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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
RALPH J. WALKER

*Vice-Presidents*
GEORGE G. OVEREND
JOHN MAHER

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## MEETING OF THE COUNCIL

MAY 18TH: The President in the chair, also present Messrs. James J. O'Connor, John Maher, Augustus Cullen, J. Bernard MacGarry, Brendan T. Walsh, A. Cox, William A. Tormey, James W. O'Donovan, Terence De Vere White, Charles W. Hyland, Eunan McCarron, D. B. Gilmore, Desmond J. Collins, Robert McD. Taylor, James R. C. Green, Peter D. M. Prentice, Derrick M. Martin, Patrick O'Donnell, John J. Sheil, Desmond Moran, John R. Halpin, Niall S. Gaffney, John J. Nash, George G. Overend, Cornelius J. Daly, Patrick Noonan.

The following was among the business transacted:

### Conflict of interest

A member was consulted by a lady who was injured while a passenger in a motor vehicle driven by her husband. The husband subsequently died, although not as a result of any injuries received in the accident, and the widow consulted member with a view to making a claim against the other party. For this purpose, member obtained from the insurance company which issued the policy covering the deceased driver a copy of the accident report form made by the deceased and certain other information. Having considered these documents member advised the widow that she could not succeed in a

claim against the other party but that she probably had a right of action against her deceased husband's personal representatives who would be entitled to indemnity under the policy of insurance. The widow then abandoned her claim against the other party and on her instructions member wrote to the insurance company claiming damages on her behalf. When the correspondence had reached a certain stage the company wrote to member objecting to his continuing to act in the matter on the ground that he had been furnished with confidential information. Member stated that he could have obtained the information elsewhere. He enquired whether under the circumstances he should act or whether he should resign his retainer. The Council on a report from a committee stated that in their opinion member should not act in the present proceedings without the consent of the insurance company.

### Courts (Establishment and Constitution) Bill 1959
### Courts (Supplemental Provisions) Bill 1959

The Council considered a report from the Parliamentary Committee in which it was stated *inter alia* that an amendment had been put down for the Committee Stage of the Courts (Supplemental Provisions) Bill 1959 providing that solicitors of ten years practice should be eligible for appointment as Circuit judges. It was pointed out in the report that a solicitor has a right of audience in the Circuit Court and that it is inconsistent and contrary to the interests of the profession that solicitors should not be eligible for appointment to the Bench. It was decided to issue a circular to all Bar Associations asking them to obtain support for the amendment.

It was also pointed out in the report that, with a few exceptions, no legal qualifications appear to be necessary for appointment to the office of Registrar and other senior offices in the High Court establishment. It was directed that representations should be made to the Department of Justice that the qualification of barrister or solicitor should be necessary for such appointments, without prejudice to the position of present office holders.

### Proceedings against unqualified person

The Council directed, subject to counsel's advice, that proceedings should be instituted against a chartered accountant for an alleged contravention of section 58 of the Solicitors Act 1954 by drawing or preparing the memorandum and articles of association of a limited company.

## AUCTIONEERS AND HOUSE AGENTS ACT 1947

A case has been brought to the notice of the Society in which a member on behalf of a client who suffered loss through the default of an auctioneer, instituted proceedings against the insurance company, named in the bond, on foot of a judgment in the High Court against the auctioneer, to obtain payment of the amount of the judgment against the insurance company. The plaintiff was met with the defence that the auctioneer did not hold a licence at the time when he received the money due to the plaintiff, and that as he was not a licensed auctioneer at the material time the insurance company was not obliged to meet the claim under the terms of the bond. Member has been advised by counsel that the defence put forward by the insurance company may succeed. The information is published as being of interest to members who may be instructed by clients to proceed for recovery of claims against insurance companies. It would be advisable in such cases before instituting proceedings to ascertain that an auctioneer's licence was in force on the material date.

## MAYO SOLICITORS' BAR ASSOCIATION

The Annual General Meeting of the Association was held in the Bar Room, Castlebar, on the 28th April last. Election of officers for 1961-'62 resulted as follows: *President*, William Dillon-Leetch; *Vice-President*, John MacHale; *Hon. Treasurer*, Miss Bea M. Hynes; *Hon. Secretary*, John F. Garavan; *Council*, Edward Fitzgerald (*Ex-Officio*), Edward A. Corr, Thomas V. O'Connor, Patrick J. McEllin and Oliver P. Morahan.

To welcome Mr. District Justice Hugh C. McGahan to the District the members had a dinner at Healy's Anglers' Hotel, Pontoon, on May 13th, and in addition to the chief guest, the President of the Incorporated Law Society, Mr. Ralph J. Walker, and the Secretary, Mr. Eric A. Plunkett, attended. Other guests were: District Justice Kennedy and District Justice Loftus, along with the President of the Sligo Bar Association, Mr. Francis Armstrong, Mr. M. De L. Staunton, President of the Roscommon Bar Association and Mr. T. J. C. O'Keeffe, Secretary, Roscommon Bar Association. Mr. Bernard Daly, County Registrar for County Mayo, was also a guest.

## COUNTY ROSCOMMON BAR ASSOCIATION

*President*, M. De L. Staunton; *Chairman*, John Kelly; *Vice-Chairman*, James T. Claffey; *Hon. Treasurer*, J. J. Sheerin; *Hon. Secretary*, T. J. C. O'Keeffe. *Committee:* M. D. Carlos, A. McCormack, G. Horan, J. F. Neilan.

## TWO OR MORE SENIOR COUNSEL

In an article entitled "Party and party costs" which appeared in the issues of the *Irish Law Times* of the 13th May, 20th May and 27th May, 1961, respectively, the anonymous author endeavours to trace the principles in which two or more senior counsel will be allowed upon taxation. The first case therein considered was that of Royal Tara China Ltd. *v.* Ferro Enamels Ltd.; this case had been at hearing before Mr. Justice Haugh for forty-seven days and the judge found that the defendants had performed defective work in the making of certain kilns for the firing of bone china which they had contracted to make for the plaintiffs so as to entitle the plaintiffs to rescind the contract and claim damages. His Lordship found that the kilns had been so unsatisfactory as to entitle the plaintiffs to rescind the contract, and also to recover £15,145 damages.

The plaintiffs had briefed three senior counsel in the action, the third senior counsel being the junior who had signed the pleadings and who had taken silk subsequently; in addition, a full-time junior counsel was also employed. The taxing master allowed fees to each of the three senior counsel and to junior counsel. Upon an application by the defendants to review the taxation, they submitted that the normal Irish High Court practice was to allow a successful party to retain only two senior and one junior counsel at the expense of the unsuccessful party, and that, despite its complexity, this case did not warrant any departure from the normal practice. In giving judgment on 1st July, 1960, Mr. Justice Murnaghan agreed with the contention of the defendants, as he did not consider adequate reasons had been given for considering this case as exceptional, and he considered that two senior counsel were sufficient for the plaintiffs for the attainment of justice. Accordingly Mr. Justice Murnaghan set aside the certificate of taxation and remitted the case to the taxing master with a direction to disallow the fees charged for the third senior counsel.

In Madden *v.* Peter Kennedy Ltd., it was contended that on taxation only one senior counsel should be allowed. This was an action for negligence arising out of an accident occurring in 1951; the plenary summons was issued in April 1953—before the passing of the Courts of Justice Act, 1953; the statement of claim was not delivered until February 1958, and the defence, delivered in July 1958, admitted liability and lodged £401 in court. The action came on for the assessment of damages before Mr. Justice Haugh and a jury in Michaelmas term 1959; the plaintiff was awarded £450 damages and High Court costs; the taxing master allowed a second senior counsel on the ground that it would be a departure from practice not to do so. The defendants applied for a review of taxation, and on the 8th July 1960 Mr. Justice Murnaghan found that the master had failed properly to apply himself to the question whether the particular circumstances were such as to justify him in departing from the normal practice of allowing the plaintiff a second senior counsel, and directed that the taxation be remitted back to the taxing master with a finding that, in His Lordship's view, one senior counsel was sufficient in this case.

## DECISIONS OF PROFESSIONAL INTEREST

*Executors and Administrators—probate—costs—evidence not supplied to defendants.*

In The Estate of Sanders; Riches *v.* Sanders (March 21, 1961) the plaintiffs had propounded as executors two wills, dated 1958 and 1959, in the alternative. The defendant alleged want of due execution and lack of testamentary capacity, but gave notice of her intention to insist on proof in solemn form and of her intention only to have the plaintiffs' witnesses cross-examined. A request for information of the evidence of the person who arranged for the preparation and execution of the 1959 will was not complied with by the plaintiffs. Scarman, J., pronouncing for the 1959 will, held that the defendant should not be condemned on costs because the evidence had not been given them; and in all the circumstances made no order for costs. *The Times*, March 22, 1961.

*Gifts—donatio mortis causa—insurance policy posted to sister before flight.*

In Re Miller (February 22, 1961) the testatrix, on October 22, 1958, while awaiting at London Airport for her flight to Italy, obtained a coupon for an insurance, which provided that the insurance company named therein would pay to the *bona fide* holder thereof or his legal personal representatives the sum of money specified if, during the 24 hours from the date impressed on the coupon, the holder should sustain by violent accidental means "(a) Death . . . £2,000". The time and date impressed on the coupon was 8.02 a.m. October 22, 1958. The testatrix posted the coupon to her sister. The postmark upon the stamp was 7.30 p.m. October 23, 1958. The testatrix wrote a letter to her sister stating that she had sent the coupon and hoped that the sister would not have to claim. The aeroplane carrying the testatrix crashed over Italy on October 22 and she was killed. On the question whether the

testatrix had made a valid *donatio mortis causa* of the insurance policy moneys to her sister or whether they went into residue, Plowman J. held that the moneys went into residue. The mere fact of sending the coupon to the sister was no evidence of a gift. Nor did the letter add anything. In any event, the claim was defeated by the fact that the coupon could not have been delivered until after the death because it bore the date October 23 on the postmark and the testatrix had died on October 22. There was no reason to hold that the mere fact of putting it in the posting box was equivalent to delivery to the donee. 105 S.J. 207.

*Libel and Slander—mitigation of damages—evidence of reputation—particularisation of specific acts.*

In Plato Films *v.* Speidel (March 2, 1961) defendants, in an action for libel in a film, pleaded justification, and, in the alternative, that in mitigation of damages, they would give evidence as to the character of the plaintiff. As particulars under the latter it was alleged that the pictures and words complained of were published as part of the film wherein the plaintiff was depicted as having been guilty of conduct therein set out "the truth of which the plaintiff in his amended statement of claim does not deny." The guilty conduct was then particularised under the description of various war crimes. The House of Lords (Lords Simonds, Radcliffe, Denning, Morris and Guest), dismissing an appeal from the Court of Appeal held that the evidence which a defendant in a libel action can give in mitigation of damages where he has failed to justify must be limited to the general reputation of the plaintiff, and cannot be extended to specific acts; and that the defence should be amended so as to omit reference to the specific acts. (1961) 1 All England Reports, 876.

*Malicious Prosecution and False Imprisonment.*

In McKay *v.* Att.-Gen. (March 14, 1961) plaintiffs brought an action against the Attorney-General and two police officers for malicious prosecution, conspiracy, trespass and libel. The action arose out of convictions, later quashed, under the Betting and Lotteries Act, 1934. McNair J. dismissed the action on the ground that the plaintiffs had failed to prove their case (1960) C.L.Y. (1950). The Court of Appeal (Ormerod, Devlin and Danckwerts L.JJ.) held, dismissing the appeal, that the trial judge had correctly decided that there was no evidence to justify the plaintiffs' allegations; the convictions had been quashed on purely legal points. *The Times*, March 15, 1961.

*Medical Practitioner—swab left in body after operation—departure from normal procedure.*

In Cooper *v.* Neville (March 9, 1961) C. had been awarded damages by the Supreme Court of Kenya for injuries sustained by her as the result of an abdominal swab left in her body in the course of an operation performed by N., a surgeon. The Court of Appeal for Eastern Africa had allowed N.'s appeal against the finding of negligence against him. The Judicial Committee (Lords Tucker, Denning and Morris) held, allowing C.'s appeal, that the finding of the trial judge should be restored, namely that if the swab was a mopping pack, it was negligence on the part of the person who used it, whether it was N. or his assistant, to lose control of it and leave it in the body; if it was a restraining pack, then having regard to the small number used, their obvious position, the absence of movement and the lack of any particular need for haste at the end of the operation, it was negligent of N. not to have removed it, since the responsibility was on him, as he admitted, to do so. There was no justification for the departure from the normal routine. *The Times*, March 10, 1961.

*Bill of Costs may be "moderated" even if one year since payment has expired.*

On the application for taxation of a solicitor's bill of costs under s. 69 of the Solicitors Act, 1957, after payment of the bill, there is by virtue of sub-s. (2) proviso (ii) no jurisdiction to order taxation if twelve months since payment have expired before the order is made, notwithstanding that the application originated within the twelve months and that there are such special circumstances as would justify an order for taxation being made within the twelve months; but, in such a case, the court may, under its inherent jurisdiction over solicitors as officers of the court, deal with the bill by ordering a taxation or "moderation", independently of the statute, either of the whole bill or of some items in it: and, on the facts in the present case, the taxation of an item of 3,500 guineas in a solicitor's bill, described as "Fee by way of general instructions, care and responsibility", followed by particulars, would be ordered under the inherent jurisdiction at the instance of his client, although the bill had been paid more than twelve months before the date of the hearing—so held by Cross J. Storer & Co. *v.* Johnson (1890), 15 App. Cas. 203 applied.

(EDITORIAL NOTE.—In this case the court was satisfied that special circumstances, such as would have satisfied s. 69 (2) proviso (i) of the Solicitors Act, 1957, existed and the proposition stated above

is framed accordingly ; but the need for establishing such special circumstances as a basis of exercising the inherent jurisdiction was in fact conceded, and the decision should not, it is thought, be regarded as deciding that the special circumstances required by that enactment must be established if the inherent jurisdiction is to be exercised.) (In Re A Solicitor—(1961) 2 All England Reports, 321.)

## DISCIPLINE IN THE PROFESSION EXERCISED BY JUDGES IN COLONIAL TERRITORIES

By the common law of England judges had the right to determine who should be admitted to practise as barristers and solicitors, and, as incidental thereto, the right to suspend or prohibit from practice. In England this power has been for a very long time delegated, so far as barristers are concerned, to the Inns of Court, and for a much shorter time, so far as solicitors are concerned, to the Law Society. In the colonies the judges have retained this power in their own hands, at any rate in those colonies where the profession is "fused." This principle was enunciated by Lord Wynford in 1839 on a petition from Antigua (1 Knapp 267) in these terms : "In the colonies there are no Inns of Court but it is essential for the due administration of justice that some persons should have authority to determine who are fit persons to practise as advocates and attorneys there. Now advocates and attorneys have always been admitted in the colonial courts by the judges, and the judges only. The power of suspending from practice must, we think, be incidental to that of admitting to practice, as is the case in England with regard to attorneys." The foregoing summary of the position is derived from the judgment of the Judicial Committee of the Privy Council, delivered by Lord Denning, in Attorney-General of Gambia *v.* N'Jie (1961) 2 W.L.R. 845.

In that case the Board (Lords Radcliffe, Denning and Guest) held that the power vested in the Chief Justice of the Supreme Court of Gambia to suspend or strike off the roll a legal practitioner was a judicial, not an administrative power. The respondent, a member of the English bar, who had been struck off by a deputy judge of the Supreme Court, successfully appealed to the West African Court of Appeal, which held that the judge only had jurisdiction to represent the Chief Justice "in the exercise of his judicial power," and that the power to strike off a legal practitioner was not such. This last proposition did not commend itself to the Board. It was true that in these cases the judge did not sit as a court of law ; he was not deciding an issue between parties ; there was no prosecutor as in a criminal case, nor any plaintiff as in a civil suit. Indeed the fact that the judges were themselves always made respondents in these cases was an implicit recognition that, when exercising this jurisdiction, they did not sit as a court of law but as a disciplinary authority. That had been judicially decided as regards West Africa in Macauley *v.* Sierra Leone Supreme Court Judges (139 L. T. Rep. 314; (1928) A. C. 344). The legislature, following that case when setting up the West African Court of Appeal, provided that an appeal should lie from any order of the judge suspending a barrister or solicitor of the Supreme Court from practice or striking his name off the roll, and that for the purpose of such an appeal any such order "shall be deemed to be an order of the Supreme Court." That section —the very section under which the present respondent appealed to the Court of Appeal—showed, clearly enough, that the legislature did not regard the decision of the judge in such a case as a decision of the Supreme Court, but as a decision of the judge as a disciplinary authority.

But it did not follow, as the West African Court of Appeal thought, that in these cases the judge was not exercising judicial powers. The essential words in the Supreme Court Ordinance were "the judicial powers of the judge," and it appeared to the Board that in this context a judge exercised judicial powers not only when he was deciding suits between parties but also when he exercised disciplinary powers which were properly appurtenant to the office of a judge. The power was analogous to that exercised by a judge in ordering the legal practitioner whom he considered to have been guilty of professional misconduct to pay the costs, or in committing him for contempt of court. Moreover, it was open to one who had been suspended or struck off to appeal to Her Majesty in Council, and that necessarily imported that this was the exercise by the judge of his judicial power, for there was no right of appeal to the Board from the exercise of an administrative power. This was a power which it was competent for a deputy judge to exercise, and the Board would advise Her Majesty that the appeal should be allowed and the order of the deputy judge should be restored. (*The Law Times*, Volume 231, page 284—May 26th, 1961.)

## ACCUSED SENT FORWARD FOR TRIAL BY ATTORNEY-GENERAL

Mr. Justice Davitt, President of the High Court, ruled on 2nd June that it was not constitutional for the Attorney-General to order the trial of a person against whom informations had been refused at a preliminary hearing. Therefore, the trial of Mrs.

Diana Shanahan, on charges arising out of the operations of Shanahans' Stamps Auctions Ltd., Dun Laoghaire, cannot take place.

Mr. Justice Davitt, delivering a reserved judgment, dismissed an application by the Attorney-General to have set aside a conditional order obtained by Mrs. Shanahan prohibiting Judge Conroy from trying Mrs. Shanahan on the charges, and setting aside the order of the Attorney-General returning her for trial; notwithstanding that informations had been refused by a district justice; and setting aside a direction of the Chief Clerk of the Dublin District Court, for her to attend for her trial.

Mr. Justice Davitt made the conditional order absolute, and allowed costs to Mrs. Shanahan, Glenageary, Co. Dublin.

Mr. Justice Davitt said that if the Attorney-General could, within the terms of the Constitution, be empowered to reverse such a decision of the District Court, then he, and anyone else, could be empowered constitutionally to reverse any judicial decision of any court. If the Attorney-General could do what he had done in this case the results would be far reaching indeed. The Courts could be rendered impotent; and if their efficacy were to disappear there would cease to be any reality in the constitutional guarantees as to life, person or property.

Any decision of the Courts that a person had not been tried in due course of law, or that he was being held in unlawful custody, or that his property had been illegally appropriated by the State, could be nullified.

The Constitution itself could be deprived of any efficacy, and would cease to have any reality since any decision of the Supreme Court or the High Court restraining Members of the Executive from exceeding their constitutional powers, or declaring an enactment of the Oireachtas to be repugnant to the Constitution and therefore invalid, could be set at naught.

Mr Justice Davitt reviewed the events from the arrest of Mrs. Shanahan on May 27th, 1960, on charges of conspiracy to defraud, fraudulent conversion and obtaining money by false pretences, to the refusal of informations by the District Justice and the order of the Attorney-General of March 28th last directing that she be sent for trial to the Circuit Court on a charge of conspiracy to defraud, and five charges of fraudulent conversion.

Mr. Justice Davitt said he had come to the conclusion that in receiving or refusing informations on the preliminary investigation of an indictable offence the District Court was exercising the judicial power of the State and administering justice within the meaning of the Articles of the Constitution.

If section 62 of the 1936 Act had required the Attorney-General before making any such direction to consider the evidence contained in the depositions taken in the District Court, and to be of the opinion that it disclosed a *prima facie* case against the accused person such as would have been sufficient to put the accused person on his or her trial, then it would have placed him in a position exactly similar to that of the District Justice; and it could have been rightly contended that in making a direction in such circumstances the Attorney-General would be doing something which he could not do constitutionally, namely, exercise the judicial powers of the State.

As had been pointed out, the section did nothing of the kind. It enabled the Attorney-General to reverse the decision of the District Court and it gave him that power absolutely and without reservation or qualification of any kind. It was to be presumed that the legislature, when entrusting the holder of a great public office with such a power, felt justified in thinking that it would never be abused.

That power, said Mr. Justice Davitt, had seldom been exercised and he felt sure that on the rare occasions it had been exercised the Attorney-General had acted judicially and had decided to make the necessary direction only after careful consideration of the depositions and when he had been of the opinion that they disclosed a *prima facie* case against the accused person and he had been satisfied that the District Court had erred in refusing informations. Nevertheless, the power given was absolute, unqualified and, as far as the provisions of the section went, did not have to be exercised judicially.

As far as the section was concerned the Attorney-General need not even read the depositions; hear submission by or on behalf of the accused; see or hear witnesses; and he might even be satisfied that the decision of the District Court was right; nevertheless he had the power to reverse it and direct that the case be sent for trial. It was difficult to imagine a power which could be less judicial. He did not think that when making a direction under the section the Attorney-General could be said to be exercising the judicial power of the State.

That was, however, by no means the end of the matter, continued Mr. Justice Davitt. If he was correct in holding as he did, that when refusing informations the District Court was making a judicial decision in exercise of its criminal jurisdiction, exercising the judicial power of the State and administering justice within the meaning of Article 34 (1) of the Constitution, then any attempt on the part of the Executive to reverse such a decision was "an unwarrantable interference . . . with the operations of the Courts in a purely judicial domain".

It was just as much an unwarrantable interference as was the enactment by the Oireachtas of the Sinn

Fein Funds Act, 1947, which was, in that case, held to be unconstitutional. The proposition needed only to be stated; it required no reasoning to support it; it was self-evident.

It is understood that an appeal against the judgment is to be brought in the Supreme Court.

*Irish Independent*—3rd June, 1961.

## THE REGISTRY

### Register C

ARCHBOLD Pleading Evidence and Practice in Criminal Cases, 1922 Edition, second-hand, required urgently. Please reply stating price to Box. No. C166.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. od. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. od. life membership.

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## ORDINARY GENERAL MEETING

A GENERAL MEETING of the Society was held in the Warwick Hotel, Galway, on Saturday, 3rd June, 1961. The President, Mr. Ralph J. Walker, took the chair. The notice convening the meeting was by permission of the meeting taken as read.

ALDERMAN REDINGTON, the Mayor of Galway, in the course of an address welcoming the Society to Galway, said "It is a great pleasure for me, as Mayor of Galway, to welcome the members of this learned body to what I understand is their first meeting in this city of Galway. I should like to compliment you for two reasons. Firstly for retaining the name Ireland in your documents and secondly on your decision to hold occasional meetings in the provinces. When your conferences and meetings are held always in Dublin the rest of the country regards their business as something remote from the lives of the people. It only remains for me to welcome you once again and I trust you will enjoy yourselves during your stay in our ancient city. I now declare this conference open".

Mr. James P. Glynn, the chairman of the Galway Solicitors' Bar Association, also welcomed the Society. Mr. Glynn said—

Mr. President, Mr. Mayor, Ladies and Gentlemen.

On behalf of the County Galway Solicitors' Bar Association I wish to extend to the Council and its Officers a sincere welcome to this ancient University City of Galway.

This County has in the past given many great men to the legal profession, that great lawyer Edward Carson, K.C., was born in this county near Gort. But for a trick of fate

by joining the North Eastern Circuit, he might have died a patriot son of the west.

We have no problems here in Galway, we may not be wealthy but we can afford what you might call good middle-class symbols. We lead a quite relaxed existence and we get on well together.

Here in the capital of the west, we have a seat of learning and culture and much to offer to the visitor. We are tourist conscious because we have an abundance of scenic beauty, mountain, sea, river and lake. When you leave this meeting this morning you can walk the very flagstones trod upon by Columbus five centuries ago when he left St. Nicholas' Church before setting out for America. You can in the adjoining market place experience the same atmosphere and there meet the real Irish and hear the mother tongue in all its fullness of beauty and clarity of tone, not the language learned from books, but learned from the mothers' knee on the hearthstone. In two quick steps from there you can move right into a hive of activity in twentieth century Galway.

As a county man it pleases me to say of Galway City in the presence of its mayor that Galway has played a great part in building up and maintaining the economic fabric of the State. In fact and in truth I can say that Galway City is now one of the nerve centres of the industrial life of the Republic of Ireland.

Mr. President, when you and the Council with your guests are leaving Galway we will be happy if we know that you look back on the city and use those famous words of General McArthur and say "We'll be back !"

The President, speaking in reply, said—

Mr. Mayor, Mr. Glynn and Fellow Members of the Incorporated Law Society, it is with very great pleasure that I rise to reply on behalf of our Members to the words of welcome which you, Mr. Mayor, have expressed to us on behalf of the citizens of Galway and you, Mr. Glynn, on behalf of the Galway Solicitors' Bar Association. This ancient city of yours so rich in history has much to offer the visitor, while just outside is a countryside second to none in the beauty of its scenery. We and our guests hope to make good use of our time here to enjoy to the full all that you have to offer us.

In reading a little of the history of your city, Mr. Mayor, I see that you have had some, shall we say, colourful predecessors who seem to have found a variety of ways of leaving their mark on the history of this place. I see, for example, that in the year 1493 James Lynch Fitzstephen, the then Mayor, felt it his duty to carry out what he believed to be justice and hanged his own son. I would have thought, Mr. Mayor, that in addition to showing tourists the window from which this deed was done, it would be an added attraction to them if you were to have half hourly demonstrations, with a dummy of course, showing how the actual deed was performed.

I see also that in 1710 your city received as a gift from its then Mayor, Edward Eyre, the park which has since been called Eyre Square after him. I have no doubt, Mr. Mayor, that you will go down in the annals of history as the man who secured the return of your ancient sword and mace and in addition as the first Mayor to welcome to this city the Members of the Incorporated Law Society and on their behalf I wish to thank you most sincerely not only for paying us the honour of welcoming us in person but for the very kind words that you have spoken.

To you, Mr. Glynn, to your secretary, Mr. Ford, and to those members of your Association who have helped so much to make this week-end possible, we are also deeply grateful.

The idea of holding our half-yearly meeting outside Dublin was originally made I believe by one of my distinguished predecessors, Mr. Dermot Shaw, and I can well remember doubts being then expressed about the wisdom of such a venture. It was nevertheless decided to try the experiment and our first week-end meeting took place two years ago in Killarney under the Presidency of Mr. John R. Halpin. It was acknowledged by all to be such an outstanding success that we were soon looking for a venue for this week-end, realizing that not alone were other parts of the country equally attractive, but that in moving around the country we were giving to our members generally a greater opportunity of taking part in these gatherings.

Galway was for me in many ways a very happy choice, for in this county of yours is the old home of my late father and many generations before him. In this city of yours he received his early education at what was then the Galway Grammar School and he grew up with men like the late Henry Anderson, who did so much for Rugby football in the Province of Connaught. I well remember as a boy being taken by my father to the bridge by the salmon weir and watching in surprise the salmon lying in rows on the bed of the river like sardines in a box—a sight, alas, no longer visible. I have spent in this and the adjoining county some of the happiest days of my life and so you realize something of the anticipation with which I have looked forward to this week-end.

We are now living, Mr. Mayor and Gentlemen, in rapidly changing times, almost daily we read of new discoveries in the world of science and new advances by man in his quest to conquer space. In the world of commerce we stand on the verge of the European Common Market, which whether we join it or not will bring further changes to our economy and way of life. These are days when nations and people are being brought closer together than ever before and we must move with the times if we are not only to survive but to play a part, out of all proportion to our size or position in the world, which I believe it is our destiny to fulfil.

On an occasion like this it is not unnatural that our thoughts should turn to our own particular sphere, that of the Law, with which we are most concerned and in which we now stand on the verge of great changes which are as necessary as they are long overdue.

Last year my distinguished predecessor, Mr. John Nash, called attention to the urgent need for law reform and he expressed not only the willingness but the desire of our profession to co-operate and assist in this very urgent business. Whether it was due to his words or whether it is the fact that we have at present a Parliamentary Secretary in the Department of Justice who combines outstanding ability with tremendous energy and drive or whether it is a combination of both—we are now in what would seem to be the greatest period of law reform that this country has yet known.

To my colleagues on the Council and to me it is refreshing to meet a completely new approach to our profession by the Department of Justice, there is now an open door through which we may approach at any time and on the shortest notice, to discuss our problems; there is a willingness to listen to and enquire into those problems and seek together a solution as satisfactory to all concerned as it is humanely possible to find.

Finally and even more important, there is an appreciation by the Department of the contribution which the Bench, the Bar and our profession are not only competent but very willing to make in the solution of our legal problems and the framing of new laws for old to which I earlier referred.

In taking our part here at home in the work of the administration of justice and in the formulation of changes so necessary and desirable in our laws, we must not lose sight of the world problem and the part that we have to play in its solution. Here I would like to refer to the work of the International Bar Association to which we now belong.

For the first time in 1956 under the leadership of Mr. Dermot Shaw, our then President, our Society was represented at the International Bar Conference in Oslo. Since then we have

been represented at conferences at Koln under the leadership of Mr. John Carrigan, and last year at Salzburg under the leadership of Mr. John Nash. Members of our Society have read papers, served on committees and addressed sessions of the conferences and at the moment Mr. Nash is our Society's representative on the Council of the Association, while Mr. Carrigan is Secretary of the Topics Committee for the next conference, due to take place next year in Edinburgh, and Mr. Plunkett is Chairman of the Membership Committee.

Recently you will no doubt have seen that the Association of Attenders and Alumni of The Hague Academy of International Law met in Dublin. I would like you to know that all the arrangements for the Conference, which was acknowledged to be an outstanding success, were made by some of the younger members of our profession.

These conferences, which are bringing together men and women of many and different nations whose ways of life may vary from ours, but who share with us a desire for freedom and a love of peace, can do nothing but good and I can assure you the name of our Society, due to the work done and being done by our representatives, stands very high and rightly so.

Finally, may I refer briefly to a movement started in the United States of America amongst those interested in the law, which seeks to establish the Rule of Law amongst nations. There are those who believe, and I share the belief, that we as lawyers have a tremendous responsibility which is only equalled by the present opportunity to put across the ideal of an international society governed by law.

In this effort practising lawyers, professors of law and jurists of every nation are needed and will be invited to use their knowledge and influence in one great co-operative and organised effort to achieve this result.

Grants of large sums have been made available in the United States to organise and further this cause and plans are now well in hand for Continental conferences which will be held during this year. Conferences have been scheduled and some have already taken place for lawyers from the Americas, Africa, Asia and Europe.

These meetings will be followed by a world conference early in 1962, when it is hoped that areas of agreement as well as those of disagreement may be defined and arising thereout international conventions may be drafted for further expanding and defining the scope of international law along with conventions for the creation of new and perhaps more effective international courts.

Funds have been provided for the expenses of one delegate from each nation to the Continental conferences and for two delegates from each nation to the world conference.

I have, of necessity, Mr. Mayor and Gentlemen, only touched very briefly on these matters which I believe to be of interest to us all and in connection with which we must be ready and willing to play our full part.

The Press withdrew and the meeting then went into private session.

The Secretary read the minutes of the Ordinary General Meeting of the Society, held on 24th November, 1960, which with the approval of the meeting were signed by the chairman.

In accordance with Bye-Law 28 the President appointed the following members to be the scrutineers of the ballot for the election of the Council for the year 1961–62: John R. McC. Blakeney, Thomas Jackson, Brendan P. McCormack, Alexander J. McDonald and Roderick J. Tierney.

## ACTING FOR BOTH PARTIES

Mr. Overend, Vice-President, then opened a discussion on the advisability of a statutory regulation which would prevent solicitors from acting for both parties in sales and purchases and any suggested exemptions or exceptions from such a regulation, if made. Mr. Overend stated the position of the Council in the matter. He said that the Council merely wished to obtain the views of the general body of members and had considered that the ordinary general meeting at which a representative selection of members were present was a suitable opportunity of doing so. He outlined shortly the replies received from Bar Associations to whom a circular had been sent and then invited those present to express their views.

Mr. J. R. Halpin (Cavan) stated that he had been asked by the Tipperary Bar Association to propose that the regulation should be made. He said that a resolution to the same effect had been defeated in County Cavan by a majority. There were several aspects of the matter. First there was the question of the public welfare and the danger of a conflict of interest and insufficient investigation of title. Secondly there was the effect of a widespread practice of acting for different parties on the premiums charged by insurance companies on solicitors' negligence indemnity policies. He felt that the recent steep increase in premium was largely due to the heavy incidence of claims for negligence resulting from this practice. Thirdly there was the question of fee cutting. He stated that it was impossible to check or secure the observance of the Professional Practice Regulations against fee cutting where only one solicitor is instructed. Personally he was strongly in favour of regulations which would prevent, either with or without certain exceptions, solicitors from acting for several parties in conveyancing matters. In counties where there was such a rule it worked very well and solicitors in these counties who had formerly opposed the making of regulations had been converted but there must be a nationwide regulation. Local rules were not sufficient. Dealing with one of the chief arguments against making the regulations, viz. that certain solicitors would have to send away old established clients who might never return, Mr. Halpin stated that the rule would work both ways. For every client that a solicitor might lose, he was equally likely to gain one. Finally he was in favour of the making of regulations because they would increase the gross amount of costs received by the profession as a whole He was prepared to support the proposed regulations although he felt that if there is any risk of diversion of clients he might be one of those who might suffer.

Mr. Augustus Cullen (Wicklow) stated that he spoke for the Bar Associations in both Wicklow and Wexford. The Wicklow meeting was opposed to the proposed regulations. In Wexford a motion supporting the regulations was defeated by 18 out of an attendance of 20 at the general meeting. He felt that this matter should be left to the judgment and foresight of individual solicitors. In many cases in the country the equity note has been discharged and in these cases no difficult question of title can arise. Even where the equity note is not discharged the vendor must supply sufficient title to satisfy the registrar. Country and city cases were widely different. In some towns there might be only one solicitor. How was it proposed that sales and purchases could be carried on if one solicitor could not act for both parties in these towns? He also instanced the difficulty of enforcing the regulations. If exemptions were to be granted where was the line to be drawn? There was also the case of the voluntary conveyance from father to son in which the value of the property is small. Finally he stated that he felt that the proposed regulations would be unworkable and should not be made.

Mr. Thomas A. Lynch (Clare) stated that he was personally in favour of a statutory regulation. He stated that in County

Clare the Bar Association have made a regulation prohibiting solicitors from acting for both parties to a sale except in cases where the consideration does not exceed £300. Personally he would have no exceptions and would like to apply the rule to all cases, including cases in which there is no auctioneer or house agent. The rule had worked very well in Clare. Difficulties arise between adjoining counties where there is a rule prohibiting double representation by the same solicitor in only one. For that reason he felt that there should be a State-wide regulation, failing which it would probably be advisable to abolish the local non-statutory rules altogether. He said that in County Clare the equity note is still undischarged in the majority of cases. In many cases the contract for sale precludes the purchaser from requiring the vendor to discharge the equity note even at the purchaser's expense, and this makes a regulation of the kind mentioned even more necessary. Finally Mr. Lynch referred to the reduction in solicitors' remuneration due to the prevalent habit of acting for both parties.

Mr. Thomas V. O'Connor (Mayo) supported the resolution on behalf of the Mayo Bar Association if it could be made on a national scale with statutory effect. A local rule had been made in County Mayo, but had failed because a number of solicitors had resigned from the association. The majority of the Mayo solicitors were strongly in favour of a regulation applicable to all sales (with certain limited exceptions, such as family transactions). Such a regulation they considered would lead to an increase of business and in the gross amount of costs received by the profession, better internal relations within the profession and better service to the public. Mr. O'Connor stated that he personally strongly supported such a regulation although he might possibly lose a certain amount of business.

Mr. Gerald Y. Goldberg (Cork) spoke on behalf of the Southern Law Association, of which solicitors in the city and county of Cork are members. He said that his association had obtained the written and oral views of solicitors from country towns. A plebiscite in country towns revealed that a majority in each of them opposed the making of a rule by the Southern Law Association. The Association could not have enforced the rule if made, as many would have resigned. In Cork city a slight majority, of which he personally was one, supported the rule. As the result of the views expressed the Southern Law Association are opposed to the making of a statutory regulation.

Mr. Ignatius M. Houlihan (Clare) said that there were two methods of approach, one the individual selfish viewpoint and the other the professional approach. From the individual point of view many solicitors would be against a statutory regulation, but he felt that from the point of view of the profession it should be recognised that the consensus of responsible judicial opinion is that no man can serve two masters. He would strongly support a nationwide regulation with statutory effect.

Mr. Seamus Mahon (Midland Bar Association) said that his Association favour a regulation because the present practice leads to widespread price cutting. There is also the danger of a conflict of interests. He was not impressed with the argument that the matter should be left to the individual judgment and foresight of solicitors. Where regulations are enforced the members of Bar Associations find it quite satisfactory. He said that most of the opposition came from Bar Associations where there is no regulation.

Mr. Thomas J. Fitzpatrick (Cavan) said that he spoke personally and not on behalf of his Bar Association. The present unrestricted practice of acting for both parties encouraged touting for business by auctioneers on behalf of solicitors. This was usually done at a public auction where the auctioneer interviews the purchaser and could be stopped only by a regulation. On the question of conflict of interest he pointed out that the vendor's solicitor must first advise his client that he has a good saleable title and he failed to see how having given this advice he could subject the title to any really critical examination on behalf of the purchaser for whom he subsequently acted. In his opinion resolutions of Barl Associations are not the best way of testing professiona opinion throughout the country as opponents of a rule will be sure to attend a meeting. He suggested that a postal ballot should be taken of the whole profession. He said that he thought that the Council are of opinion that a rule should be made. If this is so, it was the duty of the Council to make the rule under section 71 of the Act as in the case of the Accounts Regulations.

Mr. Thomas E. O'Donnell (Limerick) stated that no man can serve two masters. Various conflicts might arise under a contract and he instanced the question of penal interest where there is delay in closing. How could a solicitor for both parties deal fairly with this question? There might be special circumstances in towns where there is only one office, but the answer was that the profession must come first. He stated that the Limerick Bar Association had a rule which was well observed.

Mr. James J. Hickey (Dublin) said that, speaking personally, he was opposed to the making of a regulation as a matter of principle. Logically if a regulation was made applicable to sales it should be extended to the case of mortgagor and mortgagee. He stated that he was not unduly concerned about the judicial opinions mentioned which were probably only *obiter dicta* and not legally binding.

Mr. Patrick F. Treacy (Tipperary) favoured the regulation on the ground of the abuses resulting from the present practice, unfair competition between solicitors and the fact that an ignorant purchaser may be misled into thinking that he will get a better deal in the terms of the contract from the vendor's solicitor.

Mr. Edmund Carroll (Cork) opposed the proposed regulation. He said that there is a conflict of viewpoint between city and country solicitors mainly because of the complicated titles to city property which do not arise in registered titles in rural areas. The examination in the Land Registry of the title was a check against abuses arising from conflict of interest and insufficient examination. The personal contacts between solicitor and client in country practices made such a rule undesirable. It would cause an outcry and the diversion of clients away from particular solicitors. The question of financial gain was not paramount. The argument of attraction of business could work both ways by the attraction of old established family clients to other solicitors. The suggested limitation of the rule to cases in which auctioneers are acting might result in reduction in the number of auctions. He also instanced the case of the formation of a family company and the transfer of property from the family to the company. Finally Mr. Carroll thought that a ballot of the entire profession, both members and non-members, would show a majority against such regulations.

Miss Sarah Killeen (Dublin) spoke as a member of the legal staff of the Dublin Corporation and was in favour of regulations. The practice of a single solicitor acting for both parties was most unsatisfactory. Many purchasers who were unwilling to instruct their own solicitor wanted the Corporation's solicitors to act for them in the investigation of the title. She felt that a regulation of the kind proposed would put an end to such practices as the Corporation solicitor could not act for the mortgagee and the purchaser.

Mr. William L. Ryan (Laois) said that two meetings of his Bar Association were held but that a representative attendance could not be obtained. There was an equal division of opinion. If a regulation were made it would require some limitations. On the whole he thought his Bar Association would be opposed to regulations.

Mr. John A. Kennedy (Monaghan) said that those who supported the making of regulations must be of opinion that there are a great number of bad titles in the country. He thought the regulations should not be made.

Mr. Leslie E. Kearon (Dublin) stated that he supported the proposal to make the regulations.

Mr. John Griffin (Louth) speaking personally said that he thought the proposed regulations would cause a diversion of clients. Was it intended to make them applicable to such cases as tenancy agreements? He saw no difficulty in deciding whether it would be proper to act for both parties in individual cases. Solicitors should have sufficient independence and courage to make that decision.

Mr. Francis J. Gannon (Leitrim) said that he was against regulations.

Mr. Peter O'Connor (Waterford) stated that he favoured the making of regulations limited to certain cases, e.g. sales by public auction or in which auctioneers or house agents are employed.

Mr. Patrick Cusack (Cavan) spoke against the making of regulations.

Mr. Dominic H. Dowling (Dublin) said that regulations should not be made unless they could be enforced. He thought that the present Professional Practice Regulations dealing with undercutting, touting and other matters are not enforced.

Mr. Michael O'Meara (Nenagh) stated that the regulation would be very effective in dealing with solicitors who are not willing to join a Bar Association. He was in favour of the proposed regulation.

Mr. Patrick Noonan (Meath) stated that although he personally supported the proposed regulations he felt that there was at least a large minority against the regulations and said that regulations should not be passed by a simple majority. He thought that the public might look at this proposal as a device to increase costs.

The President, in closing the discussion, stated that he would not accept any resolution. The discussion had been valuable in clearing the air and enabling the Council to inform themselves of the various viewpoints of different members of the profession. The Council favoured the creation of strong Bar Associations. In a reference to the Accounts Regulations he stated that if the Society had failed to take action it was certain that the Government would have done so. And no one should have any regrets that the regulations had been brought in.

Mr. T. Desmond McLoughlin under general business spoke on the importance of representation of the junior members of the profession in the Society with a view to protecting their interests and raising the general level of the profession.

As there was no further business the President declared the meeting closed.

## SOCIAL EVENTS

On Friday evening, June 2nd, members and their ladies met informally at the Great Southern Hotel.

On Saturday afternoon a number of the members took part in the golf competition organised by the Solicitors' Golfing Society.

There was an attendance of over 200 at a dinner-dance of the Society at the Warwick Hotel on Saturday evening. Among the guests were His Hon. Judge Durcan, the President of the Law Society of England and Mrs. Hicks, the President of the Law Society of Northern Ireland and Mrs. McMillan, the President of the Law Society of Scotland and Mrs. Watson, the Secretary of the Law Society of Scotland and Mrs. Laurie, the Secretary of the Law Society of Northern Ireland, Mr. Murray, District Justice T. G. Burke and Mrs. Burke, and the County Registrar, Galway, and Mrs. O'Donnell.

On Sunday a number of members and their wives made a trip to Cong, some by motor launch across Lough Corrib.

Members and their friends attended an Irish Evening at the Great Southern Hotel on Sunday, June 4th, at which a performance of Irish dancing and songs given by Mr. Pascal Spellman and a group of Irish dancers was greatly appreciated.

## THE DUBLIN SOLICITORS' BAR ASSOCIATION

Summary of activities of the above Association at meetings held on 2nd November 1960, 7th December 1960, 4th January 1961, 1st February 1961, 1st March 1961, 5th April 1961, 3rd May 1961, and 7th June 1961 :—

1. A Resolution of Sympathy was passed to the widow of the late Judge McCarthy.
2. Revised rules of the Association were approved at the Annual General Meeting and these will be circulated to members during the year.
3. A subscription of £5 5s. was sent by the Association to the Congo Fund.
4. Pursuant to the provisions of the Solicitors' Act, 1960, the Council of the Incorporated Law Society of Ireland co-opted as extraordinary members of the Council, Messrs. J. B. McGarry, C. Hyland and D. Moran being the representatives of the Association.
5. The Association's form of tenancy agreement is now exclusively being sold by Messrs. A. & S. Donaldson Ltd., and all enquiries regarding same should be sent to them.
6. The Council of the Association, on an enquiry from the Council of the Incorporated Law Society, were of the opinion that the cost of a hand search on the closing of a sale, when the Negative or Common Search was not ready because of delay in the Registry of Deeds, should be borne by the Vendor.
7. Representations were made to the Registrars of the High Court regarding the unsatisfactory listing of Circuit Court appeals and were assured that steps would be taken to try and improve the position.
8. A Scale of Costs for the Circuit and District Courts, showing proposed increases and also

dealing with the increased jurisdiction arising from the Hire Purchase Amendment Act, 1960, was prepared and submitted to the Council of the Incorporated Law Society.

9. Representations have been made to the Department of Posts and Telegraphs to instal a Public Telephone in the Upper Castle Yard for the convenience of members of the profession.

10. Representations were made to the Principal Justice of the District Court (Summary Division) regarding the short time allocated to Ejectment cases and the deputation was assured that in the event of there being arrears in this Court extra time would be allocated where necessary.

11. The Association's form of Contract for sale by Public Auction has been finally approved and will be sold by Messrs. A. & S. Donaldson Ltd., to whom all enquiries should be addressed.

## FINANCE BILL, 1961

### PART I.

#### Income Tax.

*Section* 1 imposes Income Tax and Sur-tax for the current year and continues previous enactments. The proposed rate of Income Tax for 1961-62 is 6s. 4d. in the £ compared with a rate of 7s. 0d. in the £ for 1960-61. The section also charges Sur-tax for 1961-62 on incomes in excess of £2,500 at the same rates as the altered rates fixed for 1960-61 by Section 2 of the Bill.

*Section* 2 alters the charge to Sur-tax for 1960-61 which is payable on or before 1st January, 1962, by raising the starting point from £2,000 to £2,500 and by introducing revised rates in place of those imposed by Section 1 (2) of the Finance Act, 1960. There will now be only three rates (viz. 2s. 6d. for first £2,000, 5s. 0d. for next £3,000 and 7s. 6d. for remainder) as compared with the eight rates hitherto in force.

*Section* 3 raises the income limit for purposes of Earned Income Relief from £1,800 to £2,000, so that the maximum allowance will now amount to £500 instead of £450.

*Section* 4 provides for the granting of Housekeeper Allowance to a man, separated from his wife and not maintaining her, who employs a housekeeper to look after a child in respect of whom Child Allowance is granted. Under existing law such a person does not qualify either for the Married Allowance or for Housekeeper Allowance.

*Section* 5 raises the income limit for purposes of the Dependent Relative Allowance from £80 to £110.

*Section* 8 provides for the granting of life assurance relief in certain cases in which relief is not allowable under existing law. It is concerned with persons who have come to reside in this country and are paying premiums on life policies with foreign companies effected by them while they were resident abroad.

*Section* 9 secures that the proportion of a contribution paid by an employee, or by a voluntary contributor, under the Social Welfare Acts which is attributable to Widow's Pension, Orphan's Allowance and Old Age Pension shall be allowed as a deduction for purposes of Income Tax. It also provides that these benefits will be regarded as earned income for the same purposes.

*Section* 10 provides that a taxpayer from whose remuneration Income Tax is deductible, under Pay As You Earn or otherwise, may elect that his Sur-tax be similarly deducted.

*Section* 11 empowers an Inspector of Taxes to obtain a return of total income on a previous year's basis to serve for both Income Tax and Sur-Tax. An annual return in the new form will normally be the only return the taxpayer will be called upon to make.

### PART III.

#### Death Duties.

*Section* 19 and the *Second Schedule* introduce a new table of rates of Estate Duty to come into force in the case of persons dying after the passing of the Bill. The existing 3 per cent. rate applicable to estates between £5,000 and £7,500 is replaced by 1 per cent. for estates between £5,000 and £6,000 and 2 per cent. for estates between £6,000 and £7,000. The 3 per cent. rate will in future apply to estates between £7,000 and £8,000. The 4 per cent. rate, which now operates between £7,500 and £10,000 will take effect between £8,000 and £10,000. The rates of duty applicable to estates exceeding £100,000, which at present range from 41 to 53 per cent., are reduced to 40 per cent.

*Section* 20 exempts from Estate Duty property which passes or is deemed to pass on a death and which is the subject matter of a gift to the State. It limits the exemption to the period during which the property is held for the public benefit and provides for the levying and collection of duty if the property should cease to be so held.

*Section* 21 is designed to combat certain tax avoidance schemes in relation to gifts *inter vivos* and releases of life-interests taking place within three years of the death of the person effecting them.

One device takes advantage of the fact that

property has to be valued for Estate Duty purposes as at the date of death. The device as practised in relation to gifts *inter vivos* may take the form of a gift of short-dated securities. If they are redeemed before the donor's death the subject matter of the gift, namely the securities, no longer exists at the date of death and therefore cannot be valued for Estate Duty purposes. The recipient has instead the redemption moneys which, not being the subject matter of the gift, are not liable to duty. The present section makes the date of gift, instead of the date of the donor's death, the date for valuation of gifts *inter vivos*. In the case of settled property where a release of life-interest is contemplated the trust funds could, prior to the release, be invested in short-dated securities and the section also covers this.

It deals in addition with another contrivance which may be illustrated by the following example. A father, who possesses a house and £3,000, makes a gift of the house to his son. He then buys back the house for its full market value which is, say, £3,000. He dies within three years. The house passes as part of his assets, because he owned it at the date of his death, and is taxable as such. In view of Section 7 (10) of the Finance Act, 1894, the house cannot be taxed also as an *inter vivos* gift. Thus the house can be taxed once only and having regard to Section 3 of the Finance Act, 1894, the money paid by the donor to his son cannot be taxed as a gift, since the son gave full value, namely, the house, for it. Therefore, the £3,000 cash escapes taxation. The proposed section provides that an amount equivalent to the value given on re-purchase of the gift shall be taxable as a gift *inter vivos*.

*Section* 22. Section 30 of the Finance Act, 1941, provides that settled property will remain liable to Estate Duty, notwithstanding its release from trust, if the life-tenant dies within three years of the release. Doubts have arisen in this regard as to the accountability of the trustees in cases where (*a*) part only of the property having been released from trust, the settlement continues but new trustees have been appointed subsequent to the release or (*b*) the settlement is ended and, accordingly, the trustees have ceased to act prior to the date on which the claim for duty arose. The present section removes these doubts; but trustees will be accountable only to the extent of the property comprised in the settlement after the passing of the Bill.

