before the Court by way of a case stated by Mr. Owen McCarthy, BE, who had acted as arbitrator, and who asked the Court to determine which compulsory purchase order he should act upon. The lands are situated at Galloping Green South.

Mr. Justice McMahon said that the value of the land which was subject to a compulsory purchase order had been falling since the order was confirmed in 1972, thereby giving rise to a dispute as to the proper time for assessing compensation. The order, under the 1966 Housing Act, had been made by the County Council on November 11th, 1968, and was confirmed, with amendments, on August 25th, 1972.

Within the statutory three weeks, Mr. William Fuller and The Holiday Motor Inns Ltd., owners of part of the property affected, instituted High Court proceedings, claiming that the order was invalid in its entirety or, alternatively, insofar as affected their property.

The Green Dale Building Co. Ltd. did not question the validity of the order and, on December 14th, 1972, the County Council served what purported to be a notice to treat on the company. The company's case was that the compensation payable was to be based on the value of the land at the time when this notice was served.

Mr. Justice McMahon said that the County Council contended that it was not a valid notice because by reason of the pending proceedings in the High Court by Mr. Fuller and The Holiday Motor Inns Ltd., the order had not become operative.

In the latter proceedings, the High Court, on February 19th, 1975, suspended the operation of the order, on the application of the Council, insofar as it affected the property belonging to Mr. Fuller and The Holiday Motor Inns. These proceedings were later dismissed, by consent.

Arbitrator sought

Mr. Justice McMahon said that on April 14th, 1975, the Council served a second notice to treat on Green Dale Building Co. Ltd. who, in the meantime, asked to have an Arbitrator appointed.

At the subsequent inquiry, Green Dale Building Co. Ltd. made the case that the value of the lands for the purpose of determining compensation should be taken at the time when the first notice to treat was served.

Mr. Justice McMahon held that the services of the first notice to treat was not merely irregular but *ultra vires* the powers of the County Council which could not, by serving such notice before the order had become operative, make itself liable to pay compensation based on the value of the land at that time. As a statutory body with limited powers, the Council could not be bound by estoppel to do what was *ultra vires* its powers, or to refrain from doing what it was its duty to do, and therefore it could not be estopped from relying on the invalidity of the first notice to treat. Accordingly, he held that the relevant time was April 14th, 1951.

The Court made no order as to costs.

Fuller and Holiday Inns Ltd. v. Green Dale Building Co. Ltd. — McMahon J. — unreported — June 1976.

VENDOR AND PURCHASER

Sale of registered land subject to registered judgment mortgages—Conditions under which order for specific performance will be granted.

The complicated facts of this case were stated in the December Gazette, 1975, at page 297. It will be recalled that the plaintiff Tempany, was the receiver of two debentures, the first one of September, 1949 between Tractasales (Longford) and United Dominions Trust which related solely to a loan of £25,000 in respect of the lands contained on Folio 9792 only. Although there were 3 Folios involved in the lands belonging to Tractasales the plaintiff, in putting up these lands for sale by auction, only mentioned two of them, and forgot to mention Folio 12386, Co. Longford. The auction was held on 26th February, 1974, and the defendant bought the lands for £30,500, and paid a deposit of £7,625. Two further Judgment Mortgages against the lands comprised in the three Folios were registered by Peter Doggett and Henry Smith before the contract for sale had been signed. After the contract was signed, further Judgment Mortgages were registered in respect of the lands by Foster Finance Ltd. and the Longford Arms Motor Works Ltd.

In buying the premises, the defendant thought he could get finance to develop it, but he was unable to do so. As a result of searches in the Land Registry, in January, 1975, he discovered the existence of the missing Folio 12386 relating, to the lands. There was a meeting at the Four Courts on 18th March, 1975 when the defendant refused to close the sale unless £4,500 was paid to him immediately. The plaintiff refused to comply, and proceeded with his action for specific performance to carry out the terms of his contract. Finlay P. duly dismissed this action, mainly because he thought that the title shown by the plaintiff would involve the defendant in litigation with the post-contract judgment mortgages.

It was contended on behalf of the plaintiff that, when the contract for sale was signed, that Tractasales became a Trustee for the defendant, who became the owner of the whole beneficial interest in the lands. Consequently Tractasales could not own any estate or interest on which the two judgment mortgages of Foster Finance and of Longford Motor Works could operate. The position is that a vendor who signs a contract with a purchaser for the sale of land becomes a trustee to the extent that he is bound to take reasonable care of the property until the sale is completed. However the vendor becomes a trustee of the beneficial interest merely because he signs a contract. Consequently, until the whole purchase money is paid, the vendor has a beneficial interest in the land which may be charged by a Judgment Mortgage. Furthermore, when a contract for sale has been signed, the vendor becomes a trustee of the beneficial interest only to the extent that the purchase money has been paid. This contention is therefore

rejected.

The next question is whether the claims of the debenture holders in relation to the lands on the three Folios rank before the rights of the four Judgment Mortgages. Section 71(4) of the Registration of Title Act 1964 stating that registration of the relevant affidavit will operate to charge the interest of the judgment debtor subject to certain conditions is quoted in full; this had not been contained in the 1891 Act. The two debentures created a specific charge on Folio 9792 and a floating charge over all the other assets of Tractasales. The effect of the appointment of a receiver under a Debenture is that there is an equitable assignment to the holder of all the property subject to the floating charge. The equitable assignment effected by the appointment of a receiver was an unregistered right, subject to which Tractasales held the lands on which the debentures were not registered at the time of the registration of the affidavits creating the four Judgment Mortgages. A Judgment Mortgagee is not a purchaser for valuable consideration. Consequently the question posed must be answered in the affirmative. When the relevant documents are produced to the Registrar of Titles, it will be his duty to annul the entries of the four Judgment Mortgages, without proof of the payment of any sum in respect of any of them.

In view of the fact that the existence of the third Folio was only discovered by the defendant on 23rd January 1975, the 18% interest provided will only become payable from that date.

Per Henchy J.: The plaintiff was not bound, in order to make good title, to discharge the moneys due on foot of the post-contract Judgment Mortgages. These mortgages took effect subject to the defendant's equitable estate or interest in the land. They could affect only such beneficial estate or interest as the registered owner then had. That estate or interest could not survive the completion of the sale, and the registration of the defendant as full owner. The defendant could then have them cancelled on the Folios.

The appeal will accordingly be allowed, and there will be an order for specific performance of the Contract.

Tempany v. Hynes — Supreme Court O'Higgins, C.J., Henchy J. and Kenny J.) — Separate judgments by Henchy J. and Kenny J. — unreported — 1st June, 1976.

CONTEMPT OF COURT

Writer of article fined £300, and editor of Sunday World fined £600 for falsely imputing to the Court base motives, and for publishing prejudiced particulars of a case heard in camera.

On 3th June, 1976, the Sunday World published an article entitled "Tug-of-love children in tennis-style battle". As a result of this article, a motion was introduced to attach the writer, McCann, and the editor, Kennedy, for contempt.

The article referred to a Guardianship of Infants case, heard *in camera*. Kenny J. had made a second decision relating to this matter *in camera*, and there was an appeal pending against this decision in the Supreme Court.

The article purported to give details of the sorry story of a wrecked marriage, with highly offensive references to the father. It published a photograph and the names of the two boys and the mother. It was clearly based on the mother's account of what had happened and what the issues were. The article attacked the handling of such cases by the Court by falsely stating that, instead of the welfare of the children being paramount, money and the lifestyle it could buy was regarded by the Courts as by far the most important consideration. There was an innuendo that justice could not be obtained in Irish Courts. Both McCann and Kennedy have admitted that they were guilty of the gross contempt alleged against them, and have filed affidavits expressing their full apology.

It is important to note that free speech and the free expression of opinion must not be used to undermine public order or morality or the authority of the State. As Lord Russell said in *R. v. Gray* (1900) 2 Q.,B. 36—"any act done or writing published calculated to bring a Court or a Judge into contempt, or to lower his authority is contempt of Court. Furthermore any act done, or writing published, calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court".

The offence committed by the applicants here is one of deliberately scandalising the Court. The offence of scandalising is committed when, as here, a false publication is made which intentionally or recklessly imputes base motives or improper motives or conduct to the judges in question. Apart from the aspersions cast on the Court, the offenders have then to expose the private sorrows of this family to public gaze and comment, and to prejudice unfairly the future happiness of these children. If the fullest apologies had not been tendered, a substantial sentence of imprisonment would have been imposed upon them. The writer, McCann, is fined £300, and the editor, Kennedy, is fined £600, both payments to be made within 2 days or imprisonment in default. These applicants must pay in full the costs of this motion for attachment.

Re Motion to Attach McCann and Kennedy for contempt of Court — Supreme Court — (O'Higgins, C.J., and Griffin, J.) per the Chief Justice — unreported — 7th July, 1976.

VENDOR AND PURCHASER

A stipulation in a written contract of sale that time is of the essence of the contract will be strictly applied, and, in the event of non-completion, due to vendor's default, the purchasers are entitled to rescind the contract and to a return of their deposit.

Plaintiffs seek specific performance of a contract for sale of 5th November, 1973 relating to premises at Fleming Place in Dublin against the defendant Company, and the defendant firm of solicitors, hereinafter called X. X signed the contract in trust on behalf of the purchasers. Throughout X acted for the defendant company. The property sold included 3 separate plots—(1) 18, Fleming Place, (2) 17c Fleming Place, and (3) Portion of the the rere of 9 and 11 Upper Baggot Street. The price was £134,840 and a deposit of £23,000 was paid on signing the contract. On the same date, the purchasers entered into two contracts with two subsidiaries of the plaintiffs, namely (1) Manchester Chemical Co. Ltd., and (2) Manchester Chemical Co. (Ireland) Ltd. It was provided that the three contracts should be completed at the same time. The closing date was the 30th October, 1974, and there was a special condition of sale stipulating that time was to be of the essence of the contract, and, in the event of non-completion, the vendor would be entitled to rescind the contract without notice, and that then the purchaser's deposit would be forfeited. Premises No. (3), being the rere of 9 and 11 Upper Baggot Street, consisted of coach-houses, and about two thirds of the unfenced ground. The vendors never used this premises, but a Mr. McLaughlin,

who carried on a light machinery business at the rere of No. 11 did. An acknowledgment was made that the property belonged to the Manchester Co. in September, 1972.

By the summer of 1974, the purchasers had difficulty in securing financial credit for development, and were less keen on the transaction. The estate agent called on the vendors' solicitors to explain the position, but they were not co-operative. In September and October, 1974, there was a correspondence, in which the vendor's solicitors continuously reminded the purchasers that time was of the essence of the Contract and the customary investigation of title was proceeded with. During all this time, to the knowledge of the vendor, Mr. McLaughlin continued to use the premises at the rere of 11 Upper Baggot Street. Mr. McLaughlin was told he would have to have everything removed by the end of October, and he agreed; but no active steps were taken to dislodge him.

On the day of the closing, the purchaser's agent found Mr. McLaughlin on the premises with no intention of closing. The purchasers were now anxious to close as they had secured the necessary finances for the development. When purchasers' solicitors visited the premises, Mr. McLaughlin claimed he had a right to be there, and ordered them off. As the premises were not vacant, the purchasers refused to close the sale and on the following day, 31st October, X, their solicitors, wrote rescinding the contract, and asking for the return of deposit. The vendors considered Mr. McLaughlin a trespasser, and compromised by paying him £250 in return for possession. The plaintiff's contention that they should have been granted an equitable extension of time in order to eject McLaughlin is rejected. The plaintiffs accordingly sought specific performance of the contract. As the solicitors for the plaintiffs were merely their agents, the claim against them is dismissed. Following *Finkielkraut v. Monohan* (1949) 2 All ER 234 and *Quadrangle Developments v. Jenner* (1974) 1 All ER 729, Butler J. held that the plaintiffs were not entitled to specific performance. Accordingly the purchasers were entitled to rescind the contract, and are also entitled to an order for the return of their deposit.

United Yeast Co. v. Cameo Investments Ltd. and others — Butler, J. — unreported — 17th December, 1975.

NATURAL JUSTICE

Discharge of soldier from Army quashed, as he was not given an opportunity to defend himself.

Application to make absolute a Conditional Order of Certiorari to quash an order whereby the plaintiff was discharged from the Army. The Defence Act 1954 and subsequent Regulations prescribe the conditions for Membership of the Defence Forces. A person enlisting in the Army is entitled to serve for the period he enlisted unless his discharge is directed for prescribed reasons, which are stated in Paragraph 58 of the Defence Forces Regulations.

The plaintiff had joined the Army in July, 1974, and received an advancement to Private Three Star in April, 1975. Up to the end of May, 1975, the plaintiff's service as a soldier was uneventful and successful, and he was then paid £39.00 per week.

At the end of May, 1975, the plaintiff's platoon was on a training exercise in the Glen of Imaal, and some incidents occurred which were alleged to affect morale and discipline. On 25th May, a group of soldiers including the plaintiff, refused to obey the order of a Sergeant, and another of the group, to show his defiance, advanced on the Sergeant as if to assault him, and at the last moment brushed past him. When the other soldier was charged before Lt. Colonel White with assaulting the Sergeant, the plaintiff gave evidence that this soldier had accidentally bumped into the Sergeant. Accordingly the assault charge was dropped, and one of insubordination substituted. On 17th June, the plaintiff was ordered to undergo a medical check-up prior to discharge, and was sent on leave for two weeks prior to discharge on 19th June. Meanwhile on 10th June, Lt. Colonel White had directed the plaintiff's discharge, and he was finally discharged on 3rd July. On 19th June, the plaintiff tried to see Commdt. Ryan about the discharge; the officer kept him waiting for two hours, but declined to see him. Generally speaking, the regulations provide that a discharge may only be made on the ground of misconduct, and they imply that such offence shall be investigated and proved.

The reason given in the official form of discharge was merely that his services were no longer required. Broadly this clause is intended to cover cases where the soldier's conduct on the whole was unsatisfactory, but where it is not possible to bring a specific charge against him. Colonel Quinn in an affidavit stated that, having read the personal file of the plaintiff, he formed the opinion without further ado that the plaintiff should be discharged from the Army, and so directed. The relevant matters appearing on the plaintiff's personal file are carefully not revealed nor exhibited. It is quite clear that at no time was the plaintiff given any notice of the intention of his superior to discharge him, nor had he any notice of any charges against him. However the plaintiff lost his employment, and, in view of the discharge, it was difficult for him to obtain alternative employment.

The main reason that the plaintiff obtained the Conditional Order was that he had received no notice of his intended discharge, or of any charge against him, and that this constituted a denial of Natural and Constitutional Justice and was a serious infringement of his constitutional rights.

The High Court has jurisdiction to investigate and determine as a matter of law whether any act done in purported reliance of the military code is within its jurisdiction. The Court is not satisfied that, on the facts, the decision to discharge the prosecutor was within the Regulations. If a discharge is clearly desirable in the interests of the service, if allegations are founded on specific acts, the soldier should be given an opportunity of giving an explanation. It is questionable whether the military authorities, in order to avoid proving misconduct. had the right to state that his conduct was unsatisfactory. As the reasons for the discharge must be clearly desirable, this obviously includes a proper investigation.

As regards the constitutional issue, it is clear that the rights guaranteed protecton by Art. 40(3) of the Constitution include the right to continue to earn a living, and to a satisfactory discharge from the Army. There is no doubt that, in accordance with Constitutional and Natural Justice the principle of fairness must be observed. In this case the plaintiff should have been informed of the grounds on which the authorities formed the opinion that his discharge was desirable—Principle of natural justice stated in *Ridge v. Baldwin* (1964) A.C. 40, and affirmed by the Supreme Court in *Glover v. B.L.N. Ltd.* (1973) I.R. 388—followed, as O'Dalaigh C.J.

in *Re Haughey*—(1971) I.R. 236 —said: "Article 40(3) of the Constitution is a guarantee to the citizen of basic procedures of fairness. The Constitution guarantees such fairness, and it is the duty of the Court to underline that the words of this Article are not political shibboleths, but provide a positive protection for the citizen and his good name".

Accordingly Butler J. held in this case that the decision to discharge the plaintiff from the Army constituted a denial of Natural and Consitutional Justice. This defect of procedure is fundamental, and the discharge must therefore be quashed. The Conditional Order of Certiorari will be made absolute.

The Minister for Defence lodged an appeal to the Supreme Court, which was dismissed.

Henchy J. said that, under S. 73 of the Defence Act 1954, the discharge of a man from the permanent defence forces is allowed "for prescribed reasons". Paragraph 58 of the Defence Forces Regulations sets out no less than 24 reasons as "prescribed reasons" under the Act. The reason chosen in this case, instead of being a tangible one, was the nebulous one applying to a man whose discharge is clearly desirable in the interests of the service, and in whose case no other reason for discharge is applicable'. In order to apply this reason it was necessary for the Commanding Officer to prove beyond doubt that the discharge should be clearly desirable in the interests of the service, and that none of the 23 other reasons applied. To discharge the plaintiff for this reason was condemnatory, in the same way as if he had been discharged for misconduct or inefficiency, and rendered him ineligible for enlistment ever again.,

As the plaintiff has enlisted for 3 years in the Army and had served for almost 2 years before being discharged, he had a statutory contract, and was the holder of an office, in the same way as a recruit in the Gardai. While the Common Law concept of Natural Justice is usually taken to encompass the two principles of *"Nemo judex in sua causa"* and *"Audi Alteram Partem"* the requirements of Constitutional Justice undoubtedly cover a wider field—such as that Justice was not administered in public, or that the decision was given by an unconstitutional tribunal. The plaintiff rests his case here on the Common Law principle that each party is entitled to be heard. This is well founded, because the plaintiff was never given any reasons for his discharge until after he had actually been discharged; and the facts or findings to support this were never divulged to him. As the discharge in this case was for a discreditable reason, the fundamentals of justice require that the man shall be given the opportunity of meeting the case against him. In this case it would be an affront to justice if the law held that a decision with drastic consequences for the man involved could be made behind his back,. The law applicable here is well-established, and the Army Authorities were under a clear duty to give him due notice in advance of his discharge, of the statutory reasons for it, and of the essential facts and findings supporting that reason. The Army Authorities have lamentably failed to observe this procedure in this case, and the appeal is consequently dismissed.

Per Henchy J.: If a plaintiff seeks to have condemned in the Supreme Court as invalid a decision on the ground that it is incompatible with the Constitution, it is necessary for him to prove the following:

(1) The application in the circumstances of the case of a specified Constitutional right, either express or implied;

(2) The decision appealed from has infringed that right; and

(3) That the person appealing stands aggrieved by reason of that infringement.

State (Gleeson) v. Minister for Defence and Attorney General — Supreme Court — (Henchy J., Griffin J,. and Kenny J.) — Separate judgments by each Judge — unreported — 1st July, 1976.

PRACTICE

The mother of an illegitimate child may only institute proceedings in the High Court claiming an affiliation order by special leave of that Court.

It was only in 1930 that the Illegitimate Children (Affiliation Orders) Act was passed, which gave leave to the mother of such child to apply to the District Court for an affiliation order against the putative father, but it is essential that a sworn information by the mother identifying the father be filed, and the Justice must be satisfied of its authenticity before issuing a summons. The Courts Act 1971 amended the law by providing that all affiliation claims for a sum exceeding £15 per week for the maintenance and education of the child were henceforth to be heard exclusively in the High Court. If the High Court had seisin of a case the District Court could not intervene. At the moment, there is no procedure in the High Court for receiving a sworn affirmation by the mother identifying the father and the Superior Courts Rules Committee have as yet not issued any amending rules relating thereto. S. 19 of the Courts Act, 1971, had provided that claims for weekly sums of over £15 should be brought in the High Court, which accordingly has an inherent jurisdiction to operate S. 19, subject to adopting as nearly as possible the District Court procedure. Accordingly a preliminary affidavit should be sworn by the mother identifying the father, and the High Court should not grant leave to issue proceedings until this was done. As this procedure was not followed in this case, the proceedings are struck out, but may be started afresh.