*Section* 23. Under existing law there are three classes of property each of which may, for Estate Duty purposes, form an estate by itself and so escape aggregation (that is, being added together to form one estate). These classes of property are (1) unsettled property, (2) property settled by the deceased during his lifetime and (3) property settled by somebody other than the deceased. It follows, therefore, that an estate may be subdivided in such a manner that £15,000 may escape Estate Duty, i.e., into three blocks of property corresponding to the three specified classes and none of them exceeding in value £5,000 (the exemption margin). The present section coupled with the repeal of Section 24 (1) of the Finance Act, 1960, by *Section* 34 of the Bill will reduce this excessive advantage by removing the restriction on the aggregation of properties in classes (1) and (2) above, while retaining the existing exemption limit of £5,000 for Legacy and Succession Duties.

## PART IV.

### Stamp Duties.

*Section* 26 provides, with effect from the 1st August, 1961, for the abolition of the Stamp Duty on receipts for amounts of £2 and upwards.

*Section* 27 relieves from ad valorem Stamp Duty mortgages and similar securities given by subsidiary companies to their parent companies.

*Section* 28 terminates the *ad valorem* Stamp Duty on certain bills of exchange and promissory notes, and provides instead a flat duty on all bills of exchange, including cheques, and on all promissory notes. The flat duty will be threepence in the case of documents drawn within the State and twopence in other cases.

*Section* 29 deals with the Stamp Duty of 25 per cent. on conveyances and transfers of lands to non-nationals.

The availability for purchase of Irish companies incorporated before 1947 provides non-nationals with a means of avoiding this duty by acquiring land through such companies. This loophole is closed, with effect from Budget Day, by providing that all companies, whether incorporated before or after 1947, must pay the higher duty unless they can show that a majority interest in the share capital is in the beneficial ownership of Irish citizens.

There is provision for heavy penalties against persons who make false statements or declarations in order to evade payment of the duty.

The section removes all urban land from the scope of the 25 per cent. duty. In relation to other land it continues the relief for small residential properties of not more than 5 acres and for land acquired for industrial purposes. In the latter case, however, a safeguard is introduced against possible abuses of the relief.

There is also provision to enable the Minister for Finance to authorise relief in any case on the recommendation of the Land Commission.

The section directs the Revenue Commissioners to furnish the Land Commission with particulars of

all cases coming to notice where land is acquired by non-nationals.

The section, except that part of it which relates to pre-1947 companies, will have effect from the 1st August, 1961.

*Section* 30. Existing legislation provides for the application of the 25 per cent. Stamp Duty to certain leases of land in the same way as it applies to conveyances and transfers on sale. This section carries out in relation to such leases amendments of the law similar to those contained in Section 29 in relation to conveyances and transfers.

## PART V.

### Miscellaneous and General.

*Section* 32 removes the restriction which at present prevents the Bank of Ireland from making advances or loans to the Minister for Finance without the consent of the Oireachtas. The restriction does not apply to any bank other than the Bank of Ireland.

## DECISIONS OF PROFESSIONAL INTEREST

Delegated powers—invalid sub-delegation (N.Z.). In Hawke's Bay Raw Milk Producers Co-operative Co. *v.* New Zealand Milk Board (1961) N.Z.L.R. 218, the New Zealand Court of Appeal held that a purported sub-delegation by the Governor-General of the Minister of Agriculture of a power to fix milk prices was invalid. The court also held that in making regulations under statutory authority the Governor-General was exercising a delegated power of legislation.

Evidence — admissibility — highly prejudicial evidence. At the trial of a man charged with wounding his wife with intent to cause her grievous bodily harm a neighbour gave evidence that the wife had said to a neighbour "He shot me, he said he would." The judge gave a strong direction to the jury to ignore those words and the jury convicted. Held on appeal that the conviction should be quashed because the neighbour's evidence was so likely to influence the jury that even after the judge's direction there was a distinct danger that the jury had been influenced by that evidence. R. *v.* Parker (1960) 45 Cr. App. R. 1, C.C.A.

Evidence — identification. Evidence of similar offences is admissible in questions of identification. The appellant was convicted of obtaining a car by false pretences in that he went with another man to the seller of the car and posed as a fitter advising the other man who finally bought the car for a cheque which was dishonoured. The appellant denied that he was the man in question but he was identified by three witnesses as having posed as a fitter when committing other similar offences. On appeal it was argued that the evidence of the other offences was inadmissible and that the conviction should accordingly be quashed. Held that the evidence was admissible on the question of identity and the appeal failed. R. *v.* Giovannone (1960) 45 Cr. App. R. 31, C.C.A.

Evidence—corroboration—accomplice. In R. *v.* Heaps (1961) Crim. L. R. 254, the appellant had been convicted of receiving furs which had been found in possession of C. who, being indicted with the appellant, gave evidence against him. The jury were given no warning as to how they should approach C.'s evidence. The Court of Criminal Appeal, allowing the appeal, held that warning that C.'s evidence should be looked upon with suspicion should have been given and corroborative evidence looked for.

Murder—diminished responsibility—"abnormality of mind". The "abnormality of mind" referred to in the Bahamas Islands (Special Defences) Act, 1959 (which is similar to the Homicide Act, 1957), should not be judged by seeing whether it is on the border-line of insanity as defined in the M'Naghten Rules. It means something which a jury would consider as partial insanity or on the border-line of insanity in the popular, not the M'Naghten, sense.

The appellant was convicted of murder in the Bahamas in spite of a plea of diminished responsibility under the above Act. The judge had read the M'Naghten Rules to the jury and left it to them whether the appellant was on the border-line of insanity as defined by those Rules. Held that that was a misdirection and the conviction should be quashed. Rose *v.* R. (1961) 2 W.L.R. 506; 105 S.J. 253; (1961) 1 All E.R. 859 P.C.

*Res judicata* — by implication — question not directly raised in former proceedings: (Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30), s. 6 (1) (*c*), (2).) The point at issue in later proceedings is not *res judicata* and there is no estoppel by record unless the question in the earlier proceedings was precisely the same as that in the later.

In a collision between two motor-cars T., the driver of one, and the plaintiff, his passenger, were injured. T. sued S. in the county court for damages, but judgment was given for S., the court holding that T. was wholly to blame for the accident. Later, the plaintiff sued T. and S. in the High Court for damages, each denied liability and S. served a third

party notice on T. claiming an indemnity against any damages S. had to pay to the plaintiff, founding his case on the county court decision. The High Court awarded the plaintiff damages against both S. and T. On the third party notice S. sought to rely on the county court judge's notes of evidence. Held, that neither the common law nor the Law Reform (Married Women and Joint Tortfeasors) Act, 1935, allowed an action to be based on an estoppel, and in any case the precise questions of S.'s and T.'s liability to the plaintiff and their liabilities as against each other for damages to the plaintiff were not in issue in the county court and accordingly the third party notice must be dismissed. But the judge's notes of evidence could properly be looked at to see what question was raised in the previous proceedings. Randolph *v.* Tuck, 105 S.J. 157; (1961) 1 All E.R. 814, Lawton, J.

Damage to chattel not on plaintiff's land. A plaintiff whose chattel is damaged by the escape of harmful substances from the defendant's property can recover damages even though the chattel was not standing on land of the plaintiff, either on the basis of the Rylands *v.* Fletcher doctrine or on the footing of public nuisance from which the plaintiff has suffered special damage.

The plaintiff lived opposite to a depot owned and operated by the defendant company. Acid smuts containing sulphate or sulphuric acid escaped from the defendant's chimney and damaged the plaintiff's car while it was standing on the public highway. There was a continual emission of smells from the depot which on frequent occasions were particularly pungent though not injurious to health. Readings taken outside the plaintiff's house showed a noise in the evenings of from 64 to 68 decibels from plant at the depot, and tankers which left the depot in large numbers produced noise at 83 decibels. Held, the plaintiff was entitled to damages totalling £235 on all these grounds, and there would be injunctions suspended for six weeks to restrain the making of noise at night and the emission of smells at any time so as to cause a nuisance to the plaintiff. Halsey *v.* Esso Petroleum Co. (1961) 1 W.L.R. 683; 105 S.J. 209. (1961) 2 All E.R. 145. Veale, J.

Bailment—garage—car left for repair—theft and damage. In Cooper *v.* Dempsey (March 21, 1961) C. took his car to D.'s garage for repairs. D. left it in his car park, with the ignition key in the switch, the doors unlocked, and without supervision. The car was stolen, and later found in a damaged condition as the result of a crash. The Court of Appeal (Pearce, Harman and Davies L.JJ.) held that D. had failed to do what a reasonable and prudent man looking after his own property would have done, that the damage suffered by C. was not too remote; and that D. was accordingly liable to C. 105 S.J. 320.

Limitation of Actions—computation of period—date of issue of writ. In Marren *v.* Dawson Bentley & Co. (March 13, 1961) Havers J. held that the day on which an accident occurred was to be excluded from the computation of the period within which an action should be brought in respect of that accident; so that a writ issued on November 8, 1957, in respect of an accident which occurred on November 8, 1954, was not statute-barred. 231 L.T. 224.

Road Traffic—objective test "reasonable doubt". In Oakes *v.* Foster (April 18, 1961) F. was riding his motor-cycle along a road at a fairly fast speed. In the course of negotiating a sharp left-hand bend the motor-cycle mounted the kerb, travelled 121 feet along the footpath, then travelled a further 101 feet across the road, colliding with a car coming in the opposite direction. The justices, being of the opinion that there was a reasonable doubt whether or not something had happened before the collision which had caused the defendant to lose control (though there was no evidence to support such in inference), dismissed the information charging careless driving. The Divisional Court (Lord Parker C.J., Hilbery, Gorman, Salmon and Stevenson J.J.) held, allowing an appeal, that careless driving must be judged by the objective test; and that the justices' "reasonable doubt" was no more than a fanciful doubt. *The Times*, April 19, 1961.

Tort—maintenance—payment of counsel's fees. In William Hill (Park Lane) *v.* Sunday Pictorial Newspapers (1920), (April 14, 1961) W. Brought an action for maintenance against Sunday Pictorial alleging that W. had suffered pecuniary loss, namely the payment of costs to their solicitors, as the result of an unsuccessful action and appeal brought against them by L. Sunday Pictorial Newspapers (1920) had promised to pay L. 200 guineas towards his counsel's fees. Winn J. held that although the provision of counsel's fees or the promise to make such provision was maintenance of a tortious character, the action failed because special damage, which was an essential ingredient of an action for maintenance, had not been proved: there was no evidence that L. was caused to continue his action by the promise of financial assistance, or that he would have discontinued it had it not been made. *The Times*, April 15, 1961.

Wills—attestation—"at the foot or end". In The Estate of Bercovitz, Canning and Robege *v.* Enever (April 19, 1961) the deceased had signed his name at both the top and bottom of his will, whereby he purported to dispose of an estate of not less than £300,000 net. The attesting witnesses, however, had only signed their names below the top signature. Phillimore J. held upon the evidence that the only signature witnessed was that at the top, and since the signature "at the foot or end" of the document had not been attested in accordance with s. 9 of the Wills Act, 1837, the will must be pronounced against. *The Times*, April 20, 1961.

## OBITUARY

Mr. John J. Timoney, Solicitor, died on 16th May, 1961, at the Mater Hospital, Dublin.

Mr. Timoney served his apprenticeship with Mr. Patrick Glynn, 22 Nassau Street, Dublin, was admitted in Easter Sittings, 1935, and practised at Tipperary under the style of Messrs. John J. Timoney & Co.

Mr. Lewis D. Field, Solicitor, died on 27th May, 1961, at his residence, 68 Woodlawn Park, Churchtown, Dublin.

Mr. Field served his apprenticeship with the late Mr. Herbert S. McClelland, 10 Ely Place, Dublin, was admitted in Hilary Sittings, 1932, and practised at 10 Ely Place, Dublin, as partner in the firm of Messrs. Barrington & Son.

Mr. Thomas Paul McCarthy, S.C., died on 1st June, 1961, at his residence, 1 Northbrook Road, Dublin.

Mr. McCarthy served his apprenticeship with the late Mr. Jeremiah McCarthy, Sligo, was admitted in Hilary Sittings, 1911, and practised at Sligo up to his being called to the Bar in 1922.

Mr. Thomas H. O'Donovan, Solicitor, died on 20th June, 1961, at the Sacred Heart Hospital, Clonakilty, Co. Cork.

Mr. O'Donovan served his apprenticeship with the late Mr. Patrick W. O'Donovan, Clonakilty, was admitted in Hilary Sittings, 1919, and practised at Clonakilty under the style of Messrs. Thomas R. Wright & Son, until his retirement in 1957.

## THE REGISTRY

### Register C

In the Goods of Thomas Killeen, formerly of Ballyprecus, Bunclody, County Wexford, and late of Iveagh House, Bride Street, Dublin, deceased. Died at St. Laurence's Hospital, Dublin, on the 26th April, 1961.

Will any person having any information about a Will of the above named deceased please communicate with Roderick O'Connor, Solicitor, Charlestown, Co. Mayo.


# THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives widows and families, who have fallen on hard times.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
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*Vice-Presidents*
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JOHN MAHER

*Secretary*
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FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

JUNE 22ND: The President in the chair, also present Messrs. Thomas A. O'Reilly, James R. C. Greene, Peter D. M. Prentice, John Carrigan, Desmond Moran, Thomas V. O'Connor, George G. Overend, John J. Nash, Augustus Cullen, Eunan McCarron, Robert McD. Taylor, Dinnen B. Gilmore, Charles W. Hyland, James J. O'Connor, Arthur Cox, Gerald Y. Goldberg, James W. O'Donovan, Patrick Noonan, Peter E. O'Connell, Reginald J. Nolan, Francis J. Lanigan, John J. Sheil, Brendan T. Walsh, J. Bernard MacGarry, Terence De Vere White.

The following was among the business transacted:

#### Civil Liability Bill, 1960

A memorandum has been prepared for submission to the Department of Justice. There was a discussion on section 42 of the bill which deals with the question of costs where there is a claim and counterclaim and the damages are reduced because of the negligence of one or more parties to the action. The Council decided that a booklet will be prepared and put on sale for members dealing with the provisions of the Act as soon as it becomes law.

## Registry of Deeds

There was a discussion on (*a*) a proposal that deeds with memorials for registration might be lodged by post; (*b*) the form of memorial; (*c*) negative and common searches. As regards (*a*) it was decided that unless the Department of Justice would agree to introduce legislation that solicitors should have the option to lodge deeds and memorials for registration either manually as at present or to use the postal service no change should be sought in the present system of manual delivery. As regards (*b*) the Council direct that the discussions with the Parliamentary Secretary should proceed with proposals for (i) the abolition of parchment and the substitution of paper of standard quality and size for memorials, (ii) the use of typescript or manuscript at the option of the party, (iii) the abolition of the affidavit of attesting witness, (iv) the substitution of a standard form with columns or sections for the present narrative memorial. As regards (*c*) it was decided to continue the discussions with the Department on the following line, (i) there should be only one kind of search in substitution of the present negative and common searches, (ii) the official search should include a Government guarantee against mistake by officials, (iii) the requisition for a search should be lodged by post or by hand at the option of the party, (iv) there should be a standard fee on an application for a search by an adhesive revenue stamp based on the number of years covered and the number of names, (v) searches should be returned by post or taken up manually. If the party wishes to keep the search open so that the conveyance to the purchaser will appear thereon it should be possible to close the search either by post or by personal attendance, (vi) existing facilities for unofficial hand searches should be continued.

## Weekend meeting 1963

It was decided to make inquiries with a view to holding the next weekend meeting in Co. Donegal.

## Registry of Deeds hand search. Incidence of costs

On a report from a committee, the Council stated that if a contract for sale provides for Registry of Deeds searches by the vendor and the vendor cannot furnish the searches on the date appointed for completion, the vendor should pay for the substitute hand searches if the sale is closed by agreement before the official searches are ready.

## District Court. Service of processes

The Council considered a report from a committee on difficulties experienced by practitioners in having service of processes effected particularly under the default procedure. It was decided to make representation to the District Court Rules Committee suggesting that if it is impossible to secure the services of suitable persons as process servers rules should be made to enable documents to be served by registered post without any special order of the Court in all civil proceedings except in the case of a summons for committal under the Enforcement of Court Orders Acts. The rule should provide that ordinary default civil bills should be served in the same manner as ordinary civil bills. If the suggestions of the society are adopted the District Justice will have power to make an order for service by registered post of an examination order under the Enforcement of Court Orders Acts.

## Solicitors appearing on television

Having regard to the pending introduction of television it was decided to publish a statement for the guidance of members on the professional position. Inquiries are being addressed to other Law Societies, the Bar Council and the Irish Medical Association and a further statement will be published in due course.

## EXAMINATION DATES

First law, September 4th and 5th; second law, September 4th and 5th; third law, September 6th, 7th and 8th; Book-keeping, September 14th; Preliminary, September 5th and 6th; First Irish, September 15th; Second Irish, September 15th and 16th.

## PROCEEDINGS AGAINST UNQUALIFIED PERSONS. MEMORANDUM AND ARTICLES OF ASSOCIATION OF COMPANY

On July 27th in the Dublin Metropolitan District Court a chartered accountant was convicted and fined a sum of £5 with £50 costs in proceedings instituted by the Society. It was proved that the accountant had prepared the memorandum and articles of association of a limited company for or in expectation of fee or reward. The Justice held that the articles of association is a document relating to personal estate within the meaning of section 58 of the Solicitors Act 1954 and that it does not fall within the exceptions mentioned in the section. The Justice fixed recognisances in the event of an appeal. Messrs. Seamus Henchy, S.C., and Sean Gannon, B.L., (instructed by Mr. E. A. Plunkett) appeared for the Society. Mr. Seamus Heavey, S.C. and Mr William Twomey, B.L. (instructed by Messrs

Terence Doyle and Son) appeared for the defendant. Mr. Raymond O'Neill, s.c. (instructed by Messrs. D. & T. Fitzgerald) held a watching brief on behalf of the Institute of Chartered Accountants.

## CIVIL LIABILITY ACT, 1961

The Bill became law on the 14th of August, 1961.

The main provisions of the Act, some of which are a re-enactment of the existing law, are as follows :

1. The term wrong includes breach of contract and breach of trust in addition to the common meaning of tort heretofore accepted and concurrent wrong means a wrong done by two or more parties causing the same injury to the injured party.

2. Concurrent wrongdoers will each be liable for the whole of the damage which they caused to the injured party and may be sued either together or separately. If they are sued together the effect of any judgment given by the Court will be to make each of the defendants liable separately for the full amount of the plaintiff's damages. The damages in such case may be apportioned between the defendants by the jury but apparently only by the express or implied agreement of the plaintiff.

3. The common law distinctions between joint and several concurrent tortfeasors, whereby a release to one joint tortfeasor discharges all and whereby one joint tortfeasor making satisfaction and has no right of contribution against the others, will be abolished and in fact the terminology and law relating to joint tortfeasors will be replaced by the proposed statutory provisions regarding concurrent wrongdoers. A concurrent wrongdoer who makes satisfaction either by settlement or as the result of a judgment of a Court to the injured party will have a right of contribution against the other concurrent wrongdoers either by joining them in the action as third parties or by separate proceedings but the bill makes provision to encourage the enforcement of the right of contribution by the third party procedure rather than by separate proceedings.

4. The present common law regarding contributory negligence is being amended or rather abolished. A new statutory rule is to be substituted whereby on proof by the defendant that the damage suffered by the plaintiff was caused partly by the plaintiff's negligence the damages are to be reduced by such an amount as the Court thinks just. The plaintiff's action will not be dismissed, as under the present rules, but the damages will be reduced rateably in proportion to his own negligence.

5. The present common law rules which stop a civil action in tort because the facts alleged disclose a felony on the part of the defendant unless criminal proceedings are instituted, are being abolished.

6. Subject to specified exceptions, all causes of action of any person survive on his death for the benefit of his estate and all causes of action subsisting against him survive against his estate.

7. A person who causes the death of another by his wrongful act is liable to an action for damages for the benefit of the dependants of the deceased and the Minister for Finance will be liable to an action for damages for the death of any person caused by the negligent driving of a mechanically propelled vehicle belonging to the state.

The bill is extremely technical and complicated. It is published together with an explanatory memorandum of 78 pages issued by the Department of Justice. The explanatory memorandum, amended to include any changes made on the Special Committee stage of the bill, is now on sale at the Government Publications Sales Office, price 1/-. The Bill as passed by both Houses is available at 2s. 6d per copy.

## ROAD TRAFFIC ACT, 1961

The Road Traffic Act, 1961, will come into operation on a date to be fixed by order of the Minister for Local Government. It is a comprehensive measure dealing with the entire road traffic code and the Act of 1933 is completely repealed. Section 7 of the Fatal Injuries Act is also repealed, and its provisions are re-enacted, with some variation, by Section 116 of the new Act. Many of the provisions of the 1933 Act are re-enacted with little or no variation, but there are certain important additions and amendments. The attention of practitioners is particularly drawn to the following Sections:—

Section 53, dealing with the offence of dangerous driving, where it is provided that a contravention of the section resulting in death or serious bodily harm shall make the defendant liable on conviction to penal servitude for 5 years or a fine of £500. or both sentence and fine.

Section 55, which creates the new offence of parking a vehicle in a dangerous position.

Section 107, which deals with the duty to give information to a member of the Garda Síochána and which has a very much wider scope than Section 177 of the 1933 Act. Under Section 107 of the new Act, a guard may, if he has reasonable

grounds for believing that an offence under the act has been committed, require the owner of the vehicle to state whether or not he was using the vehicle at the material time. If the owner states that he was not using the vehicle, he must give such information as may be required of him, as to the identity of the person who was using the vehicle. Furthermore, any other person shall, if so required, "give any information which it is in his power to give, and which may lead to the identification of the person who was actually using the vehicle at the material time". Any person failing to give the required information will be guilty of an offence under the Section.

Section 124, which provides that a disqualification from holding a driving licence shall not be capable of being remitted under Section 23 of the Criminal Justice Act, 1951.

The following sections also contain important new matter and should not be overlooked.

Section 104 (containing new provisions relating to the Statutory Notice of intention to prosecute).

Section 106 (containing provisions enabling members of the Garda Síochána, under warrant, to enter and search premises and seize a vehicle).

Section 112 (offence of taking a vehicle without authority extended to include the taking of a pedal-cycle).

Section 103 (providing that the minister may make regulations which will bring in a system of fines for specified offences without the necessity of a court prosecution).

Section 26 (consequential disqualification orders).

Sections 44-47 (speed limits).

The Act is on sale at the Government Publications Sales Office, Henry Street Arcade, Dublin. Price 4/- Net.

## DEFAMATION ACT, 1961
## CIVIL LIABILITY ACT, 1961
## COURTS (ESTABLISHMENT) ACT, 1961
## COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961

Members should note that all of the above mentioned Acts have now become law. The two Courts Acts will be brought into operation on a day to be appointed by the Minister for Justice. The Civil Liability Act, 1961, came into force on the day it was signed by the President—i.e. the 14th of August, 1961. The Defamation Act, 1961, only comes into force on the 1st January, 1962.

## HOLIDAYS (EMPLOYEES) ACT, 1961

It is to be noted that this Act repeals the Holidays (Employees) Act, 1939 and entitles clerical and industrial employees to two weeks holiday with pay in respect of every year they have been employed by a firm. Copies may be obtained from the Government Publications Sales Office, Henry Street Arcade, Dublin.

## CLOSING OF LIBRARY DURING HOLIDAYS

The Library will be closed for reading from Wednesday, the 23rd August 1961, at 5 p.m. until Wednesday, the 6th September, at 10 a.m., and from Friday, 15th September, at 5 p.m. until Monday, 2nd October 1961, at 10 a.m. Members requiring books urgently should apply to the Office.

## THE TREATY OF ROME

Arising from Ireland's application to become a member of the European Economic Community, the following are the provisions as to the right of establishment and free supply of services.

### *Principles*

*Article 3.*

The activities of the community shall include under the conditions and with the timing provided for in this Treaty, the abolition as between member States, of the obstacles to the free movement of persons, services and capital.

### *The Right of Establishment*

*Article 52.*

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be progressively abolished in the course of the transitional period. Such progressive abolition shall also extend to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member States established in the territory of any Member State.

Freedom of establishment shall include the right to engage in and carry on non-wage-earning activities, and also to set up and manage enterprises and, in particular, companies within the meaning of Article 58, second paragraph, under the conditions laid down by the law of the country of establishment for its own nationals, subject to the provisions of the Chapter relating to capital.

*Article* 53.

Member States shall not, subject to the provisions of this Treaty, introduce any new restrictions on the establishment in their territories of nationals of other Member States.

*Article* 54.

1. Before the expiry of the first stage, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Economic and Social Committee and the Assembly have been consulted, shall lay down a general programme for the abolition of restrictions existing within the Community on freedom of establishment. The Commission shall submit such proposal to the Council in the course of the first two years of first stage.

The programme shall, in respect of each category of activities, fix the general conditions for achieving freedom of establishment and, in particular, the stages by which it shall be attained.

2. In order to implement the general programme or, if no such programme exists, to complete one stage towards the achievement of freedom of establishment for a specific activity, the Council, on a proposal of the Commission and after the Economic and Social Committee and the Assembly have been consulted, shall, until the end of the first stage by means of a unanimous vote and subsequently by means of a qualified majority vote, act by issuing directives.

3. The Council and the Commission shall exercise the functions entrusted to them by the above provisions, in particular:

by enabling a national of one Member State to acquire and exploit real property situated in the territory of another Member State to the extent that no infringement of the principles laid down in Article 39, paragraph 2 is thereby caused;

by applying the progressive abolition of restrictions on freedom of establishment, in each branch of activity under consideration, both in respect of the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and in respect of the conditions governing the entry of personnel of the main establishment into the managerial or supervisory organs of such agencies, branches and subsidiaries.

*Article* 57.

1. In order to facilitate the engagement in and exercise of non-wage-earning activities, the Council, on a proposal of the Commission and after the Assembly has been consulted, shall, in the course of the first stage by means of a unanimous vote and subsequently by means of a qualified majority vote, act by issuing directives regarding mutual recognition of diplomas, certificates and other qualification.

2. For the same purpose, the Council, acting on a proposal of the Commission and after the Assembly has been consulted, shall, before the expiry of the transitional period issue directives regarding the co-ordination of legislative and administrative provisions of Member States concerning the engagement in and exercise of non-wage-earning activities. A unanimous vote shall be required on matters which, in at least one Member State, are subject to legislative provisions and on measures concerning the protection of savings, in particular the allotment of credit and the banking profession and concerning the conditions governing the exercise in the various Member States of the medical, para-medical and pharmaceutical professions. In all other cases, the Council shall act in the course of the first stage by means of a unanimous vote and subsequently by means of a qualified majority vote.

3. In the case of the medical, para-medical and pharmaceutical professions, the progressive removal of restrictions shall be subject to the co-ordination of conditions for their exercise in the various Member States.

*Article* 58.

Companies constituted in accordance with the law of a Member State and having their registered office, central management or main establishment within the Community shall, for the purpose of applying the provisions of this Chapter, be assimilated to natural persons being nationals of Member States.

The term "companies" shall mean companies under civil or commercial law including co-operative companies and other legal persons under public or private law, with the exception of non-profit-making companies.

*Services*

*Article* 59.

Within the framework of the provisions set out below restrictions on the free supply of services within the Community shall be progressively abolished in the course of the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person to whom the services are supplied.

The Council, acting by means of a unanimous vote on a proposal of the Commission, may extend the benefit of the provisions of this chapter to cover services supplied by nationals of any third country who are established within the Community.

*Article* 60.

Services within the meaning of this Treaty shall be deemed to be services normally supplied for remuneration, to the extent that they are not governed by the provisions relating to the free movement of goods, capital and persons.

Services shall include in particular:

(*a*) activities of an industrial character;

(*b*) activities of a commercial character;

(*c*) artisan activities and

(*d*) activities of the liberal professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, a person supplying a service may, in order to carry out that service, temporarily exercise his activity in the State where the service is supplied, under the same conditions as are imposed by that State on its own nationals.

*Article* 62.

Except where otherwise provided for in this Treaty, Member States shall not introduce any new restrictions on the freedom which has been in fact achieved, in regard to the supply of services, at the date of the entry into force of this Treaty.

*Article* 63.

1. Before the end of the first stage, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Economic and Social Committee and the Assembly have been consulted, shall lay down a general programme for the abolition of restrictions existing within the Community on the free supply of services. The Commission shall submit such proposal to the Council in the course of the first two years of the first stage.

The programme shall, for each category of services, fix the general conditions and the stages of such liberalisation.

2. In order to implement the general programme or, if no such programme exists, to complete one stage in the liberalisation of a specific service, the Council, on a proposal of the Commission and after the Economic and Social Committee and the Assembly have been consulted, shall, before the end of the first stage by means of a unanimous vote and subsequently by means of a qualified majority vote, act by issuing directives.

3. The proposals and decisions referred to in paragraphs 1 and 2 shall, as a general rule, accord priority to services which directly affect production costs or the liberalisation of which contributes to facilitating the exchange of goods.

*Article* 64.

Member States hereby declare their willingness to undertake the liberalisation of services beyond the extent required by the directives issued in application of Article 63, paragraph 2, if their general economic situation and the situation of the sector concerned so permit.

The Commission shall make recommendations to this effect to the Member States concerned.

*Article* 65.

As long as the abolition of restrictions on the free supply of services has not been effected, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons within the meaning of Article 59, first paragraph, who supply services.

*Article* 66.

The provisions of Articles 55 to 58 inclusive shall apply to the matters governed by this Chapter.

## LAND COMMISSION FORMS

Representations were made to the Land Commission on the inconvenience caused to some solicitors by the refusal of the Department to supply stocks of sub-division application forms for use when required. The Land Commission have now agreed that applications for forms will be met in full subject to a maximum issue of three dozen forms at any one time. The Council feel that this arrangement will be satisfactory as it will enable practitioners to lay in a sufficient stock to cover eighteen applications for sub-division keeping a copy for the file.

## ORDNANCE SURVEY MAPS

A letter from the assistant director of Ordnance Survey states that it has now been decided to extend the existing licence scheme for the copying of maps to cover a reproduction by mechanical means. The annual fee for the licence will be 15/- in respect of each partner and assistant in the firm. Details of the scheme and application forms for the licence may be obtained on request from the Assistant Director, Ordnance Survey Office, Phoenix Park, Dublin.

## VALUATION OFFICE

A statement was published in the Society's GAZETTE for July 1960, dealing with the question of the final determination of the value of property, in which it was stated that the question of the value of property cannot be re-opened after final determination in the event of a sale at a figure greater or less than that finally determined as the value. A member has written pointing out that notwithstanding this, where property is bequeathed on a trust for sale and a sale is made within six years at a price less than the finally determined value, a claim for legacy duty refund will be entertained by the Estate Duty Office. For the purposes of legacy duty the value of property bequeathed on a trust for sale is the sale price, and not the value as at the date of death.

## BOOK-KEEPING EXAMINATION

The book-keeping examination originally scheduled for Friday, 8th September 1961, has been postponed to Thursday, September 14th, in order to facilitate apprentices who are also sitting for the second and third law examinations. Apprentices who have given notice of intention to attend for the examination will be notified of the change of date.

## EXAMINATION RESULTS

At examinations held on 7th July 1961, under the Solicitors Act 1954, the following candidates passed.

*First Examination in Irish:* John Cussen, Donal F. C. Gavin, William Colm C. Gavin, Vincent O. Morrin, Colm C. Murphy, Patrick J. McMahon, Peter C. K. O'Callaghan, Enda Patrick O'Carroll, Robin A. W. Peilow, Mary Tighe.

11 candidates attended; 10 passed.

*Second Examination in Irish:* Henry C. P. Barry, Charles J. Bergin, Thomas O. Boyle (B.C.L.), Seán de Burca (B.A.), Malachy F. Concannon (B.A., B.Comm.), Michael B. Creed (B.C.L.), John V. P. Cresswell (B.A., LL.B.), Robert Cussen (B.C.L.) Lewis J. Goldberg, Declan J. Howley, Michael B. Malone, James Monahan, Brendan A. J. Murrin, Margaret J. O'Callaghan (B.A.), Thomas J. M. O'Donoghue, Francis J. O'Flynn, Carmel M. O'Halloran.

18 candidates attended; 17 passed.

## SOLICITORS' GOLFING SOCIETY

President's (Mr. Ralph J. Walker) Prize at County Louth Golf Club, Baltray (by kind permission) on Saturday, September 23rd 1961, also Ryan Challenge Cup (handicaps 13 to 18) and other Prizes.

Annual General Meeting in Clubhouse after Competition. Dinner: 7.30 p.m.

Entries and subscriptions (£1) to Hon. Treasurer, John J. O'Dwyer, 15 D'Olier Street *or* Hon. Sec., Gerard M. Doyle, 50 Lower O'Connell Street, Dublin 1.

## COUNTY OF TIPPERARY AND OFFALY (BIRR DIVISION) SESSIONAL BAR ASSOCIATION

### LIST OF OFFICERS AND COMMITTEE

*President:* Michael O'Meara, Nenagh; *Hon. Secretary:* John Carrigan, Thurles; *Hon. Treasurer:* Martin T. Butler, Thurles; *Committee:* Michael C. Black, Nenagh; Henry Hayes, Nenagh; Patrick F. Treacy, Nenagh; James A. Binchy, Clonmel; Thomas J. Reilly, Clonmel; N. J. O'Donnell, Tipperary; Donal Binchy, Clonmel; John C. Devitt, Roscrea; John J. Nash, Thurles; Francis Murphy, Clonmel; Robert Frewen, Tipperary; Edgar J. Ryan, Killenaule; William F. O'Connell, Tipperary; John C. Reedy, Birr; Henry Shannon, Clonmel, (Life Member).

## CORRESPONDENCE

PUBLIC RECORD OFFICE,
FOUR COURTS,
DUBLIN.

Sir,

Five years ago a letter was published in this journal, acknowledging the many valuable presentations made to this office by members of the legal profession, in particular of original probates and other testamentary documents serving as substitutes for documents destroyed in 1922. I am happy to say that this co-operation has continued, with the result that since that time many important additions have been made, including over 3,000 testamentary documents, a number of early rentals and a number of deeds prior to the establishment of the Registry of Deeds. I should like to thank the donors of these through the medium of your journal, and to mention in particular the extensive presentations made by Messrs. Cathcart & Hemphill, Messrs. D. & T. Fitzgerald, Thomas Gerrard & Co., Mr. L. Kearon, Messrs. Joyce, Mackie & Lougheed, Messrs. Milward, Jones, Mayne & Knapp, and Messrs. Walker, Son & Mason. It is much to be hoped that solicitors still possessing ancient records no longer

required by themselves or their clients will consider offering them to the P.R.O. for permanent preservation. Not only testamentary documents are of value; copies of legal documents obtained from the P.R.O. before 1922 are of particular interest, as also are rentals of any date earlier than about 1870, deeds not registered in the Registry of Deeds, and almost any original legal documents of pre-19th century date.

Yours faithfully,

MARGARET C. GRIFFITH
*Deputy Keeper.*

## CUIRT BHREITHIUNAIS CHUARDA
## (Circuit Court of Justice)

Dublin Circuit. County of the City of Dublin.

Pursuant to Order 10, Rule 3 of the Rules of the Circuit Court 1950, as amended by the Circuit Court Rules 1954, I, the Circuit Judge assigned to this Circuit, being satisfied that service (in accordance with Rule 4 of Order 10 of the said 1950 Rules) of Civil Bills and other Originating Documents of the Circuit Court by a duly appointed Summons Server is not practicable in the Summons Server's area of Balbriggan in this Circuit, do hereby direct that for the period of three months from this date, or until the post of Summons Server in that area has been filled, whichever event shall first happen, service of any such Civil Bills or other Originating Documents in said area may be effected by a duly appointed Summons Server to another area in said Circuit, by registered post.

Dated this 12th day of July, 1961.

T. C. CONROY (Copy).
*Circuit Judge.*

## DECISIONS OF PROFESSIONAL INTEREST

*Evidence—admissibility—other offences.*

(Scot) (Criminal Evidence Act, 1898 s.1. (f) (ii).)—H.M. Advocate *v.* Deighan (1961), 77 Sh. Ct. Rep. 26, the Sheriff Court of Midlothian held that the prosecutor could not cross-examine the accused as to his own previous character, although he had attacked the character of prosecution witnesses, because the defence attack was essential to the nature of the defence.

*Criminal Law—Summing up of Trial.*

In R. *v.* Milne (1961) Crim. L.R. 323, the accused had been convicted of driving a car whilst under the influence of drink. The Court of Criminal Appeal *held* that, as nowhere in the summing-up was it said that the burden of proof was on the prosecution, the appeal would be allowed.

*Restraint of Trade—Public Policy (Singapore).*

In Thomas Cowan & Co. *v.* Orme (1960) 27 Malayan L.J. 41, the defendant entered into a contract of service with the plaintiffs who were carrying on business as pest exterminators and fumigators. He covenanted that he would not carry on business on Singapore Island for three years after leaving the employment. He left and broke the covenant. The Singapore High Court *held* that although the covenant was reasonably necessary for the protection of the plaintiff's business it was against public policy since to prevent the defendant from operating as a fumigator in Singapore would give the plaintiffs a virtual monopoly.

*Indemnity—guarantee distinguished.*

The father of an infant hirer under a hire-purchase contract which was void under the Infants Relief Act, 1874, signed a "Hire-Purchase Indemnity and Undertaking" whereby he agreed with the hire-purchase company "to indemnify you against any loss resulting from or arising out of the agreement and to pay to you the amount of such loss on demand and whether or not at the time of demand you shall have exercised all or any of your remedies in respect of the hirer or the chattels but so that on payment in full by me of my liabilities hereunder I shall obtain such of your rights as you may at your discretion assign to me." The infant defaulted and the father defended a claim against him by the company on the ground that his agreement was a guarantee of an illegal contract and as such unenforceable. *Held*, that the undertaking was on its true construction an indemnity and so enforceable: Yeoman Credit *v.* Latter (1961) 1W.L.R. 828 (1961) 2a 11 E.R. 294, C.A.

*Hire-Purchase—Exception clause—fundamental breach—series of lesser breaches.*

It is an implied condition of a contract of hire (and so also of a contract of hire-purchase) that the goods hired are reasonably fit for the purpose for which they are hired, except where the defect is patent and the hirer did not rely on the owner's skill and judgment. The owner cannot escape from a fundamental breach of that condition by an exception clause excluding all conditions whether that breach consists in one major defect or an accumulation of minor defects.

A hire-purchase agreement negotiated by a dealer, D., between a finance company, F., and the hirer, H., provided that H. should take on hire from its owner, F., a second-hand car, paying £125 deposit and 30 monthly hire charges of £14 19*s.* 1*d.* and finally having an option to purchase for £1. The finance company never saw the car, which had certain apparent minor defects, and which D. agreed to put right. The agreement provided that "No warranty whatsoever is given by (F.) as to the age, state or quality of the goods or as to fitness for any purpose and any implied warranties and conditions are also hereby expressly excluded." The car had so many minor defects that it could not be used on the roads and after about three months from delivery H. rejected the car. F. sued H. for arrears of instalments and damages and H. counterclaimed for the deposit and instalments paid by him as money paid on a consideration which had totally failed. *Held* that H. was entitled to reject the car because F. was in fundamental breach of the implied condition of fitness and the exception clause did not protect F. Accordingly, F. was not entitled to instalments or damages for any time after rejection, but that the consideration had not totally failed, so that H. was not entitled to recover what he had paid and must pay the instalments down to rejection. Yeoman Credit *v.* Apps. (1961) 2 All E.R. 281—Court of Appeal (Pearce Harman & Davies L.J.J.).

*Intoxicating Liquors. Consumption during prohibited hours supper licence—drink "ancillary" to meal.*

(Licensing Act, 1953 s. 104 (1) (*a*).). The description in s. 104 (1) (*a*) of the Licensing Act, 1953, of "premises . . . *bona fide* used . . for . . providing . . . substantial refreshment to which the sale of intoxicating liquor is ancillary" for which a supper licence can be granted does not refer to the sale and supply being ancillary to the total business done on the premises, but is a description of the kind of meal or refreshment which the premises must be *bona fide* intended to be used to provide. In other words, it is descriptive of the meal. It must not be a sale of liquor under the cloak of meals but there must be *bona fide* meals to which the drink is ancillary. In considering an application by a club for a supper licence, justices, on finding that the total receipts from the sale of drink exceeded those for the sale of meals, held that the drinks were not ancillary to the meals and refused the licence. On an application for mandamus *held* that it must issue, as, applying the proper test there was, on the facts, no doubt that the provisions of the section were satisfied: R. *v.* Liverpool Licensing Justices, *ex.* p. Tynan (1961) 1 W.L.R. 837; 2 all E.R. 363 Divisional Ct.

*Landlord and Tenant Act, 1954—new lease—occupation by landlord premises required for. (Landlord and Tenant Act, 1954, s. 30 (1) (g).*

In Aperbar *v.* German (1961) 177 Estates Gazette 197 Dankwerts J. *held* that landlords who in resisting an application for a new lease claimed that they wished to use a restaurant for their business as solicitors had not shown a firm and settled intention to do so as the restaurant premises were unsuitable for their business without reconstruction and they had neither applied for planning permission nor obtained estimates for work to be done.

*Northern Ireland—Vendor and purchaser—specific performance.*

In Buckley *v.* Irwin (1960) N.I. 98, the defendant, who was regarded as a person who would require protection and guidance in carrying out comparatively simple business affairs, agreed after a casual conversation with the defendant to sell his farm and tractor to him. In an action for specific performance of the agreement or alternatively for damages for breach of contract, McVeigh J. regarded the price agreed as a substantial undervalue but not necessarily as of such nature that without more evidence fraud could be inferred but he refused to make an order for specific performance on the ground that the bargain was unethical and infringed the principles of fairness which a court of equity requires to be observed. Damages for breach of contract were also refused on the ground that an agreement can be rescinded on grounds other than actual fraud and this includes a transaction in which the court is of the opinion that it is unconscientious for a person to avail himself of a legal advantage which he has obtained.

*Patents and designs—Patent—infringement.*

(Eire) In Rawls and American Tire Machinery Inc. *v.* Irish Tyre and Rubber Services (1960) I.R. II, the plaintiffs sought an injunction to restrain the defendants from infringing a patent granted in respect of an invention for individually re-lugging worn or damaged lugs on the treads of heavy duty or off-the-road tyres. On the question whether, having regard to common general knowledge in the art at the time of the patent, there was any inventive ingenuity in the alleged invention or whether it was a mere workshop improvement, Budd, J. *held* that for this purpose common general knowledge must be taken as meaning common general knowledge in the Republic of Ireland and that, as the alleged invention was a commercial success, supplied a want, was widely used and superior to what went before, it was an invention as distinct from a work-

shop improvement. The plaintiffs were accordingly entitled to an injunction sought.

*Practice—Appeal—Chief Land Registrar—rehearing or trial de novo.*

An appeal from the Chief Land Registrar to the nominated judge of the Chancery Division under R.S.C., Ord. 54d. r. 6, is a rehearing, not a *trial de novo* but the judge may admit new oral or affidavit evidence.

*Per* Russell J.: There should be a system at the hearing by the Chief Land Registrar by which he makes the equivalent of a judge's note of the evidence which will be made available to the parties for the purpose of an appeal. The alternative is a short-hand note by an official of the Registry present at the hearing, available to the parties. On an appeal from the Chief Land Registrar the question arose whether further evidence should be admitted. *Held*, that though the appeal was a rehearing on the evidence before the Chief Land Registrar, further evidence could be admitted at the appeal judge's discretion; *Re* Gilberts Application (1961) 1 W.L.R. 822: 105 S.J. 322: (1961) 2 All E.R. 313 Russel J.

*Stamp Duties—conveyance if property other than that sold. (Stamp Act*, 1891 *s.* 54 *Sched. I.)*

For a conveyance to be charged with *ad valorem* stamp duty as a conveyance on sale it must be a conveyance of the property which has been sold, not of any other property.

Co. A. bought, but took no transfer of, all the shares in Co. B, which the vendor shareholders then put into liquidation, authorising the liquidator to transfer the assets to Co. A. The liquidator conveyed Co. B's land to Co. A accordingly and contended that the conveyance need only be stamped 10s., whereas the I.L.C. contended that it must be stamped *ad valorem* as a conveyance on sale. *Held*, that as the land was never sold, but only the shares in Co. B, the conveyance was not a conveyance on sale, and so need not be stamped *ad valorem*, but was a "conveyance or transfer of any kind not hereinbefore described" within the 1st Schedule to the Stamp Act, 1891 and so liable only to a 10s. stamp. Henty & Constable (Brewers) (In Voluntary Liquidation) *v.* I.R.C., 105 S.J. 466 (1961) 2 All E.R. 372, Buckley J.

*Conveyance—take over bid. (Stamp Act*, 1891, *s.* 54, *Sch. I; Companies Act*, 1948, *s.* 209).

The head "Conveyance or transfer on sale" in Sch. 1 to the Stamp Act, 1891, means a conveyance or transfer on a contractual sale where the minds have met, not a transfer made under statutory compulsion. Therefore, where a purchaser has obtained the consent of the holders of 90 per cent. of the shares in a company to sell their shares to him and then appoints a nominee to transfer the rest to him compulsorily under s. 209 of the Companies Act, 1948, that transfer is not a "transfer on sale" and need be stamped only 10s. But the transfers by the other shareholders are transfers on sale and must be stamped *ad valorem*, even though the agreement with them is conditional on 90 per cent. acceptance of the offer and the transfers are executed before that condition is fulfilled.

Co. X made an offer for all the stock in Co. Y at 40s. 6d. a unit, conditional on 90 per cent. acceptances, and the holders of most of the stock executed transfers to Co. X against a promise to retransfer if the offer did not become binding. Later, acceptances were received for 90 per cent. of the stock and thereon Co. X's nominee transferred the rest to Co. X under s. 209 of the Companies Act, 1948. *Held* that the last transfer need be stamped only 10s. but that the other transfers, even though made before the offer became binding, must be stamped *ad valorem*. Ridge Nominees *v.* I.R.C. (1961) 2 All E.R. 354 Buckley J.

*Agency—commission—"terms acceptable to vendor"—"subject to contract".*

In Martin Gale & Wright *v.* Buswell (May 17, 1961) a house owner instructed estate agents to offer her house for sale, commission being payable "in the event of the agents introducing the property to anyone prepared to purchase . . . on terms acceptable to you". An offer was made "subject to contract" but before completion the vendor decided not to proceed with the sale. The Court of Appeal (Pearse, Upjohn and Donovan L.J.J.) *held* affirming the county court judge, that the words "subject to contract" meant that the offer was of an unstable character, and in the absence of a signed contract tendered by the purchase, there was nothing in the agreement that gave the agents a right to commission for introducing a person prepared to purchase on terms which at one time were acceptable to the vendor but which were not so at the time of the conditional offer, and consequently the claim failed. (D.C.) See also 105 S.J. 466.

*Contract—mistake—rectification—unilateral mistake.*

In A. Roberts & Co. *v.* Leicester County Council (May 3rd, 1961) in January, 1953, the defendants advertised for tenders for the erection of a school and subsequently they resolved to accept a tender

submitted by the plaintiffs subject to a reduction in price. On March 8th, 1953, the plaintiffs submitted a revised tender which specified that the works would be completed within 18 months from the date of instructions to proceed. The date for completion of the works in fact inserted in the contract, on the instructions of an official of the defendants, was September 30th, 1956, giving a period for completion of 30 months. If the tender had been made on the basis of a 30 month period for completion the price would have been higher. The plaintiffs brought an action claiming, *inter alia*, rectification of the contract. Pennycuick J. held that the plaintiffs in the circumstances were entitled to the relief claimed on the ground that if one party to a transaction knew that the instrument contained a mistake in his favour but did nothing to correct it, he was precluded from resisting rectification because the mistake was merely unilateral and not common (J.A.G.) See also 105 S.J. 425.

*Criminal Law—sentence—conspiracy to contravene Official Secrets Act*, 1911.

In R. *v.* Kroger; R. *v.* Kroger; R. *v.* Houghton; R. *v.* Gee; R. *v.* Lonsdale (May 8, 1961) the Court of Criminal Appeal (Hilbery, Pilcher and Paull JJ.) *held*, dismissing appeals against sentences imposed on a conviction of a common law conspiracy to communicate information, in contravention of s. 1 of the Official Secrets Act, 1911, that the appropriate sentence for a common law conspiracy was any sentence in the discretion of the court, provided that the sentence was not inordinately long. (D.C.) *The Times*.

*Extradition—fugitive offenders—discharge—discretion.*

In R. *v.* Governor of Brixton Prison ex p. Maranjan Singh (May 5, 1961) the Chief Metropolitan Magistrate had committed S. to Brixton Prison to await his return to India on charges under Art. 420 of the Indian Penal Code. The offences were alleged to have been committed in about October, 1951. S. applied for a writ of *habeas corpus*, applying alternatively under s. 10 of the Fugitive Offenders Act, 1881, principally on the ground of the long delay on the part of the Indian authorities in bringing proceedings. The Divisional Court (Lord Parker C.J., Salmon and Edmund Davies JJ.) *held*, allowing the application, that that court had a wide discretion under s. 10 of the Act. (D.C.) *The Times*, May 6, 1961.

*Malicious Prosecution and False Imprisonment—action against police constables.*

In Selby *v.* Maclennan (May 8, 1961) plaintiffs claimed damages for alleged assault, false imprisonment, malicious prosecution and conspiracy against two police constables. Havers J. on the verdict of a jury, entered judgment for the plaintiffs for £5,200. *The Times*, May 9, 1961. This is known as "The Kiss in the Car Case".

*Road Traffic—dangerous driving and careless driving—circumstances in which mechanical defect a defence.*

In R. *v.* Spurge (May 18, 1961) the Court of Criminal Appeal (Lord Parker C.J., Hilbery, Gorman, Salmon and Stevenson JJ.) *held* that if, on a prosecution for dangerous driving, the motor-car endangered the public solely by reason of some sudden overwhelming misfortune suffered by the man at the wheel for which he was in no way to blame, then he was not guilty of dangerous driving. *The Times*, May 19th, 1961.

*Solicitors—authority to sign memorandum—acting for both parties to sale.*

In Gavaghan *v.* Edwards (April 28, 1961) the Court of Appeal (Ormerod, Willmer and Danckwerts L.JJ.) held, dismissing an appeal from a county court judge, that the issue whether a solicitor who acted for both parties to a sale could have authority to sign a memorandum on their behalf for the purposes of s. 2 of the Irish Statute of Frauds, 1695, depended on the facts of each particular case: the mere fact of solicitor and client relationship did not give the solicitor by implication any authority to sign a memorandum.