Re Courts Act 1971 and S.E.O'B. — Supreme Court (Henchy, Griffin and Kenny JJ.) per Henchy J. — unreported — 29th July, 1976.

RECENT IRISH CASES

EQUITY

Lands held in sole name of husband, but bought from a joint account, are deemed to belong to husband and wife equally.

The plaintiff and defendant were married for 11 years. They were married and divorced in America, and, though originally from County Cavan, are still living there. The plaintiff wife claims to be entitled to half of a farm of land in County Cavan which was purchased in defendant husband's sole name, with money from a joint account. The parties were married in 1961, and both worked hard, and lived together in mutual harmony, pooling their resources in a joint account.

In 1964, they decided to purchase a small farm near their farm in Co. Cavan. The money was provided from the joint account, and sent by the defendant to his father, who arranged that the farm should be transferred into the sole name of the defendant. The defendant's father subsequently received all the rents and profits of the farm, although he gave the parties some money on their occasional visits to Ireland. Towards the end of 1968, the defendant was addicted to strong drink and in January, 1969, the plaintiff wife, had the joint account transferred into a savings account in her own name. Some time subsequently, the plaintiff came on a visit to Ireland and discovered that the lands were in her husband's sole name. She endeavoured unsuccessfully to have the lands transferred into their joint names. When they arranged to separate it was agreed that the plaintiff would pay the defendant $1,000 which she did in two payments in November, 1969. By June, 1972, there was still $3,862 in the savings account which the plaintiff retained. The plaintiff obtained a divorce in Illinois in May, 1972, and the defendant did not contest the proceedings; at this time the Court declared that the plaintiff wife was entitled to an undivided half of the lands in Cavan. The plaintiff agreed that her earnings during the period of the joint account were about two-thirds of those of the defandant. The defendant, at first, contended in Cavan that the whole case was governed by American law, and that the plaintiff should have produced evidence of American law. However, this point was abandoned when legal argument was adjourned to Dublin.

The cases cited appear to establish the following principles :-

1. Where two people provide the purchase price for property which is conveyed to one of them only, *prima facie* the person, into whose name it is conveyed will hold the property on trust in shares proportionate to their contributions to the purchase price.

2. This presumption may be rebutted by evidence of a contrary intention.

3. As between husband and wife, a Court must take into consideration the nature of the mutual relationship between them. This does not however mean that, in the case of property in the sole name of a spouse, a Court is entitled to presume an agreement, without evidence to support it.

4. Where there is a Joint Account between husband and wife, into which they put all their resources, it should be assumed, unless there is compelling evidence to the contrary, that the account was intended as a joint account, with equal rights over it to each of the parties.

In this case, as the land was purchased with money drawn from the joint account, and was made by agreement between the parties, it was held that the account had become the joint property of the husband and wife equally. Accordingly they must both be held to have contributed to the purchase in equal shares. The defendant husband's counterclaim for his share of the money left in the deposit account is rejected, as the plaintiff continued to contribute to the defendant, while he was out of employment after the separation. Declaration made accordingly.

Ann Galligan v. Matthew Galligan — Circuit Judge McWilliam — Cavan Circuit Court — 1972 — unreported.

VENDOR AND PURCHASER

In this specific sale of licensed premises. time was deemed of the essence of the contract. The purchaser delayed completion deliberately, in conscious default of his obligations. Consequently his application for specific performance will be refused. Appeal from Cork Circuit Court dismissed.

On 5th April, 1974, the plaintiff signed a contract with defendants for the purchase of the freehold, Seaview Hotel, near Kinsale, with licence attached for £34,500. The contract provided for a deposit of £8,675, but only £5,000 was actually paid. Negotiations for this contract had taken place for the previous two months. No specific date for closing was fixed. When the defendant's solicitors first sent the draft contract, they erroneously described the premises as leasehold, but sent a fresh contract subsequently; here a closing date of 22nd April, was inserted, and a clause provided that time was to be of the essence of the contract. On 20 May, 1974, solicitors for the plaintiff purchaser wrote, revealing a number of debentures against the vendor company. Eventually on 26th July, the solicitors for the defendant vendors wrote stating that his clients were dissatisfied with the delay, insisted on making time of the essence of the contract, and called upon the plaintiff to complete within two weeks. The plaintiff was on vacation, and could not be contacted until 2nd August. On 6th August, the defendant vendors repeated that no further extension could be granted, and threatened to cancel the contract. On 6th August, the plaintiff purchaser went to his bank to arrange a bridging loan, which was granted on 8th August. On 9th August, two letters were sent :- (1) The solicitors for the vendor wrote by post to the purchasers stating that, as the sale had not been completed his client was withdrawing from the sale; (2) the solicitors for the purchasers wrote to the vendor sending requisitions and a draft conveyance, and stating that the purchaser was willing to complete immediately; this letter was delivered the same afternoon. On 12th August, solicitors for purchasers offered to close that afternoon, provided vendors held the conveyance until it was sold. On same date, solicitors for the vendors pointed out that the deadline stipulated had expired; a further letter by vendor's solicitor of 13th August rejected the terms offered by defendant's solicitors on the 12th. At the end of August, the vendors brought proceedings for specific performance of the contract. The vendor however did not give evidence in Court, but his solicitor did.

The following issues of law are involved :-

1. Is the contract for sale, being the sale of a licensed premises, to be deemed a contract in which time for completion is of the essence? Normally in the sale of a public house as a going concern, time is of the essence of the contract, whether expressed to be so or not.

In this contract however, seemingly time was not expressed to be of the essence of the contract; in fact there was a clause that if the purchase was not completed before closing day, 22nd April, the purchaser was to pay to the vendor interest of 15% per annum on the unpaid balance of the purchase money until the date of actual completion. This is inconsistent with the notion that time should be of the essence of the contract.

2. Was the purchaser, between 22nd April and 26th July, in such default of his obligations under the contract as to entitle the vendor in law to fix a reasonable time for completion? It was within the clear knowledge of the purchaser, when he entered the contract, that it involved the taking over by him as a going concern of a licensed business. The title to the property did not present much difficulty, and the solicitor for the purchasers, having acted previously, was in full possession of knowledge about the title. The purchaser was deliberately in conscious default of his obligations, for he made no early attempt to obtain a bridging loan. The vendor was therefore entitled to call upon him to complete.

3. It was contended that the letter of 26th July, was invalid in fixing a time for completion, by not indicating precisely what steps were to be taken by the purchaser. This contention cannot be sustained, as it was well known to the solicitors concerned what was to be done for completion.

4. It was contended that the letter of 26th July, was invalid to require completion, because the two weeks allowed was not a reasonable time. Mainly in view of the time that had elapsed since the original date of completion, 22nd April, this letter was in the particular circumstances reasonable.

The decision of Circuit Judge Neylon will be affirmed, and the appeal dismissed. Specific performance of the contract by the purchasers will be refused.

O'Brien v. Seaview Enterprises Ltd. — Finlay P. — unreported — 31st May, 1976.

LICENSING

The character of suitability of an applicant should not be taken into account in considering the granting of *interim* licence, but the character of the company concerned should be considered.

By an agreement of January, 1975, Mr. Woolton agreed to purchase a public house known as the Chariot Inn, Ranelagh, Dublin with licence attached. Mr. and Mrs. Woolton registered in May, 1975 as the directors of Chariot Inns Ltd. The Company passed a resolution appointing Mr. Woolton to apply for an *ad interim* transfer of the licence. The application came before the District Court on 28th May, 1975. The defendant Superintendent objected on the ground that Mr. Woolton had sustained several convictions for breaches of the licensing laws, at a time when Mr. Woolton had no interest in Chariot Inns Ltd. The application was withdrawn, and subsequently the Company appointed a first plaintiff, Mr. Henessy to make the application. On 4th June, 1975, District Justice Donnelly heard the application, and the Guards indicated that they had no objection to Mr. Hennessy. The Justice, having inspected the District Court books learned that 7 convictions had been recorded against Mr. Woolton in respect of the Revolution Club in Rutland Place. The District Justice then refused the *ad interim* transfer on the ground that the Company had not got a suitable character.

Having considered in detail the law on the subject, and in particular Henchy J.'s decision, as a High Court Judge, in **The State (Doyle) v. District Justices Carr and Delap** — (1970) I.R. 87 — Finlay P. held that the applicant is entitled notwithstanding cause shown by the Superintendent, to an absolute order of Certiorari quashing the District Justice's order, and to an order of Mandamus directing the District Justice to make an order to carry on the trade in the licensed premises until the next Annual Licensing Session.

It is contended that Finlay P. wrongly held that the District Justice had power or discretion to refuse the interim transfer of the licence to the nominee of Chariot Inns Ltd., when it had been established that a director and part owner of that company was a disqualified person. But Finlay P. was correct in holding that the character or personal suitability of the applicant is not a factor to be taken into account in deciding whether an *ad interim* transfer should be granted.

Per Henchy J. I am not persuaded that in a licensing case, where character or personal suitability is in issue, and the applicant is the nominee of an incorporated company, the inquiry is to be limited to the character or personal suitability of the nominee or of the incorporated company.

Per Griffin J.: Two questions, not decided in the High Court, were raised on appeal, i.e. whether a company can hold a licence and whether the character or suitability of a director or shareholder of a company can be considered when the Certificate of Transfer of the Licence is applied for at the Annual Licensing District Court. This Court sitting is a Court of appellate jurisdiction, should not normally decide or entertain questions not decided or considered by the High Court. Opinions on such questions would in any event be merely *obiter dicta,* and should be reserved until the questions arise in an appeal, and are fully argued therein.

Per Kenny J. — There is a widely held myth that a company incorporated under the Companies Acts cannot be granted a licence to sell intoxicating drink, and that when it is so licensed, the licensee must be granted to the nominee. The case of **D. (Cottingham) v. Cork Co. Justices** (1906) 2 I.R 415, duly held that a company could be granted a licence. The illusion that a company cannot be licensed springs from the belief that a company cannot have a character, and hence is not a person. A modern company is a person in the sense that it can sue and be sued; it can be prosecuted in the District Court and can be indicted; injunctions can be granted against it, and its property may be sequestrated. Good or bad character is a matter of local or public reputation, and the widest discretion is given to Justices in respect of their Certificate. A Licensing House is conducted in a disorderly way if convictions are had for breaches of the Licensing Acts, or if improper characters are allowed to resort there for improper purposes. In such a case a Company would, through their manager, whom they put in charge, have an evil reputation and a bad character. The conduct of the authorised agents of a company is *its* character.

In an application for in Interim Transfer under the Public House (Ireland) Act 1855, the District Justice cannot of course transfer the licence to an unqualified person. He must however grant the transfer, if the evidence establishes :- (1) That either (a) the licensee has died, or (b) that he has removed himself from the premises, or (c) that there has been a sale or assignment of his interest in the premises; (2) That notice of this application has been given to the Gardai and (3) That the applicant, in this case the com-

pany, is not a qualified person. Before he became a director of this company, a Mr. W. had owned a doubtful premises called "The Revolution Club", where he had been convicted of selling wine after hours; but the relevant reputation is that of the company, and not of its Directors, which is irrelevant.

The appeal is accordingly dismissed, and an order of Certiorari and Mandamus will be directed to District Justice Donnelly to convict the company of breaches of the Licensing Acts.

The State (John Hennessy and Chariot Inns Ltd.) v. Superintendent Commons — Supreme Court (Henchy, Griffin and Kenny JJ.) unreported, 29th July, 1976.

CRIMINAL LAW APPEAL ON CAPITAL MURDER CHARGE DISMISSED ON ALL GROUNDS

The appellants, Noel and Marie Murray, husband and wife, were convicted of the capital murder of Garda Reynolds in St. Anne's Park, Raheny, under the Criminal Justice Procedure Act 1964, in the Special Criminal Court on 9th June, 1976, and sentenced to death.

They appeal on the following grounds :-

(1) That the verdict of capital murder against the two defendants was against the weight of evidence, in that the evidence did not allegedly establish that Garda Reynolds pursued the get away car acting in the course of his duty, nor because he suspected that a felony had been committed but that he merely pursued them in order to remonstrate with the driver for dangerous driving. This is rejected, because the behaviour of the four occupants of the get-away car, who had committed a bank raid in Killester, in abandoning this car in St. Anne's Park, and fleeing from Garda Reynolds, and the conduct of Garda Reynolds in pursuing them on foot in civilian attire apparently amounted to over-whelming evidence that Garda Reynolds was acting in the course of his duty in first pursuing the get-away car, and subsequently pursuing the occupants when they fled, and of actually suspecting the occupants of having committed a serious crime.

(2) There was undoubtedly a common design to rob the bank by force of arms, and this common design included all necessary steps in getting and keeping the stolen money. It cannot therefore be contended that, as he did not use a gun, Noel Murray was not guilty of murder. In this case, the accused carried arms, and threatened to use them upon anyone opposing them.

(3) Mrs. Murray contends that the shot she fired at Garda Reynolds was accidental. But this is quite unsustainable as the Guard was hit at close range. Furthermore at the time Mrs. Murray was carrying a gun that was loaded and ready for use.

(4) There was a mistrial, because the Special Criminal Court tried other counts in addition to capital murder. There is no rule of law which prohibits the trial of other offences with a count to murder. Counsel for the accused did not make any objection at the trial on this ground. This ground is accordingly rejected.

(5) There was a mistrial, because the Special Criminal Court wrongly refused several applications for adjournment made on behalf of the appellants. This arose from the fact that, on the 16th day of the trial, Stenson, who was being tried with them, became mentally ill, and his trial was adjourned. There was some question as to whether he could help upon the admissibility of the evidence made by the appellants to the Gardai, but the Court pointed out the application was premature. It was apparently proper for the Court to proceed without hearing this evidence.

(6) A member of the Special Criminal Court, who was a District Justice, had on a previous occasion participated in an adjudication in a criminal trial involving both appellants. However this Justice had taken the constitutional oath to dispense justice without fear or favour, and there was no evidence that he had been prejudiced as a result of this.

(7) The Special Criminal Court, in considering the case of Marie Murray, had not considered the doctrine of marital coercion. Under this doctrine, there is a presumption that if a wife commits a criminal act in the presence of her husband, this act was committed under coercion from her husband. However this defence is not available in the case of murder.

(8) The Special Criminal Court had prevented each appellant from addressing the Court before sentence of death was pronounced. The Court contended that the appellants would not address them in an orderly way, and that this constituted a disruption of the Court. As the appellants, by their own alleged conduct, were prevented from speaking, this ground fails.

(9) Once the appellants had been convicted of capital murder, it was contended that no sentence should have been imposed on them in relation to other offences, of which they were convicted. As it was proper to indict the defendants on counts other than the count of capital murder, and if the Court convicts them, it is proper for the Court to impose a suitable sentence.

(10) It is alleged that the appellants should have been present in Court when the death sentence was pronounced. However, in the latter portion of the trial, both accused had by their violent conduct time and again obliged the Court to require their removal from the Court room. They were placed in cells convenient to the Court, and were provided with electronic devices to enable them to hear everything that was said in Court. The members of the Court in the fact of provocation displayed at all times the greatest patience. In view of their deliberately contrived provocative behaviour, the Court had no alternative but to pronounce sentence in their absence.

(11) The question raised is whether the Criminal Justice Act 1964 created a new offence, because it abolished capital punishment for most murders, and confined it in future to specified well-defined cases. If capital murder is a new offence, there would be a presumption that an accused person was not guilty unless he had a *mens rea* in relation to all the ingredients of the offence. In such a case, no person could be convicted of the capital murder of a Garda, unless the prosecutor established that the accused knew that the victim was a Garda acting in the course of his duty. S.3(5) of the 1964 Act states specifically that "capital murder shall not be treated as a distinct offence from murder for any purpose". It follows that no new offence was created. While the prosecution had the obligation of proving the additional allegations which will bring the offence within the category of capital murder, it is immaterial whether the accused knew that the person who pursued them was acting in the course of his duty.

(12) The ground that the trial was in general unsatisfactory is rejected. The Court had in fact extended the greatest courtesy and consideration to the accused under extreme provocation at all times. Their trial was conducted with absolute fairness, and the evidence pointed unequivocally to their guilt.

The Court felt that the appeal raised a point of law of exceptional

importance, and granted an appeal to the Supreme Court. Later the Supreme Court fixed the hearing for 1st November, and granted a stay of execution of the death sentence.

The People (D.P.P.) v. Noel and Marie Murray — Court of Criminal Appeal (O'Higgins C.J., Doyle and McMahon JJ.) — unreported — 29th July, 1976.

(Note :- No legal authorities were cited in the judgment).

GRANTING OF LEGAL AID

Reasons given by Supreme Court for quashing conviction and sentences imposed upon the accused in the absence of their solicitor, despite the granting of legal aid.

The facts of this case were reported in the April, 1976 Gazette at page 11. Healy was 18 years old when, in June, 1974, he was charged in the Children's Court, with breaking and entering St. Mary's Rugby Club and stealing property, and pleaded guilty. Sentence was deferred to enable him to pay £18.80 — the value of the property — but by 31 July, 1974, when the Court sat, Healy had gone to England. Consequently a bench warrant was issued for his arrest. He was thereupon arrested, brought before the Court on 15th January, 1975, and sentenced to 3 months detention in St. Patrick's.

Meanwhile, on 13th December, 1974, Healy and Foran, who was then 16, were charged in Dundrum District Court with having stolen and caused malicious damages to a motor car, and elected to have the charges dealt with summarily, and pleaded guilty. They were remanded for five days in custody, and were then charged with causing malicious damages to another motor car which in this case they pleaded guilty to stealing. They were then remanded on bail until 30 December, but were unable to get it; on that date, they were granted a Certificate for legal aid, but were not able to secure a lawyer, even when the case was listed on 30 January, 1975. The Justice thereupon decided to punish them without further ado, and sentenced both of them to 6 months detention in St. Patrick's for stealing and a further 6 months for malicious damage.

On 7 February, Foran obtained 3 conditional Orders of Certiorari in respect of the 3 convictions, and on 21 February, 1975, Healy obtained similar Orders in respect of his 3 convictions. Cause was shown by the State, but nevertheless Gannon J. made the conditional Orders of Certiorari absolute on 29 January, 1975. The three defendants then appealed, and the Supreme Court dismissed the appeal on 18 March, 1976, but stated they would give their reasons later. These young men had no particular educational attainments, and no legal knowledge. As they had no means, they could not engage lawyers for their defence.

O'Higgins C.J. stated that the Preamble to the Constitution makes clear that rights given by the Constitution must be considered in accordance with concepts of Prudence, Justice and Charity, which may change and develop according as to whether society does so. As Walsh J. said in **McGee v. Attorney-General** (1974) I.R. 319 — "No interpretation of the Constitution is intended to be final for all time. It is given in the light of he prevailing ideas and concepts". The prosecutors contend that the Justices, in sentencing them, denied them the right to a fair trial, as well as their personal rights. The concept of Justice, referred to in the Preamble is undoubtedly carried into the Courts, by Art. 34. The Justice that is to be administered by the Courts must import not only fairness and fair procedures, but also regard to the dignity of the individual. No Court under the Constitution has jurisdiction to act contrary to Justice. Even Article 38 makes it mandatory that every criminal trial shall be conducted in accordance with Justice, and that the person accused be afforded every opportunity to defend himself. If this were not so, the dignity of the individual would be ignored, and the State would have failed to vindicate his personal rights. Because of ignorance, or lack of education, justice may require that an accused should have legal assistance, and that if necessary the State should aid him. According to **McDonald's case** (1965 I.R. 217), and the **East Donegal Mart case** (1973) I.R. 388 — Justice requires that a person charged must be afforded the opportunity by the State of being represented — otherwise the Court would tolerate injustice. This is specifically confirmed by the wording of Art. 6 (3) (a) of the European Convention on Human Rights ratified by Ireland on 25th February, 1953. The American Supreme Court had held, in **Gideon v. Wainwright Corrections Director** 372 U.S. that the right of an indigent defendant in a criminal trial for a serious offence to have the assistance of counsel is a fundamental right. The Criminal Justice (Legal Aid) Act 1962 provided that a person seeking legal aid must apply for it, but a person's constitutional right is violated, if, due to ignorance, he does not apply for legal aid. Accordingly the convictions and sentences in these cases were pronounced in violation of the constitutional rights of both accused, as justice requires a lawyer to defend them.

Per Henchy J. Art. 40(3) of the Constitution which defends and vindicates the personal right of every citizen, implies at the very least a guarantee that a citizen shall not be deprived of his liberty as a result of a criminal trial conducted in a manner calculated to shut him out from a reasonable opportunity of establishing his innocence. If, by the 1962 Act, a District Justice grants free legal aid by reason of the gravity of the charge, this is a judicial determination that an accused is entitled to have such legal aid, or he would otherwise be exposed to the risk of injustice. But by virtue of his proclaimed duty to uphold the Constitution, it is the duty of the Justice to see not merely that the application is granted, but to ensure that the accused will not be tried against his will without the benefit of legal aid. In sentencing the accused without legal representation, the Justice deprived them of a guaranteed constitutional right. A trial without legal aid in such circumstances is not a trial in due course of law. Where the known circumstances are such as to show that the accused would be entitled to free legal aid, and he is not so informed, and is subsequently convicted and deprived of his liberty, such conviction and detention obviously stem from a total disregard of his constitutionally guaranteed rights.

Kenny J. also delivered a judgment to the same effect. **Parke J.** concurred with **O'Higgins C.J.** The Supreme Court accordingly unanimously dismissed the appeal from the granting of an absolute order of Certiorari in these cases by Gannon J.

The State (Healy and Foran) v. The Governor of St. Patrick's Institution and District Justices Eileen Kennedy and O'Reilly. Reasons given by full Supreme Court for dismissing appeal — unreported — 22 July, 1976.

RECENT IRISH CASES

CONTEMPT OF COURT

Conditional Order of sequestration made against periodical company and of attachment against its editor in respect of letters criticising Special Criminal Court.

Appeal against refusal of Finlay P. to issue a conditional order of attachment against Hibernia National Review Ltd. and its editor, John Mulcahy for publishing letters from Mr. O'Donohoe and Mr. Henry dealing with the trial and conviction of Noel and Marie Murray by the Special Criminal Court. Mr. O'Donohoe, of the Student's Christian Movement in Trinity College, had stated that "they were tried without jury and virtually without evidence in circumstances which, to say the very least, cast strong doubts on the machinations of both Gardai and Government to procure a guilty verdict." Mr. Henry suggested that the Special Criminal Court conducted a travesty of a trial, that they did not give the accused the benefit of the doubt, and that the only evidence against the accused was their own statements.

It is quite valid criticism to debate the retention of the death penalty, any provision of the Offences against the State Acts, and the establishment of the Special Criminal Court. In the prosecution case, there was evidence fully reported in the press that a gun was found in Mr. Murray's house, for which he accepted responsibility, and that the bullet which killed the Garda was fired from this gun. Accordingly Mr. Henry's statement that the only evidence against the Murrays was their statements was a complete misrepresentation of the evidence, and thus a contempt of Court.

The Court will make no order against Mr. O'Donohoe, but will make a conditional order of sequestration against the Hibernia Co., and a conditional order of attachment against Mr. Mulcahy. The company and Mr. Mulcahy will have 21 days from the date of the service of the order to show cause why the conditional order should not be made absolute.

The State (Director of Public Prosecutions) v. Hibernia National Review Ltd., Mulcahy and O'Donohoe — Supreme Court (O'Higgins C. J., Kenny and Parke JJ. per Kenny J. — unreported — 14th July, 1976.

CRIMINAL LAW — PRACTICE

A Circuit Judge, on appeal from the District Court, may not impose a sentence of detention in St. Patrick's Institution to follow a sentence of imprisonment.

This appeal is a test case. The question is whether a Circuit Court Judge, when hearing an appeal from a District Court in a criminal case, is bound by the same sentencing limitations imposed on the District Court by S. 5 of the Criminal Justice Act 1951. The effect of this Section is that, where two or more sentences passed by the District Court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed twelve months.

The prosecutor in these Certiorari proceedings was convicted and sentenced in the District Court on 18th February, 1976 in respect of 14 offences. He was sentenced to 12 months imprisonment in respect of 12 offences, and to 3 months each in respect of the other 2 offences, all sentences to run concurrently. He appealed to the Circuit Court, which set aside the 2 concurrent sentences of 12 months imprisonment, which were accordingly affirmed by the Circuit Court on 6th July, 1976.

Apart from these sentences, White had been convicted on 25th August, 1975, on a charge of assault, and sentenced to 12 months detention in St. Patrick's Institution, as he was under 17 years of age then. On appeal to the Circuit Court the sentence was affirmed on 12th March, 1976, but Judge Martin ordered that this sentence was to start to run from the expiration of the cumulative sentence of 12 months imprisonment in Mountjoy Jail imposed on 18th February, 1976.

The applicant applied for an order of Certiorari to quash the order made by Circuit Judge Martin, on the ground that such order was made without jurisdiction, as being in breach of the sentencing limitation set out by S. 5 of the Criminal Justice Act 1951. McMahon J. duly granted this order of Certiorari and quashed the sentence of detention in St. Patrick's Institution. An appeal has been taken to try to reverse McMahon J.'s decision.

There is no doubt that, if Judge Martin had imposed a sentence of imprisonment which was to run from the termination of the cumulative term of 12 months imprisonment, it would have breached the limitation set by S. 5 of the Criminal Justice Act 1951, which applies as much to District Court Appeals in the Circuit Court as to proceedings in the District Court.

However a sentence of detention in St. Patrick's is not classified as imprisonment but is a separate and distinct form of penal detention instituted by the Criminal Justice Act 1960. When the offender came before Judge Martin, he was already in Mountjoy Prison serving the concurrent sentences to which he had been sentenced on 18th February, 1976. In those circumstances, the overlaping sentence of 12 months detention in St. Patrick's could not stand, as such a sentence was allowable only in lieu of imprisonment, and the Judge had no power to make the order he did, as S. 13 of the Criminal Justice Act 1960 only empowers detention in St. Patrick's in lieu of penal servitude and imprisonment. The purpose of St. Patrick's which replaces the former Borstal is a special unit for young male offenders between 16 and 21 years, which aims at their reformation and the prevention of crime, while prisons exist primarily for the penal detention of convicted criminals

Another effect of Judge Martin's Order was that, having served a sentence in Mountjoy Prison, the accused would subsequently be a fit subject for St. Patrick's. No Court has jurisdiction to make such an Order. Accordingly McMahon J.'s Order that a Certiorari be issued is affirmed, and the appeal is dismissed.

The State (Richard White) v. Circuit Judge Martin—Supreme Court (Henchy, Griffin and Parke JJ.) per Menchy J. — unreported — 21st October, 1976.

DAMAGES

Plaintiff living in uninhabitable house entitled to damages for inconvenience, and for loss due to increase in price.

The plaintiff and her family had gone into occupation of a house which the defendant had built for her. This house was shortly afterwards found to have serious defects, and subsequently became to all intents and purposes uninhabitable. The plaintiff then sued the builder defendant, and a settlement was reached between the parties on 10th

October, 1975. The settlement provided as follows,—(1) For the sale by the plaintiff to the defendant of the premises for £16,000. (2) That a sum of £4,000 be paid by the defendant as a deposit on the exchange of contracts before 20th October, 1975, (3) That the defendant agreed to pay £1,600 towards the costs of the action, (4) That £2,005 lodged in Court be paid out to the plaintiff. This was done, but the defendant did not perform any other part of the settlement agreement.

Shortly afterwards, the plaintiff found an alternative house available at £16,000, and entered into a tentative agreement to purchase it. As the defendant had not performed the terms of the settlement agreement, the plaintiff was unable to make a binding agreement.

The plaintiff claims damages in respect of:—(1) loss of the bargain to purchase the new house, and (2) discomfort, inconvenience and distress at having to remain over the winter in an uninhabitable house.

The plaintiff cited *Capital & Suburban Properties v. Swycher*, (1976) 2W. L. R. 822 in support. The Capital Properties caes was one in which a vendor, having obtained a decree for Specific Performance, which the purchaser did not carry out, claimed Recission of the contract and Damages for breach of the decree. The Court of Appeal (Buckley and Orr L.JJ. and Sir John Pennycuick) unanimously held that the purchaser's failure to complete, when time had been made of the essence of the contract was neither waived by the claim for specific performance nor superseded by the decree made by the claim. Nevertheless the vendor was not entitled to Damages as well as Recission; as he was obliged to elect at the trial whether to repudiate the contract and claim damages, or to affirm the contract and recover the remedies due. The appeal from Foster J. would be allowed. It was held that the principle stated in the Capital Properties case did not apply in this case, as the damages claimed there were Common Law Damages and not Equitable Damages.

In a proper case, Lord Cairn's Act provides that a vendor is entitled to damages as well as specific performance.

The following damages were accordingly awarded:—

(1) £2,000 for losses due to increase in price.

(2) £750 for distress and inconvenience in having to remain over the winter in an uninhabitable house.

Murphy v. Quality Homes — McWilliam J. — unreported — 22 June, 1976.

GUARDIANSHIP OF INFANTS

Mother awarded custody of daughter of 6, and son of 3, in view of their age.

Application by husband for custody of his daughter Hanna, aged 6, and his son, Michael, aged 3. The husband plaintiff and wife defendant were married in August, 1968, and both reside in the same house in Blackrock, Co. Dublin, despite the fact that the marriage has irretrievably broken down. The paramount consideration, as defined in S. 3 of the Guardianship of Infants Act, is the religious and moral intellectual, physical and social welfare of the infants. The defendant's suggestion that there was any impropriety between the plaintiff and named women is rejected. It was held that both plaintiff and defendant were equally suitable to look after the children but, in view of their tender years, custody should be awarded to the defendant mother. Submissions will be heard in regard to the plaintiff's access to his children.

O'D v. O'D — Hamilton J. — unreported — 17th June, 1976.

HABEAS CORPUS

Habeas Corpus refused on ground that jury convicting accused consisted of ratepayers and did not contain women.

The prosecutor was charged in Dublin Circuit Criminal Court with larceny and receiving. The trial lasted three days, and on 17th December, 1975, the accused was found guilty of receiving stolen property, and was sentenced to seven years penal servitude. An appeal to the Court of Criminal Appeal was dismissed.

The accused then applied for a conditional order of *Habeas Corpus*, on the ground that the jury that convicted him was composed of ratepayers and did not contain any women, and was thus contrary to the Supreme Court decision in *De Burca and Anderson v. the Attorney General*, 12th December, 1975. During the empanelling of the jury at the trial, the accused did not object to its composition.

It is said that the right to trial by jury conferred by Art. 38 of the Constitution is an inalienable right conferred not only on an accused person for his protection when he faces an indictable charge, which he cannot apparently waive, but that this right is conferred also on society at large. This contention is rejected as the right to trial by jury conferred by Art. 38 is manifestly a privilege accorded to a person charged with an offence. It is not derived from any concept of the human personality, nor from any principle antecedent to or superior to positive law. This does not appear to be a right vested in the community generally.

As the prosecutor was capable of waiving any objection to the jury selected in his case, which he apparently did, there was no duty laid upon the trial Judge in the course of the trial to discharge the jury, upon the ground that a decision delivered by the Supreme Court between the accused's arraignment and the time of the verdict of the jury had declared the provisions of the Juries Act 1927 to be inconsistent with the Constitution.

Although the question of the retroactive effect of decisions with regard to the constitutionality of the laws were argued at length by counsel, no decision was taken on this matter by the Court.

The cause shown will consequently be allowed, and the conditional Order of *Habeas Corpus* will be disallowed.

The People (Michael Byrne) v. Governor of Mountjoy Prison — High Court — Divisional Court — (Finlay P., Murnaghan and McMahon JJ.) per Finlay P. — Unreported — 17th July, 1976.

LICENSING

Refusal to grant license in shopping centre, on the ground that there are too many licensed premises in the neighbourhood.

The applicant, is a nominee of North-East Development Ltd., who

owns a shopping centre known as Boyne Centre, Drogheda. The application is for a declaration under S. 15 of the Intoxicating Liquor Act 1960 that the premises in the shopping centre, when altered under the plans submitted, will be convenient to be licensed under S. 4 of the Licensing (Ireland) Act 1902.

The formal proofs required by S. 4 have been duly complied with in this case, but no effective trading has been carried on in the premises in the last two years. Fifty five individual licensees and the Star and Crescent Club have objected to the granting of the licence on the ground of (1) The unfitness of the applicant, (2) The unfitness of the premises, and (3) the number of previously licensed premises in the town. As to (1), this objection is open, and may be dealt with later. As to (2), the structure and lay-out of the premises as proposed to be adapted will be eminently suitable and fit for use as a licensed premises.

Evidence was tendered to show that there was a considerable amount of residential development in the district since 1940. According to *Re Cummins* — (1964) I. R. 67, this evidence may not be taken into consideration, but only the position at present. There was conflicting evidence as to the adequacy of the facilities and accommodation of the presently existing licensed houses, but undoubtedly some are of a very high standard and not unduly crowded. In *Re George Doyle* — (1946) I. R. 125, Maguire P., in granting the licence, took into consideration the fact that the new licences would not unduly increase the facilities in the neighbourhood. As several licences have already been granted to shopping centres, it would be inconsistent to refuse this application on that ground alone. But in this particular instance, this objection is valid. The application is accordingly refused.

Re Patrick Scallan and the Intoxicating Liquor Acts—Circuit Judge McWilliam — Drogheda Circuit Court—28th February, 1975—unreported.

Correction: The last sentence in **the State (John Hennessy and Chariot Inns Ltd.) v. Superintendent Commons**—Supreme Court —29 July 1976 — at page 27 should read:—The appeal is accordingly dismissed and an Order of Certiorari and Mandamus will be granted to District Justice Donnelly to grant an interim order to carry on the trade in the licensed premises until the Annual Geeral Licensing Session.

BANKING

Bank not negligent in mistakenly finding overdraft due and returning cheque unpaid. There is no contractual relationship between the plaintiffs as payees of the cheque, who happened also to be customers of the Bank, and the Bank itself, but only between the drawers of the cheque and the Bank.

The facts of this case were stated in the May, 1975, Gazette at page 108. Hamilton J. in December, 1974, held that the paying Banker defendant, by giving too wide a discretion to Managers had negligently failed to exercise reasonable care and skill. He directed that an inquiry should be held as to the the amount of damages due to plaintiff. The defendant Bank appealed. The appeal was unanimously allowed by the Supreme Court, and Hamilton J.'s decision was reversed.

O'Higgins, C. J. concurred with the judgments of Henchy J. and Kenny J. Parke J. agreed with the judgment of Griffin J. Henchy J., having fully considered the relevant matters in a detailed judgment, stated the facts as follows:—

At the beginning of March 1970 the services provided by Irish banks began to be disrupted. The cause was a go-slow campaign by the bank officials in support of a claim against the Banks which was being made by the officials' trade union. The immediate results of this disruption of services was that within the banking system the processing of bank transactions fell into arrears. Whereas in normal conditions the period during which a presented cheque would be cleared and debited against the drawer's account would be at most only a few days, by the end of April 1970 some two million bank transactions, including some cheques drawn before the start of the go-slow campaign, had not been processed. It would have taken a month's work to clear those arrears, which had accumulated both in the various branches of the banks and in the central clearing house which the banks use for clearing each other's cheques.

A stop was put to this progressively deteriorating situation on the 30th April 1970 when all the banks shut down. There was now a total break in banking services. This is continued until the dispute was settled, upon which the banks restarted business on the 21st October 1970, but only behind closed doors.

The normal method of clearing cheques through the central clearing house in Dublin was then adopted to cope with the mountaineous arrears that had accumulated. It was decided by the Banks, as a means of dealing with the backlog of unprocessed cheques, and as the fairest and most expeditious method, and in order to bring customers' accounts up to date in readiness for the reopening of the Banks to the public, that the 1st May 1970 would be treated as the date for the posting in customers' accounts of all pending items.

Henchy J. then stated the facts as follows:—

Palgrave Murphy Ltd., and the plaintiffs, who are the Dublin port authority, both happened to be customers of the Bank of Ireland. The account of Palgrave Murphy Ltd. was in the O'Connell Street, Dublin, branch, and the plaintiffs' account was in the head office in College Green. On the 26th March, 1970, Palgrave Murphy Ltd. drew a cheque for a sum amounting to £18,129.93 on their O'Connell Street account in favour of the plaintiffs. This cheque was received by the plaintiffs on the 1st April and lodged by them to their account in College Green on the same day. The account of Palgrave Murphy Ltd. was then adequate to meet the cheque. Unfortunately, because of the go-slow campaign in the banks, although this cheque passed into the central clearing house on the 2nd April 1970, it got bogged down in the arrears that were accumulating there. In fact, it did not emerge from the central clearing house until after the shut-down of the banks had ended on the 21st October 1970.

Blame for this delay cannot be attributed to the Bank of Ireland.

It was simply a by-product of the dispute between the Banks and their employees. But the inability to have the cheque promptly processed through the central clearing house not alone prevented the cheque from being honoured at the beginning of April 1970, when the account of Palgrave Murphy Ltd. was adequate to meet it. In November 1970 the account of Palgrave Murphy Ltd. was inadequate to meet all the outstanding cheques that had been drawn on it. By then, Palgrave Murphy Ltd. had fallen into a state of insolvency which has since then resulted in the liquidation of the company.

The arrears in the O'Connell Street branch of the Bank of Ireland resulting from the go-slow and from the shut-down were not cleared until the 14th November 1970. On that date it was discovered that the account of Palgrave Murphy Ltd., showed that it was overdrawn to the extent of £93,983. The company had no overdraft facilities; yet cheques totalling £108,985 had been drawn on its O'Connell Street account. The officials in the O'Connell Street branch decided to dishonour cheques sufficient in aggregate value to wipe out that overdraft. The cheques to be dishonoured were chosen by lot. Individual cheques were then picked out at random for payment, and their amounts totted up. Amongst those cheques was the cheque for £18,129.93.

Henchy J. considered the law to be as follows:—

"The submission made on behalf of the plaintiffs means that there was superimposed on the contractual relationship between the Bank as paying banker and Palgrave Murphy Ltd., in regard to the decision as to payment of this cheque, a further contractual relationship between the Bank and the plaintiffs, arising from the fact that, as payees of the cheque, the plaintiffs happened to be customers of the Bank, albeit in another branch. Such contractual relationship, it is submitted, required the Bank, acting as a collecting bank, to exercise reasonable skill, care and diligence towards the plaintiffs, and that this cheque would consequently have been paid.