*Trade Unions—trade dispute—inducement to breach of contract—boundaries of law of tort.*

In Rooks *v.* Barnard (May 19, 1961) Sachs J. *held* (1) that the making of threats to induce a man to break a contract where he had no right to do so was tortious; (2) That where individual threats had the cumulative effect of causing damage it was not possible for each individual to say that no one of them had actually caused the damage and consequently that no tort had been committed at all; (3) that since the policy of the Trade Disputes Act, 1906, was to ensure that employees were as a general rule free to pursue by lawful means the furtherance of trade disputes, it followed that s. 3 should be construed as to avoid giving employees freedom to use in furtherance of a trade dispute means which were of themselves unlawful or in impairment of their obligations. Accordingly, by (1) and (2) a defence based on s. 1 of the Trade Disputes Act failed, and by (3) a defence based on s. 3 also failed. *The Times*, May 20, 1961.

## THE REGISTRY

### Register C

FOR SALE at Main Street, Hospital, County Limerick, the lucrative practice of the late Laurence Walsh, solicitor. Apply Mrs. Margaret Walsh, Hospital, Co. Limerick.

In the goods of CATHERINE McCAFFREY late of 14, Synnott Place, Dorset Street, Dublin, deceased who died at St. Kevin's Hospital on the 9th July, 1961.

Will any person having information about a Will of the above named deceased, please communicate with Thomas M. Costelloe, Solicitor, 5-6, Upper O'Connell Street, Dublin.

FOR SALE:—Public Statutes of the Oireachtas for the years 1925 and 1926 (now out of print). Binding good. Box No. C167.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 25th day of August, 1961.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, James Maher. Folio number 1866. County Tipperary. Lands of Garraun in the Barony of Eliogarty containing 35a. 2r. 2p.

2. Registered Owner Mary Bridget Brennan. Folio number 124L. County Cork. Dwellinghouse and premises known as No. 9 St. Joseph's Drive, Montenotte Park situate in the Parish of St. Anne's—Shandon and City of Cork.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
RALPH J. WALKER

*Vice-Presidents*
GEORGE G. OVEREND
JOHN MAHER

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## MEETING OF THE COUNCIL

JULY 20TH: The President in the chair, also present Messrs. Peter E. O'Connell, Augustus Cullen, A. Cox, Charles Hyland, D. B. Gilmore, James R. C. Green, J. Bernard MacGarry, Peter D. M. Prentice, James W. O'Donovan, John J. Nash, John R. Halpin, Niall S. Gaffney, John Carrigan, George G. Overend, Desmond Moran, John Maher, Frank Armstrong, Brendan T. Walsh, Patrick Noonan, Robert McD. Taylor, Thomas A. O'Reilly, Reginald J. Nolan, George A. Nolan, T. V. O'Connor.

The President reported that he had attended the reception for His Eminence Cardinal Agagianian and the reception in connection with the Irish Medical Association and that accompanied by the Vice-Presidents and the Secretary he had visited the President of Ireland.

The following was among the business transacted:

### Solicitor acting for both parties

There was a general discussion on the proposed regulation restricting or preventing solicitors from acting for both parties. Further consideration was adjourned.

### Legal Education and Training

The Secretary's report was considered and approved. The Policy Committee were authorised to submit a memorandum to the Commission on Higher Education on the lines of a draft already prepared and outlined by the President at the meeting.

### Solicitor acting for both Vendor and Purchaser. Contemplated Proceedings

Member, acting for the vendor in a sale, accepted instructions from the purchaser to act on his behalf also. The sale was not completed and the purchaser is in default with the balance of the purchase money. Member has now been instructed by the vendor to institute proceedings against the purchaser. He states that he did not obtain any information from the purchaser which could be used to the advantage of the vendor in the contemplated proceedings. In reply to an inquiry by member as to whether he is entitled to institute proceedings on behalf of the vendor, the Council, on a report from a committee, stated as their opinion that as member accepted a retainer from each party he should now act for neither in the contemplated proceedings between them.

### Costs of release in favour of Administrator from Next-of-Kin

Member acts for the next-of-kin of a deceased intestate, the administrator being represented by another solicitor. A release from the next-of-kin in favour of the executor is required on payment of their shares. On an enquiry by member as to whether he would be entitled to an approval fee for approving the draft deed of release submitted for execution by his client the Council, on the report of a committee replied that in their opinion the executor's costs of drawing the release are payable out of the residue and the costs of the beneficiary's solicitor are payable by the beneficiary.

## DINNER DANCE

Tickets for the dinner-dance on Thursday, November 23rd, will shortly be on sale at the Shelbourne Hotel. Remittances, 25/- per ticket, made payable to the Shelbourne Hotel, with applications for table reservations, should be addressed to the Bookstall, Shelbourne Hotel, St. Stephen's Green, Dublin.

## ASSISTANT TO THE SECRETARY

Mr. Thomas F. Cusack, B.C.L., has joined the Society's staff as assistant to the secretary. Mr. Cusack was admitted in Easter Sittings, 1959, and practised at Ballyjamesduff, Co. Cavan.

## PROGRAMME OF LECTURES, 1961-62

COURSE A.—Company Law. 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Thursday at 2.15 o'clock save where otherwise notified. Commencing Monday, 9th October.

COURSE B.—Conveyancing Law and Practice and Land Law. 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 9.00 o'clock save where otherwise notified. Commencing Tuesday, 10th October.

COURSE C.—The Procedure and Practice of the Courts. 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Saturday at 9.00 o'clock save where otherwise notified. Commencing Monday, 9th October.

COURSE D.—Taxation including death duties. 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Wednesday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified. Commencing Wednesday, 25th October.

COURSE E.—Book-keeping. 50 lectures deliveredy a follows :—Michaelmas Sittings—20 ; Hilars Sittings—20 ; Easter Sittings—10. Lectures each Monday and Friday at 5.15 p.m. save where otherwise notified. Commencing Monday, 9th October.

COURSE F.—Probate and executorship law and practice. 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 2.15 o'clock save where otherwise notified. Commencing Tuesday, 10th October.

Students at Course A to F who fail to attend and receive credit from the lecturer for at least 40 lectures in each course will not receive credit from the Council and must repeat any course missed.

COURSE G.—The rights, duties and responsibilities of solicitors. 2 lectures. An apprentice, to obtain credit must attend both lectures. The dates on which the lectures will be held will be announced at a later date.

For a selection of recommended reading see the published syllabus for the first, second and third law, and book-keeping examinations. The lecturer will not necessarily undertake to cover the entire field in each subject, or lecture out of any particular text book. He will advise the class as to its reading and will assume that each student will have read on the lines advised, in advance of each lecture, on the subject matter of the lecture. The aim of lectures will be to guide students in their work and to illustrate, explain and supplement their reading.

Fee: 10 guineas for each course except Course G for which there is no fee.

Apprentices should take the first law examination *before* attending any of the above lecture courses.

The lecture courses for each term have been arranged to coincide as closely as possible with the University terms.

## PRESENTATION OF CERTIFICATES OF ADMISSION

On July 20th the President, at a ceremony in the Society's library, presented Certificates of Admission to the undermentioned solicitors. In his address the President said:

Ladies and Gentlemen,

We are gathered in this simple ceremony for the purpose of handing to a number of young men, certificates of their admission to our profession, one of the pleasanter duties which falls to the President's lot to perform. These certificates bear the signature of a very distinguished lawyer—our Chief Justice—a man who began his career as a solicitor and who, having reached the position of Chief Justice, has never forgotten his connection with us nor has he ever lost interest in our wellbeing. I hope that his example of courtesy and consideration may be your example in the days that lie ahead.

It is not unnatural, perhaps, at a time like this, that my mind should go back to my own earlier days and that I should recall some of the changes which have taken place since I was admitted a solicitor. In those days an office boy was always a boy—almost every task in the office from there up was performed by male clerks. It was men who answered the telephone and received the clients, kept the books, wrote out the deeds by hand, did the court work and above all else every office boasted a Chief Clerk who in many cases was more knowledgeable than his master.

I owe much, and I am sure many of my colleagues would say the same, to faithful and knowledgeable male clerks of days gone by.

To-day the girls have taken their place and every boy wants to be a solicitor—I am not now passing comment but stating a fact and indeed as I have paid tribute to the male clerks of yesterday I could equally well pay tribute to the girls of to-day who are taking their place. Other changes include the mechanisation of our offices and from the typewriters and totting machines we have passed to dictaphones and photocopying.

This is the age of the jet plane and television—it is not unusual, having finished one's post in the morning to transact one's business in London and be back in Dublin for dinner.

The pace of life has increased and with it has increased the burden on every professional man who is doing a personal job—life is harder, competition is greater and expenses often seem insuperable.

If the increase in the numbers of our profession throughout the country had only been in accord with an increase in population all would be well but unfortunately while our numbers have risen—population has fallen. You are entering a profession in which few die rich as the world understands riches, but many have won the confidence, regard and affection of a wide circle of friends whom it has been their privilege to work for and serve.

I have no doubt you will see changes in the next twenty years in which I hope you will be ready and willing to play your full part. You will see changes—much needed indeed—in our educational system.

You may see changes in the relationship between our profession and the Bar.

You will see, I hope, a continuing of the work of law reform so well begun.

Finally, may I say that the success or failure in life of these young men is not entirely in their own hands. We, their colleagues, have our part to play in helping and encouraging them as often as we meet them. You have a right to look to us and to our Society for guidance and I hope you will not find us wanting.

You, their parents and friends, have your part to play—they will need your help and encouragement in the next few years more than ever before and I hope you will play your part.

It is with pleasure that I, on behalf of our Council and Society, welcome you to our ranks and wish you God's blessing on your efforts which I hope you will always exert according to the highest standards, for nothing less is worthy of the profession to which you now belong.

The following solicitors received certificates:

Michael J. Browne, B.A. (N.U.I.), Shop Street, Westport, Co. Mayo (Special Certificate); Oliver J. Conlon, 73 Leinster Road, Rathmines, Dublin; James J. Dennison, Convent Street, Abbeyfeale,

Co. Limerick; John Jay, B.A. Mod. (T.C.D.), 83 Pembroke Road, Dublin; Francis J. O'Mahony, Inniscarra, Newlands Road, Clondalkin, Co. Dublin; James I. Sexton, 100 O'Connell Street, Limerick.

## LIST OF NEW MEMBERS FROM 1st AUGUST, 1960, TO 31st JULY, 1961

Bernard J. Carroll, City Hall, Cork.
Edward J. C. Dillon, 10 Clare Street, Dublin, 2.
F. J. Plunkett Dillon, 25 Suffolk Street, Dublin, 2.
John B. M. Doyle, 25 Suffolk Street, Dublin, 2.
Kevin J. Early, 16 Henry Street, Dublin, 1.
Kieran T. Flynn, St. Michael's Street, Tipperary.
John J. Gordon, Ballina, Co. Mayo.
Dermot F. Bouchier Hayes, 43 Lower Leeson Street, Dublin, 2.
Gordon A. Holmes, 3 Cecil Street, Limerick.
Thomas Jackson (Jnr.), 11 St. Stephen's Green, Dublin, 2.
Humphrey P. Kelleher, 31 South Mall, Cork.
James J. Kelly, Templemore, Co. Tipperary.
Miss Sarah Carmel Killeen, City Hall, Dublin, 2.
Thomas J. D. Lane, 43 Pearse Street, Dublin, 2.
Cecil Arthur Lavery, 2728, 20th Ave., Regina, Saskatchewan, Canada.
John O. Lee, "Anchorville", Connaught Ave., Cork.
Leo J. Loftus, Ballina, Co. Mayo.
Patrick J. B. Madigan, Fermoy, Co. Cork.
Edward Minogue, Claremorris, Co. Mayo.
William J. McGuire, 6 Foster Place, Dublin, 2.
Albert L. O'Dea, Eyre Square, Galway.
Richard R. Pierse, Dunmanway, Co. Cork.
Mrs. Aine M. Smith, 15 Molesworth Street, Dublin, 2.
Diarmuid P. Teevan, 23 Ely Place, Dublin 2.

## PROCEEDINGS AGAINST SOLICITOR

By Order of the High Court, dated 23rd June, 1961, on the application of the Society, it was directed that the name of Joseph Barrett, who formerly practised at 15 Eustace Street, Dublin, be struck off the Roll of Solicitors.

## COMMITTEE ON IRISH AND COMPARATIVE LAW

A meeting of a number of lawyers was held at the Ballymascanlon House Hotel, Dundalk, on Saturday, 13th May, 1961. It was decided to set up an informal committee whose membership would be open to all those who are interested in the subjects indicated in the name of the committee.

Generally, the object of the committee is to promote the comparative study of law in such a way as to be of benefit to practising and academic lawyers, and to law students. In particular, the committee plans to hold lectures, and to organise discussions on topics of common interest to lawyers in both Irish jurisdictions. Also, the committee hopes that it will be possible to issue publications, such as the text of lectures, reports of discussions, and other papers, perhaps in an occasional volume of Irish legal studies. (Other possible publications include a bibliography of Irish legal works, a selection of cases and materials on Irish private law, and works on Irish law written in a comparative manner.) Since the committee's work will cover two jurisdictions, it will be in a good position to prepare reports on legal topics for unofficial international bodies concerned with comparative law.

The Rt. Hon. Lord MacDermott, L.C.J., and the Hon. Conor Maguire, C.J., have kindly consented to act as joint presidents of the committee.

The convener will be Dr. A. G. Donaldson, Cregagh House, Knockbreda Road, Belfast, 6.

The joint treasurers will be Vincent Grogan, Esq., M.A., Barrister-at-Law, Statute Law Reform and Consolidation Office, 3 Merrion Square, Dublin and Dr. V. T. H. Delany, Faculty of Law, Queen's University, Belfast, 7.

The ordinary annual subscription will be one guinea, but for members who are students the annual subscription will be five shillings. It is hoped that the membership of the committee will be as wide as possible, and the convener and joint treasurers will be very pleased to hear from those wishing to take part.

## DECISIONS OF PROFESSIONAL INTEREST

*Club subscriptions not deductible.*

The Master of the Rolls, Lord Justice Harman and Lord Justice Donovan dismissed this appeal, begun on Friday, by a taxpayer, Mr. Gordon Brown, Bank Manager, of Ewell, from the decision of Mr. Justice Danckwerts (*The Times*, 16th November, 1960 (1961) 1 W.L.R. 53) holding in favour of the Crown that £27 by way of subscriptions to the Devonshire Club and the Royal Automobile Club paid by the Midland Bank, Ltd. on behalf of the taxpayer, manager of their Pall Mall branch, were not expenditure "wholly, exclusively and necessarily" incurred by the manager in the performance of his duty, and therefore not allowable as deductions under Rule 7 of the 9th Schedule to the Income Tax Act, 1952.

The Master of the Rolls said that the language of rule 7 was of a rigid character. The word "necessarily" narrowed the scope of any expenses deductible. The appellant himself would never have suggested that while he was at his club he would

try and get business for the bank or tout for customers, and certainly in other respects he could not be said to be performing his duties as a manager while he was there. The phrase "to foster local contacts" was very vague. No doubt it was a useful formula so long as it did not have to be further expanded. The natural intention of the appellant's superiors was that if he belonged to the club it gave him a certain social status and he would be acceptable in that sort of society. It seemed to his Lordship that one could not divide up the appellant's uses of the club by saying that when he took one particular person to luncheon he was acting as bank manager and on other occasions he was not. When he paid his subscription was it necessarily incurred in the performance of his duties as a bank manager? The answer was No.

Lord Justice Harman said that he confessed to finding some of the arguments addressed to the Court on the subject extremely distasteful, and it would be better if he said no more than that he agreed that the appeal should be dismissed.

Lord Justice Donovan said that the test was not whether the employer imposed the expense but whether the duties did, in the sense that, irrespective of what the employer might prescribe, the duties could not be performed without incurring the particular outlay. He agreed that the appeal should be dismissed.

*Unfair Trial.*

The Court of Criminal Appeal (Mr. Justice Ashworth, Mr. Justice Paull and Mr. Justice Elwes) quashed the conviction of Ronald Edwards of Liverpool, upon charges of stealing a car and obtaining a valuable security by false pretences, on the ground that the conduct of his trial by Judge Laski, sitting as recorder at Liverpool Crown Court on 16th December, 1960 was not satisfactory.

Mr. Justice Ashworth, giving the judgment of the Court, said that the recorder seemed to have made up his mind at an early stage that there was no possible defence and that Edwards' counsel, who was doing her best to put his case to the prosecution witnesses was wasting time. When the recorder came to sum-up he poured further scorn on the defence and made, in effect, a telling speech for the prosecution. It was true that he had admitted having done so and had directed the jury they were not bound to agree with him, but by then the damage had been done.

If this conviction were allowed to stand, Edwards might rightly consider that, guilty though he might well have been, he was deprived of that priceless asset which should be afforded to all accused persons —a fair trial. If the conviction were quashed, there was strong ground for supposing that dishonesty would, in this instance, have escaped punishment. Faced with a choice between two evils, the Court felt that the most important factor in the matter was the maintenance of fairness and impartiality on the part of a judge and, as both these qualities were absent at this man's trial, the Court was constrained to allow the appeal. The grounds of appeal were that throughout the trial the recorder indicated his adverse view of Edwards. It was also said that the recorder's frequent interruptions made it difficult for Edwards' counsel to place the defence before the jury. Although Edwards' defence might be regarded as somewhat flimsy, the right to have it placed before the jury without interruption was denied him. The jury's 45-minute retirement in a simple case might well have been the outward sign of the reaction to the recorder's behaviour, and the summing-up on the burden of proof might well have given the jury the impression that they need not pay too much attention to it. The conviction would be quashed. (Regina *v.* Edwards).

*Non-disclosure to Court by Counsel.*

Lord Justice Holroyd Pearce, Lord Justice Willmer, and Lord Justice Pearson allowed this appeal by Mr. Alan Meek of Wetherby Mansions, Earls Court, from the judgment of Mr. Justice Streatfeild (*The Times*, 22nd October, 1960) on the verdict of a jury for the defendant, Mr. Richard Fleming, of the Metropolitan Police in the plaintiff's action for damages for alleged assault and false imprisonment arising out of events following his arrest on Guy Fawkes Night, 5th November, 1958.

Their Lordships, granting leave on the motions to adduce fresh evidence, ordered that there should be a new trial of the action. They also ordered that, in addition to Mr. Meek having the costs of the appeal and the motions to adduce fresh evidence, Mr. Fleming should pay the costs of the first trial in any event.

Lord Justice Holroyd Pearce said that the real ground of this appeal was that at the trial the rank and status of the defendant was by implication represented to be that of chief inspector (when in fact between the date of the matters complained of in the action and the date of the trial he had been reduced to the rank of station sergeant by reason of misconduct), and that the credit of the parties was a crucial issue at the trial; further, that the defendant deceived or misled the Court and thereby occasioned a miscarriage of justice. It was conceded that the facts were known to the defendant's legal advisers and his counsel and that as a matter of deliberate policy they were not put before the Court.

It was clear that the trial judge reasonably con-

sidered that the defendant's status and rank were relevant on credibility in a case where there was oath against oath, and there was a question of the defendant's conduct in the course of his duty.

The fact that the defendant's advisers were prepared to act as they did showed the great importance which they attached to the facts concealed. If one left aside any question of ethics, the hazards of such a course were extremely great. With so many police witnesses who might well know the truth, since the defendant's demotion was circulated in police orders, the chance of somebody in cross-examination referring to the defendant by his present rank of sergeant or letting the truth out in some other way was not negligible. Had that occurred, or had plaintiff's counsel known the facts, and elicited them in cross-examination, it seemed very unlikely that the jury would have accepted the defendant's case when they found out how they had been deceived. Even without knowing the facts, the jury had taken four hours for their deliberations and since the plaintiff's evidence was, broadly speaking, that of one against so many, one must conclude that he did well in the witness box.

There was no authority where the facts had been at all similar to those of the present case, but where a party deliberately misled the Court in a material matter, and that deception had probably tipped the scale in his favour, or even might reasonably have done so, it would be wrong to allow him to retain the judgment thus unfairly obtained. *Finis Litium* was a desirable object; but it must not be sought by so great a sacrifice of justice, which was and must remain the supreme object. Moreover, to allow the victor to keep the spoils so unworthily obtained would be an encouragement to such behaviour and do even greater harm than the multiplication of trials. Here the Judge and jury had been misled on an important matter.

His Lordship appreciated that it was very hard at times for the advocate to see his path clearly between failure in his duty to the Court and failure in his duty to his client; and he accepted that here the decision to conceal the facts was not made lightly but after anxious consideration. But, in his judgment, the duty to the Court was here unwarrantably subordinated to the duty to the client. It was no less surprising that that should be done when the defendant was a member of the Metropolitan Police Force on whose integrity the public were accustomed to rely.

That a party need not reveal something to his discredit did not mean that he could by implication falsely pretend where it was a material matter, to a rank and status that were not his and, when he knew that the Court was deluded, foster and confirm that delusion by answers such as the defendant gave. *Suggestio falsi* here went hand in hand with *suppressio veri*. It would be an intolerable infraction of the principles of justice to allow the defendant to retain a verdict thus obtained. The appeal should be allowed with costs and a new trial ordered.

Lord Justice Willmer, concurring, said that counsel for the defendant had informed the Court with complete candour that the course had been taken deliberately and in the belief that it was proper in all the circumstances. His Lordship was in no doubt that it was a wrong decision, insufficient regard being paid to the duty owed to the Court and to the plaintiff and his advisers. It would be a miscarriage of justice to allow the verdict obtained in this way to stand.

Lord Justice Pearson also concurring, said that whatever erroneous analogies might have prompted counsel's well-intentioned decision, it was utterly wrong and had had deplorable results.

Mr. Durand, Q.C. again emphasised that the decision not to disclose the defendant's change of status had been his and his alone. Neither junior counsel nor his instructing solicitor was responsible for adopting or pursuing that policy, and, indeed, they had expressed their disapproval of it. He was grateful to their Lordships for allowing him to make this statement in open court.

*Irish Constitution and foreign divorces.*

Before Mr. Justice Karminski. His Lordship dismissed the petition of Mrs. Breen (otherwise Smith) of Portsmouth, for annulment of her marriage to Mr. James Breen, of the Swan Hotel, Thame, Oxfordshire, on the ground of bigamy.

The wife's petition alleged that at the time of the ceremony of marriage celebrated between herself and the husband on 29th March, 1953, at the register office in Dublin, the husband's lawful wife, whom he married on 7th August, 1944, was still alive. The husband's answer alleged that his previous marriage had been dissolved by a decree absolute of divorce dated 2nd September, 1952, made in the High Court he being domiciled in England at all material times. The wife, by her reply, pleaded that the English decree of divorce was not recognised by the law of Eire, and that consequently the marriage ceremony in Eire in March, 1953, was by the law of Eire, bigamous.

His Lordship, reading a reserved judgment, said that it was conceded that at the time of the divorce proceedings between the husband and his first wife, the husband was domiciled in England. The first wife was alive on 27th March, 1953, the date of the ceremony of marriage in question in the present suit, and was said to be still alive.

There was no question of any defect in the form of the marriage ceremony under Irish Law. Nor was it suggested that either the wife or the registrar who performed the ceremony were deceived in any way as to the status of the husband. The wife was well-aware of the husband's earlier marriage and of its dissolution in England; the husband was described in the marriage certificate as "divorced".

The wife based her case on the provisions of article 41 of the 1937 Constitution of Ireland, Section 3, subsection 3 of which provided "No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved."

In Mayo-Perrott *v.* Mayo Perrott (1958) I.R. 336 the plaintiff, who had been the successful petitioner in this Court for dissolution of her marriage, sued in the High Court of Ireland for the unpaid balance of costs awarded to her in the suit. It was held by Mr. Justice Murnaghan, at first instance, and affirmed by the Supreme Court on appeal, that the order for costs could not be severed from the substantive order for divorce and could not be enforced in Eire, being repugnant to Eire's policy on divorce. In the Supreme Court two of the Judges, Chief Justice Maguire and Mr. Justice Kingsmill Moore, considered the question whether or not the English decree of divorce would be recognised by the Irish Courts as valid to dissolve the marriage, and their views differed completely. The Chief Justice said that subsection 3 said as plainly as it could be said that a marriage dissolved under the law of another state remained in the eyes of the law of Eire a subsisting valid marriage. His Lordship differed with obvious hesitation from the Chief Justice in this construction of the Irish Constitution, but his Lordship did not understand the subsection to say, plainly or at all, that a marriage dissolved by the Court of another State remained in the eyes of the law of Eire a subsisting valid marriage. As Mr. Justice Kingsmill Moore pointed out, no doubt the Oireachtas could pass a law that no dissolution of marriage wherever affected, even where the parties were domiciled in the country of the Court pronouncing the decree, was to be effective to dissolve the pre-existing marriage. But it had not done so, and the law existing when the Constitution was passed was that a divorce effected by a foreign Court of persons domiciled within its jurisdiction was valid in Ireland.

It was highly unlikely that the Constitution of Ireland intended, without clear words, to reverse a practically universal rule of private international law. His Lordship could find nothing in article 41 to suggest that the Courts, in the absence of further legislation, were entitled to do otherwise than regard as valid and effectual a divorce granted by the Courts of a foreign country where the parties were domiciled in that country. His Lordship therefore found that the law of Eire recognised the validity of the decree of dissolution pronounced by the English High Court, dissolving the marriage between the husband and his first wife, and also recognised the validity of the marriage celebrated in Eire between him and the petitioner. The petition therefore failed and must be dismissed.—*The Times*, 27th June, 1961.

*Charitable purposes—benefit to section of community—public element.*

The members of a trade union, though they include most of those in their industry, are not a section of the community for the purpose of making a trust for them charitable.

Under a trust deed the trustees were to provide for members of a trade union, which had as members most of those working in the printing industry, a convalescent home, and a home for poor and aged members. Held, that the trusts as they stood were not charitable because the convalescent home was not provided for a section of the community, but that the deed was an imperfect trust provision which was validated for the period since 30th July, 1954, on terms that the convalescent home be used only for poor members: Re Mead's Trust Deed; Briginshaw *v.* National Society of Operative Printers and Assistants, 105 S.J. 569; (1961) 2 All E.R. 836, Cross J. (applying observations of Lord Simonds in Oppenheim *v.* Tobacco Securities Trust Co. (1951) C.L.C. 1129 and considering Re Wykes (1961) 2 C.L. 28).

*Misprision of felony—ingredients of offence.*

Misprision of felony is an indictable misdemeanour which is committed by one who, knowing that a felony has been committed, and having a reasonable opportunity to disclose his knowledge, does not inform the police or other proper authority of all material facts known to him. It is neither an element of the offence that the concealment should be for the benefit of the accused nor that it should consist in a positive.

Per Lord Denning: Non-disclosure may be due to a claim of right in good faith. Quaere, whether the offence comprehends the concealment of a contemplated felony.

S., knowing that certain persons had stolen firearms from a U.S.A.F. station in Norfolk, did not

inform the police. He was convicted at the Manchester Crown Court of misprision of felony, and his appeal was dismissed by the Court of Criminal Appeal. On appeal to the House of Lords, held, the conviction must stand: Sykes *v.* D.P.P. (1961) 3 W.L.R. 371; 105 S.J. 566; (1961) 3 All E.R. 33, H.L.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942
### Issue of New Land Certificates

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 27th day of September, 1961.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE. 1

1. Registered Owner John William Noel Bothwell. Folio number 3721, County Louth. Lands of Navan in the Barony of Dundalk Lower, containing 135a. 2r. 22p.

2. Registered Owner Thomas Beirne. Folio number 4806, County Roscommon. Lands of Davis's Island in the Barony of Boyle, containing 42a. 2r. 25p.

3. Registered Owner John Waldron. Folio number 3666, County Mayo. Lands of Bracklagh in the Barony of Costello, containing 28a. 2r. 30p.

4. Registered Owner Patrick Murphy. Folio number 4418, County Limerick. Lands of Ballynahown in the Barony of Coshlea, containing 33a. 3r. 26p.

5. Registered Owner Richard Giltrap. Folio number 162, County Kildare. Lands of Glenmore in the Barony of South Naas, containing 115a. 0r. 22p.

6. Registered Owner Michael Fox. Folio number 1067, County King's. Lands of Aharney, containing 98a. 2r. 35p., situate in the Barony of Ballycowan formerly comprised in said Folio 1067, County King's and now comprised in Folio 15838, County King's.

## OBITUARY

MR. RAYMOND STEPHENSON, solicitor, died on 2nd June, 1961 at his residence, Cranford, Stillorgan Road, Ballsbridge, Dublin.

Mr. Stephenson served his apprenticeship with the late Mr. Thomas Stephenson, Waterford, was admitted in Hilary Sittings, 1901 and practised as partner in the firm of Messrs. O'Keeffe & Lynch, 30 Molesworth Street, Dublin, until his retirement in 1958.

MR. JAMES CLAFFEY, solicitor, died on 23rd July, 1961, at Clifden, Co. Galway.

Mr. Claffey served his apprenticeship with the late Mr. John R. Peart, 55 Dawson Street, Dublin, was admitted in Easter Sittings, 1936, and practised at Castlerea, Co. Roscommon.

MR. JOHN J. KENNEDY, solicitor, died on 3rd August, 1961, at the Mater Hospital, Dublin.

Mr. Kennedy served his apprenticeship with Mr. Andrew J. O'Flynn, Loughrea, was admitted in Trinity Sittings, 1934, and practised at 7 Lower Ormond Quay Dublin.

MR. HENRY SHANNON, solicitor, died on 23rd August 1961 at a Dublin nursing home.

Mr. Shannon served his apprenticeship with the late Mr. Richard F. Barry, Birr, was admitted in Hilary Sittings 1908 and practised under the style of Messrs. Henry Shannon & Co. Clonmel Co. Tipperary. He was a member of the Council of the Society from 1912 to 1919; and Vice-President for the year 1917-18.

MR. TERENCE DOYLE, solicitor, died on 1st August, 1961, at the Mater Private Nursing Home, Dublin.

Mr. Doyle served his apprenticeship with the late Mr. William Hunter, 11 Dame Street, Dublin, was admitted in Hilary Sittings, 1916, and practised as senior partner in the firm of Messrs. Terence Doyle & Son, 32 Nassau Street, Dublin.

## ROAD TRAFFIC ACT, 1961 (COMMENCEMENT) ORDER, 1961 S.I. No. 173/1961

The effect of this Order is to bring the following Sections of the Road Traffic Act, 1961 into force on the 1st October next:—

(1) Part I—Preliminary and General—Sections 1 to 9. This includes Section 3 setting out definitions, and Section 6 setting out the method of approval of bye-laws made by the Commissioner of the Garda under the Act.

(7) Section 18—20 specifying the conditions under which the Garda may carry out tests of mechanically propelled vehicles, and may, if necessary, require a test certificate, which should, if necessary, be produced on demand. Power is also given to the Garda to make occasional examination, inspection and test of mechanically propelled vehicles.

(3) Under Section 26, a Court may declare a person convicted of an offence in the Second Schedule disqualified from holding a Driving Licence, and may, not sooner than three months thereafter, under Section 29, remove the disqualification Order.

(3) Part V (Sections 48 to 55) relating to driving offences and imposing much severer penalties particularly in relation to dangerous driving and to driving while under the influence of intoxicating liquor.

(6) Sections 84 to 92 deal with bye-laws relating (1) to stands for taxis (Sect. 84), (2) to stopping-places and stands for omnibuses (Sect. 86), (3) to control of traffic and pedestrians generally (Sect. 88) or in specified areas (Sect. 89), (4) to the parking of vehicles on public roads (Sect. 90), (5) to the control of traffic where there is an event attracting a large assembly (Sect 91) and (6) to the prevention of obstruction of traffic by fairs and markets (Sect. 92).

(7) Sections 94 to 117 deal with the following miscellaneous matters:—Closing of particular roads to Traffic (Sect. 94), Traffic Signs (Sect. 95), Prohibition of Obstruction of Traffic (Sect. 98) and of unauthorised holding of vehicles (Sect. 99) General Penalty (Sect. 102), Evidence of speed (Sect. 105), Duty to give information on demand to Garda (Sect. 107), Obligation to stop (Sect. 106), Taking Vehicle without authority (Sect. 112), Unauthorised interference with mechanism of vehicle (Sect. 113), Penalty for False Declaration (Sect. 115), Sections 120 to 127—Miscellaneous. Second Schedule—Offences under the Act involving Consequental disqualification Orders.

## ADMISSIONS AS SOLICITORS

*1st August*, 1960 *to* 31*st July*, 1961

| *Name* | *Service with* |
|---|---|
| Binchy, Michael E., M.A. (N.U.I.), Gortskagh, Charleville, Co. Cork. | Owen Binchy, Charleville, Co. Cork. |
| Blakeney, Robert E., B.A., LL.B. (T.C.D.), Abbert, Saval Park, Dalkey, Co. Dublin. | L. Wilfred Webb, 15 St. Stephen's Green, Dublin, 2. |
| Browne, Michael J., B.A. (N.U.I.), Shop Street, Westport, Co. Mayo. | William B. Gavin, Williamsgate Street, Galway. |
| Cody, Michael G., Bagenalstown, Co. Carlow. | James Cody, Bagenalstown, Co. Carlow. |
| Conlon, Oliver J., 73 Leinster Road, Rathmines, Dublin, 6. | Michael Morrissey, Tramore, Co. Waterford. |
| Curran, Maurice R., B.C.L., LL.B., 19 Farney Park, Sandymount, Dublin, 4. | William D. McEvoy, Enniscorthy, Co. Wexford. |
| Dennison, James J., Convent Street, Abbeyfeale, Co. Limerick. | David Bell, 13 Bachelor's Walk, Dublin, 1. |
| Devine, James J., LL.B., Ardconra, Carrick-on-Shannon, Co. Leitrim. | Kevin P. McMorrow, Carrick-on-Shannon, Co. Leitrim. |
| Doyle, John B. M., B.C.L., LL.B. (N.U.I.), Rosbercon, New Ross, Co. Wexford. | James P. Coghlan, and James D. Coghlan, New Ross, Co. Wexford. |
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| Hayes, Dermot F. Bouchier, B.C.L. (N.U.I.), 43 Lower Leeson Street, Dublin, 2. | Brendan P. McCormack, 56 Lower O'Connell St., Dublin, 1. |
| Haythornthwaite, Robert B., B.A., LL.B., Vallombrosa, Bray, Co. Wicklow. | Cecil G. Vanston, 22 Kildare Street, Dublin, 2. |
| Houlihan Peter F. B., Athenry, Co. Galway. | Daniel G. Shields, Athenry, Co. Galway. |
| Jackson, Thomas, 11 St. Stephen's Green, Dublin, 2. | John N. Duff, 11 St. Stephen's Green, Dublin, 2. |
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| McGuire, William J., Attymanus, Kilnagross, Carrick-on-Shannon, Co. Leitrim. | Godfrey H. Skrine, 6 Foster Place, Dublin, 2. |
| O'Donnell, Roderick D., Ballintogher, Ballybrittas, Co. Laois. | Tadhg R. O Braonain, Athy, Co. Kildare. |
| O'Mahony, Francis J., Inniscarra, Newlands Rd., Clondalkin, Co. Dublin. | Thomas P. Robinson, 3 Lower O'Connell Street, Dublin, 1. |
| O'Sullivan, George J. P., The Villa, Garryhinch, Portarlington, Co. Laois. | Patrick Joseph O'Neill, Athy, Co. Kildare, and Francis B. O'Toole, Edenderry, Co. Offaly. |
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| Reidy, Jeremiah A., Kilmallock, Co. Limerick. | Maurice M. Power, Kilmallock, Co. Limerick. |
| Sexton, James J., 100 O'Connell Street, Limerick. | James J. Sexton, 100 O'Connell Street, Limerick. |
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|---|---|
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| YOUNG, CATHAL N., Ashe Street, Cavan. | THOMAS P. O'REILLY, Ballyconnell, Co. Cavan. |

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## AGRICULTURE, LANDS AND FISHERIES

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Bovine Tuberculosis—Counties Carlow, Laois, Wexford and Wicklow declared to be a Clearance Area after 1st August, 1961—137/1961.

Bovine Tuberculosis—Entry of Cattle from Northern Ireland into Republic prohibited after 28th August, 1961 unless they are attested, or have passed a test within 14 days of entry—169/1961.

Bovine Tuberculosis—Interference with Animal for purpose of affecting the Accuracy of a Tuberculin Test prohibited —159/1961.

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# THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

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Solicitors' Benevolent Association,
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Dublin.


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Oct./Nov.
1961

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
RALPH J. WALKER

*Vice-Presidents*
GEORGE G. OVEREND
JOHN MAHER

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### POSITION VACANT

The Council invite applications for the position of Special Examiner at the Society's First, Second and Third Law Examinations.

Particulars of the appointment may be obtained from The Secretary, Solicitors' Buildings, Four Courts, Dublin 7.

### MEETING OF THE COUNCIL

OCTOBER 5TH: The President in the chair, also present Messrs. Brendan T. Walsh, James J. O'Connor, Francis J. Lanigan, Peter D. M. Prentice, D. B. Gilmore, James R. C. Green, Desmond J. Collins, T. V. O'Connor, Peter E. O'Connell, Patrick Noonan, Thomas A. O'Reilly, N. S. Gaffney, John R. Halpin, John J. Nash, G. G. Overend, John Maher, George A. Nolan, Eunan McCarron, J. Bernard MacGarry, Brendan A. McGrath, Robert McD. Taylor, Reginald J. Nolan. Daniel J. O'Connor, John Carrigan.

The following was among the business transacted:

**Legal Aid**

Mr. Noonan reported on behalf of a committee on the subject of a recent statement by the Minister for Justice concerning a proposal to introduce legal aid

in criminal matters. The report was adopted and it was decided that information should be sought from the other Law Societies and also that the Society should seek an appointment with the Minister or Parliamentary Secretary of the Department of Justice in order to discuss the matter.

### Resignation from the Council

The President announced that he had received from Mr. Cox his resignation from the Council. Mr. Cox at the same time had offered to donate to the Society the chair of John Mitchell attorney and author of the *Jail Journal* and a bust of Chief Justice Malone by Nollekens. The Council accepted with regret the resignation of Mr. Cox and with gratitude his donations to the Society. The following resolution was proposed by the President and passed unanimously :

> The Council of The Incorporated Law Society of Ireland having learned of the wish of their colleague, Arthur Cox, to resign from the Council upon his retirement from the profession wish to place on record their appreciation and gratitude for his outstanding services to the Council, the Society and the profession. As an ordinary member of the Council, later as President in the Society's Charter Centenary Year and finally as Father of the Council his advice has been invaluable to his colleagues and in accepting his resignation, which they do with deep regret, they would like to convey to him their very sincere good wishes in his new calling.

## CO-OPTION OF NEW COUNCIL MEMBER

On the proposal of the President seconded by Mr. O'Reilly, it was unanimously resolved that Mr. Daniel J. O'Connor be co-opted from the general body of the Society as an ordinary member of the Council to fill the vacancy caused by the resignation of Mr. Cox until the next election of members of the Council.

### Week-end meeting 1961

The Secretary stated that he had been in communication with the Donegal Solicitors' Association and that the association are agreeable to have the Society's week-end meeting for 1963 in Bundoran.

### Liability for costs of having P.D. stamp impressed

The Council on a report from a committee stated as their opinion that in a case of acquisition of property for road widening purposes by a local authority, where the agreement for sale provided that the vendor's costs were payable by the local authority, the costs of having the Particulars Delivered stamp impressed were part of the vendor's costs and were consequently the liability of the local authority. Member who acted for the local authority had submitted that as the lands were not compulsorily acquired under the the Land Clauses Acts his clients were not liable for these costs.

### Medical Witnesses' Fees

A committee reported to the Council on the following facts : Member acted for a minor plaintiff through her father and next friend in a personal injuries action. Damages were assessed at £4,450. The costs were not taxed but were agreed on the basis of one day in Dublin and one day's hearing which finished in time for the evening train to Cork. Member received a bill for £62 7s. 8d. from a medical witness upon whom a subpoena had been served. The principal items on the bill were a fee of seven guineas per day for three days for attending Court, travelling expenses £6 9s. 5d., subsistence expenses £7 17s. 3d., qualification fee ten guineas, fee paid to locum tenens three guineas per day for three days. The bill gave credit for a sum of fifteen guineas which was received with the subpoena. The doctor stated in a letter to the Society that member had promised verbally to pay the fees due to the locum tenens. Member stated that whereas he did not dispute the amount of the bill he had no recollection of having made any verbal promise to pay the fees due to the locum tenens and furthermore, he was in difficulties owing to the fact that the plaintiff was a minor.

The Council adopted a report from the committee which stated that in the committee's opinion member was not personally liable for the medical witness's fees unless a personal undertaking, either expressed or implied, had been given. Anything over and above the fee allowed on taxation as between party and party for attending Court (now increased to eight guineas) is a matter between patient and doctor.

### Election for the Seanad

At an adjourned meeting of the Council held on October 11th, it was resolved unanimously that Mr. John J. Nash be nominated as the Society's representative on the Cultural and Educational Panel at the forthcoming election under the Seanad Electoral (Panel Members) Act, 1947 and 1954.

### Examination results

The report of the Court of Examiners on the results of the second and third law examinations was adopted and the results declared. The Council also awarded the Overend and Findlater Scholarships.

## FINDLATER AND OVEREND SCHOLARSHIPS

The Findlater Scholarship has been awarded to Maurice R. Curran, B.C.L., LL.B., who served his apprenticeship with Mr. William D. McEvoy of Enniscorthy. The Overend Scholarship on the results of the first law examinations was awarded to Michael V. O'Mahony who is serving under indentures with Mr. Liam M. Collins of Clonakilty, Co. Cork.

## EXAMINATION RESULTS

The following results have been declared by the Council on reports from the Court of Examiners.

*Preliminary Examination.*—Passed: Mary Margaret Harvey; Vincent O. Morrin.

Three candidates attended. One was postponed.

At examinations held on the 15th day of September under the Solicitors Act, 1954, the following candidates passed:

*First Examination in Irish:* Philomena F. P. Armstrong, John Henry Dockrell, Finola M. Foley, Thomas F. Griffin, James Terence Johnston, Francis B. Keating, Marguerite E. M. H. Magee, Joseph Molony, Dermot G. O'Donovan, Aideen M. O'Keeffe, Josephine M. E. O'Meara, Mary B. Raleigh (B.A.), John J. Seery, Rebecca Sweeney, John James Tully, George G. Mullan.

*Second Examination in Irish:*

*Passed:* Michael A. Buckley, Peter Bernard Fagan, James A. Harte.

1 candidate was postponed.

*Book-keeping Examination:*

*Passed with Merit:* 1. James L. O'Keeffe; 2. Francis J. O'Flynn; 3. Michael B. Creed (B.C.L.).

*Passed:* Mary C. D. Binchy (B.A.); John V. P. Cresswell (B.A., LL.B.), Edward R. A. Glover, Lewis J. Goldberg, Owen Mulholland, James. R. O'Donnell; Carmel M. O'Halloran; Patrick J. O'Shea; David A. Potterton, Maire Nic Shiomoin (B.Comm.).

22 candidates attended; 13 passed.

*First Law Examination:*

*Passed with Merit:* 1. Michael V. O'Mahony; 2. Bryan M. E. McMahon; 3. Sylvester W. Riordan (B.A.); 4. James G. Tynan; 5. Michael G. L. O'Connell; 6. James N. Dudley; 7. John F. P. Glynn (B.A.); 8. George B. Holland (B.A. (Mod.), LL.B.).

*Passed:* Charles J. Bergin, Michael J. Butler (B.C.L.), Anthony E. Collins (B.A., B.Comm.), Michael G. Daly, Daniel J. Hamilton, Michael P. Houlihan, Daniel Kelliher, Patrick T. Liston, Giles F. Montgomery, Denis M. Murnaghan, James J. Nestor, Thomas O'Donnell, Niall O'Neill, David W. Prentice (B.A., B.Comm.), Michael Purcell, Norman T. J. Spendlove (M.A.), Edmond M. Veale.

44 candidates attended; 25 passed.

The Centenary prize was awarded to Michael V. O'Mahony.

*Second Law Examination:*

*Passed with Merit:* 1. James L. O'Keeffe; 2. Desmond J. O'Malley (B.C.L.); 3. Edward R. A. Glover; 4. Francis J. O'Flynn; 5. Bryan F. Lynch.

*Passed:* Robert A. Downes, Graham M. Golding (B.A. (Mod.) LL.B.), David O'N. Kiely, Michael F. S. King, Helen M. Kirwan (B.C.L.), John G. Lanigan (B.C.L.), John N. M. Lavelle, William E. Leahy, Thomas J. Macken, Patrick J. J. MacGrath, Maire McHale (B.A.), Margaret J. O'Callaghan (B.A.), Patrick J. O'Shea, Maire Nic Shiomoin (B.Comm.), Thomas K. Smith (B.C.L.), Thomas C. Smyth, Peter John Woods, Malcolm B. Yaffe (B.A., LL.B.).

42 candidates attended; 23 passed.

*Third Law Examination:*

*Passed:* Michael J. P. Allen, Mary P. M. Berkery, Michael J. Butler (B.C.L.), Michael B. Creed (B.C.L.), John V. P. Cresswell (B.A., LL.B.), Thomas A. Dillon-Leetch (B.C.L.), Ailin A. Gibbons (B.C.L.), Michael F. S. King, John N. M. Lavelle, Thomas J. Macken, Owen Mulholland, James A. O'Donohoe.

19 candidates attended; 12 passed.

OCTOBER 26TH: The President in the chair, also present Messrs. George G. Overend, John Carrigan, John J. Nash, John R. Halpin, N. S. Gaffney, Peter D. M. Prentice, T. V. O'Connor, Terence De Vere White, Desmond J. Collins, Desmond Moran, James R. C. Green, Derrick M. Martin, George A. Nolan, Cornelius J. Daly, Charles W. Hyland, D. B. Gilmore, Francis J. Lanigan, Brendan T. Walsh, Augustus Cullen, J. Bernard MacGarry, Brendan A. McGrath, Eunan McCarron, John B. Jermyn, Peter E. O'Connell, Reginald J. Nolan, Patrick Noonan, James W. O'Donovan, John Maher, William A. Tormey.

The following was among the business transacted:

**Motion on notice. Acting for both parties in conveyancing matters**

The motion on notice in connection with the above was put to the meeting and passed unanimously. The following is the text of the motion as amended by the meeting:

That the Council should approve of the following rule in regard to acting for both parties :

(i) Where property is advertised for sale by public auction neither the solicitor for the vendor nor his partner or assistant shall act for the purchaser of such property in connection with the sale thereof contracted before auction, at the auction, or within six months after the auction and the purchaser shall be *bona fide* represented by an independent solicitor.

(ii) That a regulation giving effect to this rule shall be made under section 73 of the Solicitors Act, 1954, to come into effect on the 1st July, 1962.

**Television and radio broadcasts by solicitors**

The Council have approved of the following statement relating to radio and television appearances by solicitors, for the guidance of members :

(i) A solicitor may take part in a broadcast without television on a non-legal subject under his own name but his professional occupation should not be disclosed. A solicitor invited to take part in a broadcast on a legal subject should ensure that he will be described as " Solicitor " or in some other term which will preserve his anonymity and his name should not be disclosed.

(ii) (*a*) A solicitor may take part in a television broadcast on a non-legal subject and may appear and be introduced by name without reference to his professional occupation.

(*b*) A solicitor who is invited to participate in a television programme on a legal subject should apply to the Society for permission. Such permission, if given, will be generally on condition that complete anonymity is preserved both as regards the name of the solicitor and his professional occupation. Permission to appear with a reference to the name or professional occupation of the solicitor, or both, may be given if the Council are satisfied that the interests and prestige of the profession or the interests of the public require it, or if the broadcasting authority particularly wish for some good reason that the name of the speaker with or without his profession should be disclosed.

(iii) The Council will normally issue such permission only on an undertaking by the solicitor not to accept any new client whom he knows or has reasonable ground for thinking may have come to him as a result of the T.V. broadcast.

(iv) If correspondence results from a broadcast or television appearance the solicitor should write over a pen-name if he appeared anonymously and in other cases over his own name. In no case should such correspondence be conducted on his professional stationery. Normally the correspondence should be conducted on the stationery of the broadcasting authority whether the topic is of a legal or other nature.

**Solicitor giving evidence on behalf of client**

The Council considered a case where member was asked to give evidence on behalf of a defendant in a road traffic prosecution in which he acted for the defendant and his retainer was subsequently withdrawn. Member thought that there might be some objection on the part of the District Justice and he asked a colleague to interview the Justice privately and suggest that the case might be heard to a conclusion and if his evidence was not necessary the matter might be disposed of. If his evidence was considered necessary the suggestion was that the matter would be adjourned for the opinion of the Council. The District Justice agreed to this suggestion and heard the case to the stage where the defendant's solicitor called member to the witness box. The further hearing was then adjourned. The Council, on a report from a committee, stated as its opinion that there would be no professional objection to member giving evidence at the request of his client. The only question that might arise is one of privilege but in this case the client had requested the solicitor to give evidence and by so doing had waived his privilege. The privilege exists for the benefit of the client and the client is entitled to waive it if he wishes.

## INCOME TAX AND OTHER STATE CLAIMS

The Council have been in correspondence with the Revenue Commissioners on the subject of expediting the procedure for obtaining clearance of income tax and sur-tax liability for the purpose of distributing the assets of deceased persons. The Revenue Commissioners claim that they are not bound by the statutory notice to creditors and that accordingly the personal representatives will be held liable for such claims even after the assets have been distributed unless inquiries have been sent to the Revenue Commissioners and certificates of clearance

obtained. The legal position appears to be doubtful but in previous issues of the GAZETTE attention has been drawn to the position so that solicitors may advise their clients and take precautions against leaving personal representatives personally liable. It is to be noted that on the reasoning of the Revenue Commissioners' claim a personal representative might be held personally liable for any State claim, e.g. Social Welfare contributions, Land Commission annuities and levies under various statutory provisions, notwithstanding publication of the statutory notice to creditors. The position is extremely unsatisfactory and in correspondence with the Revenue Commissioners it was pointed out that the Crown in Great Britain is bound by the statutory provisions which protect the personal representatives in such cases. This is by virtue of section 27 of the Trustee Act (England), 1925 but there is no corresponding legislation in the Republic of Ireland. The Revenue Commissioners are not prepared to sponsor such legislation.

With a view to easing the resulting difficulties for personal representatives and their solicitors the Council suggested to the Revenue Commissioners that certificates of discharge of income tax and surtax be supplied by the Commissioners on application by the personal representatives. Forms of certificate have been drawn up and are under consideration by the Revenue Commissioners.

In this connection it was pointed out to the Revenue Commissioners that solicitors throughout the country experience delay in obtaining from Inspectors of Taxes the certificate of discharge of income tax under section 6 of the Finance Act, 1928 and that delay in obtaining this certificate means either the completion of sales must be delayed or that sales must be closed on undertakings. Each of these courses is manifestly unsatisfactory. In reply the Revenue Commissioners wrote that they appreciated that delay in obtaining certificates may give rise to difficulties and that the Commissioners were concerned to ensure that the section works smoothly. Accordingly Inspectors of Taxes were given instructions that applications for these certificates were to be dealt with promptly. Any specific case of delay that may be brought to the notice of the commissioners will be investigated at once.