In my judgment the contractual relationship contended for did not exist. Under our law and our system of banking, when cheques drawn by a customer on a particular branch arrive in that branch from the central clearing house, the bank, in deciding whether to pay those cheques, acts entirely as a paying bank and, apart from statute, is bound only by the contract between it and the drawer of the cheque. I find no authority – judicial, textbook or otherwise – to support the proposition that in such circumstances the bank has a contractual duty to a payee of one of those cheques who happens to be a customer in another branch of the bank. The existence of such a contractual duty would run counter to both legal principle and sound banking practice.

It is sufficient to hold that the absence of a contractual duty owed to the plaintiffs as payees of the cheque by the Bank of Ireland in the exercise of its functions as a paying bank in dealing with the cheque, defeats the plaintiffs' claim for damages for negligence on the part of the Bank in carrying out its contractual obligations."

The principles of law to be applied were stated by **Kenny J.** as follows:—

The plaintiff Board said that as the cheque for £18,129 had been given to the College Green branch for collection from the O'Connell Street branch and that as both were branches of the defendants, they should be treated as one bank. When branch banking began in the first half of the last century, the Courts had to frame rules to deal with the problems which it presented. The general rule is that branch banks are agents of one principal firm but it is settled law that when the conduct of the business of banking requires that they should be treated as distinct trading bodies, the law will regard them in this way (*The King v. Lovitt*, 1912 A.C. 212). Under the new clearing arrangement cheques of the same bank lodged at one branch for payment at another are not dealt with within the bank but are sent to the general clearing house used by all the Associated Banks for presentation at the other branch. This seems to me to show that the necessities of banking require that the two branches should be treated as separate trading bodies.

In my view the correct approach to this case is not to treat the two branches as agents of a common principal but to consider separately whether the O'Connell Street branch as a paying banker or the College Green branch as a collecting banker were guilty of any breach of contract or of duty to the plaintiffs.

The trial Judge decided that the defendants were liable as paying bankers because they should have forseen that their refusal to pay the cheque would cause the plaintiffs loss. Foreseeability does not create any liability for foreseen economic loss unless there is a special relationship between the parties as there was in *Hedley Byrne & Co. Ltd. v. Heller* (1964) A.C. 465. Commercial life would become impossible if foreseeability that one's action or inaction would cause economic loss to another were to create liability. (*Weller & Co. v. Foot and Mouth Disease Research Institute* (1965) 3 All E.R. 560).

In my opinion the defendants as paying bankers are not liable to the plaintiffs for the non-payment of the cheque given by Palgrave Murphy and lodged in the College Green Branch.

Griffin J. stated the principles of the law of banking to be adopted in this case as follows:—

In the extraordinary circumstances that existed in 1970, when it was necessary to deal with over two million cheques which had built up in the banks, the Associated Banks agreed to adopt what appeared to them to be the fairest and most equitable method of dealing with these cheques, i.e. by treating all cheques as if they were paid on the 1st of May 1970. This ensured that all cheques, in what counsel called "the banking system" were treated as if they were presented for payment on that day. One of the main reasons for this decision was that, while some branches were reasonably up to date, there were inordinate delays in some of the larger branches.

Dublin Port and Docks Board v. Bank of Ireland — Full Supreme Court – unreported – 22nd July, 1976.

RECENT IRISH CASES

INSURANCE

Insurance Company who refuses to arbitrate is in breach of a condition and cannot repudiate liability for an accident in which their company client is fully liable.

The first plaintiff, Buckley's Stores Ltd., is a company incorporated in February, 1958. The second plaintiff, Patrick Buckley was at all material times a director of that company. They owned a business in Millstreet, Co. Cork, and in 1967, bought premises in Academy Street, Cork, to convert into a departmental store. These premises were opened for business on 5th October, 1967, and many employees of the Millstreet premises were temporarily employed in the Cork premises pending the employment of the required additional staff. Two girls, Noreen Bourke and Kathleen Cronin were driven by Patrick Buckley from Millstreet to Cork each morning, and driven home each evening. On 9th October, 1967, there was a collision in which the car, belonging to the first plaintiff, but driven by Patrick Buckley, was involved; as a result Noreen Bourke and Kathleen Cronin sustained injuries and loss. Liability for the accident was fully admitted by the plaintiffs.

At the time of the accident, the first plaintiffs had the following policies of insurance:

(1) A policy of insurance with the National Employers Mutual Guardian Insurance Association Ltd. (hereinafter called "National Employers"), by which the said Association agreed to indemnify the insured against liability at law for damages and claimant's costs and expenses in respect of injury sustained by any person under a contract of service or apprenticeship with the insured, if the bodily injury is sustained in the course of employment at their business in Cork city.

(2) A policy of insurance with the Federated Employers Insurance Association Ltd. (hereinafter called the "Federated Employers") whereby that defendant agreed to insure the first plaintiff against liability for damages at law and claimant's costs in respect of bodily injury sustained by any person under a contract of service or apprenticeship with the plaintiff, if such injury is sustained in the course of employment at their business in Millstreet, Co. Cork.

(3) A policy of insurance with the Norwich Union Fire Insurance Society Ltd. (hereinafter called the "Norwich Union") whereby that defendant agreed, subject to the terms and conditions of the policy, to indemnify the insured Company, and any person driving with their consent against claims shall become liable to pay to any person by way of damages or costs in respect of injury to person or property in connection with the vehicle described in the Schedule.

Claims were instituted in the High Court on 2nd May, 1968, by Noreen Bourke and Kathleen Cronin against Patrick Buckley, and each of the 3 separate defendant insurance companies were notified of the claim. After the statement of claim had been delivered on 8th January, 1969, the question arose as to which of the three defendants was liable to indemnify Patrick Buckley in respect of the claim.

As a result of a lengthy correspondence during 1969, the Norwich Union were prepared to pay 50% of the claim, provided that the National Employers and the Federated Employers would each contribute 25% of the loss. As a result of correspondence, on 26th February, 1970, the National Employers agreed to pay 25% of the damages subject to the aforementioned conditions. However, on 14th April, 1970, the Federated Employers informed Mr. Buckley's solicitor that they were quite satisfied that their policy did not provide any indemnity. Subsequently the National Employers heard of this, and informed the solicitor that they were not prepared to make any contribution. On 31st July, 1970, the Norwich Union informed the solicitor that, in their opinion, the accident arose out of the course of employment of the injured women, and in those circumstances they were not prepared to contribute more than 50% of the total cost.

On 5 August, 1970, Patrick Buckley's solicitor wrote to the three Insurance Companies concerned that he proposed to seek arbitration in accordance with the terms of their policies, and suggested the late Mr. John A. Costello as arbitrator. Both the Federated Employers and the Norwich Union agreed that the dispute would be referred to arbitration. But the National Employers refused to submit it to arbitration on the ground that their liability was not at stake. On 19th October, 1970, Mr. Buckley's solicitor informed the National Employers that both the Norwich Union and the Federated Employers had agreed to the appointment of Mr. Costello as arbitrator. As a result of further correspondence, the National Employers still refused to take part in the arbitration.

The arbitration proceedings started on 31st July, 1971, and the arbitrator subsequently adjourned the proceedings. On 1st September, 1971, Mr. Buckley's solicitor wrote to the National Employers informing them of the situation, and stating that, if they declined to submit the matter to arbitration his instructions were to institute proceedings claiming indemnity. The National Employers however continued to reiterate their previous position that, as the proceedings had been instituted by Patrick Buckley and not by Buckley's Stores Ltd., they had never declined to indemnify Buckley's Stores. By letter of 20th October, 1971, Mr. Buckley's solicitor informed the National Employers that the arbitration would be resumed in the Four Courts on 27th October, 1971, but they did not attend. On 28th October, Buckley's Stores, wrote to invoke cover under the policy covering their employees in the Cork City branch. The Solicitor invited them to submit to arbitration, but on 8th November 1971, they declined to do so.

On 12th November, 1971, the solicitor for the injured women wrote to Mr. Buckley's solicitor stating that they wished to sue him personally, and as agent for Messrs. Buckley's Stores of Cork and of Millstreet. On 16th November, Mr. Buckley's solicitor forwarded a copy of this letter to National Employers, stating that it was now obvious that Messrs Buckley's Stores Ltd. were involved in the proceedings. The case of the injured women against Buckley's Stores Ltd. and Patrick Buckley was listed for the High Court sitting in Cork in July, 1972. On 27th July, 1972, Mr. Buckley's solicitor informed National Employers that Miss Cronin's action had been settled for £1,870 and costs, and that Miss Bourke's action had been settled for £4,000 and costs. On 8th August, 1972, the solicitor forwarded copies of the orders of the High Court to National Employers, and again asked them to consider their former decision. National Employers then referred the matter to their own solicitors, who wrote to Mr. Buckley's solicitor on 11th September, 1972, that they would advise their

clients to submit the difference which had arisen to a new arbitration, but could not take part in the present arbitration, as Messrs. Buckley's Stores Ltd. had committed a serious breach of the conditions by agreeing to be added as defendants. As a result of their solicitor's advice, National Employers wrote to Mr. Buckley's solicitor on 13th September that, as a result of the gross breach committed by Buckley's Stores Ltd., they repudiated liability in respect of the accident, and would not take part in the current arbitration.

On 4th January, 1973, the respective sums awarded by the High Court were paid to Miss Cronin and Miss Bourke respectively by Mr. Patrick Buckley. Miss Bourke's costs were taxed at £869, while Miss Cronin's costs were taxed at £731.

The present proceedings were instituted by the plaintiffs on 22nd May 1973. On 18th October, 1973, Mr. Costello delivered the arbitration award, in which he found that the Federated Employers were not liable to indemnify the plaintiffs in respect of their claims. The Norwich Union would only be liable for the indemnity if the National Employers were not so liable—and *vice versa*. The Court must now determine whether in fact National Employers are now liable to indemnify Messrs. Buckley's Stores Ltd. in respect of the claims of the injured women. This Court made an order dismissing Federated Employers from the proceedings. As a result of evidence tendered, Hamilton J. is satisfied that, at the time of their accident, the injured women were employees of Buckley Stores Ltd., in their Cork City premises. Hamilton J. is also satisfied that these girls could not have conveniently reached Cork city without getting a lift from Mr. Patrick Buckley, and that consequently, at the time of the accident, they were in the course of the employment of Buckley's Stores Ltd. in Cork city. Consequently National Employers were at all times fully liable to indemnify Buckley's Stores in respect of the claims brought by the injured women. Messrs. Buckley's Stores kept National Employers fully informed of the negotiations but admittedly National Employers did not consent to the settlement of the claims.

However Messrs. Buckley's Stores Ltd. reiterated their claim again and again in the correspondence between National Employers and Messrs Buckley's Stores' solicitor. By steadfastly refusing to agree to submit the matter to arbitration, in accordance with the conditions in the policy National Employers were undoubtedly in breach of a condition in the agreement. It is obvious that a party who is in breach of a condition cannot invoke another condition in the same policy to avoid liability. By agreeing to provide indemnity to Buckley's Ltd. in Cork city, National Employers had thereby agreed to waive the conditions of policy. Consequently National Employers are fully liable to indemnify Buckley's Stores Ltd. in respect of these claims, the amounts awarded in the judgments, the costs, the further costs in defending these proceedings, and the interest paid by the plaintiffs on the amount borrowed to enable them to pay the amounts of the judgment.

Buckley's Stores Ltd. and Patrick Buckley v. National Employers Mutual General Insurance Association Ltd. and others — Hamilton J. — unreported — 10th April, 1975.

DAMAGES

— RIGHT OF SUPPORT

Defendants who negligently demolish plaintiff's premises by not providing proper support must pay compensation to plaintiff by restoring the premises in full to the position they were previously in.

The plaintiff claims injunction against the defendants, who are respectively a developer. a firm of builders and the foreman of the builders for negligence for lack of support of the premises, 66 Aungier Street, Dublin. The plaintiff is an auctioneer practising in Dublin for the last 10 years, and practised in Rathmines until 1972. In April, 1972 he purchased the freehold of 66 Aungier Street for £7,000 and carried out extensive structural alterations for an extra £12,000 which took a year to complete. This included office accommodation on the ground floor for his business, as well as three new double flats, and 2 single flatlets, which yielded a profit rent of £60 per week. Apart from that, minimum repairs were carried out in 3 rooms which were let to statutory tenants of more than 70 years of age under the Rent Acts. Before 1972, the adjoining house, 67 Aungier Street, had been demolished, and support was given to No. 66 by flying shores. The plaintiff had carried on business in the premises since 1973.

In September, 1975, the defendants had started work on the building of foundations for the new building intended to be erected on the site of No. 67. Due to their negligence, the result of this work was to remove substantially the support from the side wall of No. 66. Consequently a collapse of the wall of No. 66 occurred on 2 September, 1975. Since then the premises have not been used, and are still in a dangerous condition. It is therefore necessary to demolish the remainder of No. 66 without causing damage to No. 65.

As there was a conflict of evidence involving a difference of cost of £7,000 between the consulting engineers of the plaintiff and of the defendant respectively, Finlay P., at the hearing of the action, ordered the defendants to carry out the demolition, as they had been mainly responsible for the lack of support.

The main question to be determined is whether the plaintiff is entitled to the cost of replacing 66 Aungier Street with a new comparable building to that which was destroyed. The defendants contend on the other hand that he is only entitled to be compensated by the market value of the house at the time it was destroyed. Finlay P. had already granted a mandatory injunction ordering the defendants to demolish the premises, and to pay to the plaintiff the cost of demolition. The plaintiff contends that the full cost of rebuilding is necessary as the only basis in which he can be restored without loss to his previous position.

The defendant contended:—

(1) That it was not essential for the plaintiff to carry on business at 66 Aungier Street, and that he could acquire suitable alternative accommodation instead.

(2) That if the plaintiff were to build a new house on the site of 66 Aungier Street, he would acquire a capital asset greatly in excess to that he had before.

(3) That, as the defendants had only been guilty of negligence, and not of wilful default, the cost of rebuilding the house, as opposed to the payment of the market value, would be an unjustified burden upon him.

On the evidence it is clear that,

if the plaintiff recovers sufficient compensation to enable him to finance that operation, he *bona fide* intends to resume practising as an auctioneer there. When the premises were destroyed, the plaintiff found temporary unsuitable office accommodation in 69 Aungier Street in order to remain in that area.

It is quite clear that at all relative times there has not been comparable premises to 66 Aungier Street for the plaintiff to purchase. From evidence available, it appears that the market value of these premises just before the collapse was £35,000. The cost of reconstruction after demolition has been completed will be £65,000 plus engineering and architectural fees. After reconstruction, the letting value will be from £2,000 to £2,500 greater than the old premises. It is likely that ultimately planning permission could be obtained to use these lettings for business purposes. It is probable that the plaintiff would obtain similar premises somewhere on the south side of the city for £35,000.

From the cases cited, the principles applicable are:—

(1) When a building is damaged or destroyed as a result of the tort of another, the owner is entitled to damages, *unless*:—

(a) The Court is satisfied that he has not got a *bona fide* intention of restoring the building *or*

(b) The Court is satisfied that, if the owner does not take steps to repair the building, there is available to him an alternative method which would restore him to his previous position.

(2) If, in restoring the building, the owner has not altered at the expense of the defendants the design, size or quality of the building which was destroyed, there should not be any deduction from the cost of restoration.

(3) If the Court is satisfied that the only reasonable method of restoring the plaintiff's position is the restoration required, it should not deny him that, merely by reason of a substantial difference between that cost and the alternative method of compensation on the basis of market value—**Harbutts v. Wayne Tank Co. (1970) 1 Q.B. 447.**

Accordingly it was held that it was neither unreasonable nor unnecessary for the plaintiff to restore this building, as in the alternative there is no step he could have taken which would restore him to his previous position. As the plaintiff is now receiving the full cost of the rebuilding (£65,000), his claim for alternative office accommodation during the reconstruction, and for the loss of rents and the storage of furniture for a further 12 months is rejected. The damages will accordingly be assessed as follows:—

Cost of rebuilding	£65,000
Architects, Surveyors and Engineers Fees	£10,000
Architects Fees to date ...	£ 2,800
Rent of Alternative Premises	£ 190
Loss of Rent to date	£ 3,000
Renovation of No. 69, Aungier Street	£ 500
Storage of furniture to date	£ 660
Loss of earnings	£ 1,250
Total:	£83,400

Judgment is accordingly given for £83,400 damages.

Munnelly v. Calcon Ltd., John Sisk & Son (Dublin) Ltd. and Another—Finlay P. — unreported — 30th July, 1976.

MASTER & SERVANT

Garda's dismissal held to be null and void

In a reserved judgment delivered in the High Court, Mr. Justice McWilliam held that an order made by the Commissioner of the Garda Siochana, Mr. Edmund P. Garvey, dismissing a 21-year-old Garda, stationed at Blackrock, Co. Dublin, at the end of his two-year probationary period was null and void.

The action was taken against the Commissioner by Garda Brendan M. Hynes, a native of Dundalk, Co. Louth, whose services were dispensed with by the Commissioner on September 17th last on the grounds that he was not likely to become an efficient and well-conducted Garda.

During the hearing of the action earlier in November, it was stated that Garda Hynes, who had been stationed at Cabinteely, Co. Dublin, prior to his transfer to Blackrock, had been on sick leave for 39 days during his probationary period and that he had produced medical certificates in respect of 32 of those days.

The Commissioner had stated on affidavit that most of the absences occurred immediately prior to, or subsequent to, rest periods, when Garda Hynes, would have been away from duty in any event.

Mr. Justice McWilliam, in his reserved judgment, said he would grant Garda Hynes the declaration that the order of the Commissioner, whereby he purported to dispense with his services as and from September 24th, was null and void.

Mr. Justice McWilliam said Garda Hynes appeared to have done reasonably well during his initial training at Templemore and did not come under adverse notice except in respect of two or three trifling matters which every recruit in every force in the world had probably experienced.

He was then stationed at Cabinteely and appeared to have carried out his duties in a satisfactory manner except that he was absent from duty on medical grounds for 39 days between March 1975 and July 1976, a period of about 16 months.

Notwithstanding the form of the Commissioner's order, it was clear, said Mr. Justice McWilliams, that these absences weighed with the Commissioner or his office.

Garda Hynes, he continued, was required to attend for an examination by the Garda Surgeon on September 6th and the Commissioner, in his affidavit, stated that he considered the absences to have been excessive and not indicative of the health required for a member of the Force and that if Garda Hynes was malingering this would render him unfit to be a member. The surgeon had certified that the Garda's sick record had been excessive and that the position had been fully explained to the Garda.

The surgeon had stated: "I would consider this case a doubtful proposition and would hesitate to forecast a satisfactory future as he appears to have a frivolous and immature attitude to the job in general". The medical evidence for the Garda was to the effect that, having had treatment, he was now fully fit and would continue to have good health.

Mr. Justice McWilliams said he accepted the contention of the Garda that the Discipline Regulation applied to breaches of discipline by recruit guards but he did not read into the statement of the Commissioner that he considered that the Garda was malingering. The Commissioner was merely saying the Garda was ill far too much to be a useful guard and that, if it was contended that he was not ill as much as that, he must have been malingering.

Mr. Justice McWilliam said it seemed to him that it would have been perfectly proper for the Commissioner to consider that a member, who was absent so often on

health grounds, was not fitted physically to perform his duties. The Garda himself must have appreciated that he was off duty a lot, although in most cases the Judge considered the Commissioner would obtain a medical report of a more comprehensive nature than the one before him in this case.