## SOLICITORS' GOLFING SOCIETY

### County Louth Golf Club (Baltray)

President's Prize and Incorporated Law Society's Challenge Cup :

*Winner :* Kevin Burke (14) 40 pts.

*Runner-up :* T. F. McKeever (9) 39 pts.

Ryan Challenge Cup (Handicaps 13 to 18) :

*Winner :* A. F. Smyth (17) 36 pts.

*Runner-up :* J. C. Griffin (15) 34 pts. (on 2nd Nine).

Best First Nine :

*Winner :* H. J. Fitzpatrick (6) 22 pts.

Best Second Nine :

*Winner :* J. Tyrrell (24) 20 pts.

Other Prizewinners : T. D. Shaw and D. Lynch.

## COUNTY MONAGHAN SOLICITORS' BAR ASSOCIATION

The following are the officers and Council elected for 1961/62.

*President:* Mr. J. J. Keenan, Monaghan; *Hon. Treasurer:* Mr. J. B. Murphy, Clones; *Hon. Secretary:* Mr. D. M. Martin, Monaghan; *Council:* Mr. P. J. O'Gara, Monaghan; Mr. J. Corrigan, Castleblayney; Mr. G. W. Knight, Clones; Mr. R. H. Brett, Monaghan; Mr. G. C. Graham, Castleblayney; Miss E. Kennedy, Carrickmacross; Mr. J. E. Keenan, Monaghan.

## MAYO SOLICITORS' BAR ASSOCIATION

The Mayo Solicitors' Bar Association were hosts to Mr. Colum Gavan-Duffy, M.A. ,LL.B., solicitor, Librarian of The Incorporated Law Society of Ireland, at the Imperial Hotel, Castlebar, on Friday the 29th September, 1961, when Mr. Gavan-Duffy read a paper on the Rent Restrictions Act, 1960 to the members. Mr. William Dillon-Leetch, (*President*), was in the chair, and after a stimulating discussion following the paper, which was very much appreciated by all the members, a vote of thanks to the speaker was proposed by Mr. Michael J. Egan, Castlebar, and seconded by Mr. John McHale, Ballina.

## COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

(*Michaelmas Term*—1961)

| | |
|---|---|
| *Tuesday* | 3rd October 1961 |
| ,, | 24th October, 1961 |
| ,, | 7th November, 1961 |
| ,, | 21st November, 1961 |
| ,, | 12th December, 1961 |

S. MARTIN
*Secretary*

## CUIRT BREITHIUNAIS CHUARDA
## (CIRCUIT COURT OF JUSTICE)

Dublin Circuit — County of the City of Dublin

Pursuant to Order 10, Rule 3 of the Rules of the Circuit Court 1950 as amended by the Circuit Court Rules 1954, I, the Circuit Judge assigned to this Circuit, being satisfied that service (in accordance with Rule 4 of Order 10 of the said 1950 Rules) of Civil Bills and other Originating Documents of the Circuit Court by a duly appointed Summons Server is not practicable in the Summons Server's area of Balbriggan in this Circuit, do hereby direct that for the period of three months from this date, or until the post of Summons Server in that area has been filled, whichever event shall first happen, service of any such Civil Bills or other Originating Documents in said area may be effected by a duly appointed Summons Server to another area in said Circuit; by registered post.

Dated this 12th day of October, 1961.

J. CONROY,
Circuit Judge.


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## DECISIONS OF PROFESSIONAL INTEREST

*Action for professional negligence.*

In *Dunn* v. *Faris* (*Blissard, Barnes and Stowe*) the plaintiff was the personal representative of a deceased client of the defendants a firm of solicitors. The client had consulted the defendants in 1952 and again in 1956 about professional business. In 1957 she told a member of the firm that she wished to buy an annuity with the proceeds of the sale of a house. The solicitor told the client that if she purchased an annuity in a certain form she would deprive her relatives of the advantage of participating in her estate after her death. She repeated her instructions and the solicitor then went about obtaining quotations. He subsequently realised as the result of a medical report that she suffered from suspected cancer. He did not disclose this information to her, although it would have a material effect on the value to be obtained from the purchaser of an annuity owing to the shortening of expectation of life. His reason was that the client might suffer severe mental anguish if the medical information were disclosed by him. The annuity was purchased and the client died shortly afterwards. The personal representative sued the firm of solicitors on behalf of the estate for alleged negligence in allowing the client to purchase the annuity and thereby deprive the estate of the money paid therefor. It was held by the High Court that the defendant firm owed no duty to the personal representative or the estate but solely under a duty towards the client. The solicitor had considered the situation having regard to all the circumstances including the mental shock to the client if informed that she was suffering from an incurable disease. He had come to a right decision which was made in good faith and was in no sense negligent or one involving a breach of duty. Judgement was given for the defendants.

(*Dunn* v. *Faris* (*Blissard, Barnes and Stowe*) 1961. 44 Sol.Jo.932).

*Commission—purchaser unwilling to pay asking price —agent not effective cause of sale.*

In *Prior* v. *Rowe* (1961) 178 E.G. 485, the plaintiff estate agent claimed commission on the sale of a house from the vendor who contended that the purchaser had contracted to buy at less than the asking price, and that the plaintiff had not been the effective cause of the introduction. The Court of Appeal held, allowing the appeal, that the estate agent was entitled to recover commission.

*Property in Ireland—order in aid—revenue debt.* (*Eire*) (*Bankruptcy* (*Ireland*) *Amendment Act*, 1872 (35 & 36. *Vict. c.* 58), *s.* 71).

In Re Gibbons, ex p. Walter (1960) Ir. Jur. Rep. 60, G. was adjudicated a bankrupt in England and the official receiver applied to the High Court of Justice (Bankruptcy) in Eire for an order in aid of the English High Court in respect of certain property in Eire belonging to the bankrupt. An oral order was made but before it was passed and perfected it became apparent that the bankruptcy matter had been initiated by the Commissioners of Inland Revenue in England. Walsh J. held that s. 71 of the Bankruptcy (Ireland) Amendment Act, 1872, is enabling and discretionary but not mandatory, and that it was the policy of the courts in Eire not to permit jurisdiction to be invoked for the purpose of

enforcing the collection of foreign revenue debts. The application was accordingly refused.

*Secured creditor—order for sale of security—election (Eire).*

In Re MacEntee (1960) Ir. Jur. Rep. 55, the Bank of Ireland, a secured creditor, on the same date as an offer of composition was accepted by the creditors, obtained an order for the sale of lands which constituted their security and a receiver was appointed. About three months later the bank lodged a proof of debt and having valued their security sought to prove for the balance of their debt. Before the order for sale was made the agent for the bank had stated that the applicants relied upon their security. Budd J. held that, despite this statement, the order for sale and the appointment of the receiver, the bank had not made an election and were entitled to value their security and to prove for the balance of the debt.

*Perpetuities—whether contingent gift to charity or immediate gift with designated modes of application subject to condition precedent. (Can.).*

In *Jewish Home For The Aged of British Columbia* v. *Toronto General Trusts Corporation* (1961) 28 *D.L.R.* (*2d.*) 48, the Supreme Court of Canada held that while the rule against perpetuities will invalidate a gift for charitable purposes which is contingent on the happening of an event which may not happen within the perpetuity period, the situation is different where there is an immediate unconditional gift to charity with a designation of certain particular modes of application of the property to charitable purposes; if the particular mode of application is subject to a condition precedent which may not be satisfied within the perpetuity period, the charitable trust will not fail if there is a general unconditional intention to devote the property to charitable purposes because the cy-près doctrine will be applied.

*Winding up—opposition by majority of creditors. (N.Z.).*

In Re J.R.S. Garage (1961) N.Z.L.R. 632, the New Zealand Supreme Court held that where a great majority of the creditors of a company oppose the winding up, then, even though it is established that the company is unable to pay its debts, the court should give effect to the wishes of the majority unless the petitioning creditor can give some valid reason why effect should not be given to those wishes.

*Criminal Law—handwriting—expert evidence required. (Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 8.).*

A jury should not be left on their own to decide questions of disputed handwriting without the assistance of expert evidence.

On an appeal against conviction in a case which turned partly on whether a receipt produced by the accused had been forged by him and in which, though no handwriting expert was called by either side, the deputy chairman of quarter sessions had invited the jury to consider whether the receipt was genuine and to compare it with accused's handwriting, held that the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, should not be applied, and quashed the conviction: R. v. *Tilley*, 105 *S.J.* 685; (1961) 3 *All* E.R. 406, *C.C.A.*

*Criminal Law—identification of prisoner—photographs shown before identification.*

Though it is improper for a witness who is to be called to identify the accused to be shown a picture of him beforehand, it will not invalidate the trial if no substantial miscarriage of justice results.

About three weeks before the trial a witness called to identify the accused was shown a photograph of him by the police. The matter was not mentioned in the summing-up and the jury convicted. Held, that in all the circumstances the conviction should not be quashed: R. v. *Seiga* (1961) 45 *Cr. App.* R. 220, *C.C.A.*

*Obstruction of administration of justice—attempt. (S. A.).*

In R. *v.* Watson; R. *v.* Halangiso, (1961) (2) S.A. 283, the High Court of Southern Rhodesia held that if A, knowing that B had been involved in a collision, and in order to obstruct or defeat the course of justice and to prevent B from being dealt with according to law, falsely informed the police that it was he, A, who was driving the vehicle at the time of the collision, A would be guilty of attempting to defeat or obstruct the course of justice.

*Criminal Law Trial—summing-up—degree of proof —"reasonably sure".*

It is a misdirection to tell a jury that they must be "reasonably sure" that the accused is guilty before they can convict.

A jury convicted the appellants of receiving after the recorder had directed the jury that they must be "reasonably sure" of the appellant's guilt in order to convict. Held, on appeal, that the conviction must be quashed: R. *v.* Head; R. *v.* Wattender (1961) 48 Cr.App.R. 225, C.C.A.

*Volenti non fit injuria—fire—injury to volunteer called in to prevent further spread.* (N.Z.).

In McCabe *v.* Russell (1961) N.Z.L.R. 385, the defendant deliberately lit a fire to clear vegetation. The fire got out of control and volunteers were called in to put it out. The plaintiff, a volunteer, was injured. The New Zealand Supreme Court *held* that the plaintiff was entitled to recover damages.

*Criminal Law—malicious damage—compensation.* (*Eire*) (*Grand Jury* (*Ireland*) *Act*, 1836 (6 & 7 *Will.* 4, *c.* 116), *s.* 140.).

In Smyth *v.* Dun Laoghaire Borough Corporation And The County Council of Dublin (1960) Ir. Jur. Rep. 45, a motor vessel was maliciously damaged by sinking while moored to a dolphin on a pier of Dun Laoghaire Harbour, a pier which was not valued for the purpose of rating. In an application for compensation by the owners of the vessel against the defendants the Supreme Court in Eire (Kingsmill Moore J. dissenting) *held* that there is no presumption of law that national waters belong to or form part of the adjoining county and that the functions of a county council cannot be extended beyond its boundaries save as specially provided by s. 140 of the Grand Jury (Ireland) Act, 1836, in the case of a malicious injury committed on the verge, or within the distance of one mile, of the boundary of any two or more counties. The application for compensation was therefore unsustainable.

*Negligence : Bankers reference : Whether duty of care.*

Hedley Byrne & Co., Ltd. *v.* Heller & Partners, Ltd. Ormerod, Harman and Pearson, L.JJ. 18th October, 1961. Plaintiffs, who were advertising agents wanted to place forward advertising orders on behalf of a certain firm on terms that they (plaintiffs) would be primarily liable for the cost thereof. Plaintiff's bankers enquired from the defendants, who were the firm's bankers, and received satisfactory references as to the firm's financial position. Relying on these, orders totalling £22,000 were placed. In fact, the firm, at the time, owed £50,000 and was financially unsound. It subsequently went into liquidation and plaintiffs were able to recover only a small part of their loss. *Held* by the Court of Appeal (upholding McNair J.) that (1) there was no general duty imposed on defendants to take care when answering queries and that (2) even though the fact of defendants financing the firm created a special relationship between defendants and the subject of their reference, that was not sufficient to create a duty to take care in giving the reference. The appeal was therefore dismissed.

## MISSING LAND CERTIFICATES

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 24th day of November, 1961.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner William Grogan. Folio number 4898, County Wexford. Lands of Shirsheen in the Barony of Gorey, containing 57a. 3r. 36p.

2. Registered Owner Michael Williams. Folio number 1518, County Tipperary. Lands of Doolis in the Barony of Iffa and Offa West, containing 31a. 0r. 22p.

3. Registered Owner James Mahon. Folio number 5396, County Carlow. Lands of Rathnapish in the Barony of Carlow, containing 0a. 1r. 1p.

4. Registered Owners Most Rev. John Charles McQuaid and others. Folio number 3449R., County Dublin. Lands of Lucan and Pettycanon in the Barony of Newcastle, containing 3a. 3r. 11p..

5. Registered Owners Michael Treacy and Nathaniel Simcox. Folio number 304 R., County Cork. Lands of Ballincurrig containing 58a. 0r. 36p. and lands of Moanroe, containing 66a. 1r. 13p. both situate in the Barony of Orrery and Kilmore.

## OBITUARY

JOHN J. SHIEL, solicitor, died on 28th September, 1961 at Jervis Street Nursing Home.

Mr. Sheil served his apprenticeship with the late Mr. Gerald Tench, 47 Lr. Sackville Street, Dublin, was admitted in Trinity Sittings, 1910 and practised at 18 Bachelors Walk and Newbridge, Co. Kildare.

He was a member of the Council of the Society from 1950 until the date of his death and Vice-President for the year 1954–55.

District Justice Kennedy died on 2nd October, 1961 at his residence, "Craiglea", Carrickmacross, Co. Monaghan.

Justice Kennedy served his apprenticeship with the late Mr. Patrick J. Kennedy, Carrickmacross, was admitted in Easter Sittings, 1933 and practised at Dundalk, Co. Louth up to his appointment as District Justice in 1955.

Mr. Daniel C. Maher, solicitor died on 8th October 1961 at his residence 175, Clontarf Road, Dublin.

Mr. Maher served his apprenticeship with the late Mr. Daniel Purcell 58 Dame Street, Dublin, was admitted in Hilary Sittings, 1905 and practised at 20 Westland Row, Dublin.

Mr. John J. Walshe, solicitor, died on 22nd October, 1961 at Talbot Park, Derry.

Mr. Walshe served his apprenticeship with the late Mr. L. E. O'Dea, Galway, was admitted in Michaelmas Sittings, 1930 and practised at Kiltimagh, Co. Mayo.

Mr. Charles J. Joyce, solicitor, died at a private Nursing Home, Dublin.

Mr. Joyce served his apprenticeship with the late Mr. Thomas J. Tullerton, Dundalk, Co. Louth, was admitted in Trinity Sittings, 1924 and practised at 128 St. Stephen's Green, Dublin as partner in the firm of Messrs. Joyce & Joyce.

## THE REGISTRY

### Register B

Solicitor aged 29, 5 years experience particularly in conveyancing and litigation, desires assistantship. Box B265.

### Professional Information

F. Gerard M. Gannon, solicitor has acquired the Legal Practice carried on by the late James T. Claffey, solicitor, Castlerea, County Roscommon and is carrying on the Practice under the style of Claffey, Gannon & Co., Solicitors, Castlerea, County Roscommon.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:
Secretary,
Solicitors' Benevolent Association,
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December
1961

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### PRACTISING CERTIFICATES 1962-63

(1) Members are reminded that practising certificates for the year to end 5th January, 1963 should be taken out on or after the 6th January, 1962 and not later than 5th February, 1962 in order to take effect as a qualification to practice from January 6th.

(2) Under the provisions of the Solicitors Acts, 1954-60 the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the Registrar, on the ground of illness or some other sufficient cause, dispenses with personal signature of the declaration. Dublin agents of country solicitors should therefore take up the declarations in good time and forward them to their correspondents for signature.

(3) The amount of the registration fee and Compensation Fund contribution is as follows:—

(*a*) If the certificate is issued within three years from date of admission, £11 for a Dublin solicitor and £8 for a country solicitor.

(*b*) In any other case, £26 for a Dublin solicitor, £23 for a country solicitor.

## THE PRESIDENT AND VICE-PRESIDENTS

Mr. George G. Overend of Dublin has been elected President of the Society for the coming year. Mr. Francis J. Lanigan of Carlow and Mr. Robert McD. Taylor of Drogheda have been elected Vice-Presidents.

## ORDINARY GENERAL MEETING MINUTES OF THE ORDINARY GENERAL MEETING

23rd November, 1961

The Presdent took the chair at 10.30 a.m.

The notice convening the meeting was by permission taken as read.

The Secretary read the minutes of the ordinary general meeting held on 3rd June, 1961 which were confirmed and signed by the chairman.

The Secretary read the report of the scrutineers of the ballot for the Council for the year 1961-62. The chairman declared the result of the ballot in accordance with the scrutineers report as follows:

Provincial delegates returned unopposed:— Ulster: John C. O'Carroll; Munster: Edward Treacy; Leinster: Reginald J. Nolan; Connaught: Francis Armstrong.

Election of ordinary members. The following received the votes placed after their names:

1. Augustus Cullen 520; 2. John Carrigan 518; 3. Ralph J. Walker 498; 4. John R. Halpin 496; 5. John J. Nash 494; 6. Niall S. Gaffney 480; 7. Thomas A. O'Reilly 474; 8. Patrick Noonan 468; 9. Desmond J. Collins 466; 10. Eunan McCarron 459; 11. Daniel J. O'Connor 451; 12. Peter E. O'Connell 447; 13. Robert McD. Taylor 447; 14. George A. Nolan 445; 15. Francis J. Lanigan 439; 16. James J. O'Connor 433; 17. William A. Tormey 422; 18. George G. Overend 410; 19. James W. O'Donovan 409; 20. Dinnen B. Gilmore 408; 21. John Maher 406; 22. Thomas V. O'Connor 400; 23. William J. V. Comerford 398; 24. Terence De Vere White 388; 25. Patrick O'Donnell 372; 26. William A. Osborne 368; 27. Peter D. M. Prentice 366; 28. James R. C. Green 364; 29. John Kelly 333; 30. Brendan T. Walsh 327; 31. Brendan A. McGrath 306.

The scrutineers returned the foregoing as duly elected ordinary members of the Council for the year ended 1961-62.

The following candidates also received the number of votes placed after their names:-

32. Charles Hyland 304; 33. Edward J. C. Dillon 298; 34. J. Bernard MacGarry 297; 35. Thomas D. McLoughlin 263; 36. Elizabeth Wright 163.

The meeting then adjourned and resumed at 2.30 p.m.

Audited accounts and balance sheets. Mr. Halpin proposed and Mr. Taylor seconded a motion that the accounts and balance sheet which had been circulated be adopted. The chairman put the motion to the meeting and it was carried unanimously.

On the motion of Mr. Collins seconded by Mr. Edmund Carroll Messrs. Kevans & Son were reappointed as the Society's auditors.

The President moved the adoption of the report of the Council for the year 1960-61 and said

It is my privilege as President to propose the adoption of the report of your Council for the past year and this I now rise to do with pleasure. Before, however, I deal with the report I would like for a moment to read to you the names of those of our members who have died during the year. They are: John J. Timoney, Lewis D. Field, Thomas H., O'Donovan, Patrick J. Neilan, John W. O'Gorman, James Cody, Michael F. Flanagan, Daniel C. Maher, John J. Kennedy, Terence Doyle, James Claffey, Raymond Stephenson, District Justice John P. Kennedy, Henry Shannon, John J. Sheil, Charles J. Joyce.

Amongst the names I have just read you will have recognised men who by their lives and work brought honour not only to themselves but also to the profession to which we all belong. Their standards were high, their word was their bond, to transact business with them was a privilege, an education and a pleasure.

Henry Shannon served the profession upon the Council of our Society from 1912-1919 and was Vice President in the year 1917-18. John Sheil was an active and greatly respected member of our Council from 1950 up to the time of his death and was Vice-President in the year 1954-55.

To the relatives of each and all we extend our very sincere and deep sympathy.

MR. ARTHUR COX

I am sure that it would be your wish that I should also refer at this time to the retirement from practice of Mr. Arthur Cox whereby the Council and profession lost one of its most outstanding and distinguished members. Your Council passed the following Resolution:

"The Council of the Incorporated Law Society of Ireland having learned of the wish of their colleague, Arthur Cox, to resign from the Council upon his retirement from the profession wish to place on record their appreciation and gratitude for his outstanding service to the Council, the Society, and the profession. As an ordinary member of the Council, later as President in the Society's Charter Centenary Year and finally as father of the Council

his advice has been invaluable to his colleagues and in accepting his resignation, which they do with deep regret, they would like to convey to him their very sincere good wishes in his new calling."

Mr. Cox has donated to the Society the Chair of John Mitchell Attorney, and author of the "Jail Journal" and a bust of Chief Justice Malone by Nollens. The Council has accepted these gifts with pleasure and conveyed to Mr. Cox its appreciation of his kindly parting gesture.

May I say very sincerely to Mr. Cox on your behalf and on my own "In the days that lie ahead of you, be they long or short, may all your ways be ways of pleasantness and all your Paths be Peace".

You will each have had a copy of our Annual Report and Statement of Accounts which I hope you will take time to read carefully if you have not already done so. You will I am sure realise that it would be quite impossible for me to deal in any detail with the report in the time at my disposal and accordingly I propose this afternoon to confine my remarks to those matters which I consider should be brought to your particular attention.

## Education

This is a subject which quite rightly has occupied and will continue to occupy a good deal of the Councils time and attention and we have set out at appendix B on Page 38 of our Report our memorandum to the Commission of Higher Education. We have not yet been asked to appear before the commission but are ready and willing to do so. There are one or two points in our memorandum which I would like to stress.

For a long time we have felt that our system of education is far too rigid and being established by statutory enactments it cannot easily be changed to meet changing times. We take the view that the time has now come when power should be vested in our Society to prescribe our own system of education and training by statutory regulations made if necessary with the approval of the President of the High Court.

While under our present system I am satisfied that our students are getting adequate instruction and examination in the theory of law I am far from happy that when first qualified they have any practical knowledge at all. Technically they are expected to serve an apprenticeship of 3, 4 or 5 years as the case may be in their masters' office but in practice academic study and lectures prevent them from so doing.

Amongst other things we have made the following recommendations :

*Firstly* : Every intending solicitor should have a university degree and in that connection we do not limit his or her choice of subject.

*Secondly :* Having obtained that degree and passed our examinations in the Theory of Law every intending solicitor should serve two years at least as a full time apprentice of a practising solicitor durnig which period he should be entitled to earn a salary.

*Thirdly :* We recommend a common system of legal education and examination for our profession and the Bar ; greater ease of transfer from one profession to the other, and reciprocity with other countries which entry into the Common Market will make more necessary than ever.

*Fourthly :* Our students and indeed the members of our profession must have adequate text books.

You will have seen from our report that the Incorporated Council of Law Reporting are now arranging to have some books published and we can only hope that the Government will realise that it has some financial responsibility in this matter. Much as we welcome the explanatory memoranda now being published by the Stationery Office with each new Act these are no adequate substitute for text books.

With new statutes, which are effecting important changes of the Law and which in many cases are indeed long overdue, appearing with ever increasing frequency, our profession, the Bar and indeed the judges and justices are faced with the problem of keeping ourselves up to date with these changes. While within our own resources we will do all we can to assist members by the provision of summaries of the more important acts, these again cannot take the place of text books which are quite beyond our resources and must remain the responsibility of the Council of Law Reporting assisted by adequate government grants.

Before I leave the subject of education may I express my admiration for and appreciation of the work done by all our lecturers and examiners during another year.

## Legal Aid

The Minister for Justice recently announced the Governments intention to introduce a legal aid scheme in criminal cases and permission has been obtained to introduce a Bill.

We understand that the Bill has actually been drafted providing for legal aid in certain criminal matters but up to the present we have not seen it nor have we been consulted in regard to its provisions or implications.

I would like you to know that we have asked the Minister for Justice as a matter of urgency to meet us and discuss with us the provisions of the proposed

Bill. We have further informed him that the Society is prepared to formulate and submit a scheme of legal aid in civil cases framed upon the scheme in operation in England and suitably amended to meet the requirements of such a scheme in this country.

Time would not permit me now to comment in any detail upon such a scheme save to say that I am of the opinion personally that whether we like it or not legal aid will in time come into operation in this country. Experience in England has gone to show that the profession there is in favour of the legal aid scheme in civil cases which scheme is operated entirely through the Law Society.

It is interesting to note in connection with legal aid in civil cases the report of the Steele Committee dated the 1st of June, 1960 in Northern Ireland. The committee after taking evidence reported in favour of a legal aid scheme in civil matters on the lines of the English scheme. The majority report was signed by both members of the Northern Ireland Law Society but the two members of the Bar on the committee signed a minority report disapproving of legal aid. The committee came out very strongly in favour of the control and administration of the scheme by the legal profession and stated that they were strongly opposed to any participation by the state or any non-professional interest. They stated that all the evidence from both lay and legal sources strongly stressed that it was undesirable that any scheme of legal aid or advice should be administered directly by persons employed by the state or by any local or public authority. The committee agreed with that view and said that the fact that the state and local authorities are themselves frequently parties to litigation in civil proceedings is an unanswerable argument against either of them being in control of the administration of a legal aid scheme. They considered it importantthat the traditional and long established relationship, privileges, and responsibility between Client, Solicitor, and Counsel should be preserved and that any scheme, its organisation, administration and control must be in the hands of the legal profession which should itself provide the necessary legal services and be remunerated on the normal professional basis.

Charles Evans Hughes, late Lord Chief Justice of the United States said

> "Whatever else lawyers may accomplish in public affairs it is their privilege and obligation to assure a competent administration of Justice to the needy, so that no man shall suffer in the enforcement of his legal rights for want of a skilled protector, able, fearless and incorruptible."

The fact that in this country we have so far had no public demand for free legal aid is in my view no small indication that the members of our profession have played their full part in providing a competent administration of justice for all and sundry as visualized by Lord Chief Justice Hughes.

It is of interest to note that in Scotland the Guthrie report on legal aid in criminal proceedings proposes a comprehensive scheme of legal aid in criminal matters, far more comprehensive than the schemes in force in England and Northern Ireland. In effect it provides that subject to satisfying the Court of insufficient means an accused on any criminal charge will normally receive legal aid.

The administrative work of the scheme will be performed by the Law Society. A Treasury grant is voted each year and paid over to the Law Society to provide for the deficiency on the legal aid account. The Law Society will receive the bills of costs and pay solicitors counsel and witnesses.

There are two grounds for the course recommended in the report of the Guthrie committee:

1. The State is a party to all criminal proceedings. It supplies the money for the defence of accused persons by means of a Treasury grant but it is more in accordance with Justice that the administration of the scheme should be in the hands of the legal professional body who stand apart from such criminal proceedings between the State and the subject.

2. It was considered that the scheme could be administered more cheaply by the Society.

Finally on this subject may I say that it is not only highy desirable but essential to the successful operation of any scheme here that the members of our profession and this Society in particular should be fully consulted by and brought into the confidence of the Minister for Justice. I can only assure you that the Council have this matter very much in mind and will keep in the closest possible touch with developments.

## Organization and Method

Your Council has continued during the past year its efforts to have modernised and simplified the business methods and procedures between our own offices and those of the various Government Departments with which we have to deal. May I say right away that in every case we have met and are meeting a most co-operative and friendly approach from the various officials with whom we have had to deal and although the intervention of the General Election did delay our work in this field considerable progress has been made.

## Land Commission

During the year a sub-committee consisting of Mr. John Halpin, Mr. Dermot P. Shaw, Mr. E. J. Montgomery and Mr. Denis R. Peart spent considerable time on the question of land commission procedure and in particular the procedure relating to the completion of sales and submission of title in land commission matters.

Some of the more important matters now being considered include :—

(1) The Statement of Ownership and Abstract of Title to be replaced by an Affidavit of Title accompanied by the Title Deeds.

(2) The issue of Requisitions on Title by the examiner and the dispensing with the requirements for personal attendance by the Solicitor save in special cases.

(3) The necessary searches and Requisitions as to tithe rents, quit Rents etc., to be made on direction of the examiner by land commission officials without the intervention of the solicitor.

(4) The production of a simplified system of arriving at the appropriate costs payable and preferably one not requiring taxation.

A satisfactory conclusion of arrangements with the Land Commission should simplify and expedite the work both of the solicitor and the Land Commission and we now await the Minister's decision upon the proposals before him.

## Rules of the High and Supreme Courts

You are probably aware that for some years past the Superior Court Rules Committee has been dealing with the entire Revision of Rules of the High Court and the Supreme Court. An impossible task for a large committee and so the completion of this tremendous work was placed in the hands of a sub-committee under the chairmanship of Mr. Justice Murnaghan.

The work of revision has now been completed and the draft Rules are with the printers. But for the intervention again of the General Election these Rules would have, by now, come before the full committee in their final form for approval and submission to the Minister. I now understand that it is unlikely that the Rules will be finally approved before the New Year and it is probable that they will not come into operation until after the long vacation in order to give an opportunity to both branches of the profession and the court officials who will have to operate the Rules of making themselves familiar with any changes arising therein.

Considerable time has been spent on the rules relating to costs with a view to cutting down the number of items; simplifying the wording and thus enabling a bill in the future to be not only very much easier to prepare but very much shorter. The actual schedules have all been revised and will I hope appear in a form more agreeable to our members.

While I am quite sure no member of the committee would for a moment suggest that these rules will, when published, be perfect in every respect, they are in my view a tremendous step in the right direction and any small matters requiring adjustment can be easily and quickly dealt with by way of amendment under the ordinary power vested in the committee.

I have no hesitation in saying that without the work done on these rules by Mr. Justice Murnaghan, and his sub-committee, and no one will ever know the hours and days at a time they have spent on the work, it would not now be so near to completion.

In many other directions progress has also been made while in some discussions are still progressing. In some cases our problem could be resolved by the provision of one or two photo copying machines as in the Land Registry where, incredible as it may seem, the Registrar has to share a machine with other departments of the courts and send all his work out of the building to be copied.

In other cases it will require legislation to effect the changes we require and I am now thinking of the Registry of Deeds where we have the sympathetic understanding of the Registrar and his officials who would be only too glad to see some much needed changes take place. We would like for example to simplify the form of the memorial, which we suggest could be typed on special paper other than parchment. We would like to simplify the system of searches, standardise the fees payable and arrange for lodgment of prepaid requisitions by post, the search being sent out when ready. These and other matters are being considered with the full co-operation and support not only of the officials as I have said but of the Minister for Justice.

## Pension Annuity Scheme

As members are aware the Society made representations to the Minister of Finance with the object of improving the terms on which self employed persons could provide for their retirement. Two very worthwhile improvements in the position were made by Part 6 of the Finance Act, 1958.

Firstly, the concession granted to certain life assurance companies by which contributions made to their annuity funds can be accumulated free of tax which has had the effect of enabling the life offices concerned to quote improved annuity rates, and secondly, the concession permitting a self employed person to set off within prescribed limits

the full annual contribution to retirement annuities as a charge against gross income, thereby obtaining full relief from both income tax and sur tax.

Having considered ways and means of taking advantage of these concessions the Council decided to engage the services of Irish Pensions Trust Limited in consultation with whom a scheme has now been devised which gives preferential terms confined exclusively to members of the Society. The Scheme also provides for the continued advice of the consultants to all members who participate keeping them in touch with any developments which may occur (including variations in rates between different underwriters) and which may prove to be to their advantage. It also provides for advice at the retiring age as to the relative value at that time of any options available in the light of the circumstances then prevailing.

The scheme primarily provides for special pension policies. An important feature of this is that it is not necessary to pay regular premiums but a member can pay as much as he likes with the minimum of £100 as his first premium and secure a pension on this single payment and can then add to it in future years if he wants to by paying other single premiums. This permits a member to make the greatest provision for his future in a year which has been profitable without leaving him any liability in a bad year.

Coupled with this, provision is made for a reducing life assurance which is optional to enable a member to augment the amount payable on his death on the pension policies if he were to die in the early years when the death payment would be small.

Finally, a special permanent and non-cancellable sickness and accident scheme has also been negotiated on preferential terms. All members of the Society under the age of 60 are eligible for the sickness and accident scheme.

Details of the scheme which, in the view of your Council, is the most advantageous at this stage available and of the advisory service offered by the Consultants will be contained in a booklet now being prepared and which will in due course be circulated to each member of the Society. We are all indebted to our Senior Vice-President Mr. Overend for a great deal of time and care given by him to this scheme.

## Finance

I must now direct your attention for a few moments to our accounts for the past year. You will observe that in recent years we have divided up our accounts under five different heads, namely :

A Members Account ; A Registration Account ; An Educational Account ; A Miscellaneous Account. And finally a Consolidation Account.

In each case the name is indicative of the nature of the particular account and the final result is to be found in the last mentioned account The Consolidation Account.

The Finance Committee have been giving very close and careful consideration to our accounts during the past year and I feel bound to bring to your notice one or two very sobering facts.

Firstly, since 1956 when our income exceeded our expenditure by some £4,200 our surplus has steadily dropped until last year when the figure was £461 and this year only slightly better at £704. Next year we will almost certainly show a loss.

Secondly, we would this year have shown a loss but for the fact that our income from Examination and Lecture Fees was up by £1,800 due to the way in which examinations happened to fall. This resulted in an abnormal amount being actually received within the year under account.

Thirdly, we must and I am sure do realise how ordinary office expenditure and outlay has risen in the past few years. The Society has been no exception. In this past year alone printing has cost us £500 more than in the previous year. Salaries, stationery, electricity and postage have all moved up.

Fourthly, apart from these increases in the more usual items there have been new items which we have had to face. The holding of our Half Yearly Meeting outside Dublin every second year has cost us money and it has been money well spent. Our obligations to the International Bar Association where we now hold an important and respected place have had to be met. The cost of entertaining the Society's Guests, which up to a year or so ago, incredible as it may seem, was borne by the members of the Council personally, is now very properly a charge on the Society.

We are spending more money in providing extra lectures for our apprentices and have had to appoint more examiners. The sum of approximately £500 is being spent in legal fees annually and I will later refer to this. Finally no one in this room or outside coud find fault with us for appointing an assistant to Mr. Plunkett to share with him the ever increasing responsibility of the work of our Society (An item which is not in fact reflected in the years accounts under review).

After long and careful considreation I have come to the conclusion that subject to two items to which I will later refer we cannot reduce our expenditure to any appreciable extent and maintain the facilities and services of the Society to which our members are entitled. There is in my view no wasteful expenditure, on the contrary we would dearly like to spend much more on our Library and other

items which could be of considerable benefit to members.

If, as in other places, our members from the country were allowed even 2nd class travelling expenses to and from Council Meetings it would cost the Society another £500 per annum not to mention hotel expenses or cost of meals which would come to a further £400 approximately.

This expense is at present borne entirely by the members concerned who with their Dublin Colleagues gave in the past year alone over two thousand hours of their time in attending meetings of the Council or its committees and that takes no account of time expended on travelling to and from such meetings. I have referred to these items as of interest only and I would like it to be clearly understood that there is no question of allowing such expenses out of Society funds nor has such a request been made by anyone.

How then can our budget be balanced in the future.

We have of course power to charge the Compensation Fund with a fair and reasonable amount to cover the cost of administering the fund in addition to all out of pocket expenses incurred by the Society. Let us be clear, however, that so far as our members are concerned this is no solution of our problem and would simply mean transferring money paid by our members from one pocket into another.

There are two substantial items of expenditure which are very much in the minds of our Council. They are the payment of £530 to the Incorporated Council of Law Reporting and the payment of £14 by each of our apprentices as stamp duties on his indentures which goes to the Kings Inns.

The first of these charges is in my view an unjustifiable charge to which our Society should no longer be subject for the following reason. When we negotiated the terms of the Solicitors Act, 1954, the Government agreed to remit stamp duties on our practising certificates and part of the stamp duty on our apprentices indentures. The Act also gave to the Society the power to remove from the Roll or to suspend solicitors whose conduct justified such penalties without imposing on us the expense of applications to the court. In exchange for these concessions the Society undertook to contribute the sum of £530 per annum to the Incorporated Council of Law Reporting. As you know, the Supreme Court decision removed our right to deal with these cases and we are now back where we started having to incur in every case the expense of court proceedings. In other words, the legal costs to which I earlier referred of approximately £500 in addition to the contribution of £530 to the Incorporated Council of Law Reporting have to be met annually—now an unjustifiable imposition which no one ever intended and which should now be removed.

The second item is even worse—I consider it an insult to our profession—I can see no reason let alone justification why our apprentices should be called upon to subsidise the Kings Inns—it is in my view the bounden duty of the Bar to collect either from their own students or their own members whatever funds they require to meet the expense of educating their students and paying for their own administration. In the current year this charge alone will cost our apprentices nearly £600. If this money was available to us for the education of our own apprentices and we were relieved of the payment to the Incorporated Council of Law Reporting it would go a long way to assisting us in our present financial problems.

Every president I have known has had a bee in his bonnet about something or other connected with our profession—I am no exception to the rule, and in giving expression to it I am bound to inform you that not only have the Council never even heard my views, but for all I know they might disagree violently with them.

You will already have realised from my earlier remarks that I referred to two points upon which our relationship with our friends at the Bar require looking into—education and finance. May I suggest with all due respect that these are only two of many matters about which we and they ought to come together for discussions.

It would be unfair of me to refer in any detail to other matters about which I hold very decided views before the Councils of our Society and the Bar have had an opportunity of considering them. I will, however, propose at our next Council meeting that a special committee of our Council be formed to consider and discuss with our friends at the Bar all such matters. I would only like to add in this connection that a happy relationship continues to prevail between our two professions which I hope may long continue.

And now the sands of my presidential year are sinking fast, another chapter in the history of our Society draws to a close. It only remains for me to say that it has been one of the most hectic and happy years of my life. No words of mine can adequately convey to the members of our profession my thanks for the privilege I have enjoyed in serving on our Council. Nor could I ever hope to repay my Colleagues on the Council for the very great honour they did me in electing me as your President.

My wife and I have represented the Society at various Government receiptions and we have enjoyed the hospitality of the Law Societies of England, Scotland and Northern Ireland, we have visited

many of the Bar Associations throughout the country and been personal guests in the homes of many of my colleagues. I and often my wife with me, have wined, dined and danced as the guests of other professional bodies and business associations. We have been the honoured guests everywhere we have gone and it has seemed to me that on every side our Society is greatly respected. In all my dealings as President whether it be with Government Departments, Offices of State, or of the Courts, everyone I have met has been helpful and co-operative. I have already in another place conveyed to my colleagues on the Council what their patience, advice, and kindness has meant to me—to my Vice Presidents, Mr. George Overend and Mr. John Maher, who have been at my side throughout the year helping me in so many different ways, I am also grateful. Lastly, I would say not only on my own behalf but also on yours, how fortunate we are with our staff in the Society. Mr. Plunkett who has been very patient with my impatience must as usual carry the heaviest weight and in giving him Mr. Barry Cusack, a young man full of ability, talent and enthusiasm, we have hoped to ease his load, Mr. Gavin Duffy continues to maintain for us a most up to date library and service here, Mr. Fitzpatrick is as far as I can see, a master of all trades—at one moment trying to explain to an unfortunate apprentice why he did not pass his last examination, and the next listening patiently to some old lady complaining that the President has not answered her letters. To Miss Dowdall, Miss Fanning, Miss Shiells and Miss Donnelly, our very sincere thanks for another year's work very well done. Lastly, no president can ever forget William O'Reilly who always sees that he never appears without this lovely chain of office but is equally careful to see that he never disappears with it. He has performed for me many kindly acts during the past year.

To each and all of them my sincere personal thanks for the courteous and loyal co-operation and help that they have rendered to one who must have often appeared to them as a very fussy and exacting President.

To the many members of our society outside our Council who have helped us by serving on committees, acting as scrutineers or who have advised us in one way or another, we extend a genuine word of thanks.

With the ending of this Chapter in our history I realise, as indeed you must all clearly see, that I am not growing younger, and the time must soon come, if indeed it is not already here, for me to give my place on the Council to a younger and more energetic man. This I am ready and willing to do at any time in the certain knowledge that the friendships that I have formed while a member of our Council will last as long as life itself.

It is with very great pleasure I now move the adoption of our report and I will ask Mr. Overend to formally second the proposal.

Mr. Overend seconded the adoption of the report.

Mr. T. D. McLoughlin then moved that the meeting should go into private session. The President thanked the press representative for their attendance and they then withdrew.

Mr. McLoughlin (Dublin) speaking on the report stated that he approved of the changes in the system of legal education and training recommended in the Society's memorandum to the commission on Higher Education. He thought that two lecturers in the law faculties of each university should be selected from the solicitor profession and he cited the examples of University College Galway and University College Cork. He also stated that the valuers appointed in connection with compulsory acquisitions by the Land Values Reference Committee should have legal qualifications and said that he was in favour of a committee of junior solicitors to advise the Council. The President replied and dealt with a number of the points raised.

Mr. C. P. Forde (Dublin) said that he is not in favour of a compulsory university degree before admission to apprenticeship at least at present. He stated that this might exclude from the profession persons with insufficient means but would otherwise be suitable.

Mr. Edmund Carroll (Fermoy) supported the view that a university degree is desirable. He thought that if a degree in non-legal subjects were taken by an apprentice he should have at least one or two years' law lectures at university level before starting apprenticeship.

Mr. J. R. Quirke (Dublin) suggested that a list of the current High Court fees should be printed in the Society's calendar.

Mr. T. J. O'Keeffe (Roscommon) enquired as to the statutory authority for the payment of £14 stamp duty on each indentures of apprenticeship to the Society of the King's Inns. The President replied that he thought it originated in a pre-Union Irish statute.

Mrs. Cecilia Hurley-McGrath (Dublin) asked how long practising solicitors would have to contribute an annual sum of £20 to the Compensation Fund.

The President replied to a number of points raised. The motion for the adoption of the report was carried unanimously.

THE PRESIDENT then opened a discussion on the advisability of introducing the accountant's certificate provisions in section 31 of the Solicitors (Amendment) Act, 1960, item 7 on the agenda and made a statement outlining the negotiations with the Parliamentary Secretary to the Minister for Justice

leading to the passing of the Solicitors (Amendment) Act, 1960 and also dealing with the present position of the Compensation Fund. Copies of the report of the Compensation Fund Committee for the year 1960/61 were distributed.

Mr. James Cawley (Dublin) asked whether the Society is now under any pressure from the department to ask the Minister to bring section 31 of the 1960 Act dealing with the accountant's certificate into operation. The President replied that the Society had not received any communication from the Minister.

Mr. T. J. O'Keeffe (Roscommon) speaking for the Roscommon Bar Association opposed the introduction of the accountant's certificate provisions. He said that it would not have the desired effect because a dishonest solicitor would always find ways around the section. The fees charged by accountants might be prohibitive and would increase overhead costs. His association thought that the soliciting of opinions at ordinary general meetings would not give a representative view point as the meetings would be dominated by Dublin solicitors and he suggested a secret postal ballot. He further stated that his association thought that the legislation introduced as the result of the initiative of the Council in recent years had given the profession an odious name by labelling members of the profession as criminals.

Mr. J. B. MacGarry (Dublin) stated that the issue before the meeting was the most vital which had been discussed for many years and that every member should express an opinion. The members had come to decide whether the accountant's certificate provisions would be in the interests of the profession. He thought that such a proposal would be ill-timed, ill-conceived and unnecessary. Every solicitor is bound by the Solicitors' Accounts Regulations and the Society can demand an audited accounting statement from any solicitor. There had been laxity between the years 1923 and 1940 which had led to the present position followed by Governmental indifference between 1940 and 1954 and subsequently between 1958 and 1960. Only thirteen complaints had been received by the Disciplinary Committee last year which had led to orders striking off solicitors in three cases. He asked the meeting to give the Council a chance to operate the provisions of the new Act. He further stated that he thought section 31 of the 1960 Act was repugnant to article 40 of the Constitution. He closed by saying that if the Society were to bring section 31 into operation it would be an acknowledgment by solicitors that the profession cannot be trusted without control from an outside agency.

Mr. Edmund Carroll (Fermoy) said that all members are in agreement with the Solicitors' Accounts Regulations already introduced but the procedure under section 31 would not be effective. He said that the meeting had no information as to what would be the nature of the regulations to be made under section 31 (*b*). He was rather against the introduction of accountants' certificates because many small offices do not employ accountants and in some cases the expense of an audit might be as much as 100 guineas per annum. He suggested for consideration the alternatives of a five-yearly audit of each solicitor's accounts or an audit of a number of solicitors accounts each year to be selected by lot.

Mr. W. J. Allen (Galway) opposed the introduction of section 31 on the grounds already stated by other members and the additional ground of the difficulty in obtaining auditors' certificates. Many accountants have no professional qualifications and auditors could not be compelled to produce certificates within a given time.

Mr. W. J. Dillon-Leetch (Ballyhaunis) stated that the Mayo Bar Association are totally opposed to the proposal of bringing in section 31.

Mr. G. Y. Goldberg (Cork) said that the Southern Law Association were unanimously opposed to the proposal. Nevertheless he said we must take facts as we find them. The Council had authorised the last president to give an undertaking to the Parliamentary Secretary that members would be canvassed on section 31 with a view to its eventual introduction. The matter must be discussed and he felt as an individual that sooner or later the Society would be met by a demand from the Department to introduce the certificate failing which the Department would do it for the Society. The Society must then offer alternative suggestions or sound reasons why it should not be introduced. The President had in his speech pointed out that the solicitors' branch of the profession contributes a sum of £14 to the Society of the King's Inns from the stamp duty on each apprentice's indentures and that the Society makes a direct contribution of £500 per annum to the Incorporated Council of Law Reporting. He thought we were the most imposed on profession in any country. He thought that the accountant's certificate provisions might be a small contribution but would not deter a dishonest solicitor. He thought that there were not so many dishonest solicitors as to cause alarm. Finally he said that if the accountant's certificate provisions are introduced there should be a breathing space of five to seven years. He thought the real answer to the problem of defalcations is partnerships. It was inopportune to introduce section 31 at present.

Mr. S. A. Siev (Dublin) stated that we were living in a free country but that freedom is being replaced by restrictions. The profession was being driven into a position of indignity as the result of twenty-two solicitors in respect of whom claims had been made on the Compensation Fund. The annual contribution of £20 to the Compensation Fund ought to be removed. Section 31 would be an additional burden. He thought that the accountant's certificate provisions would be of no real value.

Mr. J. Halpin (Cavan) said that the Cavan Bar Association agreed with the Roscommon and Mayo Bar Associations in opposing the introduction of section 31. It would have no useful effect. The accountants' certificates are required in England but defalcations there had been heavy. He referred to the difficulty and expense of getting accountants in country districts. He did not agree with Mr. Goldberg that the Minister would eventually pass legislation if the Society refuses to co-operate. If the Council could operate the full client-indemnity provisions of the Compensation Fund now in operation he thought the Minister would not insist on the introduction of section 31. On the other hand if claims are not met the Minister might introduce legislation.

Mr. Enda Gearty (Longford) opposed the accountant's certificate provisions on the grounds advanced by other members and also on the ground that section 31 might lead to compulsory disclosure of clients' affairs to auditors. Figures might be disclosed for unauthorised purposes. Other professions were not subject to requirements of this kind and he thought that the Society had sufficient powers.

Mr. Eunan McCarron (Dublin) stated that the Society has already got the necessary powers. Why should these powers not be used? If a solicitor was intentionally defrauding clients an auditor's certificate would not deter him. He suggested that spot audits might be made of individual accounts in proper cases.

Mr. James Cawley (Dublin) asked the meeting to consider the realities of the position. He said that it is unreal to suggest that the Society and the profession are not answerable to the Department of Justice. It was also unreal to discuss the matter as if it involved the question of honesty only. In the majority of cases defalcations arose from inefficient business management and incompetence without direct dishonest intent. It was even more important to-day that a solicitor should be a businessman than that he should be a skilled lawyer. He thought it incredible that solicitors who are entrusted with vast sums of clients' monies should claim to be exempted from having their accounts audited which is a minimu-

requirement in every other business. He pointed out that solicitors are being asked to account for monies which they hold on trust. No question of the auditing of solicitors' profit and loss accounts arises. In the interests of the profession itself members should agree to be subject to the jurisdiction of the Society in regard to what he regarded as a minimum requirement. The English system of law is followed in this country and the accountant's certificate provisions are in operation in England. He thought the profession is sick and that it is futile to adopt the attitude of the ostrich. In his view there is no substance in the argument that auditors might disclose clients' affairs or that the audit might be used for improper purposes. He did not look forward to paying sur-charges to the Compensation Fund for the dishonesty or incompetence of other solicitors. He thought we had time on our hands now to set our house in order which we know is not in order and that it would be advisable to introduce section 31 with a breathing space.

Mr. D. P. Shaw (Mullingar) said that there are two schools of thought. One represented by solicitors who now have their accounts audited, the other by solicitors who have not adopted the practice of audited accounts. He was in favour of the accountant's certificate. Solicitors are given the privilege of receiving clients' monies. They had the duty and the responsibility of assuring the public that their monies entrusted to the profession are safe. He did not think personally that the Minister for Justice would insist on the accountant's certificate provisions having regard to the fact that the Society have accepted a statutory duty of providing full indemnity from the Compensation Fund. He referred to the Compensation Fund Committee report which he said showed a short fall of over £23,000 in the monies available to provide for indemnity. He thought that a further contribution might have to be levied on the profession to make up this deficiency. How can this be prevented, he asked, unless the profession are united behind the Council in taking the necessary measures to ensure the solvency of the Fund?

Mr. F. J. Lanigan (Carlow) stated that he opposed section 31. He thought that there was adequate machinery available to the Disciplinary Committee and the Registrar's Committee to make inquiries into a solicitor's financial position. Only a small percentage of solicitors defaulted. He thought that a period of seven to ten years should be allowed to elapse before the accountant's certificate provisions are introduced and that there should be a yearly discussion.

Mr. D. Bouchier-Hayes (Dublin) asked the meeting to consider what is the image of the solicitor before the public. He said that it is not favourable. One per cent. of the profession can hold the whole profession up to odium. It was a misconception to think that the adoption of section 31 and the accountant's certificate provisions involved an imputation of trickery or anything of that sort as regards the profession. He instanced the cases of public bodies and State companies whose officials are subject to compulsory audit. He thought that the profession was taking steps to redeem its reputation and that the Council should not wait until their hands are forced. The issue before the meeting was whether or not the profession would govern itself. Section 31 was the answer.

Mr. Desmond Collins (Dublin) stated that he did not agree with the last speaker and he enquired whether stockbrokers are subject to compulsory audit provisions.

Mr. James Rowlette (Sligo) speaking personally stated that he opposed the suggestion of a compulsory certificate on principle although he had his own accounts audited. He thought that it would cheapen and belittle the profession.

Mr. John Carrigan (Tipperary) speaking for the Tipperary Bar Association stated that his association approved the introduction of section 31 subject to a breathing space which should be left to the Council of the Society. He also personally agreed with the proposal for accountants' certificates.

Mr. C. P. Forde (Dublin) said that he agreed with Mr. Rowlette on the question of principle. He enquired whether the profession is to be placed in pawn to accountants and stated that it would be similar to asking a surgeon to obtain a certificate from an undertaker as to his professional record. We should try to keep accountants out of our business.

Mr. R. J. Tierney (Dublin suggested as an interim measure that (i) any solicitor should be permitted to lodge with the Society voluntarily an annual accountant's certificate and that solicitors who do so should be indicated by a suitable mark in the list of practising solicitors in the Society's calendar. (ii) Such solicitors should be given an abatement in the Compensation Fund contribution. (iii) Each candidate for election to the Council should undertake to lodge an annual accountant's certificate with the Society.

Mr. Desmond Moran (Dublin) stated that the decision on the Solicitors Act case had put things back and that he thought that the discussion should be postponed to see how the present machinery works for some time.

Mr. G. M. Doyle (Dublin) stated that he thought that section 31 should not be brought into operation for the reasons given by other members.

Mr. N. S. Gaffney (Limerick) said that a meeting of the Limerick Bar Association had been held but that no decision had been reached. Speaking for himself he thought that section 31 ought to be brought into operation both from his own personal experience as a practitioner and from his experience as a member of the Disciplinary Committee. The greater number of defalcations were due to mismanagement. Solicitors who got into trouble found themselves in an irretrievable position when it was too late. He cited the examples of New Zealand and Scotland where the accountant's certificate is required. In these countries the profession opposed these certificates at first but the majority of the profession subsequently realised that they were wrong and when the accountant's certificate provisions were introduced it was found possible to reduce the Compensation Fund contribution. The nature and extent of the audit and the form of the certificate was a matter to be prescribed by the regulations made under the Act. He thought there would be no difficulty with proper regulations in having the matter dealt with satisfactorily. He also thought that an audit is advisable in every solicitor's business.

Mr. Patrick Noonan (Athboy) said that the Meath Bar Association opposed the introduction of section 31. He was personally in favour of its introduction because he objected to paying £20 per annum into the Compensation Fund for the defaults of other practitioners. He did not think it was any insult to be asked to produce an accountant's certificate. He was not impressed by the suggestion that the Minister might bring in a section over the head of the Society. He would let him bring it in. Solicitors who defaulted did not go wrong suddenly. There must be some kind of check if the profession were not going to pay for them. He knew of cases in which solicitors had their accounts audited but the audit disclosed that there was not sufficient money in the client's bank account Unless the accountant's certificate is produced to the Society. this kind of position could not be controlled. He was also in favour of spot checks. He ended by saying that without control what he described as the running sore of mismanagement would continue.

The President closed the discussion saying that as chairman he did not propose to express his personal opinion. He stated that the Council would not without the support of the profession ask the Minister to bring in section 31. It would be idle to think that everything in the garden is lovely. He thought that there was no hope of reducing the Compensation Fund contribution and that the probability was in the opposite direction.

Correspondence received from bar associations shows that

the associations in Kerry and Meath are opposed to the introduction of section 31. The bar associations of Tipperary and Wexford are in favour of accountants' certificates. This is apart from the views expressed by members at the meeting.

On the motion of Mr. T. A. O'Reilly the President vacated the chair which was taken by Mr. Overend, Vice-President. Mr. O'Reilly then proposed a vote of thanks to the President for his distinguished services to the profession during the year. The motion was carried with general acclamation.

There was no further business.

## MEETINGS OF THE COUNCIL

November 23rd. The President in the chair, also present Messrs. John Maher, W. J. Comerford, Brendan A. McGrath, Peter D. M. Prentice, John J. Nash, Daniel J. O'Connor, Robert McD. Taylor, Reginald J. Nolan, D. B. Gilmore, James R. C. Green, George A. Nolan, Desmond Moran, Desmond J. Collins, John R. Halpin, John Carrigan, Brendan T. Walsh, W. A. Osborne, Francis J. Lanigan, Thomas A. O'Reilly, Peter E. O'Connell, George G. Overend, Augustus Cullen, James W. O'Donovan, Eunan McCarron, Patrick Noonan.

The following was among the business transacted:

Committees for the Council. The committees for the year 1961-62 were appointed and are given hereunder:

### Registrar's Committee

Thomas A. O'Reilly, chairman, William J. V. Comerford, Dinnen B. Gilmore, James R. C. Green Charles Hyland, John Kelly, John Maher, Brendan A. McGrath, J. Desmond Moran, George A. Nolan, Patrick Noonan, James J. O'Connor, Terence De Vere White, to remain in office until 12th February, 1962 inclusive.

To take office on 13th February, 1962: Ralph J. Walker, chairman; William J. V. Comerford, Dinnen B. Gilmore, James R. C. Green, Charles Hyland, J. Desmond Moran, Francis J. Lanigan, John Maher.

### Compensation Fund Committee

Dinen B. Gilmore, chairman, William J. V. Comerford, James R. C. Green, Charles Hyland John Kelly, John Maher, Brendan A. McGrath, J. Desmond Moran, George A. Nolan, Patrick Noonan, James J. O'Connor, Thomas A. O'Reilly, Terence De Vere White, to remain in office until 12th February, 1962, inclusive.

To take office on 13th February 1962: Ralph J. Walker, chairman, William J. V. Comerford, Dinnen B. Gilmore, James R. C. Green, Charles Hyland J. Desmond Moran, Francis J. Lanigan, John Maher.

### Finance, Library and Publications Committees

Nial S. Gaffney, chairman, Charles Hyland, James B. MacGarry, Reginald J. Nolan, Patrick Noonan, William A. Osborne.

### Privileges Committee

James W. O'Donovan, chairman, Brendan A. McGrath, Daniel J. O'Connor, Thomas V. O'Connor, Patrick O'Donnell, Edward Treacy.

### Court Offices and Costs Committee

Reginald J. Nolan chairman, Francis Armstrong, Augustus Cullen, John Kelly, Brendan T. Walsh, John C. O'Carroll.

### Court of Examiners

Thomas A. O'Reilly, chairman, John Maher, James J. O'Connor William A. Tormey, Terence, De Vere White.

### Parliamentary Committee

The President and Vice-Presidents for 1961-62.

The President, Vice-Presidents and immediate Past President are ex-officio members of all the above committees other than the Registrar's and Compensation Fund Committees.

### Extraordinary Members of the Council

The following members of the Dublin Solicitors Bar Association were appointed as extraordinary members of the Council for the period of office of the Council: Charles Hyland, James B. MacGarry, J. Desmond Moran.

### Disciplinary Committee

The President of the High Court has appointed the following members of the Society to be the Disciplinary Committee for the year 1961-62: John Carrigan, Desmond J. Collins, John R. Halpin, Eunan McCarron, Derrick M. Martin, John J. Nash, Peter E. O'Connell, Peter D. M. Prentice, Robert McD. Taylor, Dermot P. Shaw.

### Society's Dinner Dance

The annual dinner dance was held in the Shelbourne Hotel, Dublin on November 23rd and attracted an attendance of over 300.

## PRESENTATION OF NEW CERTIFICATES

On November 23rd the President at a ceremony in the Society's library presented certificates of admission to the undermentioned solicitors. In his address to the newly admitted solicitors the President said :

LADIES AND GENTLEMEN :

Before presenting the Certificates of Admission to the Ladies and Gentlemen who, having passed our Examinations, are now entitled to join us in practice it is usual for the President to say a few words.

It may be of interest to you to know that since 1956 the average number of Apprentices entering into indentures has been 36. The average number of admissions to the roll, 40, and the average number of Practising Certificates issued 1350. The number of these entering into Indentures this year at 42 is the highest it has been since 1957 when it was 45. The numbers actually being admitted this year at 27 is the lowest it has been since 1958, and as we estimate that between 30 and 35 solicitors cease to practice either through death or retirement there should, all things being equal, be a small overall reduction in our numbers.

I have mentioned these figures because you should know that in the view of our Council the Profession is at present overcrowded and this we consider is a bad thing. We have not sought to restrict in any way the numbers entering the profession, and no one who has attained the standard required by our examiners has been deferred or delayed in any way in his progress towards qualification.

We are anxious to maintain and even improve our standards and qualifications, and I will later this afternoon be speaking about this to our members, but I believe I am right in saying that this is not because we wish to limit the numbers entering but rather to improve the quality and qualifications of those entering so that in our present highly complex and specialised situation our members may be fitted to meet and deal with every eventuality.

It is interesting to note that the situation here is quite different to that existing in Northern Ireland, England, and Scotland where there is an acute shortage of solicitors and solicitors clerks. If a measure of reciprocity comes with the Common Market it might solve some of these problems.

Having said all that I am bound to express the personal view that there is room in this country for good solicitors, and of course there is always room at the top.

It is my very pleasant task to welcome each of you very sincerely to our ranks and to hope that if you have not already done so you will join our Society. There will be available to you here quite apart from this splendid library, which can be so useful to a young solicitor who starting out may not be able to purchase all the law books he would like, all our other facilities and above all the advice and help of your colleagues here, and of Mr. Plunkett who from his wide experience over the years can consult with and advise you in confidence if at any time you find yourself in difficulty—if you are a very young solicitor and he seems too formidable to approach, though I am quite sure he would be sympathetic, there is Mr. Cusack who now has behind him all the organisation and assistance of the Society. May I hope that your families and friends will also stand by you in these early days realising particularly of those of you who are younger, that it is an uphill road requiring patience and perseverence to reach its upper heights. I can speak of this from personal experience for as a qualified solicitor I started at £8 per month. I am glad to be able to tell you it has increased a little since then—and I worked with wonderful partners some of whom were 40 years older than myself and four of whom lived to be well over 80 years of age. To consult with them was like going to Senior Counsel, to learn from them was better than any text book, to have known them and enjoyed their friendship was a great privilege and will remain a lasting memory which I greatly treasure.

May you go out into your new profession in confidence, keeping ever before you the highest standards and may God's blessing go with each of you.

## PRESENTATION OF PARCHMENTS

The following solicitors received certificates :

Mary Binchy (B.A.), Gortskagh, Charleville, Co. Cork ; Michael B. Creed (B.C.L.), Masseytown, Macroom, Co. Cork ; John V. P. Cresswell (B.A., LL.B.), Cullenstown, Kilternan, Co. Dublin ; Ailin A. Gibbons (B.C.L.), 16 Dollymount Avenue, Clontarf, Dublin ; Rory M. Hogan (B.C.L.), Ladymount, Callan, Co. Kilkenny ; Thomas J. Macken, 11 Henly Road, Churchtown, Co. Dublin ; Owen Mulholland, 6 Sandford Road, Ranelagh, Dublin ; Maire McHale (B.A.), 11 The Crescent, Galway.

## INTERNATIONAL BAR ASSOCIATION NINTH INTERNATIONAL CONFERENCE

The above conference is to be held in Edinburgh from July 16th to July 20th, 1962. Members

wishing to attend should apply immediately for registration forms and hotel reservation forms which can be had on request from the Secretary, The Law Society of Scotland, Law Society's Hall, North Bank Street, Edinburgh or from Gerald J. McMahon, Esq., Secretary General, International Bar Association, 501 Fifth Avenue, New York 17, N.Y., U.S.A.

## THE DUBLIN SOLICITORS' BAR ASSOCIATION

The Dublin Solicitors' Bar Association at their recent Annual General Meeting elected the following Officers and Council: *President*, Charles Hyland; *Vice-President*, John A. G. Cullen; *Honorary Treasurer*, Edmond O. Sheil; *Honorary Secretary*, Ernest J. Margetson; *Honorary Auditors*, Messrs. Glynn & E. Crowley. *Council:* Messrs. Edward Byrne, R. Knight, J. M. Farrelly, K. Burke, S. Millington, G. A. Williams, V. Wolfe, E. Barrett and G. M. Doyle.

## MEATH SOLICITORS' ASSOCIATION

At the Annual General Meeting of the County Meath Solicitors' Association held on the 23rd October, 1961, the following Officers were elected for 1961 to 1962: *President*, Mr. F. Reilly, Trim; *Honorary Secretary and Treasurer*, Mr. T. Noonan, Kells. *Council:* Messrs. A. Donnelly, Navan; A. J. Malone, Trim; P. Noonan, Athboy; Mrs. E. A. Leahy, Oldcastle; Messrs. N. Lacy, Kells and S. Keaveney, Kells.

## COUNTY AND CITY OF LIMERICK SESSIONAL BAR ASSOCIATION

At the Annual General Meeting of this Association held on Tuesday, the 21st November, the following officers were elected for the year 1961/62: *President*, Niall S. Gaffney; *Hon. Treasurer*, Thomas E. O'Donnell. *Committee Members:* Edward Treacy, Michael Cussen, Maurice M. A. Power, William Leahy, Caleb C. McCutcheon, Michael B. O'Malley. *Hon. Secretary:* James I. Sexton.

## SOUTHERN LAW ASSOCIATION

The Annual General Meeting was held on 1st December. The following are the officers and Council for 1961/62: *President*, John A. Coakley; *Vice-President*, Gerald Y. Goldberg; *Hon. Treasurer*, Gerald J. Moloney; *Hon. Secretary*, Humphrey P. Kelleher, 10 South Mall, Cork. *Council:* T. A. Buckley, C. J. Daly, John F. Foley, F. P. Galvin, Edmund Hayes, John B. Jermyn, Devin Keane, Hugh A. Ludlow, Bryan J. Murphy, James W. O'Donovan, B. M. O'Meara, Denis J. Quinlan.

Extraordinary members of the Council of the Incorporated Law Society of Ireland: John B. Jermyn, Cornelius J. Daly, John F. Foley, Gerald Y. Goldberg, John K. Coakley.

## MEDICO-LEGAL SOCIETY OF IRELAND

The following officers of the Medico-Legal Society of Ireland were appointed for the 1961–62 session: *Patron*, The Honourable Conor A. Maguire, Ex-Chief Justice; *President*, The Honourable Mr. Justice Murnaghan; *Past-President*, Professor P. N. Meenan, M.D., Barrister-at-Law; *Vice-Presidents:* The Honourable Mr. Justice Davitt, President of the High Court; Donough O'Donovan, Chief State Solicitor; D. A. MacErlean, M.D., City Coroner, City of Dublin; Francis McLaughlin, M.D., Daniel Costigan, Commissioner, Garda Síochána; Dermot Shaw, Solicitor; Seán McBride, S.C. and E. Y. Exshaw, LL.B., Barrister-at-Law. *Council:* Dr. J. P. Brennan, County Coroner, County Dublin; Brendan McGrath, Solicitor; M. B. Daly, Barrister-at-Law; Dr. C. S. P. Hamilton; Dr. J. Fitzgerald; J. P. Shanley, M.D. and Niall St. J. McCarthy, S.C. *Editor of Debates*, Robert Barr, Barrister-at-Law; *Assistant Editor of Debates*, Max Abrahamson, Solicitor; *Honorary Treasurer*, James A. Kelly, Solicitor and *Honorary Secretary*, Miss Agnes B. Cassidy, LL.B., Barrister-at-Law.

The opening meeting of the Society was held on the 26th October, when the President of the Society, the Honourable Mr. Justice Murnaghan addressed the Society on "the Witness and the Advocate".

The next meeting of the Society was held on the 30th November, 1961, at the Royal Hibernian Hotel, Dublin, at 8 p.m., when Mr. Vincent Grogan, Barrister-at-Law read a paper on "Law and Custom in Ghana".

Other meetings arranged for this session of the Society include papers by the Honourable Mr. Justice Walsh on "The Preliminary Investigation of Indictable Offences" and by Dr. J. P. Brennan, County Coroner for the County of Dublin on "The History and Functions of the Coroner's Court".

The annual dinner of the Society will be held in February.

The object of the Society is to promote Medico-Legal knowledge in all its aspects and ordinary membership is open to members of the medical and legal professions in Ireland and to others specially interested in medico-legal matters. Candidates for membership to the Society must be proposed and seconded by a member and elected by the Council.

Further particulars of the Society may be obtained from the honorary secretary, Miss Agnes B. Cassidy,

11 Whitehall Road, Terenure, Dublin or Law Library, Four Courts, Dublin.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942 ISSUE OF NEW LAND CERTIFICATE

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except in a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated this 29th day of December 1961.

D. L. McAllister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner Evelyn Margaret Dobbs. Folio number 2445. County Dublin. Lands of Shankill in the Barony of Rathdown containing 0a. 2r. 13p.

2. Registered Owner Matthew Clarke. Folio number 2349. County Meath. Lands of Balreask Old in the Barony of Navan Lower containing 13a. 2r. 16p.

3. Registered Owner William Henry Smith. Folio number 6381, County Cavan. Lands of Largy or Forthenry in the Barony of Tullygarvey, containing 67a. 2r. 30p.

4. Registered Owner, Hugh Murphy. Folio number 3518. County Cavan. Lands of Kilduff, in the Barony of Tullygarvey, containing 24a. 2r. 21p.

5. Registered Owner, James Cunniffe. Folio number 7136. County Leitrim. Lands of Farnagh, in the Barony of Leitrim containing 5a. 0r. 13p.

6. Registered Owner, Elizabeth (Elsa) O'Doherty. Folio number 22442 (Formerly Folio 77). County Clare. Lands of Querrin, Tullaroe, Querrin and Tullaroe containing 57a. 3r. 27p., 2a. 0r. 20p., 5a. 0r. 38p., and 6a. 1r. 9p., respectively all situate in the Barony of Moyarta.

7. Registered Owner, George Cassidy. Folio number 15078. County Donegal. Lands of Trillick, containing 19a. 1r. 9p. and one undivided moiety thereof containing 4a. 0r. 0p., situate in the Barony of Inishowen and County of Donegal.

8. Registered Limited Owner, Mary McCormack. Folio number 11759. County Meath. Lands of Sarsfieldstown in the Barony of Duleek Upper, containing 24a. 1r. 5p.

## THE REGISTRY

### Register C

Re: Miss Mary Ellen McTeigue, Deceased.

Will any solicitor or other person who prepared or has knowledge of the whereabouts of any Will of Mary Ellen McTeigue, spinster, of Ballyconnell, County Cavan, who is thought to have lived in England since 1938 or thereabouts, and who died on the 6th November, 1961, please communicate with Messrs. Vinter, Walker & Ray, Solicitors, of 6 St. Andrew's Street, Cambridge, England.

Firm of solicitors with offices excellently situated (South side) has spare accommodation (entire premises 4000 sq. feet); good lease; would consider amalgamation. Box. No. C 168.

## OBITUARY

Mr. William E. O'Brien, Solicitor died on the 21st November, 1961 at his residence The Lodge, Mitchelstown, Co. Cork.

Mr. O'Brien served his apprenticeship with the late Mr. George Roche, 20, St. Stephen's Green, Dublin, was admitted in Trinity Sittings 1905 and practised at Mitchelstown Co. Cork as senior partner in the firm of Messrs. W. E. O'Brien & Co.

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# THE GAZETTE

OF THE

INCORPORATED LAW SOCIETY OF IRELAND

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## PRACTISING CERTIFICATES, 1962-63

(1) Members are reminded that practising certificates for the year to end 5th January, 1963, must be taken out on or after the 6th January, 1962 and not later than 5th February, 1962, in order to take effect as a qualification to practise from January 6th

(2) Under the provisions of the Solicitors Acts, 1954–60, the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the Registrar, on the ground of illness or some other sufficient cause, dispenses with personal signature of the declaration. Dublin agents of country solicitors should therefore take up the declarations in good time and forward them to their correspondents for signature.

(3) The amount of the registration fee and Compensation Fund contribution is as follows :—

## POSITION VACANT

The Council invite applications from Solicitors and Barristers for the position of Lecturer in Conveyancing Law and Practice and Land Law. Particulars of the appointment may be obtained from the Secretary, Solicitors' Buildings, Four Courts, Dublin 7.

(*a*) If the certificate is issued within three years from date of admission, £11 for a Dublin solicitor and £8 for a country solicitor.

(*b*) In any other case, £26 for a Dublin solicitor, £23 for a country solicitor.

## MEETINGS OF THE COUNCIL

DECEMBER 14TH, 1961: Mr. Walker and later Mr. Overend in the chair, also present Messrs. Desmond J. Collins, James R. C. Green, W. A. Osborne, Desmond Moran, Peter D. M. Prentice, Francis J. Lanigan, John R. Halpin, Niall S. Gaffney, Dinnen B. Gilmore, Eunan McCarron, Robert McD. Taylor, John C. O'Carroll, Augustus Cullen, Brendan T. Walsh, J. Bernard MacGarry, W. J. Comerford, John Maher, Peter E. O'Connell, John Carrigan, Thomas A. O'Reilly, D. J. O'Connor, William A. Tormey, Patrick Noonan, Brendan A. McGrath.

The following was among the business transacted:

### Extraordinary members of the Council

Pursuant to the provisions of the Society's Charter the Council appointed Messrs. John B. Jermyn, Cornelius J. Daly, John F. Foley, Gerald Y. Goldberg and John K. Coakley as extraordinary members of the Council from the Council of the Southern Law Association and Messrs. William J. Jefferson, Denis K. McMillan, Brian Rankin, Frederick H. Mullan and Charles MacLaughlin as extraordinary members of the Council from the Council of the Incorporated Law Society of Northern Ireland.

### International Bar Association

The Council appointed the President, Mr. George G. Overend, as the Society's representative on the Council of the International Bar Association in place of Mr. John J. Nash who has resigned.

### Assistant solicitors. Practising certificates

The Council, on a report from a committee, ruled that a salaried assistant solicitor who does not appear in court as an advocate, practise independently or share in the profits of a firm does not require to take out a practising certificate. If his name appears on the professional stationery of his employer, if he acts for private clients or appears in court as an advocate for a client of his employer, or participates in the profits, a certificate is necessary.

### Special Examiner

The Council appointed Mr. Max W. Abrahamson as special examiner in the first, second and third law examinations in place of Mr. Daniel J. O'Connor who has resigned. Mr. Abrahamson was admitted in Michaelmas term, 1955, and practises at 40 Fitzwilliam Place, Dublin.

### Seanad Election

The meeting unanimously passed a vote of congratulation to Senator Nash on his election to Seanad Eireann and the Secretary was requested to write to Mrs. Nash expressing the appreciation of the Council for her valuable assistance to the new senator in his election campaign.

Congratulations were also sent to two other members of the Society who have been elected to Seanad Eireann. The new senators are Mr. John N. Ross and Mr. Thomas J. Fitzpatrick. Senator Ross was admitted in 1950 and practises at 20 Upper Merrion Street, as a member of the firm of Matheson Ormsby and Prentice. Senator Fitzpatrick was admitted in 1939 and practises in Cavan.

### Vacancy on the Council

A letter was read from Mr. Terence de Vere White in which he expressed his desire to resign from the Council. The Council accepted Mr. White's resignation with regret and the Secretary was directed to write to him expressing the thanks and appreciation of the Council for his valuable services as an ordinary member since 1954.

The President welcomed Mr. John O'Carroll, the new provincial delegate from Ulster.

## AUCTIONEERS AND HOUSE AGENTS ACT, 1947

The attention of members has already been drawn to the unsatisfactory situation which may arise where a plaintiff suing on foot of an auctioneer's bond is met with the defence that the auctioneer did not hold a licence at the time of receiving the money due to the plaintiff. (See GAZETTE, April 1961.) This may be a good defence, and members were advised to ascertain that an auctioneer's licence was in force at the material date before instituting such proceedings. Since then a member has written to point out that the Revenue Commissioners would not supply any information as to whether or not a particular auctioneer held a licence and there was no register available for inspection. Consequently, it would not be possible to be certain before going into Court that this defence could not be raised.

Furthermore, obtaining information from the District Court Office as to whether or not a certificate of qualification had been issued would not give protection as the fact that a particular auctioneer had obtained a certificate from the District Court was no guarantee that he had obtained a licence on foot of the certificate. As a result of representations made to them by the Society, the Revenue Commissioners have now agreed to answer in writing a query addressed to them in the following form: "Was Mr. X of.....licensed as an auctioneer during the period..... to..... or on the.....day of .....19.....". The Revenue Commissioners are not prepared and, in fact, are not permitted to allow any inspection of their records. Queries of this nature should be addressed to the Revenue Commissioners, Division 1, Lord Edward Street, Dublin, and in the normal course of events it will take about a week to ten days to answer the query. Urgent queries may be dealt with in a shorter time. The Revenue Commissioners will also furnish on request (assuming that the answer to the above query is in the affirmative) the name of the officer to be subpoenaed to attend court should this be necessary. The official reference number is 1273/10473/61 and should be quoted in correspondence.

## VALUE OF GOODWILL OF SOLICITOR'S PRACTICE FOR DEATH DUTY PURPOSES

The question of the value of a deceased partner's interest in the goodwill of the practice for Estate Duty purposes was brought by a member to the attention of the Council. He had been in partnership with his father, and on the death of the father the Revenue Commissioners claimed Estate Duty on the whole of the partnership assets as member had been taken into partnership within three years of the date of death. A return had been made in the schedule of assets for the goodwill and the question which has now arisen is whether or not a deceased partner's share of the goodwill which passes on his death to the surviving partner or partners has, in fact, any value at all and whether or not any death duties should be payable thereon. There can be no doubt that in this particular case the rest of the partnership assets, office premises, books, fittings, etc., will be liable for duty as a gift made within three years of death. It does not seem, however, that the goodwill has any value at all by itself. On the general question of the value of the deceased partner's goodwill three propositions are fairly clear. Firstly, the goodwill is property which passes on death, that is to say it is property in which the deceased had an interest ceasing on his death upon which cesser of interest benefit accrued to the surviving partner. Secondly, a deduction may be made in respect of consideration *bona fide* given to the deceased for the right to succeed to the partnership. Thirdly, if and so far as the value of the share of the goodwill passing on the death of the deceased partner exceeds the value of any consideration paid therefor, the duty on the excess, if payable at all, is payable by the surviving partner and not by the estate of the deceased partner.

Subject to the foregoing it would appear that there are certain types of cases where it could be maintained successfully that the deceased partner's share of the goodwill has little or no saleable value and hence has no value for estate duty purposes. For example, where the surviving partner has, on admission to the partnership or since admission to the partnership, given full consideration in money or money's worth for his right to succeed thereto no duty should be payable. Again, where the partnership deed provides that the assets of the practice are to be taken over by the surviving partner at a price it would be impossible in practice to sever the goodwill from the rest of the assets and offer it on the market as a saleable item. Goodwill has no value unless it can be offered together with the rest of the assets of the practice as a going concern. The hypothetical purchaser of goodwill only in a case like this would really get nothing for his money. In the first place it is probable that the surviving partner would attract all the clients to himself in any event and, secondly, he would be under no obligation to continue in partnership with the purchaser. Finally, in the type of case which has been brought to the attention of the Council, namely, that of a father and son it would appear that here the strongest case could be made for the contention that the goodwill is of no value whatever. This would be the case, especially, if there was no other member of the family qualified to practise as a solicitor. There would probably be no covenant in restraint of practice which would prevent the surviving partner, namely the son, from starting up on his own and taking most of the clients with him. A purchaser from the executors would stand very little chance of retaining business in competition with the qualified solicitor-son and surviving partner of the deceased. This would, of course, apply more in provincial Ireland than in Dublin but would nevertheless probably have very considerable application in Dublin as well.

The foregoing is not intended to be an authoritative statement of the law on this question and neither, of course, is it in any way comprehensive. Any member who finds himself involved with this

problem would be well advised to have Counsel's opinion as many different situations can arise.

## USE OF GUARANTEED CHEQUES FOR CLOSING SALES

A member wrote to the Society with reference to the practice of making payment of purchase money by means of certified or guaranteed cheques against documents of title when closing sales and stated that he thought it likely that a bank could not be held liable in the event of the cheque being dishonoured. If this is the case the solicitor who accepted the guaranteed cheque might possibly be held to have been negligent in so doing in spite of the fact that it is the usual practice. It is understood that in England guaranteed cheques will not be accepted on the closing of a sale. Bankers' drafts are used instead. Apparently the custom of marking cheques is one which has grown up among bankers themselves for the purpose of clearance, by which they become bound to one another. It seems, however, that it does not give the holder of the cheque any right against the banker who has marked it.

This question was the subject of a notice published in the January 1948 issue of the GAZETTE which contains quotations from several standard works on banking law bearing out this contention. The Council on a report from a committee were of opinion that as the contention already referred to appears to be correct, guaranteed or certified cheques should not, therefore, strictly speaking, be accepted by a solicitor when accepting a payment against title documents on the closing of a sale or similar transaction.

## INTERNATIONAL BAR ASSOCIATION NINTH INTERNATIONAL CONFERENCE

Members have been reminded by the notice appearing in the December issue that the above conference is to be held in Edinburgh, from July 16th to July 20th. It is understood that plans have been completed and preparations are in progress for the working sections of the conference. The following topics have been listed for discussion :—

1. The essential requirements for a national Legal Aid and Advice Plan, and the practical possibilities of establishing such a plan, or part of it, in the various countries.
2. Draft convention on international judicial co-operation.
3. Protection of the individual against the public administration :
   (*a*) Comparison of substantive administrative law, of the manner in which the activity of administrative agencies is regulated by law and of the possibilities for the individual to bring court action against an agency for violating his rights in a specific case.
   (*b*) The attorney's duty to protect the interests of his clients against demands by fiscal and other governmental authorities for the disclosure of information.
4. Procedure for the protection of investments abroad.
5. Organisation of a lawyer's office.
6. Monopolies and Restrictive Trade practices.
7. The organisation of the business of the courts. (The courts as a public service ; the scope of the business of the courts ; day-to-day routine.)
8. The form and legal effect of wills made by the same person in different countries.
9. Explaining to the public the services of the legal profession.
   (*a*) Methods of bringing to the public notice the advantages of a lawyer's services, e.g., via books, pamphlets, speaking programmes, radio and television, institutional advertising ; and the individual lawyer's duty to explain matters which may lead to adverse criticism of the profession.
   (*b*) Explaining the basis for lawyer's fees.
   (*c*) Explaining the security of clients' moneys ; i.e., fidelity, guarantee or compensation funds.

Further details, together with registration forms and hotel reservation forms (for those wishing to attend) may be had on request from the Secretary, The Law Society of Scotland, Law Society's Hall, North Bank Street, Edinburgh. For those who wish to attend the Conference early registration is advisable as there will be a heavy demand on hotel accommodation.

The Registration Fee to attend the Conference will be £9 plus £5 10s. 0d. for each guest if paid before May 17th but will be higher if paid after that date.

## COURTS (SUPPLEMENTAL) PROVISIONS ACT, 1961

### Qualifications for appointment as Circuit Court Judges

Members will already be aware that a proposal was introduced to amend section 17 of the above Act when it was in the committee stage in Dáil Eireann, the effect of which would have been to make solicitors eligible for appointment as Circuit Court judges on an equal footing with members of the Bar. (See report of the Council, 1960/61, page 32.) The amendment was not accepted and the result is that the exclusive right of the Bar to these appointments has been preserved.

The amendment was introduced in the Dáil by Mr. Lionel Booth, who pointed out that as the solicitors had a right of audience in the Circuit Court and as many of them had built up substantial Circuit Court practices there should be an enabling provision in the Act which would enable the Government if they found a suitable solicitor with suitable qualifications to appoint him to the Circuit Court bench. Mr. Haughey, then Parliamentary Secretary to the Minister for Justice, in opposing Mr. Booth's proposal, made the point that the Bar's long-standing right in this matter was a matter of tradition and that the Government did not wish to break with tradition. He stated that representations on this

point had been made to the Government by the Society and that the Government, after having given sympathetic consideration to the Society's proposals was, regretfully, unable to agree to upset the existing position. He did not suggest that a solicitor of long standing and experience would not in certain circumstances make an excellent Circuit Court judge but he felt that in matters where the legal professions are concerned the Government would have a very great regard for a firmly entrenched precedent such as this.

Mr. Booth's proposal was also opposed by Messrs. Vivion de Valera and Patrick Lindsay. They based their arguments almost entirely on the question of whether or not a solicitor's experience qualified him for appointment to the Circuit Court bench. They were both strongly of the opinion that a practising barrister's special experience made him far better qualified for a higher judicial appointment than a solicitor, no matter how competent or good a lawyer that solicitor was. In the discussion that followed it was this point mainly that was argued.

Mr. Haughey, in closing the discussion, repeated, in effect, what he had already said. He did not think that the matter should be discussed on the basis of the qualifications which a judge should have as it was too vast a field of discussion. The perfect judge would have a very rare combination of qualities and it was quite conceivable that a solicitor would have this combination of qualities which would fit him to be appointed as a Circuit Court judge. However, the tradition was there and it was simply because it was tradition that the Government were accepting it.

One of the results of the Society's representations to the Government on this matter has been the insertion of section 60 of the Act. This section gives statutory confirmation to the solicitor's right of audience in the Circuit Court. Previous to the passing of the Act the question of whether or not a solicitor was entitled to have audience in the Circuit Court depended on the provisions of the County Courts (Ireland) Act, 1877.

Later on Mr. Booth also moved an amendment to the 8th schedule of the Act which would have had the effect of making a solicitor eligible for appointment as a Registrar of Wards of Court on an equal footing with a member of the Bar. Mr. Haughey stated that he was strongly tempted to accept this amendment in view of the high regard in which he held the solicitors' profession. The matter was being examined departmentally in connection with the whole question of the staffing of Court offices and he stated that if the amendment was withdrawn it would be considered sympathetically later on. However, in the Act as passed, eligibility for this appointment is confined to members of the Bar. (See paragraph 21 of the 8th schedule of the Act.) (*Dáil Debates.*)

## PARTICULARS DELIVERED STAMP. COSTS

The fee of £3 9s. 9d., which has heretofore been chargeable by the vendor's solicitor for having the I.V.D. stamp impressed, has been the subject of enquiries to the Society by members. As this fee is in the nature of a Schedule II charge it is probable that it may now be increased in accordance with the Schedule II increases in S.R.G.O. 1960, that is to say by 33⅓% bringing the fee up to £4 13s. 0d. It is understood that it has been taxed up to this figure.

## CORRECTION

It has been pointed out that the report of the speech made by Mr. T. D. McLoughlin at the ordinary general meeting of the Society on November 23rd, 1961, which appeared in the last issue of THE GAZETTE is not altogether an accurate account of what he said. Mr. McLoughlin is reported as having said that the valuers appointed in connection with compulsory acquisitions by the Land Values Reference Committee should have legal qualifications. This is not correct. It should read that the arbitrator appointed by the committee should have legal qualifications. Mr. McLoughlin is also reported as having said that he was in favour of a committee of junior solicitors to advise the Council. This should read that he was in favour of a committee of junior solicitors to consider problems particular to younger members.

## CONFERENCE OF DISTRICT JUSTICES

*At a luncheon party given by the Minister for Justice on December 9th, the Minister said:*

I am very pleased to have this opportunity of meeting the entire District Court Bench. It is unfortunately true that, in the nature of things, the Minister for Justice can all too seldom have the benefit of personal contact with members of the judiciary. As a rule, it is only when some unfortunate Justice in a remote area finds a courthouse tumbling about his ears, or when some poor poteen-maker hopes that the Minister, being a Dublinman, will take a lenient view of his case and seeks the return of his supply of Christmas wash, which has been seized by an unsympathetic "gendarmerie", that a Justice's view comes to be considered by the Minister for Justice.

This, regrettably, being the position, it is very pleasant for me to meet you all socially on this occasion which I hope is only the first of many.

I am very sensible of the fact that I am addressing as important a group of individuals as there is in the country. Ninety per cent. of all prosecutions for indictable offences in 1960 were disposed of in the District Court and no less than 102,000 persons appeared before you on summary charges. A great volume of civil disputes are also adjudicated upon in your courts.

Apart from the importance of the work you do, there is no doubt that the public image of our judicial system is formed in large measure from the manner in which District Courts are conducted and I should like, at this stage, to pay you the tribute of saying that that image is universally a good one.

Your courts are not, and can never be, conducted in a routine or mechanical fashion. The stuff you deal with—human nature in all its frailty—does not admit of such treatment. Tragedy and comedy are your daily fare. It is this that distinguishes the District Court from the other courts. Great learning and great prudence are necessary in any Judge, but a District Justice must possess many qualities over and above them. Indeed, so rich and varied are your experiences, it is not surprising to find that our literature and drama are enriched from time to time by your members.

We must, all of us, do what we can to improve the administration of justice and to give to our people as fine a system as our wisdom can devise and our resources permit. The present form of our law and our courts is the result of a long process of evolution. Ideas and institutions have developed and changed in harmony with changing circumstances.

We must in our time make our own particular contribution to that process and I hope that the establishment of this new office of President of the District Court will be of very great value in this regard. It will be the means whereby the Minister for Justice, and others, can have access to the accumulated fund of learning, experience and wisdom represented by the District Court Bench.

It will, I know, be a source of very real satisfaction to anyone occupying my office to know that this machinery for consultation and advice is available and that the fund I referred to can be readily drawn upon.

As you know, I have established in my Department a new section to carry out a programme of law reform. Your assistance and advice will be very much appreciated by that section. I hope that you will feel free not only to offer that assistance and advice in regard to the proposals put forward by us but also to take the initiative in suggesting reforms which you yourselves regard as either necessary or desirable.

I have asked my Department also to undertake a systematic study of the juvenile delinquency problem and I shall arrange for the President to be approached in order that your views and advice on this matter can be obtained.

I am aware that you are at present studying the system of taking depositions in criminal cases, a system which, as you know, has been criticized in some quarters as being unduly cumbersome. I shall be very pleased in due course to have the fruits of your collective thinking on this problem also.

I sincerely hope that our meeting today at luncheon will result in our getting to know each other better and appreciating more readily each other's difficulties and problems, and that it will in that way be of value to Justice, which we are all pledged to serve.

## THE LEGAL PROFESSION IN POLAND

A recent report in an English newspaper indicates that the legal profession in Poland is in trouble with the Government at the moment. It appears that certain " reforms " aiming at setting up a set tariff of legal fees and organising defence lawyers into co-operative groups have been introduced by the Polish Association of Law Workers. The reforms have been strongly resisted by senior members of the association who view them as an attempt by the Government to eliminate lawyers who " go to all lengths " on their clients' behalf. They have been warned that the Government will intervene unless they " tighten discipline " within their own ranks. Already, some well-known lawyers have been suspended, or face court penalties.

## COUNTY CLARE LAW ASSOCIATION

At the Annual General Meeting of the above Association held at the Courthouse, Ennis, on the 7th December, 1961, the following Officers were elected :—

*President*, Patrick P. O'Shea, Kilrush; *Vice-President*, Michael J. Walshe, Ennis; *Honorary Secretary and Treasurer*, Michael J. McMahon, Kilrush; *Committee*, Patrick J. Chambers, Ennistymon; Daniel O. Healy, Scariff; Thomas A. Lynch, Thomas F. O'Reilly and James B. MacClancy, all of Ennis.

## LIMERICK SESSIONAL BAR ASSOCIATION

At a recent meeting of the Bar Association the following officers were elected :—

*President*, Niall S. Gaffney; *Hon. Treasurer*, Thomas E. O'Donnell; *Hon. Secretary*, James I. Sexton; *Committee*, William Leahy, Edward Treacy, Michael B. O'Malley, Michael Cussen, Maurice Power, Caleb C. McCutcheon.

## COUNTY KERRY LAW SOCIETY

At the Annual General Meeting of the County Kerry Law Society held at the Courthouse, Tralee, on the 2nd December, 1961, the following officers and committee were appointed :—

*President*, Mr. Gerald Baily ; *Vice-President*, Mr. J. D. O'Connell ; *Chairman*, Mr. Charles J. Downing ; *Secretary and Treasurer*, Mr. D. M. King ; *Committee*, Messrs. D. E. Browne, W. A. Crowley, H. J. Downing, J. J. Grace, C. Healy, M. L. O'Connell, J. J. O'Donnell, J. S. O'Reilly and D. Twomey.

## THE INCORPORATED LAW SOCIETY OF NORTHERN IRELAND

The following are the officers for the year :—

*President*, Mr. William J. Jefferson, Messrs. C. & H. Jefferson, solicitors, 8/9 Donegall Square North, Belfast, 1 ; *Senior Vice-President*, Mr. Denis K. McMillan, Messrs. White, McMillan & Wheeler, solicitors, 30 Chicester Street, Belfast, 1 ; *Junior Vice-President*, Mr. W. Brian Rankin, Messrs. Cleaver, Fulton & Rankin, solicitors, 62 Wellington Place, Belfast, 1.

The members nominated as extraordinary members of the Council of the Incorporated Law Society of Ireland are the President and the two Vice-Presidents with Mr. Frederick H. Mullan and Mr. Charles MacLaughlin.

## LAW REFORM

Members interested in the subject of Law Reform should note that the White Paper on Law Reform issued by the Minister for Justice, Mr. Charles Haughey, was published in full on page 4 of the issue of *The Irish Times*, dated Tuesday, 16th January, 1962.

## DECISIONS OF PROFESSIONAL INTEREST

*Picketers, appeal dismissed—Constitutional right upheld*

In a reserved judgment given on 13th December, 1961, the Supreme Court, Dublin, dismissed with costs the appeal of W. J. Fitzpatrick, general secretary of the Irish Union of Distributive Workers and Clerks, and 16 members of the clerical staff of the Educational Company of Ireland, Ltd., and its subsidiary company, Edward Hely, Ltd., from an injunction given by the High Court to stop them from picketing the company's premises at Talbot Street and Beresford Lane, Dublin. The appeal had been at hearing for nine days. The judgment was a majority one given by Kingsmill-Moore, Ó Dalaigh and Haugh, J. J. Maguire, C. J. and Lavery, J., dissented.

The companies had stated that no trade dispute existed. The defendants contended that there was a trade dispute because of the refusal of some of the employees to join the union, and that any acts that they had done had been done in furtherance of that dispute.

Mr. Justice Budd had held that, under the Constitution, a citizen was free to join or not to join an association or union as he pleased, and that the companies had the duty of abstaining from interfering with their employees' constitutional rights. Therefore the action of the defendants was an attempt to compel the plaintiffs to interfere with the constitutional rights of others, and as such, could not be supported by the Trade Disputes Act, 1906. He took the view that the Trade Disputes Act, 1906, afforded no defence to the defendants for their action in watching and besetting, or picketing the plaintiffs' premises.

The Chief Justice in his judgment said that this case raised issues of far-reaching importance in the field of industrial relations in this country. It arose out of an action taken by the defendants, who were workmen employed by the plaintiffs, to induce fellow-workmen in the same employment to join a trades union of which defendants were members. The defendants were members of the Irish Union of Distributive Workers and Clerks, and, having failed to induce nine fellow-workmen to join the union had, through their union, intimated to the plaintiffs that they objected to work with men who were not members of the union, and that unless these men joined the union they would withdraw their labour.

When our Constitution was enacted it must have been well known to most intelligent voters that the trades unions had won recognition for their right to use the weapon of collective bargaining, and the right to withdraw the labour of their members and peaceful picketing in furtherance of a legitimate trade dispute.

He must say that it had come to him as a surprise that it should be contended that our Constitution had, by implication, withdrawn from the protection of the Act a dispute of this nature to the extent that peaceful picketing should not be employed to further it. To his mind, the position was simple and clear. The defendants were exercising the right which they had of refusing to associate with workmen who were not members of their union. In his view the judgment and order of the High Court should be reversed, and this action dismissed.

Mr. Justice Lavery said that he agreed with the conclusions which the Chief Justice had reached and in essentials, for the reasons that the Chief Justice had given.

Mr. Justice Kingsmill-Moore in his judgment said that the plaintiffs, faced with this difference in opinion among their workmen, had adopted a course which seemed to him not only legal, but unexceptional on any ethical standard, and entirely commendable. He was of opinion that Mr. Justice Budd (who had given the High Court judgment) had been correct in holding that the picketing was illegal unless it had been conducted in furtherance of a trade dispute.

The first step in the constitutional argument of the plaintiffs was to show that the Constitution guaranteed the right of a citizen not to join an association or union if he did not wish. The Constitution did not give a guarantee in express terms that a citizen should not be coerced into joining a union, but he thought that it did so by necessary implication.

Moreover, he thought that the right to form associations or unions was the only intelligible way there was of expressing an explicit right to abstain from joining such association or union. The Constitution implicitly guarantees the right of a person not to be coerced. He would dismiss the appeal.

Mr. Justice Ó Dalaigh agreed with the judgment of Mr. Justice Kingsmill-Moore.

Mr. Justice Haugh said he was of opinion that the appeal should be disallowed and that the injunction should stand.

*Contract—mistake—non est factum.* (*Cty. Ct.*)

In Kirsh *v.* Finger (September 25, 1961) K. sued F. for rent due under a hiring agreement. F. pleaded that he had signed the agreement in the mistaken belief, induced by K.'s misrepresentation, that it was a hire-purchase agreement. Judge Baxter held, *inter alia*, that F.'s mistake was as to the contents and not the nature of the document (following Howatson *v.* Webb (1908) 1 Ch. 1) and that the defence of *non est factum* therefore failed.

*Criminal law—corroboration—accomplice.*

In the People (Att. Gen.) *v.* Shaw (1960) I.R. 168, where the accused was convicted on four out of eleven counts in an indictment, the Court of Criminal Appeal held that where there is evidence capable of being regarded as being corroborative of an accomplice's evidence and some but not all the counts in the indictment, the trial judge should indicate to the jury the counts on which there is no evidence capable of being regarded as corroborative. Further, on a count of receiving a typewriter, the jury were entitled to treat evidence that the accused sold it within a few days of its being stolen as corroboration of the evidence of the accomplice. The Court's decision was given by Maguire C. J. Davitt P., and McLoughlin J.; the trial judge was Teevan J.

*Criminal law—confession.*

In the People (Att. Gen.) *v.* Ainscough (1960) I.R. 136, the evidence against the accused, who was charged with shopbreaking and larceny and was unrepresented, consisted almost entirely of a statement which he was alleged to have made to a detective officer. On being informed by the trial judge of his right to do so, the accused, during the absence of the jury, challenged the statement on the ground that it had been procured by an inducement held out by the detective officer. The trial judge ruled that the statement was admissible but on the return of the jury did not inform the accused of his right to challenge the statement on cross-examination on the ground on which he had challenged it during the jury's absence. On an application by the accused for leave to appeal, the Court of Criminal Appeal in Eire held that the failure of the accused to cross-examine the detective officer in the presence of the jury as to the manner of the taking of the statement may have misled the jury as to the weight to be attached to the objection to the admission of the statement. A new trial was ordered. The court's decision was given by Maguire C. J. Davitt P., and McLoughlin J.; the trial judge was Dixon J.

*Insanity—automatism—whether question for jury.*

The issue of automatism should only be left to the jury where the defence has laid a proper foundation for so doing by producing positive evidence of it; if, however, the defence succeeds in laying such a foundation then the onus is on the prosecution to prove intent. But where the alleged automatism is based solely on a defect of reason from disease of the mind within the M'Naughton Rules, and that cause is rejected by the jury, there is no room for the alternative defence of automatism.

Per Lord Denning: "The old notion that only the defence can raise a defence of insanity is now gone. The prosecution are entitled to raise it and it is their duty to do so rather than allow a dangerous person to be at large."

Per Lord Denning, further: "It seems to me that any mental disorder (including epilepsy or cerebral tumour) which has manifested itself in violence and is prone to recur is a disease of the mind for the purpose of the M'Naughten Rules."

The appellant was convicted of murder in Northern Ireland in spite of three defences, namely that at the time of the killing he was in a state of automatism because suffering an attack of psycho-motor epilepsy,

that he was so confused and deficient in reason that he was incapable of forming the necessary intent, and that he was guilty but insane as he was suffering from a disease of the mind within the M'Naughten Rules. The judge had put the third defence to the jury, but not the first or second. Held, on appeal, that the course taken by the judge was right and that no alternative verdict of manslaughter was open (Bratty *v.* Att. Gen. for Northern Ireland (1961) 3 W.R.L. 965; 105 S.J. 865; (1961) 3 All E.R. 523, H.L.)

*Criminal law—summing-up—issue of provocation not left to jury.* (*Homicide Act*, 1957 (5 & 6 *Eliz. 2, c.* 11), *s.*3)

If in a trial on a charge of capital murder contrary to s.5 (1) (b) of the Homicide Act, 1957, evidence is given on which the jury might find such provocation as would reduce the crime to manslaughter under s. 3 of the Act, the judge must direct the jury that the alternative verdict of manslaughter is open, and leave the question of provocation to the jury, even though the defence did not seek to raise the defence during trial.

The appellant had shot his father-in-law in the course of gang warfare between his and another family. His defence was that he had shot his father-in-law by mistake, having meant to shoot at two members of the rival gang who were attacking his father-in-law in his own home. Neither party suggested that a verdict of manslaughter might be given, and there was not a word in the appellant's evidence to suggest in terms that he had been provoked. No reference to manslaughter was made in the summing-up to the jury, which convicted of capital murder. On appeal, held that as the alternative verdict was open on the facts it should have been explained to the jury and the question of provocation should have been left to them, and as the jury might have returned a verdict of manslaughter that verdict should be substituted: R. *v.* Porritt (1961) 3 All E.R. 463. C.C.A.

## THE REGISTRY

### Register A


ASSISTANT SOLICITOR

Bank's Law Agent (Dublin) has vacancy for an Assistant Solicitor, aged under thirty. Good knowledge of conveyancing essential. Initial salary according to experience, but not less than £800. Reply (in confidence), stating age and details of education, qualifications and professional experience to Box A.191.


### Register C

Estate of the late Miss Phyllis Murray, Barrettstown Castle, Ballymore Eustace, Co. Kildare.

The under-mentioned firm of solicitors are anxious to trace the original title deeds of the Barrettstown Castle Estate. Would any Bank, Solicitor or other person, who may have any knowledge of the whereabouts of the documents kindly communicate with Fred Sutton & Co., Solicitors, 52 Dame Street, Dublin.

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In the Goods of Marie J. Paine, late of Norval, Croswaithe Park, Dun Laoghaire, Co. Dublin, deceased who died at Bloomfield, Donnybrook, Dublin, on the 6th January, 1962. If any person is aware of a Will of the deceased subsequent to the 19th April, 1947, will they please communicate with John P. A. Hooper & Co., Solicitors, Royal Bank Chambers, 102 Upper George's Street, Dun Laoghaire, Co. Dublin.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 31st day of January, 1962.

D. L. McAllister,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
Dublin.

Schedule.