Finally the Judge said it was difficult to accept that there was a proper consideration of the case by the Commissioner at the proper time when, having given one ground for discharge in the order he made, his affidavit stated that the discharge was really made on a different ground.

Counsel who represented Garda Hynes, said his client had not received any pay or suspension allowance since September 24th.

Mr. Justice McWilliam said the order of the Court was that the Commissioner's order was null and void. This meant that Garda Hynes did not cease to be a recruit Garda and it appeared to him to follow from that that the Garda should be paid. But this matter was not the responsibility of the Court. He would give both parties liberty to apply to the Court.

He granted costs to Garda Hynes and granted a stay of execution on the order of the court pending an appeal by the Commissioner.

Hynes v. Garda Commissioner Garvey — High Court — McWilliam J. — unreported — 19th November 1976.

PASSING OFF

Injunction granted and £1,500 damages awarded to plaintiff because defendants sold their product in a box identical to that of the plaintiff.

This case concerns the marketing of equipment consisting of light ropes held by or attached to the hands and feet, and passing over pulleys thus enabling the arms and legs and other parts of the body to be exercised. The plaintiffs were appointed sole distributors in Ireland for one of the parts of this American equipment called the Body Shaper, introduced to Ireland at the end of 1974. The product was advertised in some newspapers, mainly the "Sunday World". While originally the equipment was imported, now it is made in Ireland. The equipment was sold in a box with the label "5 Minute Body Shaper Plan". Apart from the equipment, there was a comprehensive booklet of 30 pages containing photographs of men and women in various positions during exercises.

This Body Shaper was sold at £6 on which there was an estimated profit of £2.10. During 1975, a very successful mail order business was developed. In 1976, however, several other brands came on the market, including that of the defendants, which was sold at a much lower price; this was also an American product called "Slimliner". The plaintiffs complain that the packaging and advertising of the Slimliner had been done so as to mislead or deceive purchasers, and to lead them to believe that they were purchasing the plaintiff's product, and detail their complaint.

The size of the Slimline box was the same as that of the Body Shaper. The defendants advertised extensively Slimliner on television, giving prominence to the size of the box. The American defendants employed an Irish advertising firm specifically to prepare the box and deal with the advertising, and, in so doing, produced the plaintiff's box and booklet, and asked the Irish advertisers to imitate it. There is no doubt that the box produced for the defendants was in several respects very similar to that of the plaintiffs.

The general principles of law are clear. A person selling a product in such a way as to mislead the public into believing that it is the product of another person is liable to that other person for injury to the goodwill of the business. It is not necessary to produce evidence that any person was actually deceived, provided that the goods are marketed in such a way that they are calculated to deceive, nor is it necessary to establish an intention to deceive.

In this case, the goods were undoubtedly marketed in a way calculated to deceive. In constructing their box, the defendants and their advertisers overstepped the mark by including too many similarities to the plaintiff's box. Consequently the plaintiffs are entitled to an injunction restraining the defendants from advertising their product which includes the matter complained of. As it is necessary to estimate the damages, the fact that there was other legitimate competition, and the plaintiffs themselves intended to introduce a cheaper model should be taken into account; accordingly a sum of £1,500 will be awarded.

Grange Marketing Ltd. v M. & Q. Plastic Products Ltd. — McWilliam J. — unreported — 17th June, 1976.

LABOUR LAW

Conditional order of attachment for picketing despite Court Order.

A Conditional Order of attachment was granted by Mr. Justice Hamilton in the High Court, in Dublin, against a retired Co. Clare labourer who, it was claimed, had stamped on a court order served on him.

Mr. Justice Hamilton held that there was a *prima facia* case of gross contempt against Michael Dowd, of Killaloe. He directed that the order be served on the Commissioner of the Garda Siochana directing the defendant to be brought before the Court.

The conditional order of attachment was granted on the application of Louis de Courcy Ltd., whose registered office is in Limerick.

Last month the Court granted the Limerick company an injunction restraining Mr. Dowd from picketing their premises at Glentworth Street and from publishing libellous allegations concerning the company in their practice as auctioneers and valuers.

A solicitor's apprentice in an affidavit on behalf of D. J. O'Malley and Co., said that on Tuesday at 4 p.m. he approached Mr. Dowd at Glentworth Street and informed him he was serving High Court documents on him. Mr. Dowd made no reply.

The apprentice said he placed a copy of the High Court order between Mr. Dowd's hands. At the time he was carrying a placard. Mr. Dowd, he said, allowed the copy of the order to fall into the footpath and proceeded to stamp on it with his feet, destroying it, and walked up and down the footpath outside the company's offices.

De Courcy v. Dowd - Hamilton J. - unreported - 1 December, 1976.

Note — As Dowd would not subsequently undertake not to picket, the Order was made absolute, and he was imprisoned for contempt.

RECENT IRISH CASES

CONTEMPT OF COURT

High Court discharges conditional order against Irish Press Ltd. and others for contempt.

The President of the High Court (Mr. Justice Finlay) on 15 December refused to make absolute conditional orders of attachment in proceedings in which the Director of Public Prosecutions sought to have Irish Press Ltd., the editor, Mr. Tim Pat Coogan, Mr. T. P. O'Mahony, a journalist, and Mr. Gerald Y. Goldberg, a Cork solicitor, committed to prison for contempt of court.

The President said he was satisfied that good cause had been shown by all the respondents against the making absolute of the conditional order.

The matter arose out of the publication of an article in the *Irish Press* on July 11th, 1975, under the heading: "Torture being used on suspects, says lawyer".

The article referred to an open letter by Mr. Goldberg to the Minister for Justice regarding allegations concerning his clients in custody.

When the original order of attachment was made by the Court in July 1975, an affidavit by Walter Carroll, a solicitor attached to the office of the Director of Public Prosecutions, was before the Court. He said that three of the persons mentioned in the column, Bernard Lynch, David O'Donnell and Bartholomew Madden, were on July 11th on remand to the District Court in Cork charged with the murder of Laurence White and that a fourth man, Finbarr Doyle, was on remand charged with being an accessory before the fact to murder.

Mr. Donal Barrington, S.C., for the Director of Public Prosecutions submitted that the Court was not really concerned with these allegations. The only issue for the Court was whether the article in question was intended to prejudice the trial of the four men.

One of the matters which the Director of Public Prosecutions complained of was the statement of the solicitor's letter which said that certain statements made by the accused persons were not voluntary.

The Director brought the matter to the Court's attention because he feared it might prejudice the intended trial.

Mr. Richard N. Cooke, S.C., representing Irish Press Ltd., Mr. Coogan and Mr. O'Mahony, said he had not put in a replying affidavit because he was prepared to offer Mr. Coogan and Mr. O'Mahony as witnesses to give evidence and to be cross-examined if either party wished.

Mr. Cooke said the article in question contained an abstract of a letter written by an officer of the Court in the performance of what he (Mr. Goldberg) conceived to be his duty in relation to his clients. The letter was issued on behalf of the solicitor to the newspapers. There was no doubt about its authenticity or origin.

It did not occur to any of the experienced journalists assembled in conference that it was in any way a contempt of Court, or could be so construed.

Mr. Cooke said the article was vetted by two senior journalists with 20 years' and 40 years' experience, to make sure it was not libellous. The most striking thing about it was that it never occurred to anybody that it could be contempt of court.

He claimed that what had been published had been a statement of fact which bore on a trial that might take place. Where the publication did not bear directly on the guilt or innocence of an accused person it did not affect the defence or the prosecution. One must look keenly at what had been actually said because there was the primary factor of prejudice in either taking up the case for or against the accused persons.

"I would like to make the newspapers position clear. We had no intention whatever of being guilty of contempt of court."

Thomas O'Mahony said the letter which was the basis of his article had been received by him in the Cork office of the *Irish Press*. Its origin had been authenticated to him by a colleague and he had no doubt as to its origin.

He took the view that if a man of Mr. Goldberg's standing had felt it necessary to make a statement of this kind then that in itself was obviously newsworthy. The matters referred to in the statement were obviously of considerable public importance and he therefore felt he had a duty to report the substance of the document, which he did.

Timothy Coogan, editor, said Mr. O'Mahony had let them know in advance that the article was coming, so it appeared on the news list.

There was some surprise expressed that it was Mr. Goldberg who was known throughout the country. He was not, in any sense, known as habitually dealing with political or Republican people, or being in any way anti-Establishment. He regarded it as both of interest and importance, but essentially dangerous, and considered that it should be examined carefully for libel. The Department of Justice was contacted as well. The question of contempt of court did not arise.

Mr. Cooke — You were more worried about libel? — We were. At the time there had been no precedent for contempt of court, in my experience. This was in July, 1975. It would be quite different now because, following the appointment of the Director of Public Prosecutions, these cases have become quite prevalent. Every newspaper in Dublin has been prosecuted for contempt of court, as well as *Hibernia*.

Opening the case for Mr. Goldberg, Mr. John Lovatt-Dolan, S.C., submitted that the allegation of contempt by his client had been contained in an article which he did not write and for which, in one sense, he could not be legally responsible. He might have been factually responsible in the sense that he supplied certain information as a result of which the article was written but he could not be responsible for the form the article took. He submitted that in those circumstances he could not be found guilty of contempt because he could have no control over what was written.

The President said that if Mr. Goldberg was writing to the Minister and not for publication, it was probably unnecessary to be cautious. Writing a letter to the Minister could never be contempt but the difficulty was writing to him and offering it to the press for publication.

Mr. Lovatt-Dolan submitted that the actual wording used could not conceivably influence the course of the trial. The accused persons, at that stage, were innocent and the presumptions were entirely in their favour and the claim that the statements were not voluntary could not be to their disadvantage.

Mr. Lovatt-Dolan submitted that an accused person was entitled to a declaration of his own innocence on TV or in the news media. Such a declaration could not be construed as interfering with the course of justice.

The President said that no comment likely to prejudice the course

of a trial could be made. That should not be misunderstood by anyone concerned with the administration of justice.

Mr. Lovatt-Dolan said that if an accused had the right to declare his innocence of a charge it followed that his legal representative was entitled to do it on his behalf.

The President referred to the portion of Mr. Goldberg's letter which stated that the statements were not made voluntarily, and said that the test should be whether to any ordinary person reading it, it indicated not only that the statements were not voluntary but that it carried at least, if not an overt concealed allegation that the statements had been obtained by torture.

The President said he thought publication of the letter making even this much reference to a pending criminal proceeding was unwise. He thought it was unwise for a solicitor and unwise for a newspaper but a decision that it lacked wisdom did not constitute contempt of Court. In those circumstances he would discharge the conditional order.

Mr. Goldberg, in an affidavit sworn on August 8th, 1975, said his letter to the Minister showed his concern and intention to avoid making any reference or excessive reference of any improper nature in respect of the four accused persons, because he appreciated that these cases were *sub-judice*, and even in a letter to the Minister, he did not wish, as a matter of prudence, to be guilty of any breach of the *sub-judice* rule. He therefore exercised caution and restraint in the words which he used.

Mr. Goldberg said he believed it was his duty to express concern, that his clients were undergoing prolonged interrogation at which he was not permitted to attend and advise them. He was concerned also with the failure of the Garda authorities to furnish him with copies of statements which he understood had been made in writing by certain of the accused men and, also, by other clients who were not then, or who had not since been charged.

He believed there was nothing in his letter which could have been regarded as tending to prejudice the possibility of a proper trial taking place and that his concern was to ensure just that.

"I say that there has been a failure on the part of the Minister, the Garda authorities and the Director of Public Prosecutions to deal with my complaints".

He said he had been practising for almost 41 years and in all of his experience he had never been so hampered or found himself in such difficult and distressing circumstances as he had encountered in this case.

"I do not see how I can discharge my professional obligations and reconcile my conscience with my knowledge of facts and events in this case without being false to my clients, to myself, to the profession of which I am a member and to the State of which I am a citizen".

He said that while he asked the *Irish Press* to publish his letter he did not anticipate that an article would be written nor was he consulted as to this.

D.P.P. v. Irish Press and Goldberg — Finlay P. — unreported — 15th December, 1976.

Note—The Judgment in this case is not available.

CENSORSHIP

Censorship Board's powers to be tested in banning "Family Planning".

Mr. Justice McMahon in the High Court on December 10 made an order directing the Censorship of Publications Board to show cause why its order prohibiting the publication and sale of a booklet called *Family Planning* should not be quashed.

A conditional order of *certiorari* was granted to Frank Crummey, his wife, Evelyn, and Family Planning Services Ltd., and, in view of the fact that constitutional issues are to be raised in the proceedings, Mr. Justice McMahon directed that the conditional order be served not only on the Censorship of Publications Board but also on the Chief State Solicitor on behalf of the Attorney General

Mr. R. J. O'Hanlon, S.C., who, made the application, read an affidavit by Mr. Crummey, a private investigator, of Crumlin, Dublin, who stated that he was aged 40 and he was married to the second-named prosecutor on April 4th, 1961 and they had five children aged between 15 and 5. He said that he was at present a full-time student at Trinity College, Dublin, studying economics and social studies. His wife was employed in a restaurant in order to supplement his limited income as a private investigator. Without his wife's income he would no longer be able to continue as a student since his other job was of necessity a part-time one.

It was imperative that they should not have any more children at this stage as that would place an intolerable burden on their family and their resources. In that regard it was essential for them that they have the fullest information immediately available concerning family planning.

Mr. Crummey said he was a director of Family Planning Services Ltd., of 67 Pembroke Road, Dublin, which was a non-profit making company and employed three persons. It was one of the major distributors of *Family Planning* and he personally distributed it during 1972 and advertised it in *Woman's Way* magazine.

Family Planning Services Ltd. provided a postal and personal service to about 30,000 couples in the State in respect of (a) the supply of non-prescriptive contraceptives and (b) information and advice on family planning. They had distributed many thousand copies of *Family Planning.*

Mr. Crummey referred to a copy of Iris Oifguil dated December 3rd, 1976, from which it appeared that the Censorship of Publications Board had ordered that *Family Planning,* being allegedly obscene and indecent, should be banned from publication and/or sale. Neither he nor any member nor director of Family Planning Association had been given notice of the proposed banning of the booklet, nor were they given time to make argument against the banning, and in that regard he claimed that their natural rights and legal and constitutional rights had been infringed.

As a result of the ban, his wife and he were being frustrated in their constitutional right to information on family planning. He also claimed that his reputation was being damaged by the ban; his children and friends would see him as a distributor of obscene and indecent literature.

Mr. Crummey, said that in February 1974, Family Planning Services Ltd. had been prosecuted in the District Court on charges of selling this booklet in contravention of Section 16 of the Censorship of Publications Act, 1929, charging that it advocated the unnatural prevention of conception. The District Justice dismissed the charge after hearing the prosecutor's evidence. Similar charges had been dismissed against the Irish Family Planning Association.

The ban, said Mr. Crummey, might endanger the existence of the company in that it was of limited value to supply contraceptives, in accordance with the decision of the Supreme Court in *McGee v. the Attorney General* (1974) I. R. 284, without being able also to provide the necessary information to persons wishing to use contraceptives.

He asked that the Censorship Board's order be quashed as it was contrary to natural justice and contrary to the Constitution, and he set out a number of grounds. Among these was a claim that the Board, in making its decision, was exercising a judicial function; it was an unlawful violation of the right of freedom of expression and freedom of opinion and it interfered with the right to marital privacy, which involved the right to determine the size of one's family and the right to have access to contraceptives. He claimed that the result might be unwanted pregnancies.

No grounds whatsoever had been given by the Board to justify the indecent and obscene label applied to this booklet and the booklet could not in any way come within this definition. It was for the public good that the booklet be distributed.

Mr. O'Hanlon said there were several grounds of challenge open, One was whether the Act permitted the Board to prohibit the sale and distribution of a booklet which contained nothing more than material in relation to methods of contraception which had been recognised by the Supreme Court in the case of *McGee v. the Attorney General* I. R. 284 to be permissable and lawful in this country. The Supreme Court had also recognised that it was permissible to import contraceptives devices, and to that extent the lawfulness of the activity was recognised by the decision.

"If the booklet contains nothing further than information of an educational nature in relation to these matters, and if the Act is wide enough to permit a finding by the Board of indecency and obscenity against such a publication and a total banning of its distribution, it is submitted that such a power vested in the Board would seem to be in conflict with the constitutional guarantees contained in Articles 40 to 42 of the Constitution", said Mr. O'Hanlon.

Mr. Justice McMahon said it was clear that the issues raised should be fully considered and therefore a conditional order would be issued.

When Mr. O'Hanlon asked that the grounds should also include a claim that Sections 6 and 7 of the Act were contrary to the constitutional rights of the prosecutors, Mr. Justice McMahon asked him to supply the Registrar with the grounds he wished to put forward, and he directed service on the Board and on the Chief State Solicitor on behalf of the Attorney General.

Crummey v. Censorship of Publications Board — McMahon J. — 10th December, 1976.
Note—The Judgment in thise case is not available.

EXTRADITION

Judge hits at crimes in the name of Patriotism.

In the High Court in Dublin on 10 December Mr. Justice Butler referred to petty criminals trying to draw around themselves a mantle of Irish republicanism and patriotism in order to avoid proper prosecution for criminal offences which had absolutely no political connection.

In refusing to prohibit the extradition of a man wanted in Preston, England, on a charge of stealing a quantity of tuna fish, he said that this was such a case.

"In my view, Irish republicanism and Irish nationalism has a long, proud and chivalrous history, but in recent years numerous crimes have been committed in its name", he said. "Enough unchivalrous and despicable acts have been done without petty criminals getting in on the act, and trying to draw around themselves a mantle of Irish republicanism and patriotism in order to avoid proper prosecution for criminal offences which had absolutely no political connection".

Ordering the extradition of Samuel Hughes, Lismore, Co. Waterford, the Judge awarded the Attorney General the costs of the motion. and said he would give double costs against the applicant, if he could.

"I am quite satisfied that there are no grounds, whatever, that he will be prosecuted for any offence, other than the offence charged in the warrant", the Judge added.

Mr. Justice Butler said the case being made by the British authorities was that Hughes had taken part in the hijacking of two lorries, containing quantities of tuna fish, anoraks and pullovers and that his share of the venture amounted to about £8,000.

Not only was he (Judge) not satisfied but he positively disbelieved and, found as a fact, that at no time was Hughes suspected by the English authorities of being engaged in any IRA activities. He found the only interest the English police had in him was in connection with activities concerning receiving stolen goods.

"I am quite satisfied there are no grounds, whatever, for believing that he will be prosecuted for any offence other than the offence charged in the warrant.

The State (Hughes) v. Attorney General. — Butler J. — unreported — 10th December, 1976.
(Judgment not available).

PRACTICE

Prison Governor ordered to allow visits by Solicitor.

The President of the High Court, Mr. Justice Finlay, on 17 December made an order directing the Governor of Portaloise Prison to admit a Dublin Solicitor, Mr. Patrick McCartan, to the prison to conduct an interview or interviews on reasonable conditions and at reasonable times with Eddie Gallagher, who is serving a 20-year-sentence for kidnapping Dr. Herrema.

The conditions require that Mr. McCartan, on notification of his request for such interviews, should indicate to the Governor the general nature of the legal business concerned. In the event of Mr. McCartan being unaware of the general nature of this, the visit would be allowed on an assurance by him that the interview had been requested by the prisoner, and that to Mr. McCartan's knowledge and belief it was a *bona fide* request for legal assistance.

The application for the order arose from the failure of Mr. McCartan to get a second interview with Gallagher in the prison last month after the prisoner had requested legal aid.