1. Registered Owner Most Reverend Michael Fogarty and others. Folio number 329. County Clare. Lands of Caherhurley in the Barony of Tulla Upper containing 8a. 0r. 2p.

2. Registered Owner George A. O'Toole. Folio number 6017. County Kildare. Lands of Carbury in the Barony of Carbury containing 0a. 0r. 2½p.

3. Registered Owner Robert Eaton. Folio number 2722. County Donegal. Lands of Muntertinny in the Barony of Raphoe North, containing 39a. 0r. 12p.

## ACTS OF THE OIREACHTAS, 1961

| No. | | Signed by President |
|---|---|---|
| 1. | Dairy Produce Marketing Act, 1961 | 16th January 1961 |
| 2. | Electricity Supply (Amendment) Act, 1961 | 15th February 1961 |
| 3. | Derelict Sites Act, 1961 | 15th February 1961 |
| 4. | Mental Treatment (Detention in Approved Institutions) Act, 1961 | 15th March 1961 |
| 5. | Connaught Rangers (Pensioms) Act, 1961 | 21st March 1961 |
| 6. | Army Pensions (Increase) Act 1961 | 21st March 1961 |
| 7. | Mental Treatment Act, 1961 | 28th March 1961 |
| 8. | Central Bank Act, 1961 | 30th March 1961 |
| 9. | Central Fund Act, 1961 | 30th March 1961 |
| 10. | Imposition of Duties (Confirmation of Orders) Act, 1961 | 26th April 1961 |
| 11. | Juries Act, 1961 | 23rd May 1961 |
| 12. | Poisons Act, 1961 | 24th May 1961 |
| 13. | Agricultural Credit Act, 1961 | 30th May 1961 |
| 14. | Pigs and Bacon (Amendment) Act, 1961 | 6th June 1961 |
| 15. | Agricultural Produce (Eggs) Act, 1961 | 20th June 1961 |
| 16. | Courts of Justice and Court Officers (Superannuation) Act, 1961 | 20th June 1961 |
| 17. | Charities Act, 1961 | 28th June 1961 |
| 18. | Nurses Act, 1961 | 11th July 1961 |
| 19. | Electoral (Amendment) Act, 1961 | 14th July 1961 |
| 20. | Industrial Research and Standards Act, 1961 | 17th July 1961 |
| 21. | Hospitals Federation and Amalgamation Act, 1961 | 18th July 1961 |
| 22. | Social Welfare (Miscellaneous Provisions) Act, 1961 | 27th July 1961 |
| 23. | Finance Act, 1961 | 28th July 1961 |
| 24. | Road Traffic Act, 1961 | 29th July 1961 |
| 25. | Air Navigation and Transport Act, 1961 | 3rd August 1961 |
| 26. | Medical Practitioners Act, 1961 | 3rd August 1961 |
| 27. | Health (Corporate Bodies) Act, 1961 | 3rd August 1961 |
| 28. | Insurance Act, 1961 | 3rd August 1961 |
| 29. | Appropriation Act, 1961 | 3rd August 1961 |
| 30. | Industrial Grants (Amendment) Act, 1961 | 9th August 1961 |
| 31. | Shannon Free Airport Development Company Limited (Amendment) Act, 1961 | 9th August 1961 |
| 32. | Milk (Regulation of Supply and Price) (Amendment) Act, 1961 | 9th August 1961 |
| 33. | Holidays (Employees) Act, 1961 | 9th August 1961 |
| 34. | Local Authorities (Education Scholarships) Amendment Act, 1961 | 11th August 1961 |
| 35. | Curragh of Kildare Act, 1961 | 11th August 1961 |
| 36. | Agricultural Workers (Holidays) (Amendment) Act, 1961 | 16th August 1961 |
| 37. | Tourist Traffic Act, 1961 | 16th August 1961 |
| 38. | Courts (Establishment and Constitution) Act, 1961 | 16th August 1961 |
| 39. | Courts (Supplemental Provisions) Act, 1961 | 16th August 1961 |
| 40. | Defamation Act, 1961 | 17th August 1961 |
| 41. | Civil Liability Act, 1961 | 17th August 1961 |
| 42. | Electricity (Temporary Provisions) Act, 1961 | 2nd September 1961 |
| 43. | Control of Exports (Temporary Provisions) Act, 1956 (Continuance) Act, 1961 | 20th December 1961 |
| 44. | Foyle Fisheries (Amendment) Act, 1961 | 20th December 1961 |
| 45. | Local Loans Funds (Amendment) Act, 1961 | 20th December 1961 |
| 46. | Turf Development Act, 1961 | 20th December 1961 |
| 47. | Agricultural Produce (Cereals) Act, 1961 | 20th December 1961 |

### PRIVATE ACTS

| | | |
|---|---|---|
| 1. | Iveagh Trust (Amendment) Act, 1961 | 17th April 1961 |

## MEDICO-LEGAL SOCIETY OF IRELAND.

The Annual Dinner of the Society will be held at the King's Inns, Henrietta Street (by kind permission of the Benchers) on Thursday 15th, February, 1962, at 7.30. p.m.

A Sherry Reception will be held at 7 p.m. Tickets —30/- each—may be obtained from Miss Cassidy in the Law Library, or from Captain James Kelly, Solicitor.

The final meetings of the current Session will be held in the Hibernian Hotel, Dawson Street, Dublin, at 8 p.m.

The Honourable Mr. Justice Walsh will speak on "The Preliminary Investigation of Indictable Offences" on Thursday 22nd, February, 1962, and The Earl of Longford P.C. will speak on "The Theory of Punishment" on Thursday, 26th March, 1962.

## CALENDAR, 1962.

The Calendar and Law Directory will be on sale about February 28th, 1962.

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Vol. 55
No. 8

February
1962

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

JANUARY 4TH: The President in the Chair. Also present, Messrs. Brendan T. Walsh, John Maher, Augustus Cullen, William A. Osborne, Eunan McCarron, Peter E. O'Connell, Brendan A. McGrath, James R. C. Green, Desmond J. Collins, Charles Hyland, Peter D. M. Prentice, Desmond Moran, Gerald Y. Goldberg, James W. O'Donovan, John J. Nash, John Carrigan, Francis J. Lanigan, Reginald J. Nolan, John C. O'Carroll, J. Bernard MacGarry, D. J. O'Connor, Thomas A. O'Reilly.

The following was among the business transacted:

#### Medical examinations in workmen's compensation cases. Medical reports to insurance companies

The Council on a report from a committee appointed Messrs. Goldberg, Lanigan and MacGarry as a deputation to meet representatives of the Irish Medical Association to discuss the question of the nature and scope of medical examinations in workmen's compensation cases by doctors on behalf of the insurance company. It was also decided that the

deputation should take up as an additional matter with the association the question of doctors attending patients and making reports to insurance companies without the patients' consent.

### Wearing of robes in court by solicitors and District Justices

On a report from a committee the Council decided to inform the District Court Rules Committee that as there is a division of opinion in the profession on the question of the wearing of robes in the District Court no rule should be made on this subject by the committee affecting solicitors having regard in particular to the absence of robing facilities in many country court houses.

### Co-option of new member.

On the motion of the President seconded by Mr. Collins it was resolved unanimously under bye-law 38 that Mr. Raymond A. French be co-opted from the general body of the Society as a member of the Council to fill the vacancy caused by the resignation of Mr. de Vere White.

### Circuit Court Rules Committee

It was unanimously resolved that Mr. Joseph P. Tyrrell be appointed as the Society's representative on the committee for five years from the expiration of his present term of office on the 17th January, 1962.

### Incorporated Council of Law Reporting

It was unanimously resolved that Mr. J. B. MacGarry be appointed as one of the Society's members of the Incorporated Council of Law Reporting in place of Mr. de Vere White.

### Committee members

It was resolved that Mr. Raymond A. French be appointed a member of the Court of Examiners in place of Mr. de Vere White and that the following members of the Southern Law Association be appointed to committees :

Finance Committee—John F. Foley ; Privileges Committee—Gerald Y. Goldberg ; Court Offices and Costs Committee—Cornelius J. Daly.

## CONTROL OF DISBURSEMENTS IN A SOLICITOR'S PRACTICE

The control of disbursements is very important since it is related to working capital. It is worth remembering that four out of five people who fail in business do so because of lack of working capital.

In a solicitor's practice disbursements may be classified as direct client disbursements (stamp duties, counsel's fees, court fees, etc.) and indirect disbursements (rent, salaries and other overheads). Probably the majority of solicitors do not distinguish between the two for accounting purposes. At the end of the financial year the total of direct and indirect disbursements is set off against income and profit is reckoned as the excess of income over all disbursements.

It would, however, be better accounting practice to strike separate balances for (*a*) direct disbursements for clients against clients' disbursements received and (*b*) indirect disbursements against profit costs received, and to carry out this exercise more frequently than once a year, particularly in regard to the direct client disbursements received and paid. If disbursements are going out faster than they come in it may indicate an expansion in your practice ; on the other hand it may indicate loss of working capital. Disbursements for clients in advance of reimbursement are in effect interest free loans. If you pay out counsel's fees, stamp duties or court fees for a client and wait a month, six months or a year until you recover the amount as part of a general bill of costs it may not matter very much in the particular case. If you do this for twenty, thirty or fifty clients the amount of these interest free loans can reach quite startling dimensions. In any efficient business there must be a satisfactory and efficient turnover of working capital.

There should therefore be continuous and efficient control at the earliest possible stage. Six practical points are suggested :

(1) An effective general office system for all cash and cheque transactions. Deviations from this system should be allowed only after consideration and if necessary, consultation with your auditor.

(2) At the initial interview for any new business estimate the probable amount of direct client disbursements and probable duration of the matter. Where necessary request the client for prepayment of direct disbursements. If part only is prepaid inform the client that further interim disbursement accounts may be submitted.

(3) Following on (2) establish an interim disbursement bill system and carry it into effect when necessary—possibly at regular monthly intervals. Most clients prefer to pay their bills in small instalments rather than in one large amount.

(4) Keep a continual check on unpaid, and more particularly undrawn, bills of profit costs.

(5) Establish a regular system of furnishing bills of profit costs. Reminders should go out after 60, 90 and 120 days.

(6) Regular consideration of any necessary action on

(i) Any bills outstanding six months

(ii) Any bills £50 or more outstanding over three months

(iii) Any client's debit balance in excess of £10 (uncosted)

(iv) Total owed by clients on bills rendered and also for disbursements unrendered.

(v) The overall financial position by monthly profit and loss account and balance sheet tied in with the revenue expense budget.

(vi) Graphical recording of trend and progress of costs and disbursements.

Counsel's fees may present a problem. If you follow the disbursements in advance system the problem disappears but if not there may be a dilemma. Some practitioners pay counsel immediately and obtain reimbursements from the client later on. This is creditable but may be bad business. On the other hand delay in payment is not good for solicitor/counsel relations. The solution appears to be to debit the client's account immediately upon receipt of counsel's docket and send an interim disbursement bill requesting early payment so that counsel's fees may be discharged without delay. (*Law Institute Journal*, Australia.)

## ACCOUNTABILITY FOR ESTATE DUTY OF A PURCHASER FROM THE PERSONAL REPRESENTATIVE OF REAL ESTATE INCLUDING FREEHOLD REGISTERED LAND

A member wrote to the Society with reference to the refusal by solicitors for a vendor to furnish a certificate of discharge from death duties in the case of a sale by a legal personal representative of freehold registered land compulsorily acquired under the Land Acts. Although the question is one of strict law the Society has been in correspondence with the Revenue Commissioners and has obtained the opinion of the Commissioners on the question of whether such a purchaser may be liable for estate duty on the property after the sale has been completed if no certificate has been obtained. The opinion of the Commissioners is that no protection is afforded to the purchaser either by section 19 (1) of the Administration of Estates Act, 1959 or section 8 (18) of the Finance Act, 1894. The liability for estate duty does not, it seems, follow the purchase money into the hands of the legal personal representative but continues to attach to the property itself.

The practical effect of all this is that a purchaser from a personal representative of real property must make sure to obtain a certificate of discharge from death duties in order to protect himself. This applies to freehold registered land as well. Furthermore, where there is a death on the title within twelve years a certificate should be asked for and should be given. It appears that the only case where the certificate of discharge from death duties is not, strictly speaking, necessary is in a sale of a leasehold or tenancy interest by an executor or administrator as such interests are personal property and the executor or personal representative alone is accountable for the estate duty thereon. If the Revenue Commissioners' view of the law on this question is correct, and it must be taken for practical purposes to be correct, then it follows as a matter of conveyancing practice that a purchaser is entitled to requisition a certificate of discharge from death duties where he is buying freehold lands including freehold registered lands from the legal personal representative (or where there is a death on the title within twelve years) and the vendor is not entitled to refuse it.

The foregoing is not meant to be an authoritative statement of law but is published merely for the information and guidance of members.

## PROCEEDINGS AGAINST SOLICITORS

By order of the President of the High Court, dated 11th September, 1961, on a petition of the Society grounded on a report of the Disciplinary Committee, it was directed that the name of George M. Hegarty who formerly practised at Castletownberehaven, Co. Cork, be struck off the Roll of Solicitors.

By order of the President of the High Court, dated 20th September, 1961, on a petition of the Society grounded upon a report of the Disciplinary Committee, it was directed that the name of Leonard E. M. Downes who formerly practised at 9 Mary Street, Dublin, be struck off the Roll of Solicitors.

By order of the President of the High Court, dated 17th November, 1961, on a petition of the Society grounded upon a report of the Disciplinary Committee, it was directed that Patrick Cunningham, solicitor, of 18 Palmerston Gardens, Rathmines, Dublin, be suspended from practice for the then current practice year 1961/62.

## MEETINGS OF THE COUNCIL

FEBRUARY 1ST: The President in the Chair. Also present, Messrs. Brendan T. Walsh, John Carrigan, John R. Halpin, N. S. Gaffney, John J. Nash, Francis J. Lanigan, Thomas A. O'Reilly, Peter D. M. Prentice, R. A. French, John Kelly, James R. C.

Green, Edward Treacy, Desmond J. Collins, Ralph J. Walker, Reginald J. Nolan, T. V. O'Connor, John Maher, D. B. Gilmore, James W. O'Donovan, Charles Hyland, Desmond Moran, J. Bernard MacGarry, Wiliam A. Tormey, Eunan Mc Carron, Peter E. O'Connell, Patrick Noonan, George A. Nolan, Daniel J. O'Connor, Brendan A. McGrath, Robert McD. Taylor, W. A. Osborne.

The President on behalf of the Council welcomed Mr. Raymond A. French who was present.

The following was among the business transacted :

### Second Calling in the District Court

The President and Mr. Walker were appointed as the Society's deputation to seek an interview with the President of the District Court on the subject of his practice in refusing to allow a second calling in civil proceedings in his court.

### Disciplinary Committee

The President stated that he had sent his letter of resignation from the Disciplinary Committee to the President of the High Court. It was resolved to inform the President of the High Court that Mr. Derrick M. Martin would act instead if appointed.

### Acting for Both Parties

It was decided to hold an ordinary general meeting of the Society on Friday, 9th March, 1962 at 2.30 p.m. to consider further the proposed rule prohibiting a solicitor from acting for both vendor and purchaser in certain limited cases.

## ROSCOMMON SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting held in Elphin on Friday, 9th February, the following honorary officers and committee for 1962-63 were appointed : President, Mr. M. de L. Staunton, Castlerea ; Chairman, Mr. John Kelly, Elphin ; Vice-Chairman, Mr. Thomas Callan, Boyle ; Treasurer, Mr. James Sheerin, Boyle ; Secretary, Mr. T. J. C. O'Keeffe, Roscommon. Committee : Mr. P. C. Sweeney, Roscommon ; Mr. Gerald Gannon, Castlerea ; Mr. Oliver Macklin, Athlone ; Mr. H. Wynne, Boyle.

## DISTRICT COURT (GAMING AND LOTTERIES ACT, 1956) RULES, 1962 S.I. No. 9 of 1962

The District Court Rules Committee, with the concurrence of the Minister for Justice, have made the District Court (Gaming and Lotteries Act, 1956) Rules, 1962. The Rules, which come into operation on the 1st March, 1962, regulate the practice and procedure of the District Court in relation to the Gaming and Lotteries Act, 1956, and prescribe forms of notice, certificate, licence and permit.

Copies of the Rules may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 8d., postage 2d. extra.

## DISTRICT COURT RULES (No. 1), 1962 S.I. No. 7 of 1962

The District Court Rules Committee, with the concurrence of the Minister for Justice, have made the District Court Rules (No. 1), 1962. The Rules, which come into operation on the 1st March, 1962, revise the practice and procedure of the District Court in relation to the service of summonses and the service of documents outside the State and provide for the issue of notices to defendants of the imposition of fines.

Copies of the Rules may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 8d., postage 2d. extra.

## DISTRICT COURT RULES (No. 2), 1962 S.I. No. 8 of 1962

The District Court Rules Committee, with the concurrence of the Minister for Justice, have made the District Court Rules (No. 2), 1962. The Rules, which come into operation on the 1st March, 1962, revoke the existing rules relating to Affiliation, Maintenance and Enforcement of Court Orders and provide new rules governing the practice and procedure in these proceedings.

Copies of the Rules may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 3/–, postage 2d. extra.

## DECISIONS OF PROFESSIONAL INTEREST

*Income tax assessment—failure to make return—penalty not assessable until case determines*

On 10th April, 1928, the defendant, who was then a State Solicitor, was served with a notice requiring him to make a return of income within 21 days, but he failed to do so. Estimated assessments were made and proceedings were instituted in the High Court for the recovery, under Section 107 of the Income Tax Act, 1918, as amended by Section 10 of the Finance Act, 1925, of a penalty of £455, representing £20 plus treble the tax chargeable. The defendant was meanwhile appointed County Registrar, and in October, 1930, Hanna, J. awarded to the plaintiffs the full amount claimed with costs.

Per Hanna, J.:—It is absolutely clear law that on the receipt of the assessor's request for particulars of income, every taxpayer is bound by Statute to make a clear and correct return. It should be known to everyone that, under the Statute, the taxpayer who neglects or refuses to make such a return is subject to a heavy penalty.

The defendant appealed to the Supreme Court on the ground that the penalty was not applicable until the appeals which had been lodged had been heard and determined by the Revenue Commissioners. In March, 1931, the Supreme Court (Kennedy, C.J., Fitzgibbon and Murnaghan, J.J.) allowed the appeal, on the ground that Hanna, J. had fixed the penalty based upon the guess-work of the assessing authority without any material supplied by the defaulting tax-payer, and that it was inequitable for the plaintiffs to have brought an action for penalties before the assessment had been finally determined by the Commissioners.

(Attorney-General *v.* X, 38 Tax Cases (1961), 666.)

*Aiding champerty—Solicitor only entitled to out-of-pocket expenses.*

Mr. Justice Pennycuick gave a reserved judgment for the applicant, Radomir Pachtich, son of a former Prime Minister of Yugoslavia, Nicola Pachtich, in this interlocutory application for review of taxation of the costs of a solicitor, and held that if a solicitor was aware of the existence and the terms of a champertous agreement in connection with litigation his contract of retainer in respect of that litigation was unenforceable.

His Lordship said that on February 26th, 1959, the applicant sought to prove for a sum of £2,616,486 in the winding up of Trepca Mines Ltd. This claim having been rejected by the liquidator, an application was brought to the Court to have the liquidator's order reversed. That application was dismissed on July 12th, 1959. The applicant then persuaded a M. Tayssou to interest himself in a possible appeal from this order, and they entered into an agreement in October 14th, 1959. It was in French and purported to have been entered into in Paris, but it was in fact signed in London. Under this agreement M. Tayssou was to pay the solicitor named in the agreement (the respondent) for the conduct of the appeal. This contract was plainly objectionable on the grounds of champerty and was accepted by counsel for the solicitor to be so. It was admitted by the solicitor that he was at all material times aware of the terms of the agreement of October 14th, 1959.

After some correspondence and discussion a deed was executed in English on April 9th, 1960, between M. Tayssou, as the guarantor of the expenses of the proceedings, and the applicant. M. Tayssou agreed not to withdraw the guarantee, and in consideration of this the applicant undertook to hold 25 per cent. of sums recovered up to £300,000 and 50 per cent. of sums recovered in excess of £300,000 on trust for Tayssou, and not to enter into any negotiations with the liquidator of the company without the consent of Tayssou.

By July 13th, 1960, the Court of Appeal discharged the order and remitted the application to the Companies Court for further adjudication of the applicants' claim. Later the applicant changed his solicitors and without M. Tayssou's consent came to a compromise with the liquidator. The solicitor, who estimated that the costs of the appeal would exceed £4,000, obtained a charging order of £6,000 on the £70,000 compromise sum for his costs, charges and expenses.

It was plain that the agreement of October 14th, 1959, and the deed of April 9th, 1960, were objectionable on the ground of champerty. Champerty was the maintenance of an action under an agreement whereby the maintainor was to have a share in the subject-matter and was illegal on the ground of public policy; it was an indictable offence. Where a party retained a solicitor to conduct litigation who was ignorant of the champertous agreement, the contract of retainer was unobjectionable. If the solicitor was aware of the terms of such an agreement the contract of retainer, being an agreement to abet the doing of a series of illegal acts, must be void and unenforceable.

In the present case the solicitor was aware of the terms of the agreement and the deed, and the terms had been such as to involve him as an active participant in carrying them out. His Lordship thought that unless he was constrained to decide otherwise by authority he would come, without hesitation, to the conclusion that the solicitor had been retained for abetting a series of acts which were illegal by reason of champerty and that the contract of retainer was on that ground void and unenforceable.

His Lordship, having examined authorities, held that the solicitor was entitled only to his out-of-pocket expenses.

The solicitor was granted leave to appeal.

(*In re. Trepca Mines Ltd.—The Times*, 10th February, 1962.)

*Local Government—institution of proceedings by solicitors—ratification by subsequent resolution*

In January, 1961, a local authority served notice on the defendant to abate a statutory nuisance on

a caravan site owned by him in the area. He did not comply with the notice, and on the 27th March, 1961, he began High Court proceedings against the Council. On the 21st July, 1961, the solicitors to the Council issued a writ for an injunction restraining the defendant from keeping and maintaining the site in such a state as to be a statutory nuisance pursuant to section 100 of the Public Health Act, 1936. A notice of motion asking for interim relief was served on the same date. Three days later on the 24th July, the Council in a meeting resolved " being of opinion that summary proceedings would afford an inadequate remedy to secure compliance " with the notice served in January, to take proceedings in the High Court for securing the abatement of the nuisance. The defendant objected at the hearing that the Council had no power to issue such proceedings since under section 100 its " opinion " had not been expressed at the date when the writ was issued. Widgery, J. decided that the Council did not lack capacity to sue and the defendant appealed from his decision. It was held by Evershed, M.R. and Danckwerts, L.J. (Willmor, L.J. dissenting) that although the Council had not formally recorded its opinion at the date of the issue of the writ it had done so by the time the the motion came for hearing, i.e., by the time that the first effective step in the action had been taken. The section should not be strictly construed so as to require that a formal expression of the requisite opinion should precede in time the issue of the writ. The court should hold that an opinion formally expressed on the 24th July had in fact been held three days before. The appeal was therefore dismissed. (Warwick Rural District Court *v.* Miller Reid.) All E.R.—(1962)—I—212.

*Costs*

Order to tax costs " of and incidental to negotiations leading to this order: " Trustees of the will of a deceased were empowered by a court order to pay to the deceased's widow a certain sum in full and final settlement of her claim against the estate. The order was made " to tax on the common fund basis the costs of the defendant of and incidental to negotiations leading up to this order ". One of the items was disallowed by the Taxing Master on the grounds that the expenses included therein related to a period before negotiations with the trustees began and were incurred in connection with investigation of the widow's claim. Consequently they were not covered by the words " and incidental to ". The widow took out a summons for a review of the taxation and she contended that the work set out in the item was " incidental " as it had to be carried out before the negotiations could commence. It was held by Plowman, J. that the words " and incidental to " as used in the order meant " costs of and consequent upon the negotiations," and accordingly did not cover costs incurred before the negotiations commenced. These could not be said to be costs incidental to the negotiations. The summons was dismissed. (In re Fahey's Will Trusts.) All E.R. (1962)—I—73.

*Statement of claim amended during trial.*

In Pathak *v.* James Nourse Ltd., an action for negligence taken by a sailor against shipowners arising out of an accident it became evident during the trial that the particulars of negligence alleged in the statement of claim were completely incorrect. The trial judge expressed the view that the accident was nevertheless due to gross negligence on the part of the defendants and he gave leave to amend the statement of claim to substitute a different allegation of fact and totally different allegations of negligence. He also gave leave for consequential amendments to the defence. The action was tried on the amended pleadings, the defendants were held liable and damages and costs (including the costs of the amendments) were awarded. The defendants appealed and the Court of Appeal dismissed their appeal on the question of liability. As regards the costs it was held that the trial judge had erred in imposing the costs of the amendments on the defendants. He had departed from the exercise of proper discretion and had erred in law by awarding the costs of the amendments against the defendants. The Court of Appeal directed that neither party be awarded costs up to the date of the amendment and to that extent the appeal was allowed.

(*Solicitors' Journal*, December 22nd, page 1106.)

*Stamp duty on compulsory transfer of stock under a statutory provision.*

In Ridge Nominees Ltd. *v.* Inland Revenue Commissioners the Court of Appeal has held that where one company has offered to take over the shares of another, which offer has been accepted by the majority of shareholders, a stock transfer executed by the nominee of the offering company in respect of the stock of a dissenting stockholder is a " conveyance or transfer on sale " within section 54 and schedule I to the Stamp Act 1891. This is so notwithstanding the fact that the transferor was compelled to sell against her will her dissent being overridden by the assent imposed by the Companies Act 1948 (section 209). The transfer was accordingly liable to *ad valorem* stamp duty under the head of " conveyance or transfer on sale " in schedule I to the Stamp Act 1891.

(*All England Law Reports*, 1961—III—page 1008.)

*Defective endorsement on writ : summons to set aside.*

An appeal against an order of a trial judge setting aside a writ for nullity on the grounds that it did not disclose a cause of action was allowed by the Court of Appeal in England consisting of Holroyd Pearce and Davies L. JJ. The plaintiff suing for damages as a result of a road accident had issued a writ on the 18th March 1958, the endorsement of which contained only the words " the plaintiff's claim is for damages for personal injuries ". The defendant on the 4th August 1961, took out a summons for an order setting aside the writ. The District Registrar dismissed the summons on the 16th August. The plaintiff filed a statement of claim on the 17th August alleging full particulars of negligence and the defendant entered an appearance. On appeal from the Registrar's order Edmund Davies J. held that the writ was a nullity and he set it aside. His order was appealed from by the plaintiff and it was held that the writ was not a nullity on the following grounds :

1. The defendant was at all times aware of the nature of the claim against him and he was therefore not prejudiced by reason of the fact that negligence was not alleged in the original endorsement of claim.

2. Under the provisions of the relevant statute of limitation, the Law Reform (Limitation of Actions, etc.) Act 1954, the statement of claim which would have cured the defective writ could have been delivered at any time up to the 13th October, 1961. The judge by setting the writ aside on the 12th October had prevented the plaintiff from curing this defect. Holroyd Pearce L. J. in his judgment stated that this was the third successive case in which the court had had to deal with difficulties of plaintiffs through delay in issuing writs. They should issue their writs in good time and then continue to negotiate if they so desired. These cases should serve as a warning to plaintiffs that such delay was likely to lead them into serious trouble and expense.

(Pontin & anr. *v.* Wood.) *All E.R.*—1962—I—294).

*Solicitors' indemnity policies.*

In Davies *v.* Hosken (1937 3 All E.R. 192) and Goddard and Smith *v.* Frew (1939 All E.R. 358.) Underwriters of indemnity policies were exonerated from liability to indemnify the insured where the claim made arose from misappropriation or misapplication by a clerk of clients' funds held.

The form of standard policy was amended subsequently to exclude specifically claims against insured persons brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of any person employed by the insured, but an extension of the policy to include indemnity in respect of claims brought about or contributed to by the dishonesty of the employees of the insured became available upon payment of an additional premium for the extra cover.

It is understood that underwriters of the standard form of solicitors' indemnity policy hold the view that the extension of the policy to include " indemnity against liability for claims brought about or contributed to by the fraud or dishonesty of a clerk or other employee " is still ineffective to provide indemnity against liability in respect of any fraudulent or dishonest misappropriation or misapplication of clients' funds by a clerk where the claim made in respect thereof is capable of being framed as a claim for debt, e.g. for money had and received.

This interpretation of the policy will probably be tested in the courts, but, pending a decision as to the correct interpretation of the policy, members are advised that full protection against claims of this nature may not be available unless a fidelity policy in respect of their employees is also in force.

(*Law Institute Journal* (Australia), December 1961, page 430.)

## OBITUARY

Mr. John D'Oyly Battley, Solicitor, died on the 25th January, 1962 at Sir Patrick Dun's Hospital, Dublin.

Mr. Battley was admitted in Easter Sittings, 1932 and practised at 31 Molesworth Street, Dublin as senior partner in the firm of Messrs. Moore, Kiely & Lloyd, 31 Molesworth Street, Dublin up to his retirement in 1959.

Mr. Noel M. J. Purcell, Solicitor, died on 31st January, 1962 at St. Michael's Hospital, Dún Laoghaire, Co. Dublin.

Mr. Purcell served his apprenticeship with the late Mr. Daniel Purcell, 58 Dame Street, Dublin, was admitted in Trinity Sittings, 1919 and practised at 16 Dawson Street, under the style of Messrs. Daniel Purcell & Son.

Mr. William T. McMenamin, Solicitor died on 3rd February, 1962 at Ballybofey, Co. Donegal.

Mr. McMenamin served his apprenticeship with the late Mr. William Kelly, Letterkenny, Co. Donegal, was admitted in Michaelmas Sittings, 1919 and practised at Ballybofey, Co. Donegal as senior partner in the firm of Messrs. W. T. McMenamin & Son.

MR. THOMAS A. O'DONOGHUE, Solicitor, died on 24th February, 1962 at his residence Dublin Road, Tuam, Co. Galway.

Mr. O'Donoghue served his apprenticeship with the late Mr. Gerald Maguire, Claremorris, Co. Mayo, was admitted in Hilary Sittings, 1929, and practised at Tuam, Co. Galway, as senior partner in the firm of Messrs. T. A. O'Donoghue & Son.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 10th day of March, 1962.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, Esther Fitzhenry. Folio number 482. County Wexford. Lands of Knockbrack in the Barony of Bargy containing 8a. 2r. 20p.

2. Registered Owner, Francis Mulvey. Folio number 17807. County Leitrim. Lands of Leitra in the Barony of Leitrim (formerly comprised in Folio 759—Closed) containing 15a. 3r. 27p.

3. Registered Owner, Patrick Keenan. Folio number 2L. S.D. County Wicklow. The plot of ground with the dwelling-house thereon known as No. 2, Dargle View Cottages, situate in the Parish of Old Connaught and Urban District of Bray.

4. Registered Owner, Joseph Lynch. Folio number 18121. County Cork. Lands of Kilpatrick in the Barony of Kilnalea containing 38a. 1r. 10p.

5. Registered Owner Patrick Ronaghan. Folio number 1873. County Monaghan. Lands of Cashel in the Barony of Cremorne containing 9a. 3r. 6p.

## THE REGISTRY

### Register A

FOR SALE. Practice in Southern town. Good business centre. Box No. A192.

### Register C

MISS MARY CUNNINGHAM. The undermentioned solicitors understand that a Dublin solicitor has attempted to trace Miss Mary Cunningham in connection with a will of a client who died two years ago. Would this solicitor kindly contact Brown, Turner, Compton Carr & Co., 11 St. George's Place, Southport, Lancashire.

LOST WILL. In the goods of JOHN NORTHRIDGE, late of Baurleigh, Bandon, County Cork, Farmer, deceased.

Will any solicitor having a will executed by the above named dated the 10th day of November, 1923, please communicate immediately with the undersigned. Reward. R. Neville & Co., Solicitors, Bandon, Co. Cork.

## INDEX OF STATUTORY INSTRUMENTS

### published since August, 1961

AGRICULTURE, LANDS AND FISHERIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Agricultural Produce (Cereals) Act 1961 in force from 22 January 1962—2/1962.

Agricultural Produce (Eggs) Act 1961 in force from 16 October 1961—205/1961.

Agricultural Wages—Some Minimum Rates increased from 30 October 1961—222/1061.

Agricultural Produce (Eggs) Amendment Regulations 1961 206/1961.

Agricultural Wages (Minimum Rates) (No. 2) Order 1960 revoked from 30 October 1961—221/1961.

Bacon Subsidy payable in respect of Bacon exported from 28 August 1959 to 16 February 1961—79/1961.

Bacon Sales Levy (Home Consumption) Suspending Orders —61/1961.

Bovine Tuberculosis—Movement of Cattle into Longford, Cavan and Monaghan prohibited after 1 April 1961—65/1961.

Bovine Tuberculosis (Attested Area) (Amendment No. 5) Order 1961—228/1961.

Bovine Tuberculosis—Movement of Cattle prohibited into Counties Kildare, Louth, Meath, Offaly and Westmeath, save under permit, after 4 December 1961—266/1961

Colorado Beetle Order 1945 restricted as regards certain Plants—3/1962.

Committees of Agriculture—Increased Night and Day Allowances for Officers after 1 April 1961—244/1961.

Foot and Mouth Disease (Importation) of Plants Order 1952 restricted as regards certain Plants—4/1962.

Fisheries—Ministerial Functions related thereto transferred from Minister to Parliamentary Secretary of Lands—258/1961.
Foyle Fisheries (Amendment) Act, 1961 in force from 1 March, 1962-24/1962.
Land Bonds issued in 1961 carry Interest at 6%—307/1961.

## COMMODITIES, GOODS AND SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Canadian Citizens and Corporations entitled to own Irish Ships—299/1961.
Film Censor's Certificate may be exhibited once at beginning of programme of short films—55/1961.
Gas Fund contribution fixed at 2/3 per million Cubic Feet in 1961—90/1961.
Industrial Research and Standards Act 1961 in force from 4 October 1961—210/1961.
Mercantile Marine Act 1955 (Reciprocating State) (Canada)—299/1961.
Milk Retail Price in Dublin Sale District from November, 1961—233/1961.
Restrictive Trade Practices relating to Motor Spirit and Motor Vehicle Lubricating Oil Order 1961—294/1961.
Undeveloped Areas Act 1952—Extension of Area of Application to Macroom U.D.C., Co. Cork—209/1961.
Undeveloped Areas Act 1952—Extension of Area of Application to parts of West Cork including Dunmanway—235/1962.
Undeveloped Areas Act 1952—Extension of Area of Application to Monaghan and Cavan—237/1962.

## CONTROL OF IMPORTS AND EXPORTS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Assembled Road Vehicle Bodies—Imports limited to 50, in 1962—289/1961.
Assembled Mechanically Propelled Vehicles—Imports limited to 26 in 1962—284/1961.
Assembled Motor Vehicle Chassis—Imports limited—286/1961, 288/1961.
Boots and Shoes—Imports limited—291/1961.
Coniferous Timber in the Round—Import prohibited save under Licence from Belgium, Denmark, Germany and Holland after 1 February 1962—5/1962.
Control of listed Miscellaneous Exports save under Licence—59/1961., 2T/1962.
Electric Filament Lamps—Imports limited to 100,000 in 1962 242/1961.
Foam-Backed Materials brought within Control of Imports Orders—10/1962.
Hats, Caps, Hoods and Shapes—Imports limited—290/1961.
Motor Car Body Parts—Imports limited to 10 in 1962—285/1961.
Pneumatic Bicycle Tyres—Imports limited—305/1961.
Pneumatic Motor Tyres—Imports limited—303/1961.
Rubber Proofed Clothing—Imports limited—287/1961.
Rubber Boots and Shoes—Imports limited—304/1962.
Sparking Plugs—Imports limited—220/1961.
Sugar—Import prohibited during 1962 save by Sugar Co.—296/1961.
Silk or Artificial Silk Hose—Imports limited—22/1962.
Woven Wool Fabrics—Import limited—23/1962.
Woven Piece Goods—Imports limited—243/1961.

## COUNTY AND TOWN MANAGEMENT

SUBJECT MATTER AND REFERENCE NUMBERS.

Local Government (Sanitary Services Act 1934) (Section 34 re Camping) (Part of County of Donegal) Order 1961—295/1961 :—Buncrana U.D.C.—26/1962.
Local Officers in Gaeltacht—Requisite competent knowledge of Irish extended to 31 January 1963—15/1962, 16/1962.
Public Libraries—Minister may make grants to Library Council to provide financial assistance to Local Authorities for their Library Service—265/1961.
Registration of Electors and Preparation of Juror's Lists transferred from Rate Collectors to Assistance Officers of Kerry Co. Council—204/1961.

## CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Aluminium Strip (Coated)—Customs Duty suspended to 30 September 1963—208/1961.
Cider and Perry—Specified Alterations in Duty—60/1961.
Flexible Expanded Foam or Sponge Material—Full Customs Duty of 50% imposed after 21 November 1961—252/1961.
Chrome—Tanned Leather—Duty reduced to 40% full after 1 November, 1961—236/1961.
Gas Pressure Cylinders—Customs Duty suspended to 30 November 1962—260/1961.
Isinglass and Edible Gelatine—Duty suspended to 31st October, 1962—234/1961.
Miscellaneous Articles—New Customs Duty imposed after 20 April 1961 as substitute for Special Import Levy—77/1961.
Milk Cans (Tin or Tin Plate) exempted from duty after 19 September 1961, if not exceeding 14 gallons—707/1961.
Motor Vehicles—(including Parts and Accessories)—New Customs Duty imposed after 20 April 1961 to replace previous revoked Customs Duties and Special Import Levies—78/1961.
Power Driven Pumps (Specified)—Full Customs Duty of 50% imposed after 13 April 1961—72/1961.
Special Import Levies revoked after 20 April 1961—77/1961.
Umbrellas (Specified) subject to 50% Full Duty after 5 December 1961—267/1961.
Yarns (Specified) of Man-made Fibre exempted from duty in 1962—298/1961.
Wheaten Products (Specified)—Full Customs Duty of 75% imposed after 13 October 1961—225/1961.

## EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Apprenticeship Act, 1959—Motor Mechanics declared a Desegnated Trade—28/1962.
Apprenticeship Act, 1959—Electrician declared a Designated Trade—29/1962.
Apprenticeship Act, 1959—Furniture declared a Designated Trade—30/1962.
Apprenticeship Act, 1959—Appointment of Statutory Apprenticeship Committee for Motor Mechanics—31/1962.
Apprenticeship Act, 1959—Appointment of Statutory Apprenticeship Committee for Electricians—32/1962.
Apprenticeship Act, 1959—Appointment of Statutory Apprenticeship Committee for Furniture Trade—33/1962.
Button-Making Joint Labour Committee—Minimum Rates of Pay and Conditions of Employment fixed after 25 November 1961—854/1961.
Creameries Joint Labour Committee—Minimum Rates of Pay and Conditions of Employment from 2 December 1961—262/1961.
Chewing-Gum Industry—Women may be employed between 7 a.m. and 11 p.m.—69/1961.

Carpet-Weaving Industry—Women may be employed between 7 a.m. and 11 p.m.—782/1961.
Cigarette Industry—Women may be employed from 7 a.m. to 11 p.m.—192/1961.
General Waste Materials Reclamation Joint Labour Committee —Minimum Rates of Pay and Conditions of Employment after 6 November 1961—240/1961.
Furniture Trade Apprenticeship Committee Confirmation of Rules in force after 13 November 1961—253/1961.
Glass-Fibre Cloth Industry—Women and Young Persons may be employed between 7 a.m. and 10 p.m.—292/1961.
Glass-Cloth Industry—same Regulations for Women—68/1961.
Handkerchief and Household Piece Goods Joint Labour Committee—Minimum Rates of Pay and Conditions of Employment fixed after 25 November 1961—255/1961.
Messengers in Cork City—Minimum Rates of Pay and Conditions of Employment after 18 November 1961—250/1961.
Messengers in Waterford City—Minimum Rates of Pay and Conditions of Employment fixed after 18 November 1961 —251/1961.
Messengers in Dublin City and Dún Laoghaire—Minimum Rates of Pay and Conditions of Employment after 6 November 1961—239/1961.
Paper Box Joint Labour Committee—Minimum Rates of Pay and Conditions of Employment fixed after 9 February 1962 —17/1962.
Packing Joint Labour Committee—Minimum Rates of Pay after 6 November 1961—241/1961.
Provender Milling Joint Labour Committee—Mimimum Rates of Pay and Conditions of Employment fixed after 9 February 1962—18/1962.
Sugar Confectionery and Food Preserving Joint Labour Committee—Minimum Rates of Pay and Conditions of Employment fixed after 9 February 1962—19/1962.
Tailoring Joint Labour Committee—Minimum Rates of Pay and Conditions of Employment fixed after 9 February 1962 —20/1962.
Worsted Spinning Industry—Young Persons under 18 may be employed in specified Processes between 8 a.m. and 10 p.m.—1/1962.

## FINANCE AND CENTRAL GOVERNMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Borough and County Constituencies—Charges of Returning Officers, Presiding Officers and Poll Clerks increases—203/1961.
Census of Population 1961—Statistics to be collected in respect of 9 April 1961 Regulations—64/1961.
Dáil Éireann General Election to be held on 4 October 1961 —202/1961.
Income Tax (Employments under P.A.Y.E.) (Surtax) Regulations 1961—231/1961.
3½% National Security Loan 1956–61 (Conversion) Regulations 1961—249/1961.
Polling Cards (Dáil Éireann and Presidential Elections and Referenda) Regulations, 1961—245/1961.
Returning Officer may employ special paid Legal Assessor at Elections—278/1961.
Seanad Electoral Act—Subsistence Charges of Returning Officers in University Constituencies increased—211/1961.
Seanad Returning Officers in University Constituencies—Fees increased in December, 1961—277/1961.
State Guarantees Act, 1954—Minister may guarantee borrowings by National Building Agency Ltd. up to £250,000—74/1961.
Vocational Education Act, 1930—Variations may be made from time to time in limits of Maintenance Grants to Schools—275/1961.

## HARBOURS AND HYDRO-ELECTRIC WORKS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Drogheda Harbour Commissioners may charge a Flat Rate per Ton for Goods in Containers, Flats or Trailers after 23 October, 1961—227/1961.

## HEALTH.

SUBJECT MATTER AND REFERENCE NUMBERS.

Age Limit for Office of District Medical Officer raised in specified cases over 70 years of age—141/1961.
Dental and Aural Appliances may in certain circumstances be supplied by Health Authorities—198/1961.
Dublin Health Authority—Part of Clondalkin Dispensary District transferred to South City Dispensary District—193/1961.
Dispensary District—Tara transferred from Navan to Killeen Dispensary District—280/1961.
District Medical Officers—Retiring Age Limit raised in specified cases to 70 years—21/1962.
Dublin Health Authority—Bluebell transferred from Clondalkin Registrar's District to South City No. 5 Registrar's District after 2 October, 1961—213/1961.
Kilgoblin Dispensary District, Co. Kerry, abolished and added to Annascaul Dispensary District—281/1961.
Hospitals Federation and Amalgamation Act, 1961—Establishment Day fixed at 6th November, 1961—223/1961.
Meath Registrar's District—Tara E.D. transferred from Navan District to Killeen District after 21 December, 1961—293/1961.
Mental Treatment Act, 1961—Some Sections brought into operation on 1 March, 1962—264/1961.
Mental Treatment Regulations, 1961, in force from 1 March, 1962—261/1961.
Wexford Registrar's District—Townland of Effernogue transferred from Enniscorthy No. 1 District to Ferns District—214/1961.
Wicklow Registrar's Districts—Various townlands, including Ballywaltrim and Oldcourt transferred from Delgany District to Bray No. 1 District—215/1961.

## JUSTICE, EXTERNAL AFFAIRS AND DEFENCE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Courts (Establishment and Constitution) Act, 1961, in force from 29 September, 1961—217/1961.
Courts of Justice and Court Officers (Adoption of Provisions and Allocation of Pension) Regulations, 1961—216/1961.
District Court Rules (No. 1), 1962, relating to Service of Summonses and of Documents outside the State—7/1962.
District Court Rules (No. 2), 1962, relating to Affiliation, Maintenance and Enforcement of Court Orders—8/1962.
District Court (Gaming and Lotteries Act, 1956) Rules, 1962—9/1962.
Film Censorship Amendment of Fees—218/1961.
Garda Síochána Pay after 1 November, 1961—257/1961.
Garda Síochána (Representative Bodies) Regulations, 1927 (Amendment) Regulations, 1962, in force from 31 December, 1961—6/1962.
Juries for High Court and Circuit Court cases in Cork may be drawn partly from Cork City and partly from Cork County adjoining Cork City—201/1961.
Juries Act, 1961, in force from 15 September, 1961—199/1961.
Jury Districts in County Cork varied after 15 September, 1961 —200/1961.
Property Values (Arbitrations and Appeals) Rules, 1961—91/1961.
Wild Birds Protection Act, 1930—Departmental Functions transferred from Justice to Lands after 27 November, 1961—259/1961.

## MISCELLANEOUS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Córas Iompair Éireann—Some Registration Fees on Transport Stock abolished after 11 December, 1961—276/1961.

Dead Turkeys exported during December 1961 need not be killed on Licensed Poultry Premises—263/1961.

Donegal Co. Council may grant Camping Sites in Ards, Rosguill, Faluin and Buncrana—295/1961.

Drapery and Boot Shops in Castlebar, Co. Mayo may open from 9.30 a.m. to 6 p.m. on week-days and to 8 p.m. on Saturday—248/1961.

Drapery and Boot Shops in Navan U.D.C.—Closing hour brought forward to 6 p.m. on weekdays and 9 p.m. on Saturdays.—207/1961

Electricity Supply Board—Commission of Inquiry appointed to determine the Settlement of Disputes and the Remuneration of the Staff—196/1961.

Electricity (Temporary Provisions) Act, 1961, to expire on 13 September, 1961—197/1961.

Factories Act, 1955—References to Certifying Surgeon in Factories Act, 1901, to be construed as References to Certifying Doctor in 1955 Act—247/1961.

Grain Board—Additional Function in respect of payment of Wheat Levy to Wheat Growers—273/1961.

Limerick City Street Trading Regulations, 1961—226/1961.

Periodical Lotteries (Accounts and Records) Regulations, 1961—212/1961.

Shannon Customs-Free Airport—Licences for carrying on Trade there transferred from Transport and Power to Industry and Commerce—62/1962.

Summer Time in force from 25 March to 28 October, 1962—232/1961.

United States of America now a signatory to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954—302/1961.

## POST OFFICE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Broadcasting Sound Licences fixed at £1 per annum after 1 January, 1962—279/1961.

Dáil Elections Free Postage Regulations, 1961—195/1961.

Seanad Elections (University Members) Free Postage Regulations, 1961—194/1961.

Television Receiving Licences fixed at £4 per annum after 1 January, 1962—279/1961.

## SOCIAL SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Social Welfare (Overlapping Benefits) (Amendment No. 2) Regulations, 1961—270/1961.

## TRANSPORT AND TRAFFIC.

SUBJECT MATTER AND REFERENCE NUMBERS.

Cork Airport Bye-Laws in force from 16 October, 1961—229/1961.

Mechanically Propelled Vehicles (International Circulation)—Regulations regarding Foreign Visitors' Cars—269/1961, 12/1962.

Motor Car (International Circulation) Act, 1909, repealed as from 1st January, 1962—268/1961.

Road Traffic—Compulsory Insurance under Part VI of Road Traffic Act, 1961 Regulations, 1962—14/1962.

Road Traffic Act, 1961 (Commissioner's Bye-Laws and Temporary Rules) Regulations, 1961—219/1961.

Road Traffic Act, 1961—Sections 10, 14 and 118 and Part VI of the Act dealing with Compulsory Insurance to come into force on 1 May, 1962—11/1962.

Road Vehicles (Registration and Licensing) (Amendment) Regulations, 1962, dealing with compulsory Insurance—13/1962.

Road Vehicles (Index Marks) (Amendment) Regulations, 1961—283/1961.

Traffic Signs (Temporary Authorisations to use during 1962)—306/1961.

Transport, Fuel and Power—Transfer of further Departmental Administration and Ministerial Functions relating to Tourism from Industry and Commerce to Transport and Power after 31 October, 1961—246/1961.

Turf Development Act, 1946—Railway and Bridge to be built at Derrygocenagh, Co. Offaly—224/1961.


# THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:

SECRETARY,

SOLICITORS' BENEVOLENT ASSOCIATION,

18, HUME STREET,

DUBLIN.


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1962

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
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*Secretary*
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FOR CIRCULATION AMONG MEMBERS

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### MEETING OF THE COUNCIL

MARCH 1ST: The President in the chair. Also present, Messrs. Niall S. Gaffney, John Carrigan, John R. Halpin, Thomas A. O'Reilly, John J. Nash, James R. C. Green, Ralph J. Walker, Eunan McCarron, John Maher, John C. O'Carroll, Desmond Moran, Brendan T. Walsh, W. A. Osborne, Augustus Cullen, Robert McD. Taylor, J. Bernard MacGarry, Desmond J. Collins, Patrick O'Donnell, Brendan A. McGrath, R. A. French.

The following was among the business transacted:

#### Law Reform

The Council appointed working parties to deal with the various heads of Law Reform outlined in the recent Government White Paper. The following working parties were appointed:

*Liability of State Authorities:* Francis J. Lanigan, Augustus Cullen. *Administration of Estates:* Patrick Noonan, J. B. MacGarry. *Wills:* P. D. M. Prentice, Charles Hyland. *Guardianship of Infants:* Brendan T. Walsh, W. A. Osborne. *Law of Contracts:* D. B. Gilmore, J. W. O'Donovan. *Bankruptcy:* D. J. Collins, R. H. Carter. *Liabilities of Occupiers and Innkeepers:* Brendan A. McGrath, Thomas V. O'Connor. *Trustees:* R. A. French, R. W. R. Johnston. *Registration of Title and Deeds:* John

Maher, J. R. C. Green. *Operation of the Courts:* R. J. Walker, R. McD. Taylor. *Law of Evidence:* T. A. O'Reilly, Peter E. O'Connell. *Civil Liability for Animals:* W. A. Tormey, Desmond Moran. *Criminal Law:* Gerald Goldberg, Herman Good.

### Examination results

The report of the Court of Examiners on the results of the preliminary and first and second Irish examinations was adopted and the results declared.