His counsel, Mr. Patrick McEntee, SC, told the Court that on a Thursday Mr. McCartan received word from Portlaoise that he was excluded from visiting on Saturday.

The President said there was a rule that a member of the legal profession could interview a prisoner within the sight but out of the hearing of prison staff. That rule was meaningless if prison staff were to be allowed to take from a solicitor the written instructions he had got from his client and read them. "You

might as well put the prison governor sitting at the table with the solicitor and prisoner, and I am not prepared to have this right strangulated", said the President. How, he asked, could one justify a prison officer taking the notes of a solicitor written in his own hand?

The Governor of Portlaoise Prison Mr. William Reilly, stated in an affidavit that it was essential to have strict control of all visits to the prison, and that this must also extend to members of the legal profession. Before he could allow a solicitor or barrister to have facilities for a professional visit he must be satisfied that the requirements of the Rules for the Government of Prisons 1947 were met.

Mr. Reilly stated he was aware Mr. McCartan was a prominent member of the Prisoners' Rights Organisation and that he had admitted to being a member of Official Sinn Fein.

Mr. MacEntee said a solicitor would be capitulating his function were he to accept that a third party, against whom action might be taken should be informed of the purpose of the visit.

The President said that under the Act the Governor had an obligation to see that the legal adviser was carrying out a *bona fide* act, in order to prevent excess.

The President asked what remedy a solicitor would have if the Governor ruled that he was not satisfied that the visit was on legal business. Surely the balance should be in favour of the constitutional right of the prisoner rather than on any risk involved in allowing it, he said.

The State (McCartan) v. Governor of Portlaoise Prison. — Finlay P. — unreported — 17th December, 1976.
Note—The Judgement in this case is not available.

PRACTICE

Court extends hours for legal consultation in prison.

The Governor of Mountjoy Prison Mr. John Frawley, was ordered by the President of the High Court, Mr. Justice Finlay, to extend the visiting hours to the prison to facilitate a Dublin solicitor, Mr. Patrick McCartan, to consult with his clients.

This brings to an end a 12-month legal battle by nine Dublin solicitors to gain admission after official visiting hours which are from 10 a.m. to 5.00 p.m. The solicitors had claimed that it was inconvenient for them to make professional visits to the prison during the official hours because they were engaged in Court work.

The Governor opposed the extension on the grounds of the necessity for security at the prison. He stated that from 5.30 onwards some 400 prisoners were out of their cells and associating together. This was at a time when it was not possible to have the full complement of prison officers available for visits. He did not place any obstacle in the way of visits once he was satisfied there were reasonable grounds requiring them to take place after 5 p.m.

The President ordered that in addition to the normal visiting hours Mr. McCartan be permitted to visit clients on Monday and Thursday of each week between 5 p.m. and 8 p.m. on he notifying the Governor at or before 2 p.m. that day of his visit to two prisoners. He ordered that the Governor might refuse visits to the basement of the prison where high security prisoners were detained.

The State (McCartan) v Governor Mountjoy. — Finlay P.—unreported —17th December, 1976.
Note—The Judgment in this case is not available.

Circumstances when legal adviser can be admitted to see client in Garda Station.

Finlay P. said that it seemed to him desirable, having regard to the issues raised in this case, to set down certain general principles which could be applied to the question of the right of access of a person in detention by the Garda Siochana to his legal adviser.

"Having regard, however, to the extreme importance of this right, and to the major inroad on the liberty of the individual, which its denial or restriction would involve, I am satisfied that, where a detained person is entitled to access to his legal adviser, this must be achieved in privacy and out of the hearing of any member of the Garda Siochana".

He added: "Furthermore, I am satisfied that the right exists not only in a detained person, who has himself sought to exercise it, but also in a detained person on whose behalf a *bona fide* request for the availability of legal advice has been made".

In the absence of special circumstances, it did not appear to him to be justifiable, that a solicitor such as Mr. Sheehan, of excellent standing, should, upon revealing the source of his instructions, be requested to confirm them by the physical presence at the Garda station of the person who retained him.

Neither did it seem to be justified to issue a blanket prohibition against access by a detained person to a solicitor, the origin of whose instructions were an association or society, rather than an individual.

In the event, though largely due to the patience and proper persistence of Mr. Sheehan, Harrington was not effectively deprived of his right to legal advice.

The President discharged Harrington from his bail after it was stated that the Garda authorities did not propose to pursue the matter further.

The State (Noel Harrington) v. Commissioner of Garda Siochana and others.—Finlay P.—unreported —14th December, 1976.

HABEAS CORPUS — EMERGENCY POWERS

Prosecutor released because detained on suspicion for a second time in respect of the same crime.

On 19th October, 1976, the prosecutor, Hoey was arrested under S. 2 of the Emergency Powers Act, 1976, on suspicion of being involved in causing an explosion which resulted in a murder. The prosecutor was detained by the Garda for an initial period of 48 hours, and, by direction of a Chief Superintendent, for a further 5 days. He was then released on 26th October, and re-arrested at 7.00 p.m. on 5th November, 1976, on suspicion of involvement in the same crime as previously. On this occasion, he was detained at first for 48 hours, but this period was then extented for a further 5 days by direction of a Chief Superintendent. It is contended that S. 2 of the Emergency Powers Act 1976 does not justify a second period of detention for suspicion of involvement in the same offence. Accordingly, upon an application for Habeas Corpus, Finlay P. is not satisfied that he can imply into S. 2 some special qualification about re-arrest. The order of Habeas Corpus will be made absolute, and the prosecutor released.

The State (Hoey) v. Commissioner of the Garda Siochana—Finlay P.—unreported—12th November, 1976.

General Index to Volume 70, 1976

Index to Recent Irish Cases 1976

1976

INDEX

to

SUPREME COURT

and

HIGH COURT

WRITTEN JUDGMENTS

Compiled by N. Lloyd-Blood, B.L.

ADOPTION

Consent

Validity – Power to make Adoption Order dependent upon consent of child's mother – Adoption Board having statutory obligation to satisfy itself that mother understands the nature and effect of her consent – Consent revocable until Adoption Order is made – Mother not informed that consent revocable and not given notice of meeting of Board at which Adoption Order made – Marriage of mother and father of child after Adoption Order was made by Board – Whether statutory requirements obligatory or directory – Adoption order declared a nullity – Adoption Act, 1952, ss. 14 (6), 15 (3) – 164/74 – Supreme Court – 2/6/76.
M. v. An Bord Uchtála.

AFFILIATION

Procedure

High Court jurisdiction – Jurisdiction apparently dependent upon appropriate rules of court – Rules not made – Jurisdiction not excluded – Application of existing High Court rules to create procedure similar to procedure prescribed in statute – Claim for maintenance in excess of District Court jurisdiction – (212/75 – Supreme Court – 29/7/76).
O. v. W.

AGENCY

Principal

Knowledge – Agent's knowledge imputed to principal normally – Otherwise where agent involved in fraud or misfeasance against his principal – (97/75 – Supreme Court – 18/3/76).
United Dominions Trust (Ir.) Ltd. v. Shannon Car Hire Vans Ltd.

ARBITRATION

Reference

Contract – Sale of land – Purchase by tenant of landlord's interest – Purchase price not ascertained – Provision that price to be the number of years purchase of rent that would be fixed under Landlord & Tenant (Ground Rents) Acts, 1967, if rent reserved were a ground rent within meaning of that Act – Price of ground rent under Act of 1967 ascertained by county registrar – Registrar declining to perform function sought to be imposed on him by tenant – No agreement between parties to refer differences to arbitrator – Contract not specifying person to fix price – No arbitration agreement within meaning of s. 2 of Arbitration Act, 1954 – No power in court to appoint arbitrator – (1973 No. 2361P – Hamilton J. – 18/6/76).
Carr v. Phelan.

AUCTION

Reserve

Unlawful use of puffer – Reserve withdrawn – (1974 No. 983P. – Hamilton J. – 27/1/76).
Early v. Fallon.

BANKRUPTCY

Mortgage

Fraudulent preference – Whether company's intention was to prefer mortgagee to other creditors – Intention not established – Mortgage registered within one month of liquidation – (1976 No. 118 Sp. – McWilliam J. – 8/9/76).
Corran Construction Ltd. v. Bank of Ireland Finance Ltd.

Property

Beneficial ownership – Bankrupt the registered owner of 19,000 shares in company – Admission during examination that 7,600 shares belonged to third party – Evidence establishing beneficial ownership of those shares not in bankrupt – (No. 1633 – Hamilton J. – 7/5/76).
In re O'Keeffe.

CASE STATED

District Court

Jurisdiction – Extradition – Corresponding offence – Question of mixed fact and law – District Justice having power to state Case – (111/1973 – Supreme Court – 22/7/76).
Murphy v. Bayliss.

COMPANY

Charge

Validity – Inaccurate particulars of mortgage delivered to registrar of companies after expiration of statutory time limit – Statute declaring that charge on company's property to be void in that event – Registrar giving certificate of due registration – Statute also stating that such certificate to be conclusive evidence of due registration of charge – Liquidator of company bound by statutory effect of registrar's certificate – Companies Act, 1963, ss. 99, 104 – (1976 No. 37 Sp. – Hamilton J. – 10/12/76).
Lombard & Ulster Banking (Ir.) Ltd. v. Amurec Ltd. (in Liquidation).

Mortgage

Fraudulent preference – Whether company's intention was to prefer mortgagee to other creditors – Intention not established – Mortgage registered within one month of liquidation – (1976 No. 118 Sp. – McWilliam J. – 8/9/76).
Corran Construction Ltd. v. Bank of Ireland Finance Ltd.

Winding up

Constitution – Articles and memorandum – Assets for distribution are not profits – Whether company precluded by its constitution from distributing profits among its members – (1974 No. 28 – Kenny J. – 22/1/76).
Wilson v. Dunnes Stores (Cork) Ltd.

Winding up

Secured creditor – Bank loan to company on strength of existing contract by company to sell its lands and business as a going concern – Company undertaking to repay loan out of purchase price – Subsequent order winding up company – Whether bank having equitable charge on purchase money – Whether bank having a charge on book debt requiring registration under Companies Act, 1963 – (1974 No. 1751P – McWilliam J. – 1/6 and 21/7/76).
In re Kum Tong Restaurant (Dublin) Ltd.

COMPULSORY ACQUISITION

Compensation

Assessment – Value of land at date of notice to treat – Two notices to treat – First notice served before compulsory purchase order became operative – Arbitrator appointed on application of acquiring authority – Statutory power of authority to serve notice after order became operative – Whether landowner had altered his position as a result of service at first notice – Whether authority had adopted first notice by appointment of arbitrator – Value of land at date of second notice proper basis for assessment – Service of first notice ultra vires acquiring authority – No estoppel in face of statute – Housing Act, 1966 s. 79 – (1976 No. 143 SS – McMahon J. – 24/6/76).
Greendale Building Co. v. Dublin County Council.

CONSTITUTION

Legislation

Reference of Bill to Supreme Court – Bill expressed to be for purpose of securing public safety and the preservation of the State – Time of armed conflict in which State not a participant – Resolutions of Houses of Oireachtas as to existence of national emergency – Constitution of Ireland, Articles 26, 28. 3(3) – (Supreme Court – 15/10/76).
Emergency Powers Bill, 1976.

Legislation

Reference of Bill to Supreme Court – Presumption of constitutionality – Extra-territorial effect of enactment – Special Criminal Court – Evidence on commission – Right of representation includes right to cross-examine – Admissibility of evidence – Accused entitled to statement of evidence (Supreme Court – 6/5/76).
In re Criminal Law (Jurisdiction) Bill, 1975.

Personal rights

Bodily integrity – Prisoner's state of mind disturbed – Self-inflicted injuries – Stringent conditions of detention – Right not infringed – (1975 No. 140 SS. – Finlay P. – 13/4/76).
The State (Crawley) v. Governor of Mountjoy Prison.

Personal rights

Liberty – Detention of suspect beyond period allowed – Detention prolonged to enable suspect to complete statement – Detention unlawful – (5-8/76 – C.C.A. – 16/11/76).
The People (D.P.P.) v. Madden & Ors.

Prison Governor

Prison discipline – Breach of discipline by prisoner serving sentence – Punishment imposed by Prison Governor in accordance with regulations – Governor exercising limited function and power of a judical nature in a matter other than a criminal matter – Punishment not unconstitutional – Constitution of Ireland, Article 37 – (1975 No. 613 SS – High Court – 21/1/76).
The State (Murray) v. Governor of Limerick Prison.

Statute

Validity – Delegated legislation – Statutory instrument – Price control – Sale of intoxicating liquor – Whether principles of natural justice applicable to exercise of legislative power – Point not decided as instrument not made arbitrarily or capriciously (1974 No. 1146P – McMahon J. – 28/6/76).
Cassidy v. Minister for Industry and Commerce.

Statute

Validity – Delegated legislation – Power of statutory body to select class of employers and to impose levy on each employer in that class – Levy to be used for training apprentices – Statutory instrument enabling body to impose levy based on an estimate in event of employer failing to make required returns – Whether instrument *ultra vires* the statute conferring the power – Industrial Training Levy (Printing and Paper Industry)

Order, 1972 (S.I. No. 305) – Industrial Training Act, 1967, s. 21 – (1974 No. 3902P – McMahon J. – 28/5/76).
City View Press Ltd. v. An Comhairle Oiliúnta (Training Board).

CONTEMPT OF COURT

Punishment
Criminal contempt – Scandalising court – Custody proceedings – Custody of infants contested between parents – Proceedings heard in camera – Names of infants and photographs revealed in biased article by journalist who also attacked competence and integrity of court – Apology – Fine imposed with imprisonment in default – (142/75 – Supreme Court – 7/7/76).
In re McCann & Kennedy.

CONTRACT

Breach
Damages – Building contract – New dwelling – No express standards – Proper workmanlike standards implied – Cost of remedial work – Cost fixed upon prices existing at date of first reasonable opportunity to remedy breaches – Damages for owner's inconvenience and lack of enjoyment – (1974 No. 1987P – McMahon J. – 19/5/76).
Johnson v. Longleat Properties.

Breach
Liability – Building contract – Sub contract – Employer nominating sub-contractor to erect roof of factory in accordance with sub-contractor's design – Roof defective – Damage resulting from faulty design and poor materials – Contractor liable generally for defective workmanship and materials of sub-contractor – Contractor not liable for damage resulting from faulty design of sub-contractor – Measure of damages recoverable – Cost of remedial work – Cost fixed upon prices existing at date of first reasonable opportunity to remedy defect – (1976 No. 101 SS – McMahon J. – 3/6/76).
Norta Wallpapers (Ir.) Ltd., v. John Sisk & Son (Dublin) Ltd.

Compromise
Breach – Settlement of action for breach of building contract – Failure of defendant to implement settlement – Cause of action for breach of compromise – (1975 No. 4344P – McWilliam J. – 22/6/76.
Murphy v. Quality Homes.

Discharge
Implied term – Appointment of doctor to private hospital – Hospital financed and managed under charitable trusts of will – Appointment permanent unless terminated by governors if insufficient funds available to enable hospital to continue in operation or unless "it should have to close down for any other reason" – Hospital ceasing as private hospital – Termination of appointment valid as term implied that power to terminate operable upon hospital ceasing to operate under management and control of governors and trustees of the charity – (1964 No. 4 Sp. – Gannon J. – 9/7/76)
Browne v. Mulligan.

Formation
Terms – Knowledge of terms – Foreigner signing agreement without knowledge of existence of important express term and without appreciation of the function of a deposit in a sale of land – Whether foreigner bound by agreement – Plaintiff foreigner recovering deposit – (1975 No. 748P – Finlay P. – 1/6/76).
Siebel v. Kent.

Formation
Terms – Price – No price fixed by parties – Provision in agreement that price to be fixed as if circumstances suitable for application of machinery of named statute – No person designated to fix price – Official having power for purposes of statute but refusing to fix price for other purposes – Court having no function to nominate person to ascertain price – No concluded agreement – (1973 No. 2361P – Hamilton J. – 18/6/76).
Carr v. Phelan.

Implied Term
Agency – Plaintiff sole distributing agent for defendant's goods – Implied term that plaintiff would not deal in goods of defendant's competitors – Termination of agency – Implied term that agency terminable by reasonable notice of termination – (1974 No. 3565P – Finlay P. – 8/10/76).
Irish Welding Ltd. v. Philips Electrical (Ir.).

Implied Term
Set off – Implied exclusion of common law right of set off by provisions of building contract which were inconsistent with exercise of that right – (1976 No. 1124 – Finlay P. – 15/11/76).
John Sisk & Sons Ltd. V. Lawter Products B.V.

Rescission
Contract by defendant Building Society to lend plaintiff money in return for mortgage of plaintiff's lands – Express power of defendant to rescind unilaterally before completion of mortgage – Additional term insisted upon by defendant that plaintiff should procure from third parties substantial investments in defendant Society – Investments procured by plaintiff – Subsequent rescission by defendant of contract to lend – Rescission not valid as plaintiff had altered his position – Contract to lend money not enforceable specificially – Assessment of plaintiff's damages to await further evidence – (1974 No. 230P – Finlay P. – 4/3/76).
Duggan v. Allied Irish Building Society.

Terms
Set off – Interim certificate issued to contractor by architect in course of performance of building contract – Failure of employer to pay sum certified – Contractor's motion for summary judgment – Employer claiming right to set off unproved and unquantified counterclaims – Common law right of set-off insconsistent with terms of building contract – Contractor entitled to summary judgment for amount certified – (1976 No. 1124. – Finlay P. – 15/11/76).
John Sisk & Son Ltd. v. Lawter Products B.V.

CRIMINAL LAW

Adjournment
Remand – Jurisdiction – Return for trial – Return to Central Criminal Court – Adjournment and remand of accused in custody – Orders made before arraignment – Court having jurisdiction to make such orders – Habeas Corpus refused – (1976 No. 230 SS – McWilliam J. – 27/8/76).
The State (Pender) v. Governor of Mountjoy Prison.

Appeal
Court of Criminal Appeal – Function – Findings of fact and inferences therefrom made by court of trial – Treatment of such findings and inferences by court of appeal – *The S.S. Gairloch* (1899) 2 I.R. 1 applied – (5-8/1976 – C.C.A. – 16/11/76).
The People (D.P.P.) v. Madden & Ors.

Assault
Assault at common law charged – Trial – Whether charge triable summarily – No offence created by s.42 of Offences Against the Person Act, 1861 – Section 11 of Criminal Justice Act, 1951 – Summary trial authorised – (1976 No. 365 SS – Finlay P. – 29/11/76).
The Attorney General (O'Connor) v. O'Reilly.

Detention
Treatment of detainee – Conduct of police enquiry – Whether ill-treatment would invalidate lawfulness of detention – (1976 No. 439 SS – Finlay P. – 14/12/76).
The State (Harrington) v. Commissioner of Garda Síochána.

Evidence
Admissibility – Statement of suspect in detention – Statement made after expiration of 48 hours of lawful detention – Statement inadmissible – (5-8/1976 – C.C.A. – 16/11/76).
The People (D.P.P.) v. Madden & Ors.

Extradition
Corresponding offence – Foreign warrant – Warrant reciting charge of offence contrary to s. 7 of Forgery Act, 1913 – Enactment also in force in Ireland – Description of offence in warrant omitting "with intent to defraud" – Omission of phrase not fatal as obvious that offence under s. 7 of Act of 1913 was charged – (86/75 – Supreme Court – 5/7/76).
Duff v. Sheehan.

Extradition
Corresponding offence – Question of mixed fact and law – District Justice having power to state Case – (111/76 – Supreme Court – 22/7/76).
Murphy v. Bayliss.

Extradition
Foreign warrant – Validity of warrant presumed "unless the Court sees good reason to the contrary" – Order of District Court for delivery of accused to foreign police for conveyance outside the State – Accused applying for habeas corpus in High Court – Application for leave to adduce evidence of foreign law to extablish that foreign court issued warrant without jurisdiction – Application refused wrongfully – Extradition Act, 1965, s. 55 – (124/75 – Supreme Court – 1/6/76).
Gillespie v. The Attorney General.

Fisheries
Foreign vessel – Entry within fishery limits – Master of foreign sea-fishing boat – Charge that boat entered unlawfully within the exclusive fishery limits of the State contrary to s. 221 of Fisheries Act, 1959 – Charge containing additional statement that person on board boat attempted to fish – Statement inserted because penalty for conviction affected by facts in statement if proved – Conviction in terms of charge – Conviction valid – Section creating one offence only – Penalty increased if offence accompanied by

fishing or an attempt to fish – (1976 No. 220 SS – Finlay P. – 27/7/76).
The State (Neculai) v. McCourt.

Imprisonment
Transfer to mental hospital – Whether original offence excused by state of mind – (59/1976 – Supreme Court – 14/10/76).
The State (Heany) v. Central Mental Hospital.

Infant
Enquiry as to age – Child or young person charged with offence – Procedure governed by age of accused – Statute giving jurisdiction to court even if it was mislead by answer given to enquiry – Statute not applicable where answer to enquiry not given on oath – Section 123 of Children's Act, 1908 – (1976 No. 133 SS – Finlay P. – 30/7/76).
The State (Kenny) v. Ó hUadhaigh.

Infant
Sentence – Child or young person – Imprisonment prohibited unless court certifies that accused of unruly or depraved character so as not to be suitable for detention in place provided by Children's Act, 1908 – Charge and conviction for assault – Evidence adduced in support of charge not sufficient or appropriate to ground certificate – Enquiry required into general character of accused before certificate can be given – (1976 No. 207 SS – Hamilton J. – 29/7/76).
The State (Holland) v. Kennedy.

Jury
Selection of panel – Conviction after trial before judge and jury – Leave to appeal refused – Habeas corpus proceedings raising issue of validity of conviction on ground that provisions of Juries Act, 1927, declared unconstitutional by Supreme Court in other proceedings during trial of accused – Members of jury all qualified and no objection by applicant at trial to method of selecting jury panel – Conviction valid and habeas corpus refused – (1976 No. 197 SS – High Court – 12/7/76).
The People (Byrne) v. Governor of Mountjoy Prison.

Legal Advice
Detainee – Suspect being questioned in police station – Right to legal advice – Procurement of such advice – (1976 No. 439 SS – Finlay P. 14/12/76).
The State (Harrington) v. Commissioner of Garda Síochána.

Legal Aid
Failure – Accused granted certificate for free legal aid – Conviction after trial at which accused not represented – Conviction set aside – Duty of court to inform accused of his right to apply for legal aid – (141, 143, 144/75 – Supreme Court – 22/7/76).
The State (Foran & Healy) v. O'Reilly.

Legal Aid
Police – Interrogation of suspect – Police not obliged to obtain legal assistance for suspect in absence of request – (5-8/1976 – C.C.A. – 16/11/76).
The People (D.P.P.) v. Madden & Ors.

Murder
Capital murder – Joint trial of husband and wife – Armed robbery – Accused escaping after robbery – Accused chased by policeman in civilian clothes – Policeman shot dead by female accused – Ample evidence that deceased was acting in the course of duty suspecting the commission of a felony – Ample evidence of common design to resist arrest by force of arms – No rule of law prohibiting trial of other offences at trial for murder – No mistrial on ground that member of Special Criminal Court had adjudicated at trial of accused for criminal offence on previous occasion – Wife's defence that she acted under coercion of husband not applicable to charge of murder – Not necessary for accused to be in court when sentence pronounced as proceedings relayed to accused – Accused failing to avail of chance to address court on sentence – Capital murder not a new offence but a statutory retention of an old offence and its punishment – Leave to appeal to Supreme Court on point of law – (1976 Nos. 20 & 21 – Court of Criminal Appeal – 29/7/76).
The People (D.P.P.) v. Murray.

Murder
Capital murder – Whether a new offence – Mens rea – Whether prosecution must prove that accused knew that deceased was a policeman acting in the course of his duty – Criminal Justice Act, 1964, s.1 – (137-8/1976 – Supreme Court – 9/12/76).
The People (D.P.P.) v. Murray.

Offence
Planning permission – Change of user – Permission granted for use as "fried fish and chip shop" – Condition imposed that user should not occur between 11 p.m. and 8 a.m. – Permission not required for use as chip shop – Prosecution for alleged user outside authorised hours in contravention of permission – Evidence that witnesses bought "fish and chips" – No evidence that fish was fried fish -- Case stated by District Justice – Held that no satisfactory evidence that shop used as fried fish shop – However, imposition of condition in regard to hours of use as chip shop was a valid imposition or condition in granting permission for use as fried fish shop notwithstanding permission for use as chip shop not required – Further, the ordinary meaning of "chip" was "a fried slice of potato" and so there had been evidence to support a conviction in regard to user as chip shop – (1976 No. 36 SS – Finlay P. – 1/6/76).
Corporation of Dublin v. Raso.

Offence
Proof – Control of foot and mouth disease – Failure to comply with Prohibition Notice served on defendant by veterinary inspector – Notice prohibiting defendant from entering upon specified lands – Notice authorised if inspector "has reason to believe" that the movement of any person may be attended with risk of spread of disease – Conviction in District Court without evidence of inspector – Appeal to Circuit Court – Case stated – Necessary for prosecution to prove that inspector had reason to believe and believed the relevant matters – Appeal Court still having discretion to admit missing evidence being a procedural matter – Foot and Mouth Disease Order, 1956, Article 19 – (113/1974 – Supreme Court – 5/4/76).
The Attorney General (Corbett) v. Halford.

Police
Interrogation – Suspect required to give full account of his movements – Whether any power to require repetition of full account given – Offences Against the State Act, 1939, s. 52 – (5-8/1976 – C.C.A. – 16/11/76).
The People (D.P.P.) v. Madden & Ors.

Procedure
District Court – Plea of guilty – Indictable offence – Court empowered to send accused forward for sentence to the court to which accused, if he had pleaded not guilty, could lawfully "have been sent forward for trial" – Certificate of Attorney General issued under s. 46(1) of Act of 1939 – Accused sent forward properly for sentence under Act of 1967 to Special Criminal Court – Habeas corpus – Offences against the State Act, 1939, s. 13 (2) (b) – (1976 No. 26 SS – Butler J. 16/2/76).
The People (A.G.) v. Littlejohn.

Procedure
District Court – Plea of guilty – Indictable offence – Court empowered to send accused forward for sentence to the court to which accused, if he had pleaded not guilty, could lawfully "have been sent forward for trial" – Certificate of Attorney General issued under s. 46 (1) of Act of 1939 – Certificate valid – Accused sent forward properly for sentence under Act of 1967 to Special Criminal Court – Habeas corpus – Offences against the State Act, 1939, s. 46 (1) – Criminal Procedure Act, 1967, s. 13 (2) (b) – (19/74 & 25/76 – Supreme Court – 18/3/76).
The State (Littlejohn) v. Governor of Mountjoy Prison.

Prosecution
Authority to initiate – Summary charges brought by police in the name of The People and at the suit of the Director of Public Prosecutions – No authority to prosecute given by D.P.P. – District Justice having no power to determine charges – (1976 No. 58 SS – McMahon J. – 10/12/76).
The People (D.P.P.) v. Roddy.

Road Traffic
Alcohol test – Blood sample – Statutory procedure mandatory – Certificate of result of test not stating that certain requirements satisfied – Onus on prosecution to prove aliunde omitted matters – Failure of proof – Adjournment refused – Complaint dismissed – Decision upheld – (103/75 – Supreme Court – 29/7/76).
Verdon v. Downes.

Road Traffic
Caution – Failure to provide blood specimen – Statutory defence if defendant shows that he has not been cautioned in the prescribed manner of "the possible effects of his refusal or failure" – Defendant cautioned in accordance with regulations – Caution informing defendant that he would be liable to be prosecuted for an offence under s. 30 of Act of 1968 – Defendant prosecuted and convicted under that section – Caution failing to inform defendant that on conviction he would be disqualified from holding driving licence for minimum period of one year – "Possible effects" not equivalent of "possible consequences" – Conviction valid – *Attorney General v. Jordan* 107 I.L.T.R. 112 overruled – Case stated – (33/1976 – Supreme Court 8/4/76).
Grogan v. Byrne.

Road Traffic
Insurance – Complaint that defendant was

owner of vehicle when it was used by third party when user was not covered by policy of insurance – Failure of user to produce on demand such policy – No such demand made on defendant – Whether presumption that no policy in existence – Complaint properly dismissed – Case stated – Road Traffic Act, 1961, ss. 56 (4) 69 – (1975 No. 553 SS. – Gannon J. – 15/3/76).
Lyons v. Cooney.

Sentence
Detention – St. Patrick's Institution– Prisoner serving sentence of imprisonment – Appeal by prisoner to Circuit Court from earlier sentence of detention imposed by District Court – Sentence of detention affirmed with variation – Circuit Court purporting to postpone start of detention until expiration of existing sentence of imprisonment – Lack of jurisdiction – Certiorari – (127/1976 – Supreme Court – 21/10/76).
The State (White) v. Martin.

Sentence
Mistake – Two months imprisonment – Sentence recorded as "three months imprisonment" – Judicial shorthand for "convicted and sentenced to three months imprisonment" – Order of certiorari quashing sentence only – Effect of order – Conviction and sentence not severable – Conviction also quashed – Order prohibiting District Justice from substituting "two months imprisonment"– (39/1973 – Supreme Court – 5/4/1976).
The State (Burke) v. o hUadhaigh.

Warrant
Validity – Sentence of 7 years penal servitude be imposed – Sentence recorded on warrant as "to be detained in military custody for a period of 7 years" – Warrant held to be valid – (189/75 – Supreme Court – 27/1/76).
The State (Flannery) v. Governor of Military Detention Barracks.

DAMAGES

Assessment
Fault – Apportionment – Plaintiff claiming damages for personal injuries caused by alleged negligence of two defendants – Question of liability of each party left to jury – Question of degrees of fault of each party also left to jury although trial judge ultimately responsible for deciding those questions – Civil Liability Act, 1961 s. 38 – (1974 No. 3554P – Murnaghan J. – 24/11/76) – Interlocutory ruling during trial.
Lynch v. Lynch.

Assessment
House destroyed – Cost of rebuilding plaintiff's house awarded as damages rather than market value of destroyed house – (1975 No. 3504P – Finlay P. – 30/7/76).
Munnelly v. Calcon Ltd.

Assessment
Inconvenience and discomfort – Breach of building contract – Failure of defendant to implement compromise – (1975 No. 4344 – McWilliam J. – 22/6/76).
Murphy v. Quality Homes.

Assessment
Inconvenience and loss of enjoyment – Breach of building contract – Defects in new house – Assessment of cost of repairs – (1974 No. 198P – McMahon J. – 19/5/76).
Johnson v. Longleat Properties.

Assessment
Injury resulting from death – Claim on behalf of dependants of deceased – Wife and four children – Posthumous child – Deceased farmer with forty acres – Children too young to suffer mental distress – Apportionment of damages – (1975 No. 68P – Murnaghan J. – 5/10/76).
O'Sullivan v. Coras Iompar Eireann.

Contract
Breach – Termination of commercial agreement – Whether plaintiff's damages limited to compensation for loss – Whether such damages should deprive defendant of unjust enrichment resulting from his breach – Breach not calculated by defendant to obtain benefit of unjust enrichment – Damages restricted to compensation for loss – (1975 No. 1007P – Finlay P. 14/7/76).
Hickey & Co. Ltd., v. Roches Stores Stores (Dublin) Ltd.

Contract
Breach – Termination of doctor's contract for services – Three months' notice – Three months salary in lieu of notice – Three months profits for loss of authorised concurrent private practice also awarded – Expenses of removal awarded – (1964 No. 4 Sp. – Gannon J. – 9/7/76).
Murphy v. Mulligan.

DEFENCE FORCES

Member
Discharge – Natural justice – Audi alteram partem – Rule ignored by Minister – Member the holder of an office upon statutory terms – Discharge invalid – Defence Forces Regulations A. 10, paragraph 58 (r) – Defence Act, 1954, s. 73 – (6/76 – Supreme Court – 1/7/76).
The State (Gleeson) v. Minister for Defence.

EMERGENCY POWERS

Police
Arrest – Suspect thought to have committed offence – Release after expiration of statutory period of detention – Suspect arrested a second time in respect of the same offence – Suspect not charged – Whether second period of detention lawful – Habeas corpus – Emergency Powers Act, 1976, s. 2 – (1976 No. 443 SS–Finlay P. – 12/11/76).
The State (Hoey) v. Commissioner of Garda Siochana.

EJECTMENT

Trespasser
Building erected by trespasser – Owner having no knowledge until building completed in eighth year of ownership – Genuine mistake by trespasser who nevertheless had means of knowledge that he was trespassing – Order for possession with stay to enable defendant to pay value of site and damages – Stay to be perpetual if payment made – (1974 No. 2597P – Finlay P. – 28/7/76).
McMahon v. Kerry County Council.

EVIDENCE

Estoppel
Statutory power – Statutory power to be exercised after specified event – Authority exercising power before specified event – Authority exercising power properly on second occasion – Whether authority bound by exercise of power on first occasion – No estoppel in face of statute – (1976 No. 143 SS – McMahon J. – 24/6/76).
Greendale Building Co. v. Dublin County Council.

Extradition
Foreign law – Application for leave to adduce evidence of foreign law to establish foreign warrant issued without jurisdiction – Application refused wrongfully – (124/75 – Supreme Court – 1/6/76).
Gillespie v. The Attorney General.

HIGH COURT

Jurisdiction
Affiliation – Adaptation of High Court procedure to produce procedure prescribed by statute – Claim for maintenance in excess of District Court jurisdiction – (212/75 – Supreme Court – 29/7/76).
O. v. W.

HUSBAND AND WIFE

Infant
Custody – Failure of marriage – Daughter aged 6 years and son aged 3 years – Custody of both children awarded to mother – (1976 No. 77 Sp. – Hamilton J. – 17/6/76).
O'D. v. O'D.

Infant
Custody – Two sons and one daughter – 14, 9 and 3 years – Mother remarrying after divorce in England – Mother pregnant – Children to continue in father's custody – (1975 No. 244 Sp. – McWillaim J. – 26/1/76).
M. v. M.

Infant
Custody – Wife applying for sole custody for purpose of taking child abroad – Intention of wife to marry paramour abroad and to change her religion for that purpose – Husband alive within jurisdiction – Both parents Catholics – No express mutual promise at date of marriage to rear children in that faith – Such promise implied *(In re May,* 92 I.L.T.R. 1). Application refused and custody awarded to father – (Parke J. – 4/2/76).
H. v. H.

Marriage
Nullity – Marriage not consummated – Husband not impotent as such but only in relation to wife – Marriage in 1969 – Decree obtained in ecclesiastical court – Decree of nullity granted to wife – (1/75 – Supreme Court – 1/7/76).
S. v. S.

Property
Matrimonial home – Wife's application for declaration of her estate or interest – Wife's contribution on purchase of house – House conveyed to husband and wife as joint tenants – No reason to alter effect of conveyance at common law – Wife not given and not entitled to any interest in second house purchased solely by husband – Married Women's Status Act, 1957, s. 12 – (1976 No. 77 Sp. – Hamilton J. – 17/6/76).
O'D. v. O'D.

INDUSTRY

Apprentices
Training scheme – Statutory levy imposed on employers – Constitution – Statute – Validity – Delegated legislation – (1974 No. 3902P – McMahon J. – 28/5/76).
City View Press Ltd. v. An Comhairle Oiliunta. (Training Board).

INFANT
Custody
See Husband and Wife.

INJUNCTION
Remedy
Damages – Plaintiff seeking interlocutory injunction – Allegation that defendant had induced third party to act in breach of contract with plaintiff – If tort established by plaintiff, damages an adequate remedy – Interlocutory injunction refused – (1976 No. 1494P – Hamilton J. – 8/9/76).
Reno Engrais et Produits Chemiques S.A. v. Irish Agricultural Wholesale Society Ltd.

JURY
Panel
Method of selection – No objection taken by accused at his trial – Subsequent objection that provisions of Juries Act, 1927, declared unconstitutional – Members of jury all qualified – Conviction valid – Habeas corpus refused – (1976 No. 197 SS – High Court – 12/7/76).
The People (Byrne) v. Governor of Mountjoy Prison.

LANDLORD AND TENANT
Lease
Breach of covenant – Forfeiture – Covenant by lessee not to use or permit premises to be used for trade or business purposes without consent in writing of the lessor – Sublease by lessee expressly allowing user for purpose of business – No attempt to remedy breach – Order for recovery of possession – (1972 No. 3328P – McMahon J. – 3/3/76).
Walsh v. Legge.

New Tenancy
Statutory right – Service of notice of intention to claim such relief – Lessor's interest in premises terminating during term granted by him to lessee – Consequent termination of interest of lessee – Lessee unaware of termination of lessor's interest when serving notice – Failure of lessor to inform lessee of facts and to serve statutory notice on superior landlord – Notice of claim served by lessee on superior landlord – New tenancy directed by court – Term of new lease to be 21 years with rent review at end of seven years – (1976 No. 33 – Gannon J. – 31/5/76).
Eamonn Andrews Productions Ltd. v. Gaiety Theatre (Dublin) Ltd.

Time limit
Extension – Intention to claim new tenancy in tenement – Service of notice of intention – Negotiations by respondent to purchase applicant's interest in tenement – Decision of respondent in July, 1974, not to purchase – Decision not communicated to applicant – Tenancy terminating by expiration of term of years on 31st December – Period for serving notice extended – (D 3255 – Hamilton J. – 25/1/76).
Grey Door Hotel Co. Ltd. v. Pembroke Trust.

LICENSING ACTS
Licence
Interim transfer – Nominee of applicant company – Shareholder and director of company having been convicted of offence under licensing code – Whether valid ground for refusing application – Company held to be distinct persona – (153/75 – Supreme Court – 29/7/76).
The State (Hennessy) v. Donnelly.

Restaurant
Premises with on-licence – Application for certificate stating that portion of premises a restaurant for purpose of s. 13 of Intoxicating Liquor Act, 1927 – No existing user as restaurant – Public bar in said portion – No jurisdiction to issue certificate – (1976 No. 238 SS – Finlay P. – 29/11/76).
Whelan v. Tobin.

LIMITATION OF ACTIONS
Negligence
Motorist – Infant plaintiff injured in motor accident – Driver of car killed in same accident – Plaintiff's action commenced within three years of date of accident against personal representative of driver – Statute requiring that plaintiff's proceedings be commenced within two years after driver's death – Whether plaintiff's property rights protected – Held cause of action barred – Civil Liability Act, 1961, S. 9 – (1969 No. 2136P – Murnaghan J. – 12/7/76).
O'Shea v. Greensmyth.

LOCAL GOVERNMENT
Planning
Compensation – Permission for building development refused – Whether intended development involved material change in the use of any structure or other land – Definition of "use" – Applicant entitled to compensation – Local Government (Planning & Development) Act, 1963, ss. 2, 55, 56 – (1976 No. 229 SS – Finlay P. – 21/12/76).
In re Viscount Securities Ltd.