### Brandaris Insurance Company Limited

The Council considered a communication received from the English Law Society on the above company which is now in liquidation. Members were notified by means of a circular sent with the last issue of THE GAZETTE of the fact that this company was in liquidation and were asked to communicate with the Society for advice if they found themselves involved in claims against persons insured by the company. The Motor Insurers Bureau of 107 Cheapside, London E.C. 2., appear to be the body responsible under their agreement with the British Government for liabilities on policies issued by the Brandaris Insurance Co., Ltd. for compulsorily insurable risks. A solicitor acting for a client who has a claim against a person insured by the company should bear in mind the possible interest of the Motor Insurers Bureau in the matter and that notice should be given to the Bureau in sufficient time to enable it to consider its position, certainly before judgment is signed in default or otherwise. It is understood that according to the strict terms of the agreement between the British Minister for Transport and the Motor Insurers Bureau notice of the intention of bringing proceedings must be given to the Bureau before or within twenty-one days after the commencement of the proceedings, but that strict application of the time limit will not be insisted upon. The Bureau will meet the costs involved only where these are not discharged by the defendant, and the plaintiff will be required to assign the judgment to the Bureau who will be at liberty to prove in liquidation of the company. If the claim is in respect of a head of damage which is not compulsorily insurable the solicitor acting for the claimant may have to consider the financial standing of the defendant as the Bureau may not be liable in such an event. It is not known whether the Brandaris Insurance Co., Ltd. were members of the Irish Motor Insurers Bureau who have a similar agreement with the Minister for Local Government. The address of the Irish Motor Insurers Bureau is 4 Eustace Street, Dublin 2, and it is advisable, to be on the safe side, to give notice to both Bureaus. Copies of the Irish agreement may be obtained from the Department of Local Government, the Motor Insurers Bureau or the Government Publications Office.

## SPECIAL GENERAL MEETING

A special general meeting of the Society was held in the Society's library on Friday, 9th March, 1962, at 2.30 o'clock. The President took the chair.

The meeting was summoned for further consideration of the question of a regulation under section 71 of the Solicitors Act, 1954, prohibiting or restricting solicitors from acting for both parties in conveyancing matters.

The notice convening the meeting was by permission of the meeting taken as read.

The following draft regulation was circulated for the consideration of the members present:

> Where property is advertised for sale by public auction neither the solicitor nor the vendor nor his partner or assistant shall act for the purchaser of such property in connection with the purchase thereof contracted before auction, at the auction or within six months after the auction and the purchaser shall be *bona fide* represented by an independent solicitor.

The PRESIDENT opened the discussion and explained the effect of the proposed regulation. He stated that there is a difference of opinion in the profession as to whether or not such a regulation should be made. The matter had been considered by the Council who were in favour of making a rule but not necessarily unanimously. Some individual members of the Council expressed the views of Bar Associations. There were strong views on each side in the Bar Associations and the Council had decided to submit the matter to a further general meeting with a view to ascertaining the profession's opinion on the matter. They requested members to speak to the rule as drafted and circulated. There were four principal arguments in favour of such a regulation. Firstly, no man can serve two masters and there is always a possible conflict of interest in conveyancing matters even in cases where the equity note has been discharged. The premiums charged by insurance companies on solicitors profession's negligence policies have in the recent past been sharply increased and it was felt that the practice of acting for both parties might give rise to added risk. Secondly there was the question of price-cut conveyancing because where a solicitor acts for both parties his client invariably expects to get a reduction even although the solicitor's responsibility is doubled. Thirdly there was the question of unfair attraction of business by solicitors and fourthly the question of touting by auctioneers. One of the principal objections to acting for both parties is that auctioneers conducting auctions in many cases try to attract the purchaser to the vendor's solicitor. The points advanced against the regulations were firstly that it would be an undue interference with solicitors private business and secondly that a solicitor who must send away one client to another solicitor is in danger of losing that client permanently. This would apply particularly in a small town or village where there is only one permanent resident solicitor who would of necessity have to send one party to a conveyancing transaction to another town. The President stated that the Council would consider the matter in the light of any opinions expressed at the meeting and would not introduce a rule without a postal ballot. He pointed out that

the Council are the rule making authority under the Solicitors Acts and that there is no power in a general meeting to make rules but that the Council would naturally be guided by the opinions expressed.

Mr. Edmund Carroll (Fermoy) asked why was the rule limited and not general.

The President replied that there was a divergence of opinion at Galway. Some members were in favour of a limited rule and it was thought that if a rule were to be introduced it would find greater favour in this form.

Mr. J. R. Halpin (Cavan) chairman of the Provincial Solicitors' Association stated that the views of the profession appear to be divided equally. His Association had passed a resolution requesting the Society to take a postal ballot before bringing in a rule. The Council of the Society had accepted this resolution. His personal views were in favour of a rule. He had no personal axe to grind as he intended to retire in the near future. The principal argument was the public interest. No man could satisfactorily serve two clients with possible opposing interests which might always develop even in the most unexpected way. From the viewpoint of the interests of the profession such a rule would prevent price cutting. He also referred to the increase in premiums in negligence insurance policies. The argument that a solicitor may lose a client from the operation of the rule cuts in both ways because under such a rule a solicitor would very probably gain a client for every client lost.

Mr. Patrick Cusack (Ballyjamesduff) opposed the rule and stated that he was supported by a great number of solicitors. He thought that the introduction of a limited rule was insincere and made no sense. It should be all or nothing. He suggested that the Society should bring in the financial regulations under the Solicitors Acts and enquired why this had not been done. He stated that Mr. Halpin the previous speaker was not affected financially but that he and other solicitors were. He submitted that section 71 of the Solicitors Act 1954 did not authorise the Council to make regulations of the kind suggested divesting solicitors of the right to act for both parties which they obtained when they were admitted. The right to act for both parties was recognised by the regulations made under the Solicitors Remuneration Act 1881 dealing with the costs of leases. A rule of the kind suggested would split the profession and many members would not obey it in view of their opinion of the legal position. In reply to a question put by the President Mr. Cusack stated that by the financial regulations he meant the Accountant's Certificate Regulations under the Solicitors (Amendment) Act 1960 which he thought should be introduced forthwith.

Mr. Edmund Carroll (Fermoy) opposed the making of a regulation on the ground that it would divert clients away from their established solicitors. The individual solicitor was the best judge of the question of whether or not he should act for two parties. Mr. Carroll enquired why we should insure against professional negligence if we divest the companies of liability. The recent increase in premiums may have been due to acting for both parties but he thought that a more likely cause was mistakes by solicitors due to lapse of time. Mr. Carroll stated that at one time he thought that under such a rule he would get as many clients as he would lose but recently he heard it said that a solicitor who could not act for both parties would send the other client to his Dublin agent. He approved of a postal ballot and if a reasonable proportion of the country and city solicitors supported a regulation he would follow it.

Mr. Fintan O'Connor (Wexford) stated that he had no intention of retiring like Mr. Halpin and he and others like him had no intention of observing such a rule if made. They had obtained the opinion of senior counsel that such a rule would be ultra vires to the Solicitors Act and repugnant to the Constitution. For this reason he would not follow the result of a postal ballot even if it supported the rule.

Mr. John Kieran (Ardee) on behalf of the Louth Bar Association stated that he opposed the rule and that he associated himself with the remarks of previous speakers.

Mr. F. J. Gannon (Mohill) stated that there are eleven solicitors in County Leitrim who are unanimously against such a rule and if such a rule was made they would not obey it. He thought the rule would be unduly restrictive and unfair to the public. He challenged the statement regarding the effect of the practice of acting for both parties on insurance premiums. He thought that the question of price cutting could be covered by Bar Association rules and that it did not exist in County Leitrim.

Mr. James R. Quirke (Dublin) suggested that it was inopportune to make a rule at the present time and that no action should be taken.

Mr. Andrew Comyn (Mallow) stated that he had listened to the arguments against the making of a rule for twenty five years and asked the members to grow up and discuss the matter sensibly. Solicitors earn their living by serving the public and the question is whether the rule would be for the public benefit. Clients could not be expected to appreciate the danger of asking a solicitor to act for both sides. He had read titles for four years as a solicitor in a bank and from time to time they received bad titles. In his experience the bad titles almost invariably came from the practice of acting for both parties. How could a solicitor draw requisitions on title and answer them as well? It was no answer that the public did not want the rule. The public did not know the position. From the professional point of view the rule was necessary and that auctioneers frequently tried to divert the purchaser to the vendor's solicitor. He had lost many clients in that way. The present freedom to act for both parties also tended to encourage fee cutting. In reply to denials by some members he stated that he was certain that it was so and knew of many cases. The argument about losing clients was absurd. There would be a two way traffic and a solicitor who sent a client to another to avoid a conflict of interest would get him back if he was worth anything as a solicitor.

Mr. T. J. Fitzpatrick (Cavan) supported the suggestion of a postal ballot but he deprecated the attitude of some previous speakers. He stated that he would not resign if the rule were not passed neither would he bring the society to the Supreme Court if the rule were made but would accept any regulations made by the society. He did not know whether he would lose or make money under the rule but he was not in favour of conflicting interests. The free choice argument did not hold water. He was convinced that the present system led to price cutting and was afraid that the principal offenders were the larger firms and bigger solicitors who would give advantages to established clients. If the rule were passed it would break up a very undesirable relationship between some solicitors and auctioneers who brought purchasers to solicitors for vendors to ingratiate themselves. He did not agree that a client who is sent to another solicitor for a particular transaction never returns. He was not sure whether he would support a rule of the kind suggested on a limited scale because he thought that the rule should be general. He certainly would support a general rule.

Mr. Nathaniel Lacy (Kells) supported the rule and the arguments of Mr. Halpin. He thought that limited rule would not go far enough and that the rule should be extended to all conveyancing. He said that he once consulted an eminent conveyancer the late Mr. Newett who told him of the rule about constructive notice and that a solicitor who acts for both parties might receive constructive notice of matters which would not be in the interests of his clients. The day a sale is closed is not the date on which the file can be closed. All kinds of questions arise about boundaries and other matters. He deprecated the statement that some solicitors would not obey a rule which he described as a schoolboy attitude and unworthy of the profession. The County Meath

Bar Association supported the proposed rule by a majority of one.

Mr. J. N. Brennan (Wexford) stated that his association had received counsel's opinion that the rule would be *ultra vires* and they were acting responsibly in stating that they would not obey it. It would militate against old established firms and he stated that his firm had been following the present practice for over 100 years without any difficulties of the kind suggested. Mr. Comyn was the only speaker who had produced arguments or evidence but he was not convinced by them. The motion was illogical. The society should go the whole way or do nothing. It was either right or wrong to act for both parties and he could see no sense or purpose in a limited rule, but he did not agree with any rule of the kind suggested.

Mr. J. B. MacGarry (Dublin) stated that present practice had existed in the past many years and he could not see any undesirable consequences from it. Every solicitor realises that he must avoid the conflict of interests. What was the purpose of the new rule, was it to protect the public from the profession or to protect the profession from the public or to protect members of the profession from one another? A closed shop should be avoided and he was opposed to trade union methods in dealing with the public. He thought that the clients right of free choice must be upheld; if there was any malpractice the Bar Association's Rules could deal with it. The public are always anxious to get cheap law-and the side effects of the rule might be worse than the present system as it would result in hole and corner methods such as solicitors lending their names in conveyancing transactions. The proposal was inconsistent. If the society is sincere an unqualified rule should be introduced. In conclusion he asked whether the rule is necessary and enforceable. If the answer to both questions is in the affirmative then bring in the rule.

Mr. William Dillon-Leetch (Mayo) stated that he supported the rule but not the limited rule on the agenda. His firm was established in 1889 and he had many clients who would seek to retain him for vendor and purchaser in the same sale. He felt he could not do justice to both. He mentioned the difficulty about a reserve price on an auction and the possibility of disclosure or the fact that a client might think the reserve price had been disclosed where the solicitor acted for both sides. He referred to a case in which he acted for a client who had lost money due to defalcation by a member of the profession and had a claim on the Compensation Fund. The solicitor had acted for both parties but fortunately had elected to take the money as agent for the vendor but the position might have been otherwise. He did not believe that the full scale fees were charged where a solicitor acts for both parties and he had seen bills which were evidence to the contrary. He also thought that an analysis of losses from solicitors' defalcations would show that a disproportionate number of them arose in cases where you had one solicitor acting for vendor and purchaser.

Mr. J. A. Cullen (Dublin) chairman of the Dublin Solicitors' Bar Association stated that the matter had been considered by the Association and that owing to a divergence of views they were not able to express any representative viewpoint.

Mr. S. A. Siev (Dublin) stated that there were abuses such as price cutting but questioned whether such a rule would stop it. There had been regulations prohibiting this practice since 1955. Shortly after the regulations were introduced he was asked by a prospective client to quote a fee which he refused to do and was informed by the client that another solicitor was prepared to do the work for less than the commission scale fee. The name of the solicitor in question was given by the party. He questioned the use of regulations when such things could happen.

Mr. N. S. Gaffney (Limerick) stated that the Limerick Bar Association which had a membership of forty supported the rule. The Association had made rules of the kind mentioned which were effective and he knew of only one instance where they had been broken since 1925. The member in question had been fined. He supported the rule because it was to the advantage of the public and the profession—especially the younger members and he thought that the rule should apply to private sales as well as auctions.

Mr. John Kelly (Roscommon) stated that his Bar Association unanimously opposed the rule. He blamed the solicitors for vendors for allowing auctioneers to divert purchasers to them. He thought the rule if made would be evaded by dishonest and observed by the reputable members of the profession.

Mr. Séamus Mahon (Mullingar) for the Midland Bar Association stated that his association unanimously supported the rule. He advocated a postal ballot and said that a rule should be made applying to all sales.

Mr. John Louth (Arklow) stated that the Wicklow Bar Association opposed the rule unanimously. There would be friction if the rule were passed and auctioneers would still continue to divert clients even in the face of a rule.

Mr. James Cody (Bagenalstown) stated that he was personally opposed to the rule but thought that a postal ballot should be held and that a rule should be made if supported by 75% of the members.

Mr. W. B. Fawsitt (Dublin) opposed the rule. He stated that he had acted for vendor and purchaser in many cases and experienced no difficulty. In cases of difficulty counsel could be instructed to draw requisitions on title and protect the purchaser's interests. In his experience the full commission scale fees were charged where solicitors acted for both parties. He thought that the rule would be unconstitutional and an undue interference in solicitors' private affairs.

Mr. D. H. Kearns (Portumna) opposed the rule. He stated that a resolution in favour of it had been passed at a meeting of the Galway Bar Association with an attendance of only eleven and by a majority of one vote. There were fifty four solicitors in the county. He opposed the rule because it would reduce his earnings. In most transactions the title must pass the solicitor for a Bank or Building Society which would be a sufficient safeguard. He suggested that a rule might be made providing that equities must be discharged in a case where one solicitor acted for both parties or that counsel must be retained on behalf of one party. He was a member of both the Tipperary and Galway Bar Associations and he had lost several clients in Co. Tipperary where such a rule was in operation.

Mr. James Glynn (Tuam) chairman of the Galway Bar Association suggested that a postal ballot should be taken and that the Society should follow the result of the ballot.

Mr. Gerard MacGowan (Balbriggan) stated that he is the only resident solicitor in that town. In 90% of the sales he acted for both parties and had found that where he acted for both parties he could complete the transaction in about one fifth of the time. He thought that expeditious service was for the good of the profession. He did not accept the insurance premium argument. The fees on one good sale would pay the fees on a professional indemnity policy.

Mr. James H. Mackey (Dublin) supported the rule and stated that he had instances of cases in which acting for both parties caused damage particularly in the granting of leases of new houses. He read a clause in a contract which he had received from a solicitor for a builder which provided that in the event of the purchaser's engaging the builder's solicitor his costs would be paid by the builder.

Mr. Cecil Vance (Bailieborough) opposed the rule and stated that he considered there was no necessity for it.

Mr. M. P. Keane (Carrick-on-Shannon) opposed the rule and stated that there would be no guarantee that the second solicitor would be more competent than the first if the latter

declined to act for both parties. He also thought that the rule would not remedy the abuse of fee cutting as a solicitor who obtained a new client as the result of the rule would be more tempted to reduce fees in order to retain the client.

Mr. W. A. Osborne (Athy) stated that the Kildare Bar Association were opposed to the rule.

Mr. Raymond C. Meredith (Dublin) stated that his firm would never act for both parties where there is a conflict. He opposed the rule and stated that it should have universal application or it should not be made at all.

Mr. T. P. O'Reilly (Ballyconnell) opposed the rule on the ground that he was the only resident solicitor in Ballyconnell and the diversion of clients to other towns would cause hardship to them and would reduce his practice.

Mr. B. J. Lynch (Carrick-on-Shannon) stated that in view of the great difference of opinion in the profession he did not think that a majority obtained by a postal ballot would justify the introduction of the rule.

Mr. C. McGuill (Dundalk) opposed the rule and stated that solicitors must be given credit for ability to decide whether there is a conflicting interest. It would lead to a diversion of clients and slower service.

Mr. G. Y. Goldberg (Cork) supported the rule as being for the benefit of the profession and the public. There was always a danger of a conflict of interests when a solicitor acts for both parties. The council were not seeking to impose the rule but wanted to obtain the views of the profession. He supported Mr. Dillon-Leetch and thought that the rule was perfectly fair and constitutional.

Mr. W. D. McEvoy (Gorey) stated that conditions are completely different in the city and the country. He referred to the opinion of counsel obtained by the Wexford Bar Association and stated that he thought that the rule was a reflection on the intelligence and integrity of solicitors.

Mr. J. A. Kennedy (Carrickmacross) stated that he opposed the rule.

Mr. W. P. Toolan (Ballinamore) opposed the rule. He thought the main arguments in favour of it i.e. price cutting and touting were insufficient. If the present rules prohibiting these abuses were inadequate they could be strengthened and he thought that the cases which were mentioned previously should have been brought to the notice of the society.

Mr. James Smith (Arva) opposed the rule and stated that he knew of only one case where a solicitor was made liable for damages in a conveyancing transaction. In that matter he acted for one party only. A careful solicitor will always draw up a proper contract. In cases of conflict he will send his client to another solicitor or instruct counsel. The Bar Associations could regulate fee cutting. He did not think that the proposed rule would prevent auctioneers from diverting clients to certain solicitors. He was the only solicitor resident in Arva and if the rule were made he would have to send clients thirteen miles to seek other advice and he would get no return by receiving clients from other towns. He did not understand why sales by private treaty were excluded from the scope of the proposed rule.

Mr. Barry Steen (Navan) stated that the resolution of the Meath Bar Association in favour of the rule was passed at a badly attended meeting and then only by the casting vote of the chairman. He personally opposed the rule.

The President in closing the discussion said that the council were not trying to force any regulation on the profession. The discussion at the Ordinary General Meeting in Galway was inconclusive although a slight majority of the speakers at that meeting appeared to be in favour of a limited rule. He did not understand the references to the sincerity of the proposers of a rule. As drafted it was intended to meet the views of a number of the speakers at the Galway meeting who were not prepared to go the whole way and advocate a universal rule. A limited rule would meet the biggest abuse of touting by auctioneers and undesirable relations with solicitors. There was also the difficulty which arises when there are two adjoining Bar Associations one of which has a rule and the other has not. He went on to say that no regulation would be brought in without a postal ballot. He did not know whether there would be a postal ballot as the council would have to reconsider the matter. The rule making authority under the Solicitors Act was vested in the council not in a general meeting but the council were taking steps to inform themselves of professional opinion on the matter. There was no doubt what the predominant opinion of the members at the present meeting was on the subject but it did not follow that it was representative of the entire profession and the duty of the council was towards the profession as a whole. The council would have to consider the legal points raised at the meeting and no further step will be taken without adequate notice to the profession.

The proceedings then terminated.

## CORONERS BILL, 1961

The Coroners Bill, 1961 has now passed the committee stage in Dáil Éireann and it is obtainable from the Government Publications Office, (price 2/– nett). The following is an extract from the *Dáil Debates* for Thursday, 15th February, 1962, and contains a discussion on what is now section 35 (2) of the Bill. Section 35 (2) now reads as follows:

> "A coroner or deputy coroner shall not hold an inquest on the body of, or inquire into the death of, any person if he has drawn up, or assisted in the drawing up, and is a beneficiary under, any testamentary disposition made by that person."

"Minister for Justice (Mr. Haughey): I move amendment No. 30:

> In subsection (2), page 12, line 46, to delete 'who is a solicitor or barrister'.

It has been pointed out that sometimes a coroner who is a doctor might assist in the drawing up of a will under which he would be a beneficiary and that, therefore, the prohibition in subsection (2) of Section 45 on 'legal' coroners holding inquests should be extended to medical coroners when they find themselves in the same position. Under the subsection, as proposed to be revised, any coroner or deputy coroner will be prohibited from holding an inquest or inquiring into the death of any person where he has drawn up or assisted in drawing up the will of the deceased person and benefits under it.

Amendment agreed to.

Mr. McGilligan: I move amendment No. 31:

> In subsection (2), page 12, line 49, to delete 'and is a beneficiary under'.

I want to delete certain words. The object of this is that a person should not act as a coroner in the case of a death where, prior to that death, he has helped in the drawing up of a will or a testamentary disposition. The matter is limited to those words. He is precluded from acting only if he has assisted

in the drawing up of a will or is a beneficiary under it. Suppose a doctor helped to draw up a will under which he benefited and the testator died under peculiar circumstances then the doctor could not hold the inquest. The term 'is a beneficiary' is very narrow. It would not apply, for instance, if a solicitor drew up a will under which his wife, his family, relatives or friends were to benefit. I do not see why it should not be extended to cover the complete range of full testamentary disposition. If a coroner has assisted in the drawing up of a will, no matter who benefits, he should not hold the inquest on the body of the testator. The phrase is far too narrow. If it were changed to 'a will under which he benefits' or 'which benefits him' that would be a different matter. Being a beneficiary under a will is a very technical matter and I suggest it would be better to say that if a coroner had occasion to draw up the testamentary disposition of the deceased he should not hold the inquest.

Mr. Haughey: I have a certain amount of sympathy with Deputy McGilligan's point of view in this matter. This is a new provision and the entire concept of subsection (2) is new to law. We want to ensure that there will be no conflicts of interest between the two capacities of the coroner and this concept deals with the case where there is a solicitor-coroner. I think it desirable that the coroner should, as far as possible, have no connection whatever with a deceased or his affairs. However, we must be practical about this and realise that we cannot put too many impositions on the coroner.

We can visualise the situation in a country town where the solicitor-coroner has a large practice. As we all know, there will be an accumulation of wills in any solicitor's office which have been drawn up over the years and left in the solicitor's safe. We would be putting an undue obligation on a solicitor-coroner if we compelled him on every occasion when he was about to carry out an inquest to go through the accumulated wills in his office and ascertain that he had not drawn up the will of the deceased.

However, I think the suggestion made by Deputy McGilligan is a good one which would probably meet both our points of view. I undertake to have another look at the actual wording of the provision and see if we might expand the concept of 'beneficiary' somewhat.

Amendment, by leave, withdrawn.

Section 35, as amended, agreed to."

## FEES FOR LEGAL PROCEEDINGS

"125. Mr. M. P. Murphy asked the Minister for Justice whether in view of the hardship caused to members of the general public by the uncertain nature of the cost of legal proceedings of any kind he will investigate the possibility of the setting out of a scale of charges to be adhered to by members of the legal profession for normal legal transactions and proceedings.

Mr. Haughey: I do not accept that there is such uncertainty in the matter of legal costs as to cause hardship.

Costs in court proceedings are prescribed by the rules made by the rules committees of the various courts and, in general, refer to the costs which the unsuccessful party may be ordered to pay to the successful party. Except in the case of the district court, where the prescribed costs may not be exceeded, provision is made for allowing higher costs in exceptional cases. Any costs payable on a solicitor and client basis over and above the prescribed costs can be agreed between the solicitor and his client and in default of agreement may be taxed by a Taxing Master.

Solicitors' costs in non-contentious business are regulated by orders made under the Solicitors Remuneration Act, 1881 and, in relation to Land Registry business, by the Land Registration Rules.

Owing to the variety of circumstances affecting even normal legal transactions and proceedings it would be impossible to prepare standard scales.

Mr. M. P. Murphy: The average person does not know what his costs are going to be. Surely the time is at hand when some scale should be publicised to enable the public to know to what they are committed in law courts and land conveyancing?

Mr. Haughey: The Deputy will appreciate that there are several different matters involved. First of all, the question deals entirely with the cost of legal proceedings and the possibility of the setting out of a scale of charges to be adhered to by members of the legal profession. The Deputy will appreciate that is only one aspect. In so far as those charges are concerned, they are very well regulated, either by rules of court or otherwise. They are known or should be known and can be made known to prospective litigants. There are of course other factors which affect the cost of legal proceedings. Those factors, I may say, are not mentioned by the Deputy in his question but it is very difficult to make known in advance what the cost of any particular legal proceedings will be because one of the factors is the amount of time they will take. Having said all that, I want to inform the Deputy that the Programme of Law Reform in which my Department is engaged, and as set out in the White Paper published recently, envisages the setting up of a committee to investigate the procedure and practices in

the courts, with the view to seeing whether or not the cost of litigation could be reduced for litigants. I hope that committee will be set up shortly and I think we can be reasonably hopeful that arising out of its work some reduction in legal costs generally may be able to be made.

MR. SHERWIN: There is a need for some sort of scale because I had a case where I got a bill for £40.

AN LEAS-CHEANN COMHAIRLE: Perhaps the Deputy will put a question?

MR. SHERWIN: Is the Minister aware that I got a demand for £40 and when I went to the Taxing Master, it was reduced to £20? Not everyone is aware of the Taxing Master and therefore the simple people are taken advantage of.

MR. M. F. MURPHY: Will the Minister indicate what action is to be taken by a person who feels he has been charged excessively for a particular legal business he has had, let it be a law case or a payment for the discharge of equities, title or any such incidental matters, the conveyancing of land or premises? What steps is he to take if the bill of costs frightens him, as in some cases it does, if he believes it is excessive? I should like the Minister to make a statement on that matter.

MR. HAUGHEY: There are two main avenues of approach open to him, if he feels he has been charged in this way. Firstly, as Deputy Sherwin mentioned, there is the Taxing Master. A client can always ask to have his bill of costs taxed and there is a procedure set out for that and then the correct fees will be determined by the Taxing Master. Alternatively, if it is not a matter which comes within the ambit of the Taxing Master, one of the courses open to the client is to refer the matter to the Incorporated Law Society which has general jurisdiction over the behaviour of solicitors.

MR. SHERWIN: This is an important matter."

(*Dáil Debates*, 15th February, 1962.)

## MEDICO-LEGAL SOCIETY OF IRELAND

Mr. Justice Walsh delivered a lecture on the "Preliminary Investigation of Indictable Offences" to the Medico-Legal Society in the Royal Hibernian Hotel, Dublin, on Thursday, 22nd February, 1962. The learned lecturer traced the history of justices of the peace and of the grand jury since the Middle Ages; he pointed out that there were about 20,000 justices of the peace in England, most of them laymen, who were assisted by their clerk who was a trained lawyer. Their main purpose as regards indictable offences was to hear the evidence put forward by the prosecution and to decide whether a *prima facie* case had been established to return the accused for trial to a higher court. For a long time counsel for the accused could not examine witnesses without leave, the investigation could be held in private at the discretion of the magistrates and only after 1848 did a prisoner become entitled to get copies of the indictment and lists of prosecution witnesses. Since 1924 these investigations were now held in public before a trained lawyer, the District Justice. The learned lecturer then reviewed some recent decisions arising from the power of a District Justice to return the accused for trial or to refuse informations in a preliminary investigation—Attorney-General *v.* Colleary (1935—69 I.L.T.R. 233) The State (Attorney General) *v.* Judge Roe (1951 I.R. 172) and The People *v.* Boggan (1958 I.R. 67). The lecturer then compared the Continental inquisitorial system, and the Irish accusatorial system and suggested that the Continental system was not suited to the Irish temperament. Mr. Justice Davitt pointed out that the preliminary investigation provided a screening where the accused was informed of the nature of the case he would have to answer and was confronted with the prosecution witnesses whose evidence, taken down in writing, could not subsequently be altered; these were invaluable safeguards. Mr. Edward Fahy, B.L., stated that there were unwarrantable delays in the District Court, due, in his opinion, to the archaic system of taking depositions by long hand; more Justices should be appointed in Dublin, because justice, to be effective, should be speedy. Some system of recording device for depositions should be considered. Mr. Herman Good stated that in his opinion a decision of a Justice was a judicial determination. Skilled personnel should be employed in taking depositions, as at present much unnecessary matter was inserted.

Mr. Justice Kenny suggested that depositions in the District Court could be taken in the form of sworn affidavits. Dr. Hickey (State Pathologist), Mr. O'Donovan (Chief State Solicitor), Mr. Eoin O'Mahony, B.L. and Mr. T. D. McLoughlin also spoke.

Mr. Justice Walsh, in replying to the discussion, favoured affidavit evidence provided the accused was entitled to hear and see the witnesses first; he thought the best recording processes were either the dictaphone memo-belt or the shorthand machine which could not be altered. The lecturer thought that all preliminary investigations should be in private unless the defence specifically requested them to be in public. Mr. Justice Murnaghan, President of the Society, presided.

## THE DUBLIN SOLICITORS' BAR ASSOCIATION

A joint meeting was held with members of the Belfast Solicitors' Bar Association at Dundalk,

when matters of mutual interest were discussed, and in particular, legal aid.

A sub-committee of the Council has prepared a report on the question of the necessity for adjudication of leases. Copies of this report are being sent to the Incorporated Law Society, and to the various solicitors acting for lending bodies.

At the request of the Ground Rents Commission, a report was prepared by the Council, and sent to the secretary of the Commission. Two members of the Council will attend at the sitting of the Commission, to give evidence on the report if required.

In view of the small response to the circular letter regarding the proposed trip to New York, the venture is not being proceeded with.

## THE SOCIETY'S CALENDAR AND LAW DIRECTORY

The Publications Committee have under consideration the question of revising and reprinting the calendar with a view to making it more attractive and useful. Bar Associations and individual members are invited to consider the matter and to communicate to the Secretary any suggestions for the improvement of the publication. All suggestions received will be considered carefully by the committee.

The Council wish to apologise to members who ordered the 1962 Calendar for the delay in publication. This was due to printing difficulties and the delay was completely outside the Society's control. The calendar is now available for those who have placed orders and any member wishing to obtain a copy who has not placed an order may, by applying to the Society, have his name put down for any surplus copies available after orders have been fulfilled.

## NO APPEARANCE WHEN CASE CALLED

*The Times* for March 7th, contains a report of a statement made from the Bench by Lord Chief Justice Parker. His lordship said that solicitors should carefully watch the weekly and daily lists as it had come to his attention that four cases had recently been called on before judges trying non-jury cases and that neither a solicitor nor counsel had appeared on either side. These cases had all appeared in the weekly warned list, the daily warned list and the day's cause list. His lordship stated that in future those who appeared to be in default would be ordered personally to pay any costs thrown away.

His lordship also said that recently several cases had appeared in the day's cause list when they had been settled some months before that. It was essential for solicitors to inform the clerk in charge of the lists of any settlement and also of the possible length of cases to ensure the proper administration of the work of the courts. This was the responsibility of both solicitors and counsel.

## SOLICITORS WORK TO RULE

A newspaper report of March 1st from Glasgow indicates that twenty-six solicitors operating the Poor's Roll at Glasgow Sheriff's Court began to work to rule on March 1st. They are doing so against the decision of the Government that they cannot introduce a Bill in the present session of Parliament to establish a comprehensive system of legal aid in criminal cases in Scotland as recommended by the Guthrie Report. Legal aid in criminal cases in Scotland originated in medieval times. In distant and more leisured times it was considered no unfair burden on the profession that a number of solicitors in each locality should be appointed on a roster to take on the duties of representing the poor. In more recent times the Treasury allocated an annual sum of £8,000 which was distributed by the Law Society among the solicitors so acting on a, more or less, *quantum mernit* basis. Applications for legal aid became so numerous that the duty of representing the poor, or allegedly poor, became an impossible burden. Furthermore many persons seeking legal aid were found or suspected to have sufficient means to pay for legal assistance. A committee under the chairmanship of Lord Guthrie investigated the position and drew up a report recommending that the present system should be scrapped and replaced by a comprehensive legal aid system in criminal cases. The net cost would be about £250,000 and the Government were slow to implement the report.

On March 1st, none of the solicitors who take on the Poor's Roll on a rota appeared for prisoners at the Summary Court. The work to rule takes the form of adhering strictly to what they consider is the meaning of the terms of the schedule to the Sheriff's Court (Scotland) Act 1907, by refusing to give free legal representation to any person on a criminal charge until that person produces a sworn affidavit that he or she is unable to pay for legal representation.

Procedure at the Summary Court was faster than usual. Only three of the twenty-four persons who appeared on charges had instructed a solicitor to represent them. The others, although informed by Sheriff J. Bayne that he would grant them an adjournment so that they could obtain a solicitor, did not ask for the services of Poor's Roll solicitors.

## ROAD TRAFFIC ACT, 1961 (COMMENCEMENT) ORDER, 1962

The above Order, which was signed on the 31st January, 1962, brings into force certain sections of the Road Traffic Act, 1961; namely section 14; all of Part VI (relating to insurance) and section 118. The corresponding provisions in the Road Traffic Act, 1933, are repealed. The sections already referred to will come into force on the 1st May, 1962. The Order may be obtained from the Government Publications Office, Henry Street Arcade, Dublin, price 4d.; postage 2d.

## ROAD TRAFFIC (COMPULSORY INSURANCE) REGULATIONS, 1962

The above Order was signed on the 31st January, 1962, and it contains regulations to implement Part VI of the Road Traffic Act, 1961, dealing with compulsory insurance of mechanically propelled vehicles. The order may be obtained from the Government Publications Office, Henry Street Arcade, Dublin, price 1/6d., postage 2d.

## EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 6th and 7th days of February, the following candidates passed :—

Rapheline A. Hoey, Rory O'Beirne, Leonie M. M. O'Hagan, Brian G. McD. Taylor.

6 candidates attended; 4 passed.

At examinations held on the 2nd February under the Solicitors Act, 1954, the following candidates passed :—

*First Examination in Irish :* John F. M. Darley, Maeve J. Durcan, Brian Greene, Walter M. Halley, John Bernard Harte, Anthony G. Hayes, Raphaeline A. Hoey, Eugene P. Hunt (B.A., N.U.I.), Helen M. E. Keenan (B.A., N.U.I.), Mary Carmel Kelly, Michael Martin, John H. Matthews, Maire Noonan, Rory O'Beirne, Hugh B. J. O'Donnell, Patrick T. O'Donnell, Leonie M. M. O'Hagan, Eleanor A. M. O'Rourke, David John Strahan, Brian G. McD. Taylor.

21 candidates attended; 20 passed.

*Second Examination in Irish :* Brian A. Carroll, Michael G. Daly, Fintan Earley (B.C.L.), Bartholomew J. Flynn, John F. P. Glynn (B.A., N.U.I.), Daniel J. Hamilton, Michael P. Houlihan, William E. Leahy, Garrett P. Lombard, Giles F. Montgomery, Denis M. Murnaghan, Bryan M. E. McMahon, Michael G. L. O'Connell, Thomas A. O'Donnell, Michael V. O'Mahony, Niall Patrick O'Neill, Patrick J. O'Shea, Michael Purcell, Sylvester W. Riordan (B.A., N.U.I.), Thomas C. Smyth, Norman T. J. Spendlove (M.A., B.A.I., Dip. Geog.), James Gregory Tynan, Edmond M. Veale.

23 candidates attended; 23 passed.

At the book-keeping examination for apprentices to solicitors held on the 26th February, the following passed the examination :

*Passed with Merit :* 1. Brian J. Gardiner; 2. Bryan M. E. McMahon; 3. Anthony C. Gore-Grimes (B.A.); 4. Bryan F. Lynch; 5. Michael V. O'Mahony; 6. James A. Harte.

*Passed :* Charles J. Bergin, Bruce F. St. John Blake (B.A., LL.B.), Thomas O. Boyle (B.C.L.), Seán de Burca (B.A., B.C.L.), Robert Cussen, Robert A. Downes, Patrick J. Farrell (B.C.L.), Michael P. Houlihan, David O'N. Kiely, William J. P. Kirwan, Denis M. McDowell (B.C.L.), Patrick J. J. MacGrath, Michael G. L. O'Connell, Thomas C. Smyth, James Gregory Tynan, Peter John Woods.

29 candidates attended; 22 passed.

At the First Law Examination for apprentices to solicitors held on the 5th and 6th days of February, the following passed the examination : John G. Black, Brendan P. Byrne, Arthur F. Callanan, Stuart L. Cosgrave, Ian Q. Crivon, Thomas D. Durcan, Laurence A. Farrell, John P. Gaffney, Francis P. Gleeson, James C. Glynn, Michael B. Malone, Robert T. R. McDowell (B.A.), Brian M. McMahon, Patrick F. O'Donnell, Bryan L. M. O'Flaherty.

29 candidates attended; 15 passed.

The Centenary Prize was not awarded.

At the Second Law Examination for apprentices to solicitors held on the 5th and 6th days of February, the following passed the examination :

*Passed with Merit :* 1. Anthony C. Gore-Grimes (B.A.); 2. Michael G. Dickson (B.A. (Mod.)); 3. Joseph L. Dundon.

*Passed :* Bruce F. St. John Blake (B.A., LL.B.), Patrick J. Connellan, Robert Cussen (B.C.L.), Thomas A. Dillon-Leetch (B.C.L.), Fintan Earley (B.C.L.), Brian J. Gardiner (B.C.L.), Mary Grace Hanna (B.C.L., LL.B.), Delphine Kelly (B.A.), William J. P. Kirwan, Dermot V. Loftus, Neil M. Matthews, James Monahan (B.C.L.), James R. O'Donnell, Carmel M. O'Halloran.

28 candidates attended; 17 passed.

At the Third Law Examination for apprentices to solicitors held on the 7th, 8th and 9th days of February, the following passed the examination :

*Passed with Merit :* 1. James L. O'Keeffe; 2. Francis J. O'Flynn.

*Passed :* Fintan Earley (B.C.L.), William S. Geraghty (B.A., LL.B.), Edward R. A. Glover, Lewis J. Goldberg, Anthony C. Gore-Grimes

(B.A.), Denis M. McDowell (B.C.L.), Desmond J. O'Malley (B.C.L.), David A. Potterton, Máire Nic Shiomoin (B.Comm.), Thomas K. Smith (B.C.L., LL.B.), Malcolm B. Yaffe (B.A., LL.B.).

20 candidates attended; 13 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded a Gold Medal to James L. O'Keeffe, a Silver Medal to Francis J. O'Flynn and Special Certificates to Anthony C. Gore-Grimes, B.A., and Desmond J. O'Malley, B.C.L.

## DECISIONS OF PROFESSIONAL INTEREST

*Bankruptcy—administration of insolvent estate—relationship between stockbroker and client—proceeds of sale of securities standing to credit of deceased stockbroker—whether proof of debt on behalf of cestui que trust constitutes election—Irish Bankrupt and Insolvent Act*, 1857, *section* 22.

An executor sold securities belonging to the estate which he was administering and they realised the sum of £4,759 4s. 9d. They were sold through a stockbroker who subsequently died and whose estate was found to be insolvent. The deceased stockbroker's estate was being administered in bankruptcy under section 21 of the Bankruptcy Amendment Act (Northern Ireland), 1929, and at the date of his death there was standing to his credit in a bank the sum of £4,239 8s. 9d., which represented part of the proceeds of the sale. This was not immediately evident and in the meantime the executor had proved for the full debt of £4,759 4s. 9d. When it transpired that the amount standing to the credit of the deceased in the bank in fact represented a part of the proceeds of the sale the executor sought to amend his proof of debt and to prove for the balance only, namely £519 16s. 0d. He contended that the sum of £4,239 8s. 9d., standing to the deceased stockbroker's credit being trust money did not vest in the Official Assignee. His application was opposed by the Official Assignee who, while not denying that the money was traceable to the sale of the securities and was therefore impressed with a trust, said that the applicant, by proving for a debt, had made an election to treat it as such and, consequently, to take his chance on whatever dividend would come to him with the other creditors.

It was held by McVeigh J. that the proving of the debt did not amount to any such election by the applicant and leave was given to amend as applied for. The learned judge said that he could not hold that the act of proving the debt made the trust money vest in the Official Assignee when it would not have done so otherwise. In the circumstances the other creditors of a deceased were at no real loss. (In re Calvert [1961] N.I., page 58.)

*Education—negligence—stupid prank.*

In Perry *v.* King Alfred School Society (October 27, 1961) a girl was injured at school when a heavy radiator on which she was sitting fell on her after two other pupils had tried to tip her off. The Court of Appeal (Sellers, Upjohn and Diplock L.JJ.) held, dismissing an appeal from a finding that the school was not negligent, that it was no part of the duty of a school to forsee every act of stupidity that might take place and that the appellants had failed to show (1) that the school should have been aware that the heater was inherently dangerous; (2) that they knew that this girl and others like her were in the habit of playing with the radiators; and (3) they ought to have known that some children were in the habit of rocking the radiators. (*The Guardian*, October 28, 1961.)

*Fraud—misrepresentation and undue influence—undue influence—Presumption—agreement between engaged couple.*

In Zamet *v.* Hyman (October 18, 1961) on August 4, 1955, an elderly widow engaged to an elderly widower executed at the office of her fiance's solicitor an agreement under seal, by which she relinquished all rights which she might have in her prospective husband's estate under the relevant statutory provisions, in consideration for which she would receive £600 on his death. The solicitor explained to her the effect of the Inheritance (Family Provision) Act, 1938, and the Intestates' Estates Act, 1952, but no mention was made of the value of the prospective husband's estate. The marriage took place three days later. In July, 1958, the husband died intestate, leaving an estate of about £10,000. In proceedings to determine whether the agreement was binding on the widow, the Court of Appeal (Lord Evershed M.R., Donovan and Danckwerts L.JJ.), affirming Pennycuick J., held that the document executed by the widow was so seriously one-sided that it required strong proof, if it was to stand, that when she executed it she fully understood its significance. The onus on those claiming that the document was valid and binding of rebutting the presumption of undue influence by the deceased had not been discharged, and that, accordingly, the document should be delivered up for cancellation. (1961 All E.R.—III—933.

*Solicitors—negligence—purchase of annuity just before death.*

In Dunn *v.* Fairs, Blissard Barnes & Stone (October 26, 1961) the plaintiff was the administrator

of the estate of a woman who died of cancer in hospital. He alleged that just before her death the defendant solicitors had negligently caused or permitted the deceased to purchase an annuity of £156 a year for £1,363, and that her estate was thereby deprived of that sum of money. Barry J. held that (1) the defendants were not negligent in relation to the deceased as they were faced with the dilemma of having to proceed with the purchase or take action which would have led the deceased to suspect that she was suffering from an incurable disease; they were entitled to assume that at the relevant time the doctors did not consider it uneconomic to invest in such an annuity; (2) the defendants owed no duty to the present plaintiff. (*The Times*, October 27, 1961.)

*Vendor and purchaser—contract for sale—completion date.* In Smith *v.* Mansi (October 20, 1961) Wilberforce J. held that where a vendor and purchaser of property fail to agree on the completion date for the sale there is no legally binding contract even though the parties have agreed on every other necessary term in the agreement. (*The Guardian*, October 21, 1961.)

*Crown proceedings—liability of Secretary of State—negligence to prisoner.* (*Crown Proceedings Act*, 1947 (10 & 11 *Geo.* 6, *c.* 44), *s.* 2.)

The pursuer, at the time a prisoner, was injured when he fell from a scaffolding while working in prison. He brought an action for negligence against the Secretary of State for Scotland on the following grounds: (1) that the accident was caused through the fault of a fellow-prisoner, and (2) breach of the defender's statutory duty to provide safe equipment. Subsequently after the expiry of the limitation period, the pursuer amended the pleading by inserting as a futher cause of action, the defender's breach of the common law duty to take reasonable care of the prisoners under his control. The Sheriff's Court of Midlothian held that the amendment was good in that it did not radically alter the basis of the action. It also held that the action failed on grounds (1) and (2) because the master and servant relationship did not exist between the parties, and failed on the amendment because no specific averment of fault had been made against the defender or his servants. Keatings *v.* Secretary of State for Scotland (1961, 77 Sh. Ct. Rep. 113.)

*Tenant for life—powers of—leasing powers.*

A tenant for life has no power to grant a lease of the settled land together with property of his own, at any rate where there is no provision for apportionment of the rent. He may enter into an executory agreement for the grant of a lease, as opposed to an agreement for a lease which in equity is equivalent to a lease, provided that the lease will be in conformity with the Settled Land Act when it is granted.

The tenant for life of certain properties in London agreed to grant three leases for terms of 99 years commencing not later than December, 1972. One of the leases was to include property of which he was the owner in fee. The rent payable was to be £17,500 per annum, which exceeded one-fifth of the aggregate annual value of all the properties. S. of the Settled Land Act, 1888, provides: "Save as hereinafter provided, every lease—(i) shall be by deed, and be made to take effect in possession not later than twelve months after its date . . ." S. (3) provides: "Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner: Provided that . . . (iii) the rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed." Held, (1) that in the absence of a provision for apportionment of the rent between his own property and the settled land, he had no power to grant a lease including both; (2) that it was within his power to agree to grant leases to commence at a date more than twelve months after the date of the agreement; (3) that he had no power to grant the leases at the rent proposed, as it would be impossible to apportion the rents in such a way as to ensure that each property was let at a rent less than one-fifth of the full annual value. Re Rycroft's Settlement, Rycroft *v.* Rycroft (1961, 3 W.L.R. 890; 105 S.J. 649, Wilberforce J.)

*Memorandum.* (*Statute of Frauds* (*Ireland*), 1695.)

In Godley *v.* Power (1957) 95 I.L.T.R. 135 the plaintiff claimed that the defendant had orally agreed to purchase from him certain licensed premises, known as "Toby Jug", Cappoquin, and certain articles therein. On the defendant attempting to withdraw from the agreement the plaintiff brought an action for specific perofrmance and for breach of contract. At the hearing the defendant's solicitor testified that the defendant had called with him and had instructed him that he had purchased the premises for £2,250. In the defendant's presence his solicitor telephoned the plaintiff's solicitor and later wrote to him confirming that the defendant had agreed to purchase the premises at the figure stated and that the vendor would be liable for one-half of the auctioneer's fees and asking him to have an inventory of articles included in the agreement for sale. The Supreme Court in Éire (Kingsmill-Moore, O'Daly and Martin Maguire JJ; Maguire C.J. and Lavery J. dissenting, reversing Dixon J.) held that a contract had been concluded between the parties and that

the letter written by the defendant's solicitor was a sufficient note or memorandum in writing to satisfy the Statute of Frauds.

*Criminal Law—first offence.*

In R. *v.* Lloyd (October 30, 1961) the Court of Criminal Appeal (Glyn-Jones, Elwes and Widgery JJ.) held, dismissing an appeal against a sentence of 12 months' imprisonment, that a first offender cannot expect to be put on probation as a matter of course; if the offence merits imprisonment in all the circumstances then the sentencing court is fully entitled to impose a prison sentence. (*The Guardian*, October 31, 1961.)

*Evidence—expert witness.*

In Clark *v.* Ryan (1960) 103 Commonwealth L.R. 486 the High Court of Australia held that in an action for damages for personal injuries caused by a road accident, expert evidence tendered by a witness purporting to be "skilled in the diagnosis of road accidents" was inadmissible as the witness was not experienced in the particular type of accident concerned and the jury could have decided on the factual evidence alone, unassisted by expert evidence. An appellate court may reverse the decision of a trial court as to the admissibility of expert evidence where there is no evidence that the witness was qualified as an expert or where the question of his competency was decided upon erroneous legal standards.

## THE REGISTRY

IN THE GOODS OF Madge McGrath, "Rushwee," St. Michael's Road, Tipperary, Spinster, Deceased, who died at St. Patrick's Hospital, Cashel, County Tipperary, on the 13th Day of February, 1962.

Will any person having any information about a Will of the above named Deceased, please communicate with Kieran T. Flynn, Solicitor, Tipperary.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 1st day of March, 1962.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, John Francis Regan. Folio number 1837, County Longford. Lands of Aghnashingan containing 6a. 3r. 6p., and lands of Curry containing 13a. 2r. 30p., both situate in the Barony of Moydow.

2. Registered Owner, John Gately (Junior). Folio number 8309, County Roscommon. Lands of Feevagh containing 31a. 2r. 25p., and lands of Cartronkilly containing 0a. 3r. 39p.

3. Registered Owner, Samuel Wilkinson. Folio Number 9085, County Tipperary. Lands of Mackanagh Lower containing 78a. 3r. 8p., situate in the Barony of Clanwilliam.

4. Registered Owner, John Thomas Sainsbury. Folio number 118LSD, City of Dublin. Plot of ground with dwellinghouse thereon known as number 11 St. Anthony's Road, situate in the County Borough of Dublin.

5. Registered Owner, Michael J. Condon. Folio number 21604, County Cork. Lands of Ballymore, containing 59a. 3r. 14p., situate in the Barony of Carberry East, East Division.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

The President in the chair. Also present, Messrs. Brendan T. Walsh, John R. Halpin, Francis J. Lanigan, Thomas A. O'Reilly, John J. Nash, George A. Nolan, John Maher, Daniel J. O'Connor, James R. C. Green, Reginald J. Nolan, Edward Treacy, T. V. O'Connor, Charles Hyland, James J. O'Connor, D. B. Gilmore, Ralph J. Walker, Eunan McCarron, R. A. French, Peter D. M. Prentice, Desmond Moran, William A. Tormey, Augustus Cullen, W. A. Osborne, Brendan A. McGrath, J. Bernard Mac Garry, Robert McD. Taylor, Peter E. O'Connell, Gerald Y. Goldberg, Cornelius J. Daly, James W. O'Donovan, Desmond J. Collins, Patrick Noonan.

The following was among the business transacted :

**Lecturer in Land Law and Conveyancing**

The Council appointed Mr. John F. Buckley, B.A., LL.B., to be the Society's lecturer in Land Law and Conveyancing in place of Mr. R. W. Johnston who resigned. Mr. Buckley was admitted in Trinity Sittings 1956 and he practises at 8 Clare Street, Dublin.

**Five day week in solicitors' and other offices**

The Council considered a letter from a member who suggested that in view of the fact that some

solicitors' offices were now operating a five day week Saturday should be a *dies non* for the service of court proceedings as Sunday is. The Council decided that no general recommendation should be issued on the subject but that the Society's representative on the Superior Court Rules Committee should be asked to enquire from the committee whether it would be possible to introduce a rule providing that where the last day for serving any document or taking any steps expires on a Saturday, the period should be extended so as to expire on the following Monday.

### Lecture by a solicitor

A member enquired if there would be any objection to his delivering a lecture to a meeting of the Superiors of certain religious orders on the subject of the advantages or otherwise of incorporation for religious communities for the purpose of holding property. Member would not be getting any fee for delivering the lecture and if the lecture is published his name will not appear over it. The Council on a report from a committee stated that there would be no objection to member giving the lecture referred to.