Planning
Notice – Misleading advertisement – Notice of application for permission to erect three temporary prefabricated classrooms in secondary school – New access to school from cul-de-sac also intended – Permission to develop invalid – (1976 No. 3557 P. – McMahon J. – 12/11/76).
Keleghan v. Corby.

NATURAL JUSTICE
Office Holder
Dismissal – Member of Defence Forces – Audi alteram partem – Rule ignored – Dismissal invalid – (6/76 – Supreme Court – 1/7/76).
The State (Gleeson) v. Minister for Defence.

Police
Dismissal – Statutory procedure – Right of accused to be informed of allegations – Right to be given opportunity of answering charges – *The State (Gleeson) v. Minister for Defence* (S.C. – 1/7/76) considered – Garda Siochana (Discipline) Regulations, 1971, reg. 34. (1976 No. 1715P – Hamilton J. – 8/9/76).
Hogan v. Minister for Justice.

NEGLIGENCE
Builder
Scaffold – Plaintiff injured in fall from scaffold obtained by plaintiff's employers on hire from 3rd defendants – Plaintiff's employers acting as sub-contractors for 2nd defendants – Plaintiff recovering damages from his employers – Building (Safety, Health & Welfare) Regulations, 1959, reg. 29 – (1973 No. 2940P – Murnaghan J. – 1/12/76).
Delaney v. Mather & Platt Ltd.

Demolition
Support – Terrace of houses – Demolition of business premises by negligent removal of support from plaintiff's house – Damages the cost of rebuilding as distinct from market value of destroyed house – (1975 No. 3504P – Finlay P. – 30/7/76).
Munnelly v. Calcon Ltd.

Employer
System of work – Plaintiff railwayman injured in fall from vertical steel ladder – Whether employer should have provided circular metal cage around ladder – Cage not a customary feature of railway installation – No similar accident within 10 years – Defendant's appeal allowed – (137/75 – Supreme Court – 9/2/76).
Bradley v. Coras Iompar Eireann.

NEGOTIABLE INSTRUMENTS
Cheque
Dishonour – Presentment for payment delayed by bank strike – Drawer customer of one branch of bank – Payee customer of another branch – Drawer's account in funds when payee lodged cheque in his branch for collection – Drawer's account insufficient at artificial date chosen by banks as day of settlement at end of strike – Drawer's cheque dishonoured by his (paying) branch – Plaintiff payee claiming damages from bank for negligence and breach of contract – Two branches treated as distinct banks – Plaintiff's claim rejected as paying branch/bank owed no duty to payee – Query whether proper method employed in selecting cheques to be dishonoured – (38/1975 – Supreme Court – 22/7/76).
Dublin Port and Docks Board v. Bank of Ireland.

NUISANCE
Noise
Vibration – Mining activities – Damage to dwellings – Damages in lieu of injunction – (1973 No. 1516P – Gannon J. – (16/2/76).
Halpin v. Tara Mines Ltd.

ORDER
Validity
Attachment – Civil contempt of court – Detention of person in contempt – Transfer to mental hospital – Whether offence excused by state of mind – (59/1976 – Supreme Court – 14/10/76).
The State (Heany) v. Central Mental Hospital.

PARTNERSHIP
Dissolution
Examiner to prepare accounts – Items in dispute – Matter re-entered in court list for issues to be determined by court – Trial of issues on affidavit and oral evidence – Issues determined by court – Interest on balance found due to retiring partner – Costs of all parties payable out of partnership assets – Partnership Act, 1890, s. 42 – (1970 No. 812P – Kenny J. – 22/1/76).
O'Connor v. Woods.

PRACTICE
Action
Transfer – Claim for unliquidated damages in High Court – Assault and battery committed in 1970 – Summons issued in 1975 – No defence delivered – Whether plaintiff had absolute right to trial with jury – No trial with jury in Circuit Court – Action transferred to Circuit Court – *Ronayne v. Ronayne* (1970) I.R. 15 considered – (1975 No. 1183P – McWilliam J. – 23/2/76).
McDonald v. Galvin.

Attachment
Contempt of Court – Civil contempt – Jury not required for trial of issue – *The State (Commins) v. Fawsitt* approved – (59/1976 – Supreme Court – 14/10/76).
The State (Heany) v. Central Mental Hospital.

Attachment
Contempt of Court – civil contempt – Whether issue may be tried without a jury – Order of the Court in a civil action disobeyed by one of the parties – Verdict of jury not required (*McEnroe v. Leonard* 9/12/75 not applied) – Sentence may be of indefinite duration – Constitution of Ireland, Article 38, s. 5 – (1976 Nos. 64 & 65 SS. – Finlay P. – 19/3/76).
The State (Commins) v. Fawsitt.

Attachment
Contempt of Court – Criminal contempt – Bias imputed to judges of Special Criminal Court – False representation about evidence tendered against accused at criminal trial – Conditional order of attachment against editor of publication – Conditional order of sequestration against body corporate which published the contempt – (121/1976 – Supreme Court – 14/7/76).
The State (D.P.P.) v. Hibernia National Review Ltd.

Costs
Taxation – Counsel's fees – Principles stated by Gannon J. in *Dunne v. O'Neill* (1974 I.R. 180) applied (1972 No. 1470P – Parke J. – 12/3/76).
Irish Trust Bank Ltd. v. Central Bank of Ireland.

Procedure
Affiliation – High Court jurisdiction – Jurisdiction apparently dependent upon existence of appropriate rules of court – Rules not made – Jurisdiction not excluded – Application of existing High Court rules to create procedure similar to procedure prescribed by statute – Claim for maintenance in excess of District Court jurisdiction – (212/75 – Supreme Court – 29/7/76).
O. v. W.

Time Limit
Extension – *See* Landlord and Tenant.

PRISON
Discipline
Enforcement – Whether a criminal matter – Limited function of a judicial nature – Constitution – Punishment not unconstitutional – (1975 No. 613 SS. – High Court – 21/1/76).
The State (Murray) v. Governor of Limerick Prison.

RATES
Hereditament
Valuation – Increase in value – Statutory exclusion from liability to rates arising from consequential increase in value of hereditament due to specified works – Valuation (Ir.) Act, 1852, s. 14 – (Gannon J. – 21/12/76).
Nixon v. Commissioner of Valuation.

REAL PROPERTY
Easement
Support Terrace of houses – Demolition of business premises by negligent removal of support from plaintiff's house during rebuilding of adjoining house Measure of damages to be the cost of rebuilding plaintiff's house as distinct from market value of destroyed house – (1975 No. 3504P – Finlay P. – 30/7/76).
Munnelly v. Calcon Ltd.

Trespass
Building erected – Trespasser acting in belief that building site belonged to him – Owner having no knowledge until building completed in eighth year of ownership – Lack of attention by owner to his property and failure to fence plot from surrounding land – Trespasser having means of knowledge that he was trespassing – Unjust enrichment – Ejectment – Order made for possession with stay to enable defendant to pay value of site and damages – Stay to be perpetual if payment made – (1974 No. 2597P – Finlay P. – 28/7/76).
McMahon v. Kerry Co. Council.

REVENUE
Company
Constitution – Distribution of profits – Company not liable for Corporation Profits Tax if a "corporate body which by its constitution is precluded from distributing any profits among its members" – Company so precluded by its articles of association – Revenue claim that provisions in company's Articles relating to the winding up of the company allowed a distribution of profits to its members – Both claims rejected – Finance Act, 1932, s. 47 – (1974 No. 28 – Kenny J. 22/1/76).
Wilson v. Dunnes Stores (Cork) Ltd.

Income Tax
Forestry – Allowable expenses – Cost of purchasing and planting young trees to replace old woodland being a revenue expense and allowable – Cost of preparing waste land for planting being a capital expense – Cost of purchasing and planting young trees on reclaimed waste land being a capital expense – Income Tax Act, 1918, Sch. B, rr. 5 & 7 – (38/1976 – Supreme Court – 20/12/76).
Wilson-Wright v. Connolly.

Income Tax
Occupier of land – Schedule B – Whether taxpayer had the use of land – Taxpayer cultivating, cutting and removing grass from military aerodrome under licence of Minister in whom aerodrome was vested – Whether Act contemplated two users of same land – Taxpayer not the dominant user and not assessable under Schedule B – Income Tax Act, 1967, s. 18 – (13/1975 – Supreme Court – 20/12/76).
O'Conail v. George Shackleton & Sons Ltd.

SALE OF GOODS
Consideration
Failure – Defendant seller not the owner of goods – Property not vested in plaintiff buyer – Buyer claiming recovery of price of goods – Quasi contract – Seller handing over price to owner of goods who became hirer under sham hire-purchase agreement with buyer as a device for obtaining a loan – Plaintiff having no knowledge of true facts – Agency – Agent's knowledge of fraud or misfeasance against his principal not imputed to principal – (97/1975 – Supreme Court – 19/3/76).
United Dominions Trust (Ir.) Ltd. v. Shannon Care Hire Vans Ltd.

SALE OF LAND
Contract
Breach – Discharge – Recission – Sale of licensed premises with intoxicating liquor licence as going concern – No express term stipulating that date fixed by contract for completion to be of essence of contract – Normally such term implied by law in contracts for sale of such premises – Existence of express term relating to interest on purchase money after completion date and conduct of parties excluding implication of such term – Consequently term implied by law that sale (if not completed on or before) should be completed within reasonable period after completion date – Deliberate delay by purchaser who tried to provide purchase money by sale of other property in order to avoid necessity of obtaining bridging loan otherwise required to enable him to complete – Vendor not informed of reason for purchaser's delay – No conveyancing or title difficulties – After expiration of 3 months demand by vendor that purchaser complete within 14 days – Failure of purchaser to so complete – Rescission (and return of deposit) by vendor – Plaintiff purchaser's claim for specific performance – Judgment for defendant – Purchaser in breach of implied term to complete within reasonable period after completion date – (Circuit Appeal – Finlay P. – 31/5/76).
O'Brien v. Seaview Enterprises Ltd.

Contract
Formation – Agreement "subject to contract" – Facts supporting inference that parties had concluded a contract to buy and sell property – Phrase used to indicate that provisions of existing agreement should be recorded in formal written document – Execution of formal contract by vendor not a condition precedent to his liability – (1976 No. 377P – McWilliam J. – 3/11/76).
O'Flaherty v. Arvan Properties Ltd.

Contract
Formation – Knowledge of terms – Foreign purchaser unable to speak English – No independent advice – Contract prepared and deposit taken by helpful estate agent – Express term that deposit (¼ of £72,500) to be forfeited in event of purchaser failing to complete – Purchaser signing memorandum of contract – Purchaser having no knowledge of express term or nature of a deposit – Purchaser failing to complete – Plaintiff purchaser recovering deposit with accrued interest – (1975 No. 748P – Finlay P. – 1/6/76).
Siebel v. Kent.

Contract
Recission – Licensed premises – Defendant vendor misrepresenting amount of current turnover of business – Misrepresentation an inducement to contract – Plaintiff entitled to rescind – Sale also invalidated by unlawful use of puffer at auction contrary to Sale of Land by Auction Act, 1867 – (1974 No. 983P – Hamilton J. – 27/1/76).
Early v. Fallon.

Contract
Specific performance – Damages in addition – Breach by defendant of contract to build house for plaintiff – Plaintiff's action compromised – Compromise including sale of defective house by plaintiff to defendant – Failure of defendant to implement compromise – Specific performance ordered – Damages awarded to plaintiff for loss of bargain in purchase of other property because of defendant's failure to pay purchase price – Damages awarded for discomfort and inconvenience suffered by plaintiff – (1975 No. 4344P – McWilliam J. – 22/6/76).
Murphy v. Quality Homes.

Contract
Specific performance – Licensed premises – Memorandum not invalidated by intoxication of defendant vendor – Acquisition of licence by plaintiff not mentioned by either party – Delay by plaintiff – Damages in lieu of specific performance – (1973 No. 1412P – Gannon J. – 26/4/76).
White v. Mc Cooey.

Contract
Specific performance – Purchase price not ascertained – Purchase of landlord's interest by tenant – Provision that price to be the number of years purchase of rent that would be fixed under Landlord and Tenant (Ground Rents) Act, 1967, if rent reserved were a ground rent within the meaning of that Act – Price of purchase of ground rent under Act of 1967 ascertained by county registrar – Registrar declining to perform function sought to be imposed on him by tenant – Tenant claiming specific performance of contract by landlord – Contract failing to specify person to fix price – Price essential to contract – No concluding agreement – Specific performance refused – (1973 No. 2361P – Hamilton J. – 18/6/76).
Carr v. Phelan.

Judgment mortgage
Registered land – Contract of sale – Registration of judgment mortgage as burden on Folio after execution of contract by owner and before conveyance – Interest of purchaser superior to that of judgment creditor – Registration of Title Act, 1964, s. 71 – (145/75 – Supreme Court – 1/6/76).
Tempany v. Hynes.

SOCIAL WELFARE

Benefit
Entitlement – Alienation of property in order to qualify for benefit – Claim rejected – (1975 No. 362 SS. – Gannon J. – 2/2/76).
The State (Power) v. Moran.

Benefit
Hospital services – Geriatric ward of court – Whether ward was receiving "in-patient services" under s. 51 of Health Act, 1970, or "institutional assistance" under s. 54 of Health Act, 1953 – Whether ward chargeable for maintenance – (133/75 – Supreme Court – 20/12/76).
In re McInerney.

Insurance
Contribution – Special rate for employees of public authorities – Whether General Medical Services (Payments) Board a public authority – (1976 No. 121 Sp. – Hamilton J. 30/11/76).
General Medical Services (Payments) Board v. Minister for Social Welfare.

Pension
Qualifications – Non-contributory Old Age pension – Applicant alienating property before application – Whether alienation effected to qualify for pension – Decision of appeals officer rejecting application – Evidence to support decision – Decision not invalidated by consideration of irrelevant factors – (1976 No. 362 SS. – Gannon J. 2/2/76).
The State (Power) v. Moran.

STATE SIDE

Certiorari
Criminal offence – Admission by applicant and plea of guilty – Conviction of applicant in District Court – Conviction affirmed on appeal to Circuit Court – Applicant alleging absence of evidence which would have been essential to support conviction – Application refused on ground that court would not enquire into allegation in certiorari proceedings – (1976 No. 122 SS – McWilliam J. – 17/8/76).
The State (Lee-Kiddier) v. Dunleavy.

Certiorari
Refusal – Conviction in District Court – Trial alleged to have been unsatisfactory – Certiorari proceedings not a substitute for an appeal – Conditional order refused – Illegal fishing by foreign ship – (1976 No. 502 SS – Finlay P. – 15/12/76).
The State (Shinkaruk) v. Carroll.

Habeas corpus
Constitution – Convicted prisoner – Disturbed state of mind and history of self-inflicted injuries – Stringent conditions of detention – Right of bodily integrity not infringed – (1975 No. 140 SS. – Finlay P. – 13/4/76).
The State (Crawley) v. Governor of Mountjoy Prison.

Habeas corpus
Contempt of Court – Imprisonment of indefinite duration – Civil Contempt – Prisoner transferred from prison to mental hospital – Imprisonment replaced by detention for treatment – Applicant in lawful custody – (1976 No. 11 SS. – Finlay P. – 19/3/76).
The State (Heany) v. Central Mental Hospital.

Habeas corpus
Treatment of detainee – Conduct of police enquiry – Whether ill-treatment would invalidate lawfulness of detention – (1976 No. 439 SS – Finlay P. – 14/12/76).
The State (Harrington) v. Commissioner of Garda Siochana.

STATUTE

Interpretation
Conflicting provisions – Companies Act, 1963, ss. 99, 104 – (1976 No. 37 Sp. – Hamilton J. – 10/12/76).
Lombard & Ulster Banking (Ir.) Ltd. v. Amurec Ltd. (In Liquidation).

Natural Justice
Delegated legislation – Statutory instrument – Imposition of price control for sale of intoxicating liquor – Legislative power not exercised arbitrarily or capriciously – (1974 No. 1146P – McMahon J. – 28/6/76).
Cassidy v. Minister for Industry and Commerce.

TRADE MARK

Registration
"Aphrodisia" – Non-medicated soaps, perfumes etc. – No direct reference to character of goods – Not adapted to distinguish and not registerable in Part A – Mark not incapable of distinguishing applicant's goods and registerable in Part B – (1968 No. 219 Sp. – Kenny J. – 31/3/76).
Fabergé Inc. v. Controller of Patents etc.

Registration
"Durex" – Class 10 – Surgeons gloves and finger stalls – Whether public likely to be deceived or confused – Trade Marks Act, 1963, s. 19 – (1974 Nos. 239-43 – Hamilton J. – 13/7/76).
L.R.C. International Ltd. v. Controller of Trade Marks.

TRADE NAMES & DESIGNS

Passing off
Packaging – Similar designs – Equipment for slimming – Plaintiff not the owners of relevant goods but sole distributing agents of the owner – Judgment for the plaintiffs – (1976 No. 80P – McWilliam J. 17/6/76).
Grange Marketing Ltd. v. M. & Q. Plastic Products Ltd.

TRADE UNION

Trade Dispute
Picketing – Closure of factory and cessation of business – Employer paying redundancy money – Former employees in dispute about non-employment – Trade dispute in existence and injunction to restrain picketing refused – (1976 No. 3509P – Hamilton J. – 22/9/76).
Gouldings Chemicals Ltd. v. Bolger.

Trade Dispute
Picketing – Seasonal worker – Application for employment refused because of unsatisfactory work when employed by plaintiff on previous occasion – Dispute about non-employment – Trade dispute in existence – Interlocutory injunction refused – (1976 No. 4860P. – Hamilton J. – 19/11/76).
McHenry Bros. Ltd. v. Carey.

TRIBUNAL

Decision
Validity – Evidence to support decision – Decision not invalidated by consideration of irrelevant factors – (1976 No. 362 SS Gannon J. – 2/2/76).
The State (Power) v. Moran.

TRUSTS

Will
Bequest – Whether precatory trust or absolute gift – (1974 No. 374 Sp. – Hamilton J. – 14/5/76).
In re Sweeney: Hillary v. Sweeney.

WILL

Construction
Devise of "freehold land" – Testator owning property under long lease – *Falsa demonstratio non nocet* – Lease for 10,000 years with provision for abatement of rent – No rent paid for 40 years – Presumption that rent redeemed – Bequest of leasehold interest to tenant for life – Provision that life tenant use premises as principal residence not void for uncertainty but void under s. 51 of the Settled Land Act, 1882 – Costs payable out of specific bequest – (1974 No. 94 Sp. – Kenny J. – 30/3/76).
In re Atkins, deceased.

Construction
Precatory trust or absolute bequest – Universal devise and bequest to wife "for her own absolute use and benefit" subject to express wish that she makes provision for the payment of specified legacies – Wife entitled beneficially – No trust or condition attached to bequest – (1974 No. 374 Sp. – Hamilton J. – 14/5/76).
In re Sweeney: Hillary v. Sweeney.

WORDS AND PHRASES

"Chips"
Prosecution for breach of condition imposed in granting permission for user of premises as "fried fish and chip shop" – Condition imposed under Local Government (Planning and Development) Act 1963 – (1976 No. 36 SS – Finlay P. – 1/6/76).
Corporation of Dublin v. Raso.

The entries in the Index were prepared by Nevil Lloyd-Blood, Barrister-at-Law, on behalf of the Incorporated Council of Law Reporting for Ireland.