### Costs of approving draft memorial of a lease where the lease is registered by the lessee's solicitor

A member acted for the lessors of property. A new lease was negotiated and on the 21st July, 1960 the agents for the lessor wrote to the lessee's solicitor quoting the terms of the new lease and stating that the lessee would be responsible for the costs of the lessor's solicitor in connection with a new lease and in connection with registering the same. The lessee's solicitors agreed in writing to the terms of this letter and in due course returned the draft lease approved of and stated that they would have it registered on their client's signature and would prepare a memorial in due course. Member requested that a draft memorial be submitted for approval and the lessee's solicitors refused to do this. Opinion 38 of the Council states that it is the right of the solicitor for a lessee, should he so desire, in the absence of agreement to the contrary, to prepare the memorial and register the lease at the expense of his client. Opinion 39 states that where the memorial for registering a lease is prepared by the solicitor for the lessee, the solicitor for the lessor is entitled to be paid by the lessee the costs of approving of and obtaining the execution of a memorial under Schedule II in addition to all other charges to which he may be entitled. On the basis that the lessee's solicitors were entitled to register the lease as there was no agreement to the contrary the Council, on a report from a committee, were of opinion that the lessee's solicitors should submit a draft memorial for approval by the lessor's solicitors and that the lessee was liable for the costs of the lessor's solicitors of approving the draft memorial, chargeable under Schedule II.

## ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) FEES RULES, 1962

The above order was signed by the Minister for Finance on the 23rd March, 1962 and it has effect as regards applications made under Rule 2 of the Acquisition of Land (Assessment of Compensation) Fees Rules 1920 made after the 31st March, 1962 and as respects awards of and hearings before arbitrators appointed pursuant to such applications made after that date. The order revises the fees chargeable for the services of the property arbitrator appointed under the Acquisition of Land(Assessment of Compensation) Act 1919. The order is available from the Government Publication Office, Henry Street Arcade, Dublin (price 4d., postage 2d. extra.).

## EMPLOYMENT REGULATION ORDER (LAW CLERKS JOINT LABOUR COMMITTEE) 1962

The above order was signed on the 29th March, 1962 and it fixes new minimum rates of pay as and from the 9th April, 1962 for certain workers employed in solicitors' offices. The order is available from the Government Publications Office, Henry Street Arcade, Dublin (price 9d., postage 2d. extra.)

## CORRECTION

In the CIRCULAR LETTER sent to all members with the March issue of THE GAZETTE it was stated that the recent Government White Paper on Law Reform was available from the Government Publications Office, price 4d. (postage 2d. extra.). This is not correct as it should have read " price 1/6d. (postage 2d. extra) ". Any members who have ordered and have forwarded cash on the basis that the price was 4d. are requested to forward the balance in order to enable the Government Publications Office to deal with their orders.

## MEDICO-LEGAL SOCIETY OF IRELAND

The last meeting of the Society for the current Session was held in the Royal Hibernian Hotel on Monday 26th March, 1962 when the Earl of Longford, P.C., gave an address on " The Theory of Punishment ". In England, there were approximately three times as many criminals as in Ireland, and three times as many crimes were committed as before the Second World War; there were no less than 29,000 convicted prisoners now. There were two schools of thought—those who regarded punishment

as too lenient, and those who thought the penal system was too harsh. The three necessary elements in punishment were Deterrence (discouraging others), Retribution (a link between the heinousness of the crime and the severity of the punishment) and Restitution (Restoring to a victim as far as possible what has been taken away). As Pope Pius XII said, retributive punishment should help towards rehabilitation, yet one cannot be rehabilitated until one recognises one's sin. While the prisoner should be prepared to accept the justice of the punishment, at the same time the judges and the public should identify themselves more actively with the future of the prisoner. The Chief Justice thought that, in assessing punishment, judges were laymen and that as far as possible they should interest themselves in the future welfare of the prisoners whom they have sentenced; the community should help ex-prisoners in securing employment. It was disturbing that on the whole imprisonment had no beneficial effect on prisoners; perhaps the idea of a week-end prison to enable prisoners to purge short term sentences could be considered. On the Continent, the injured party could take an action for damages for murder, and a study of penology by law students should be actively considered.

Mr. Edward Fahy, B.L., stated that he knew from personal experience that the best detectives in Dublin had left the force, and that consequently the number of crimes now detected had diminished considerably. The major cause of juvenile delinquency was lack of parental control, and this applied as much to rich as to poor parents. When visiting the Malone Institute, Belfast, he had been impressed by the letters which the ex-borstal boys had written to the Governor. Dr. Keith Simpson stressed that many habitual criminals were mental patients who required essential treatment. In the Welfare State, too many people had obtained big pay packets who did not know how to make the best use of the money.

Dr. Eustace, Rev. Professor O'Doherty, Dr. Meenan and Mr. Donough O'Donovan also spoke. Mr. Justice Murnaghan, in summing up, stated that in most cases the mental condition of the prisoner towards his punishment was inalterable. In his view the prevalence of divorce in England had lowered the moral outlook of the people, and was responsible for the great increase in crime. The practical application of imposing punishment was the most difficult task a judge had to perform, as so many factors, such as the effect on the prisoner's family, had to be considered.

## APPELLATE PROCEDURE IN ENGLAND

"The Times" for Friday March 23rd reports that the Master of the Rolls presiding in the Court of Appeal announced that in view of comments by United States jurists on the English appellate system immediate steps would be taken by way of experiment to reduce the time taken in the hearing of appeals by the court. For the purposes of the experiment each member of the court will have read (1) the pleadings or the originating summons (or their equivalent), (2) the order under appeal, (3) the notice of appeal and respondent's notice (if any) and (4) the judgment of the trial judge together with any cases cited by him in his judgment. It was proposed to introduce the experiment in connection with the appeals tribunal list on the following week. The proposal was made with the full support of the Lord Chancellor and representatives of the Bar and the Law Society had been consulted. The visiting American jurists had drawn attention to the length of time so frequently taken up in the court by the reading of documents, including the judgment under appeal and the cases therein cited, and it had been pointed out that the result must often be substantially to increase the costs. It was not, however, intended to fetter in any way the right of counsel to full oral argument of their cases. (See also [1962] 1 All E.R. 897).

## CHARITIES ACT, 1961

The attention of members is drawn to the following important provisions of the Act:—

(1) In the Schedule to the Act, the whole of the Charitable Donations and Bequests (Ireland) Act 1844 is repealed as from the 1st July, 1961; this includes *inter alia* Section 16, and it is therefore no longer necessary to make use of an "O'Hagan clause" in a will in order that a charitable donation or devise will be valid if made within three months of the death of the testator.

(2) Under Section 29 of the Charities Act 1961, the powers given to the Commissioners to frame cy-pres schemes in cases where the charitable intention of the testator cannot be carried out are considerably widened; the Commissioners may henceforth direct this intention to be carried out with due regard to the spirit of the gift, if the charitable gift does not exceed £5,000 and for this purpose the value of the land is to be taken as 50 times the poor law valuation.

(3) Under Section 32 of the 1961 Act, the Commissioners are henceforth given power to invest charity funds under their control in securities not authorised by law or not authorised by the trust instrument, and the Commissioners may permit ordinary charity trustees to do likewise. Investments of charity funds however will be confined generally to Irish securities.

(4) By Section 34, the Commissioners may, if they think it advantageous, authorise a charity (*a*) to sell land, or (*b*) to exchange it for other land, or (*c*) to surrender a lease of the land. While previous investments are not affected, it is to be noted that the Board may not only sanction present sales, but may also give retrospective sanction to a sale made without their authority.

(5) By Section 37, special proposals may be laid before the Commissioners relating to specified works, such as the digging of stone and gravel, the cutting of timber, the laying out of new roads, and the making of drains, by the trustees of a charity; even if the specified act is unauthorised by the trust, the Commissioners may nevertheless sanction it, if they consider it would be beneficial to the charity, and may order monies to be applied towards it; they may also authorise retrospective works.

(6) The old rule that where a trustee has an absolute power of selection between the objects, the gift will fail as an imperfect trust, will no longer apply; and henceforth, in the case of a charity, a charitable intention will be carried into effect by means of a scheme framed by the court or the Commissioners.

(7) Section 45 provides that in determining whether or not a gift for the purpose of the advancement of religion is a valid charitable gift it shall be conclusively presumed that the purpose includes and will occasion public benefit. All valid charitable gifts for the purpose of the advancement of religion which take effect after 1st January, 1960 shall have effect and are to be construed as respects their having effect in accordance with the laws, canons, ordinances and tenets of the religion concerned.

(8) Section 46 sets out the conditions under which the High Court or the Commissioners may make schemes for the establishment of common investment funds of several charities.

(9) Section 47 widens considerably the circumstances in which a charitable gift may henceforth be applied cy-pres.

(10) By Section 49, in the case of a gift taking effect after the 1st January, 1960 for purposes which are deemed to include charitable and non-charitable objects, the court shall be deemed to give effect to its terms so as to exclude the non-charitable objects, and the purpose of the whole gift will henceforth be treated as charitable, unless the charitable objects are apportioned from the non-charitable ones, or where the non-charitable objects are not identifiable.

(11) Henceforth, by Section 50, gifts for graves, tombs and memorials, if not exceeding an income of £60 per annum, or a capital of £1,000 whether inside or outside a church, are to be deemed charitable, if made after the 1st July, 1961.

The Act came into force on the 1st July, 1961.

## PRACTISING CERTIFICATE AND MEMBERSHIP EXPENSES

**Allowances against Schedule E Assessments**

The Revenue Commissioners have given the following ruling. A solicitor-employee is allowed the costs of:—

(*a*) the annual registration fee on taking out a practising certificate.

(*b*) the compensation fund contribution.

(*c*) the £1 subscription to the Society.

as deductions under schedule E where he has to bear the costs of these items himself (Society's reference 1909. 1927).

## ESTATE DUTY OFFICE

The Council have recently received representations of delay in this office. It was stated that where for estate duty purposes an estate is over £40,000 there is a back log of at least six months in assessing residuary accounts for legacy duty. If there is substantial ground for complaint the Council will make representations in the proper quarters. Any members who have cause for complaint should submit particulars to the Secretary. Where a complaint of this kind is made to the Society it is essential to ensure that any delay is not due to omission or default on the part of the solicitor or executor.

## BOOK REVIEWS

*Justice* is a journal which has recently been brought out jointly by the law students of University College and Trinity College; it is a very well-produced journal containing many interesting contributions, notably a review of Dr. Kelly's book on *Fundamental Rights* by Charles Lysaght, and an article on emergency legislation by Donal Hamilton. This journal fills a real gap, as there is very little outlet for serious legal writing in the Republic. We hope that it will receive the warm support of the solicitor's profession and that it may long continue to be published. The Chief Justice in his Foreword has upheld the right of students to discuss problems of law. Like Mr. Lysaght's review, Mr. Hugh Geoghegan's article on *The Role of Equity in Irish Jurisprudence* is to be commended in that it may provoke discussion. *The annual subscription is 5/-.*

Mr. G. W. Rudd's book on *The English Legal System* has just been published by Messrs. Butterworth for £1 17s. 6d. It is a useful book of 263 pages

edited in 5 parts—History of the Legal System—The Legal Profession (Barristers and Solicitors)—Civil Procedure and Practice—Criminal Procedure—Evidence. Mr. Rudd, as a barrister who is a lecturer in the Practice of the Courts at the English Law Society's School of Law, is well versed in the intricacies of this subject, and, despite the difficulties, has succeeded in conveying the elements of court procedure to the student in as simple a manner as possible. It would be impossible to state concisely the amount of deep research that Mr. Rudd must have employed to state the principles so clearly and yet so concisely, and yet our learned author has succeeded in making his matter most readable. Although there are some differences between English and Irish Court practice, this need not deter the practitioner or the student from purchasing this well-produced and attractive book, because the practice that will be learned effortlessly will more than repay the cost.

## DECISIONS OF PROFESSIONAL INTEREST

*Failure by auctioneer to pay over money to client—Notice of proceedings to recover—Section 15 (1) Auctioneers and House Agents Act, 1947.*

Section 15(1) of the Auctioneers and House Agents Act 1947 provides that where a plaintiff recovers a judgment against a defendant for payment of money in discharge of a liability incurred by the defendant as a licensed auctioneer or house agent in relation to the receipt or payment of money, the High Court may, on application, order such money to be paid out to him (the plaintiff) from the statutory deposit maintained by the defendant. Where, however, the auctioneer has fulfilled his statutory obligation by means of a guarantee bond with an insurance company it is provided that if notice of the institution of the proceedings against the auctioneer is served *before the hearing of the proceedings* on the insurance company the Court may order the appropriate sum to be paid to the account of the Courts of Justice by the Company on behalf of the plaintiff. In a recent case an auctioneer had a bond from an insurance company and the plaintiff wrote a letter on April 30th, 1959 to the defendant company giving notice of intention to institute proceedings for the recovery of a sum of £138, the proceeds of a furniture sale, and that the claim would be against their insured, the auctioneer, and arising out of his default. A copy of the Civil Bill that it was intended to serve was enclosed and it was stated that it would be served on May 7th. The letter was formally acknowledged on June 3rd. The Civil Bill was duly served prior to the receipt of the acknowledgment. It was held by the Supreme Court (Maguire C. J., Lavery and Kingsmill-Moore J. J.) affirming the judgment of Budd, J., that the intention of the section was that the notice must be served *after* the institution of proceedings but *before* the hearing. Accordingly, the letter of the 30th April, 1959 having been sent before the institution of proceedings was not in compliance with the terms of Section 15 as it was only *notice of intention* to bring proceedings. Lavery J. dissented (In the Matter of the Auctioneers and House Agents Act, 1947; and In the Matter of Edward Nolan, an auctioneer; John Maher *v.* the Irish National Insurance Company, Ltd., I.L.T., March 31st, 1962, page 92).

*Exclusion of legal representation in arbitration—discretion of arbitrators.*

An application to set aside an award made by two arbitrators under the London Metal Exchange regulations was dismissed by McNair J., in Henry Bath & Son Ltd., *v.* Birgby Products. The regulations provided that neither counsel nor a solicitor should be briefed to appear for either party without the consent of the arbitrators. The applicants, Birgby Products, contended that the arbitrators had improperly exercised their discretion by excluding legal representation at the hearing. They had perused papers which had been delivered by Henry Bath & Son Ltd., and also a letter from Birgby Products' solicitors before excluding legal representation and had then decided to adhere to the normal practice laid down by the rules. They had not examined Birgby Products case before arriving at this decision. It was contended that if they had done so an issue of fraud would have been disclosed. His lordship held that although it was always open to the court to interfere with the discretion of the arbitrators where it had been improperly exercised, he did not think that there had been any improper or excessive exercise of discretion in this case. As long as an arbitrator exercises his discretion honestly and fairly the court would be very loth to interfere. Even assuming that there had been fairly raised some question of fraud, he did not accept the submission that in every case in which fraud was raised in an arbitration the parties were entitled, in the face of the normal practice of the trade in which those arbitrations took place, to be legally represented.

## DISCLOSURE OF STATEMENTS MADE TO POLICE

### Changes in Crown Privilege Claims

Two modifications of the procedure regarding disclosure in civil proceedings of statements made to the police in the course of a criminal investigation were announced by the Lord Chancellor in the House of Lords yesterday.

Lord Kilmuir recalled that in June, 1956, he made

a statement about Crown privilege for documents and oral evidence in the course of which he referred to the practice regarding the production in civil cases of statements made to the police, and indicated that in some cases it was necessary to make a claim of privilege for such statements.

The present position, he said yesterday, was that in general privilege was claimed by a Minister's certificate or affidavit for statements made to the police in the course of a criminal investigation unless the maker of the statement consented to production or had died.

He continued: "I am now able to announce two modifications of the practice: the first is that privilege will not be claimed in proceedings for malicious prosecution, wrongful arrest, and other proceedings against the police where the justification for the prosecution, arrest, or other police action is an issue in the proceedings, unless the disclosure of the statement would reveal the identity of a police informer."

"The second modification relates to the manner of claiming privilege for statements made to the police. The claim of privilege will still be made on the ground of public interest, but it is proposed that in future the claim should be made without a Minister's certificate or affidavit and that the court should be left to decide, having regard to the principles laid down in the cases whether the statements should be produced."

"In the case of tribunals other than courts, however, the claim will continue to be supported, where necessary, by a Minister's certificate or affidavit."

The Lord Chancellor added that nothing he had said was intended to apply to Scotland where the existing practice did not require any change.

Lord Silkin said this was not a far-reaching improvement but was a step in the right direction.

A body of practice was being gradually built up which it might be somewhat difficult for the legal practitioner to discover. What steps were being taken to give publicity to the new practice? Was it possible to incorporate it in some document such as a White Paper so that it would be readily available to those who on occasions might make use of it?

Lord Kilmuir said he would certainly consider all possible methods and those which seemed most helpful to the profession would be taken.

("The Times"—9th March, 1962.)

## LIBRARY ACQUISITIONS

*List of books ordered in Library to April*, 1962.

### A.—BOOKS PURCHASED OR ON ORDER

Barrett & McCann—*Law of the Labourers and the Labourers' question*, 1906; Bingham—*All the modern cases of negligence*, 1961; Boland and Sayer—*Oaths and Affirmations*, 2nd Edn., 1961.

Coleman—*An Employer's Duties at Common Law in Ireland*, 1961; Cordery—*Law relating to Solicitors* 5th Edn., 1961; *Criminal Case and Comment*, 1960; Crotty—*District Court Practice*, 1960 (second copy), Deane & Spurling—*Elements of Conveyancing*, 4th Edn., 1925; Delany—*The Law of Charities in Ireland*, 2nd Edn., 1962 (two copies).

*English and Empire Digest*—Replacements Volume 6 (Bills of Exchange and negotiable instruments) 1961; —Volume 7 (Bills of Sale to Burials), 1961; Volume 1 (Action to Agency), 1961; Volume 19 (Easements to Education), 1962; *English and Empire Digest*—Third cumulative supplement, 1961; Evans (Basil)—*Buying and selling a house*, 3rd Edn., 1961.

Fitzgerald (Garrett)—*State Sponsored Bodies*, 1961; Fleming—*Law of Torts*, 1961; Glover—*Registration of Ownership of Land in Ireland*, 1933; Grogan—*Administrative Tribunals in the Public Service*, 1961; Griffiths—*Law relating to Bankruptcy, Deeds of Arrangement, Receivership and Trusteeships*, 7th Edn., 1961.

Harrison and Hillman—*Book-keeping and Accountancy for Solicitors*, 1st Edn., 1960; Halsbury—*Laws of England*, Simonds Edn., Vol. 33 (Revenue and Road Traffic), 1961; Vol. 34 (Sale of Goods to Sheriffs), 1961; Vol. 35 (Shipping and Navigation), 1961; Vol. 36 (Solicitors to Telegraphs), 1961; Horan—*Courts of Justice Act*, 1924 (second copy); Horan—*Circuit Court Practice*, 1932 (second copy).

Incorporated Council of Law Reporting for England and Wales—*Consolidated Index of Law Reports and Weekly Law Reports*, 1951–60; Incorporated Council of Law reporting for Ireland—*Digest of reported Irish Law Cases* (1949–58), ed. R. A. Harrison (two copies), 1961; Ireland—*Commission on Emigration and Population Problems*, 1948–54; Ireland—*Commission on Income Taxation*, First to Sixth reports bound together, 1961; *Irish Catholic Directory*, 1962.

Jackson & Gossett—*Investigation of title*, 4th edn., 1922, extra copy; James—*Law of Torts*, 1960 (second copy); Jones—*British Nationality*, 1947; Josling—*Periods of Limitation*, 2nd Edn., 1960, Keeton—*Trial by Tribunal*, 1960; Kelly—*Fundamental rights in the Irish Law and Constitution*, 1961.

*Law List*, 1961.

Maurice (Spencer)—*The (English) Charities Act*, 1960; Mayne & McGregor—*Law of Damages*, 12th Edn., 1961; Maxwell—*The Interpretation of Statutes*, 11th Edn., 1962; Munkman—*Employer's Liability at Common Law*, 4th Edn., 1961.

Nathan—*Equity through the cases*, 4th Edn., 1961;

Nelson—*Probate Practice*, 1926 (two extra copies); *Northern Ireland Statutes*, 1960.

Palmer—*Company Guide*, 37th Edn., 1961; Preston & Colinvaux—*Laws of Insurance*, 2nd Edn., 1961; *Priestly Report on British Civil Service*, 1955.

Salmond—*Law of Torts*, 13th Edn., ed. Heuston, 1961 (two copies); Shillman—*Licensing Laws*, 1941 (extra copy); Slater—*Mercantile Law*, 14th Edn., 1961; Smith—*British Justice: The Scottish Contribution*, 1961; Smyth—*The Houses of the Oireachtas*, 1961; Snell—*Principles of Equity*, 25th Edn., ed. Megarry, 1960 (two copies); Strahan—*Law of Property*, 8th Edn., 1926 (extra copy); Street—*Law of Damages*, 1st Edn., 1962.

*Who's Who*, 1962; Wilson—*Law of Contracts* 1957 (second copy); *Writers' and Artists' Yearbook* 1962.

## B.—DONATIONS AND EXCHANGES

Canadian Embassy, Dublin—*Canada Law Reports*, 1961.

American Bar Association—Perry and Cooper, *Sources of our Liberties*, 1961.

International Bar Association—*7th Conference Report*, Cologne, July, 1958; *8th Conference Report*, Salzburg, July, 1960.

University of British Columbia, Vancouver—*Digest of British Columbia Law Reports* (63 vols.), in 3 *volumes*, vol. 1 (1916); vol. 2 (1933); and vol. 3 (1953).

Arthur Cox, Dublin—*Inaugural addresses of Solicitors' Apprentices' Debating Society*—(1) Laurence O'Neill on Devolution (1904), (2) Enda Healy on Women's Suffrage (1908), (3) Thomas Arkins on Industrial Disputes, (4) Ambrose Davoren on the Rights of Minorities (1912), and (5) Arthur Cox on "The Lawyer and Literature" (1913).

Law Society, London—*Catalogue of Library*, 1891 *Supplement to catalogue of Library*, 1906; Lund (Sir Thomas)—*Guide to Professional Conduct and Etiquette of Solicitors*, 1961; Pamphlets of Lectures on Torts, Contracts, Revenue Law, Landlord and Tenant, 1961.

Messrs. Whitney, Moore & Keller—Williams on Executors, 2 vols., 1893; Hallett-Fry on Income Tax, 1910; Davidson on Conveyancing, 1882; Williams on Real Property, 1892; and Norman, *Digest of Death duties*, vol. 2, 1912; Palmer, *Company Precedents*, 11th Edn., Part 3, 1912; Buckley, *Companies Act*, 8th Edn., 1902.

National Bank, Dublin—Ferguson, *Treatise on the Practice of Queen's Bench Common Pleas and Exchequer Divisions*, 2 vols., Dublin, 1942; *The Pleader's Assistant*, Dublin, 1895; Hayes, *Digest of Criminal Statute Law of Ireland*, Part 2, 2nd Edn., Dublin, 1842.

C. Gavan Duffy—Harrison-Moore, *The Constitution of the Commonwealth of Australia*, 2nd Edn., 1910; Kerr, *The Law of the Australian Constitution*, 1925; *Report of the Royal Commission on the Australian Constitution*, 1929; *Donoughmore Report on Minister's Power*, 1932; *Lee of Fareham Report of the Royal Commission on Police Powers and Procedure*, 1929; *Ross Report on Royal Commission of the Press*, 1947–1949; *Henderson Report on Royal Commission on Population*, 1949; *Morton of Henryton Report of Royal Commission on Marriage and Divorce*, 1949; *Wolfenden Report*, 1957; Keogh (Rev. Francis)—*The Development of the Law on Gifts for Masses in England and in Ireland* (Doctorate Theses in Canon Law, 1961).

Miscellaneous Donations—Kime's *Directory*, 1960; Queensland Law Society, Act of 1852 and Rules thereunder; *Cambridge Law School Handbook*, 1961; *Florida Bar Directory*, 1961; Abrahamson, *Trade Disputes Act, Strict Interpretation in Ireland*, 1961. Messrs. Butterworth, London—Harrison and Hillman, *Book-keeping and Accountancy for Solicitors*, 2nd Edn., 1962; Rudd—*The English Legal System*, 1962.

Miscellaneous Exchanges—National University of Ireland, *Calendar*, 1961; University of London, *Calendar*, 1961–62; Queen's University, Belfast, *Calendar*, 1961–62; University College, Cork, *Calendar*, 1961–62; Dublin University (Trinity College), *Calendar*, 1961–62; Glasgow University, *Calendar*, 1961–62; Manchester University, *Calendar*, 1961–62; University of Wales, *Calendar*, 1961–62; *Scottish Law List*, 1961; University College, Dublin, *Calendar*, 1961–62; Society of Public Teachers of Law, *Directory of Members*, 1962; Incorporated Law Society, *Calendar*, 1962.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some

person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 12th day of May, 1962.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Denis Bracken. Folio number 791. County Offaly (King's). Lands of Coolreagh Glebe in the Barony of Ballyboy, containing 123a. 3r. 10p.

2. Registered Owner, James Connolly. Folio number 178. County Louth. Lands of Drumshallon in the Barony of Ferrard, containing 6a. 0r. 21p.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

APRIL 26TH: The President in the Chair. Also present, Messrs. John R. Halpin, John Carrigan, T. V. O'Connor, George A. Nolan, Gerald Y. Goldberg, Desmond Moran, Daniel J. O'Connor, James R. C. Green, James J. O'Connor, D. B. Gilmore, Eunan McCarron, Ralph J. Walker, John Maher, R. A. French, William A. Tormey, Peter D. M. Prentice, Brendan A. McGrath, Augustus Cullen, Brendan T. Walsh, Robert McD. Taylor, Peter S. O'Connell, Patrick Noonan, Reginald J. Nolan, Thomas A. O'Reilly, Niall S. Gaffney, Francis J. Lanigan, J. Bernard MacGarry.

The following was among the business transacted:

#### Law Reform

The Council received a report on the subject of the law relating to trusts from the Society's working party, Mr. R. A. French and Mr. R. W. R. Johnston, and a report on the law relating to the liabilities of innkeepers submitted by the Society's working party, Mr. Brendan A. McGrath and Mr. T. V. O'Connor. It was decided that the reports should be circulated to a committee of the Council for

consideration and then forwarded to the Department of Justice together with any amendments as soon as possible.

## International Bar Association

### Ninth International Conference

The President and the immediate Past President were appointed as the Society's delegates to the conference at Edinburgh.

## Costs in Land Registry matters

A member acted for a person entitled in fee simple on the death of the limited owner of registered land. The property involved consisted of four farms of registered land each of which exceeded £1,000 in value. Each of the holdings was registered on a separate folio and the Land Registry assessed the fees on each holding separately on the application of member's client for registration. The fees were not assessed on the total value of the lands. Member enquired if he should charge his costs on the basis that he was dealing with four separate holdings or as if he were dealing with one holding, the total value of which exceeds £1,000. On a report from a committee it was decided that in the opinion of the Council the matter should be treated by member as one transaction for the purposes of costs.

Member also made three further enquiries concerning Land Registry costs. They were

(i) What costs should be charged by a solicitor acting for the registered owner of two or more holdings which are being transferred at the same time by means of a Deed of Voluntary Transfer? Should the costs be assessed as if only one holding of the total valuation of the entire lands was being transferred, or should the costs be assessed in respect of each holding separately?

(ii) What costs should be charged by a vendor's solicitor and a purchaser's solicitor where two or more holdings of registered land have been sold or purchased together by the same client? In this case the title to each holding may (and probably would be) entirely different so that an investigation of the title of each holding would be necessary. A further variation of this problem will arise where a vendor or purchaser sells or purchases a holding, portion of which is registered land and portion of which is unregistered land.

(iii) What costs are chargeable by a vendor's or a purchaser's solicitor on the sale of two or more holdings of land described in one folio where the registration is subject to equities and the lands were originally vested in different tenant purchasers under the Land Purchase Acts?

In this case there would in fact be a separate investigation of title for each holding.

On a report from the committee it was decided that the answers to member's queries should be given as follows:

(i) A transfer by registered owner of two or more holdings by a deed of voluntary transfer should be treated as one transaction by the solicitor acting for the registered owner for the purpose of costs.

(ii) and (iii) Where separate titles are furnished or investigated the solicitor acting for the vendor or purchaser or as the case may be is entitled to treat each of the titles separately for the purpose of charging costs.

## Particulars Delivered Stamp Costs

Members acted for the vendors in the sale of a plot of registered land to a local authority. The annuity payable in respect of the lands had been redeemed in 1917. The County Council undertook to pay the vendor's costs and in furnishing their bill a fee was included for having the P.D. stamp impressed by members. The local authority's solicitors took exception to this fee and stated that the P.D. stamp was not required to be affixed in Land Registry cases. Members then wrote to the Society for guidance on the matter.

The obligation to have the P.D. stamp impressed is imposed by section 4 of the Finance (1909–10) Act, 1910, as amended by the Finance Act, 1920. The former Act imposed the increment value duty and the latter Act abolished the duty but did not take away the liability to furnish particulars to the Commissioners and to have the stamp impressed. The section also provides that a deed is not to be deemed to have been properly stamped unless it has a P.D. stamp impressed. Regulations made by the Commissioners of Inland Revenue provided that conveyances to which the Land Purchase (Ireland) Acts apply which are to be registered under the Local Registration of Title (Ireland) Act, 1891, need not be presented for the purpose of having the stamp impressed. It is understood, however, that the Stamp Office consider that the P.D. stamp should be impressed where the annuity has been redeemed.

The Council, on a report from a committee, decided that in this case member was entitled to charge for having the P.D. stamp affixed having regard to the view of the Revenue Commissioners in the matter. Furthermore, in view of the provisions of the statutes the P.D. stamp should be affixed in all cases whether required by the Revenue Commissioners or not where there is a transfer of registered land and the solicitor affixing the stamp is, consequently, entitled to the usual fee.

### Disclosure to Insurance Company of Widow's instructions to Solicitor to pay over to her child's share in deceased intestate's estate

A member acted for the widow of a deceased intestate and the assets when realised amounted to approximately £5,500. The deceased left a widow and one child. Another solicitor had previously been instructed and he had extracted the grant of administration and the administration bond was obtained from an insurance company. Member had in hands about two-thirds of the moneys realised and his client informed him that she wished to have this money transferred to her for use in the course of her business. Member enquired of the Society if he was at liberty to notify the insurance company of this or if he was under any obligation to notify them. He felt that he should pay over the money to his client (who is also the legal personal representative) when requested, but he wished to know if he had any duty to the insurance company who had gone surety on the administration bond.

The Council, on a report from a committee, decided that member should be advised to write to the client informing her that the consent of the insurance company would be required for the application of the child's share in the manner disclosed. Member should ask for particulars from the client of what it was intended to do and should ask also for permission to disclose them when obtained to the insurance company.

## ORDINARY GENERAL MEETING

A general meeting of the Society was held in the Library, Four Courts on 24th May, 1962. The president, Mr. George G. Overend, took the chair. The notice convening the meeting was by permission of the meeting taken as read.

The minutes of the ordinary general meeting held on November 23rd, 1961 and the minutes of the special general meeting held on 9th March, 1962, having been circulated, were taken as read and signed by the chairman.

The chairman announced that he nominated the following members of the Society as scrutineers of the ballot for the election of the council to be held on 15th November, 1962; John R. McC. Blakeney, Thomas Jackson, B. P. Mc Cormack, R. J. Tierney, A. J. McDonald.

The President addressing the meeting said :—

LADIES AND GENTLEMEN,

Before dealing with the business of your society I have to record with regret the death since we last met of the following members of the society: William E. O'Brien, Mitchelstown, John D'Oyly Battley, Dublin, William T. McMenamin, Ballybofey, Noel M. J. Purcell, Dublin, Thomas A. O'Donoghue, Tuam, William McCabe, Cork, Daniel Casey, Cork, Richard A. O'Brien, Dublin, James Rowlette, Sligo and William T. Mackey, Dublin.

On behalf of the members of the council and on my own behalf I would like to express deep sympathy with their relatives and friends.

While it may be invidious to mention any names I must refer to the late Mr. Richard A. O'Brien who died last week at the age of 86 and was for over 21 years Chairman of the Solicitors' Benevolent Association. On his retirement he became the first and only patron of that association. He was untiring in his efforts for our less fortunate colleagues and their dependants and he will be remembered with gratitude by all those he was instrumental in helping during his long tenure of office.

Too many of us either neglect or forget our responsibilities to our needy colleagues and their families. May I appeal to you to do your share by joining the Solicitors' Benevolent Association if you are not already a member, or if you are, by procuring at least one new member.

It has always been the wish of your council that every practising solicitor should be a member of your society, but, over the years, there has always been a small minority which, for some reason or another have not seen their way to join. I think this is a great pity as the society, working through its council, is, after all, your governing body and it behoves each member of the profession to give his contribution, however great or small, it may be, to the society for the betterment of the profession as a whole. There are at present 1,300 solicitors holding practising certificates in the Republic and 1121 members of the society so that there are at least 179 practising solicitors outside the society and the figure is certainly highe. as many assistant solicitors do not take out practising certificates. I would earnestly appeal to you to do your utmost to persuade these men and women to join the society and to play their part in the affairs of our profession.

COMMON MARKET

The future of the legal profession in this country is more uncertain today than it has ever been before. It seems now very possible that Ireland will, before long, become a member of the European Economic Community, more generally known as the Common Market. Very few of us profess fully to understand the implications of such membership but they will be far-reaching and will affect us politically, in trade and commerce, and indeed in the professions.

It is by no means certain as to what will be the exact form which membership will take. The admission of the United Kingdom, Ireland and possibly some of the Scandinavian countries will pose problems that did not face the original Six, and changes in the Treaty of Rome may ensue. The treaty is a complex organisation and I think I can say without fear of contradiction that the effect of some of its provisions are far from clear.

Article 55 provides for what is known as "freedom of establishment", namely the right of a person in one member state to set up in another member state.

The general tenor of the whole treaty is to create one large community within which there should be a free inter-change of population, of labour and of services and it would seem from this that professional men, which would include lawyers, may likewise have the right of "freedom of establishment" to a greater or lesser degree.

Activities which in any state include even incidentally the exercise of public authority are expressly excluded by Article 55(1) from the "freedom of establishment" and among considered opinion there seems to be much doubt as to whether such exception could include lawyers in whole or in part.

The problem as I see it will fall naturally into two branches, first : the right of a lawyer of one member state to appear or have audience in the courts of another member state and secondly, the right of a lawyer of one member state to practise law in another from his office. It is possible that the ultimate interpretation of the treaty might give a different ruling on each of these two aspects.

Whatever the changes may be that face us, it is quite certain that changes there will be. If the common market is to establish freedom of movement within the community then undoubtedly there will have to be a uniformity of law within that community at certain levels.

Certain branches of the law will have to be completely uniform throughout the community and it is more than probable that we shall have superimposed upon us on a "take it or leave it" basis, a system of community law governing such matters as bankruptcy, patents, trade marks, enforcement of judgments, sale of goods, restrictive practices and other such matters, which in the course of time will tend to become more rather than less numerous.

I can envisage that if we join the community we shall be faced with a double system of law like that of the federal law and the state law in the U.S.A. It would seem natural that in such eventuality the lawyers of the member states should be free to practise the community law in any part of the common market but only local lawyers should be entitled to practise State law or domestic law relating to a particular member.

There is a fundamental difference in the concept of the judiciary between the common law countries such as ourselves and Great Britain and the civil law countries which embrace most of the continental states.

This difference will pose a difficult problem if there is to be integration of the judicial system at any level. No suggestion as to how this may be achieved has yet been made as far as I am aware and we must await and study developments.

What the common market will mean to the practising lawyer in this country cannot yet be assessed but greater competition and greater opportunities appear to be certain. All these changes will be gradual and will be spread over a long period but we must prepare ourselves to avail of opportunities and to meet competition and the council intends to study developments closely.

At this stage there is not very much we can do, but we could join with other branches of the profession in providing information or lectures on the Treaty of Rome as it will affect the legal profession, and the European Court at Luxembourg which it established.

We may ultimately have to widen the studies both of practitioners and apprentices to equip ourselves to changing conditions. In the cities and larger towns there will surely have to be a greater degree of specialisation with consequently larger firms.

If lawyers, for example, from Great Britain could advise at any level on matters arising here we must match their degree of specialisation if we are to hold our own.

Law is getting daily more complex and it is more and more difficult for the average solicitor to keep abreast of the technical details of all branches of law—other professions have their specialists and we may have to follow suit.

I read with interest that in his speech at the annual meeting of the Institute of Chartered Accountants the president, Mr. Ernest Dawson, had come to the same conclusion about his profession.

The council are well aware that the problem will need constant study and supervision and we hope, in consultation with our neighbours, to learn more accurately just what the position of the lawyer in the common market will be.

## International Bar Association

Some nine or ten years ago your society became members of the International Bar Association which is an association of law societies throughout the world. It holds a conference every second year which any member of a society, which is itself a member of the association, is entitled to attend, and representatives from your society have attended conferences of the I.B.A. at Oslo in 1956, at Cologne in 1958 and at Salzburg in 1960.

A further conference is to be held this year in Edinburgh, from the 15th to the 20th July, and a number of members of the society have indicated their intention to attend.

As a preliminary to the Edinburgh Conference the council of the I.B.A. on which your society has a representative, held a meeting in Dublin last January. We were very glad to have the opportunity of welcoming practising lawyers from different countries to Dublin even at that time of the year and of showing them a little Irish hospitality.

In my view, these meetings are of considerable value to all solicitors. Various topics of practical interest are discussed and one gets the opportunity of seeing how laws of other countries, with whom we shall more than likely have closer contacts in the future, differ from our own. Apart from this, there are social functions included in each conference where one gets an opportunity of mixing with and getting to know lawyers of other countries and their wives. Nothing but good can come from meetings between professional men of similar outlook from different countries, and the council feel that this association is one that we should, as indeed we do, support, and I would like to encourage the members to take an interest in the association and to attend the conferences. Our society will not in any way benefit from this but I think you, ladies and gentlemen, would find the conference not only interesting but instructive. I have noticed that such members of your society as have attended any of these conferences were always looking forward to the next.

## Law Reform

Turning now to rather more domestic matters, I would like to say how much we welcome the energy and enterprise of the Minister for Justice in initiating a large programme of law reform. Several of my predecessors have drawn attention to the fact that in so many respects our law had been allowed to lag behind and that there was an urgent necessity for reform. A gigantic task now faces the Minister and the staff of his department and he can be assured that in so far as we can do so the council and the members of this society will afford him as much assistance and co-operation as they can.

He has already indicated to the council that he would be glad of the benefit of their views on the various topics which he has scheduled for law reform, and the council has set up small working parties to study the various branches of the law in which reform is imminent. These working parties will report to the council who, in turn, will submit their recommendations to the minister. Sometimes the need for a particular reform becomes apparent in a particular case which pinpoints an injustice or an anomaly. The members of the society can help in this work by letting Mr. Plunkett know of any instances where they think the law reform is desirable. Any suggestions will be more than welcome and will be carefully studied by the working parties and the council. If we can give the minister the benefit of our combined experience we can put before him practical problems and practical suggestions for reform which might be quite uncontroversial and easily achieved. For example, a lot of tedious and unproductive work would be eliminated if the Apportionment Act were

repealed or modified in so far as it relates to trusts and to taxation.

Two of the working parties have already produced reports, one of them in an interim form and these have been forwarded to the minister. We have offered to see him and discuss any aspects of the suggested reforms if he should consider this would be of advantage.

Before the minister announced his programme the council had been considering, as members know, the question of organisation and method, both in solicitors offices and in offices with which they have to deal with a view to simplifying and expediting the work. To take but one example the council had considered the question of the Registry of Deeds, a most efficient organisation which still operates under a Statute more than 250 years old. There is no doubt that with the lapse of time and the institution of more modern methods the process of registering deeds and the making of searches could be simplified to the advantage of all.

The registry officials were most helpful and certain progress had been made in this direction but these small isolated efforts should now be merged in the general programme of law reform and our suggestions will be put to the minister in so far as he has not already received them with a view to their being embodied in the amending legislation which we are promised.

When announcing his White Paper the Minister mentioned that many of our laws were antiquated and that we required a system of law which reflected our traditions and ideals and was conditioned to the social and economic circumstances of the country. Particular aspects would be studied in a comparative manner so that principles in other countries might be adopted or adapted for our purposes.

One of the greatest handicaps of the practising lawyer in this country is the lack of up to date text books. While a few most valuable books have been published by Irish lawyers over the years, in general the market is too small to make their writing or publication economic. May I, therefore, appeal to the minister, when drafting the various bills in his programme that where it is decided to adopt a principle of the present law in Great Britain, he should adopt the identical wording of the British Section so as to give us practitioners the benefit of the British text books and of the judgments of British Courts which, while in no way binding, would give us an indication of how our courts might be expected to construe a particular section—A distinction without a difference would help no one.

## Text Books

I have referred to the lack of adequate text books on modern statutes. Many practitioners would welcome a guide to new legislation and the Council are arranging to publish a series of booklets on recent statutes. To prepare a booklet on any new Act requires considerable time and research and it is not always easy to find people willing to undertake the task even for a reasonable fee.

However, several booklets are in hand covering:

(1) Married Womans Status Act, 1957,
(2) Administration of Estates Act, 1959,
(3) Statute of Limitations, 1957,
(4) Civil Liability Act, 1961 and
(5) Stamp duties.

The booklets relating to the Stamp Duties and the Civil Liabilities Act are with the printers and that relating to the Married Womans Status Act is almost ready for the printers—the others are all nearing completion.

Members will be able to buy the booklets in due course at a modest price to cover the society's expenses—you will all be informed as and when they are ready.

The council will hope to sponsor similar publications on future legislation of general interest to members.

## Stamp Duties

One of the greatest problems for the everyday practitioner is to keep abreast of the ever-changing pattern of stamp duties. The law on this subject has been changed consistently over the years and it is now in such a maze that it is almost impossible to folliow it and to avoid the traps into which one can quite innocently fall. The Minister for Finance in his budget speech stated that he was proposing to bring out a booklet on the subject of stamp duties but I understand that this will merely be a collection of the relevant provisions in one booklet which, in itself, will be of considerable value to the profession but will do nothing to clarify and simplify the system which is now too utterly complicated. As I have mentioned, the council hopes to publish a booklet on the subject soon which will attempt to explain the effect of the law as it now stands.

I feel very strongly that the minister sacrificed a very great principle when, in the Finance Act, 1961 for the first time provision was made that further stamp duty could be payable on a deed after it was marked adjudicated. The basic principle of stamp duty law has always been that, where there was any doubt or difficulty as to the amount of stamp duty payable on a document, it could be lodged with the revenue commissioners for adjudication and, once they had adjudicated on the document and the appropriate stamp was impressed then the stamp duty on that document could not be questioned.

The Finance Act, 1961 by Sections 33 and 34 itself provided that in certain circumstances an instrument, even though marked adjudicated or not, shall again be subject to further stamp duty.

Anybody dealing with deeds or documents in connection with title to property or otherwise should be entitled to know with certainty that the deed or document before him has been fully stamped. The Finance Act, 1961 is laying an impossible and intolerable burden on the solicitor and, through him, on the public at large and with the complexities of the law to-day solicitors and their clients could find themselves liable for stamp duties which neither had anticipated or contemplated.

I would earnestly appeal to those in authority not to sacrifice principle to expediency and to re-instate the fundamental principle on which stamp duty has been founded namely, that once a document has been adjudged duly stamped, it is and will remain duly stamped. Surely if additional penalties are to be imposed later for any reason they can be made personal so as not to attach to the documents or to subsequent innocent holders thereof.

## Legal Aid

You will have read in your papers of the introduction of the Criminal Justice (Legal Aid) Bill, 1961 and of its progress through the Dáil.

The council welcomes this provision of legal aid even if it is only in a very limited form at the start. The bill itself is by no means a complete document and much of the operation of the scheme is being left to regulations to be made by the minister under the Act when it becomes law. Until we see these regulations we cannot give a considered opinion of the scheme.

The administration of any legal aid scheme, be it civil or criminal, should be in the hands of the profession as it is in Great Britain. We have pressed the minister to give the law society the administration of the scheme under the bill but he has not seen his way to do it. He has indicated that the present bill is only very limited and experimental and that he considers it could best be administered in the way he has provided.

We must emphasise that if the legal aid is to be extended at all and if and when civil legal aid is introduced in this country it is imperative that the administration should be

entrusted to the legal profession. Committees have sat both in Scotland and in Northern Ireland on the subject of legal aid and both the Guthrie Report in Scotland and the report of the Steele Committee in Northern Ireland emphasises strongly that it is undesirable that any scheme of legal aid or advice should be administered directly by persons employed by the State or by any local or public authority.

The State and local authorities are themselves frequently parties to litigation and civil proceedings and this alone is an unanswerable argument against either of them being in control of the administration of a legal aid scheme. The State is, of necessity, a party to all criminal proceedings. The funds in any legal aid scheme must be provided by the State but, beyond this it is in accordance with justice that the actual administration of the scheme should be in the hands of the profession who stand apart from any such proceedings.

The minister has indicated his willingness to co-operate with the society and, while regretting that he has not seen fit to concede the administration of the present limited scheme to the profession, we must hope that he will harken to the words of the independent committees which have considered the problem elsewhere and will ensure that in any further or extended scheme the administration is entrusted to the profession.

The present Bill envisages the setting up of panels of solicitors and it must be clear that any solicitor who so wishes and is in the possession of a practising certificate shall be entitled, as of right, to have his name on the panel and not to be capable of being removed from the panel except in accordance with the existing disciplinary procedure.

Furthermore, it must be a fundamental of every legal aid scheme that every citizen availing of the scheme should have an absolute right to select his own legal adviser from the panel.

The traditional and long-established personal relationship that exists between solicitor and client must be preserved and its basic principle would be destroyed if the client was not entitled to rely on the advice of the solicitor of his choice but had somebody thrust upon him.

The panel may have to be divided into districts as it would not be right to allow additional travelling expenses to be incurred by permitting an accused person to select a solicitor from another part of the country. Local panels would be satisfactory but there are many instances of solicitors practising in more than one area and they should be permitted to have their names on more than one panel provided the panels were in areas in which they normally practised, which presumably would be contiguous areas.

If legal aid is to be a success there must be absolute confidence by the public in the aid which they receive and wholehearted co-operation by the profession.

It will not be a matter for the society but for the individual solicitors to volunteer their names for the panel. The profession has always been quick to come to the aid of a person charged with a criminal offence and I have no doubt that solicitors will be anxious and willing to co-operate in working the Bill but the fees which will be allowed to them under the Act, when it becomes law, must be on some fair and reasonable basis and related to the amount of work and responsibility involved. At present no regulations have been made and no scale of fees disclosed but I should like to emphasise that if the scheme is to get the support from the individual solicitors that I and my colleagues on the council would like to see it get, it must be legal aid at the expense of the public funds and not at the expense of the solicitors.

## Administration of the Courts, Etc.

The minister has recently set up a committee of inquiry to inquire into the operation of the courts with a view to considering whether the cost of litigation could be reduced and the convenience of the public and the efficient despatch of business be more effectively secured by amendments in the law. Here again, we see the hand of the reformer and we shall, as a profession, be very glad and willing to assist the commission in its investigations and we feel sure that it will find ways and means to cut out unnecessary and wasteful steps and procedures. The public may well feel that there is too much formality in the administration of the law but every citizen must realize that justice is a very precious thing and, while modern tempo tends to lead us to try and streamline all procedures, this, while estimable even in the case of the administration of justice, must be watched very carefully as it would be all too easy to over-simplify the procedures and formalities which have stood the test of years to the detriment of justice itself.

The principle of justice and equal rights under the law must not be prejudiced in any way, and not only must justice be done but it must be seen to be done. No changes can be contemplated which would, in any way jeopardise such principles.

## Education

Many of my predecessors have spoken to you on the subject of the education of our apprentices. This question is perennially to the forefront of our minds and is probably, with the advent of the common market, going to assume even greater importance in the near future. The present system of apprenticeship is, in my view, outmoded. The law is becoming ever more diverse and complex and the solicitor is the poor unfortunate G.P. who is expected to know something, and often more than something, about everything. The courses which the apprentice has to study are more diverse and the examinations more searching than they used to be and I think that this is inevitable. At the same time an apprentice is supposed, while studying his theory of law, to work in his office and to learn the practical aspects of the legal principles in day-to-day business which is, in itself, a full-time education. An apprentice has, of necessity, to seek long stretches away from the office to study and it is very difficult for the practitioner to give an apprentice ground work in the practical application of the law when he is only intermittently in attendance at the office.

The effect of our present system of apprenticeship is to train would-be lawyers to have a competent knowledge of the theory of law and of the law itself but very little practical experience of how to apply their knowledge. From the apprentice's point of view it is very difficult to mix both theory and practice though, to a certain extent, they can help each other.

I consider that the whole basis of the apprenticeship should be changed to a system whereby the student, first of all, learns his theoretical subjects, and passes his exams therein. The theoretical training should be given in conjunction with the Universities and the student should be encouraged, if not required, to take a university degree during this period. Subsequently he would do an uninterrupted period of practical apprenticeship, whole-time in his master's office. This would mean lengthening the period of apprenticeship, which, by statute, the Society cannot itself do but I think it will ultimately be found to be necessary. The main objection that would be raised to a longer apprenticeship could well be off-set by providing that apprentices who have qualified in theoretical subjects and are learning the practical application full-time in their offices, should be paid a salary during such period on a scale which would be prescribed.

Your profession has always been highly regulated by statute and the time has come when it should be left to the society itself as in other professions, to prescribe free from any statutory restrictions what is the proper period and method of training for a solicitor. Surely the profession is in much the

best position to know how to train its own would-be members.

Training of apprentices will have to be flexible and easily varied to meet ever-changing circumstances and statutory restrictions make for rigidity.

If the common market becomes reality there will be an even greater curriculum to be studied and the question of languages for the lawyer may become one of paramount importance. Some common language or languages will have to be adopted so that lawyers in the community and even further afield can communicate freely.

French is the paramount language of the Six and French and English seem the most likely languages to be used in law in the future. While it would be premature to bring French into our syllabus now, it may be very important for the lawyer of the future to be able to speak it, and anyone contemplating a legal career would be well advised even at this stage, to study French both at school and afterwards.

The world is getting much smaller and the areas with which we are concerned and will be concerned, are ever expanding and lawyers here and elsewhere shall have to face up to the language problem in some shape or form.

### Pension Scheme

Since the last annual meeting you will all have received copies of the booklet containing the provisions of the Pension Sickness and Accident Insurance Scheme which the council has negotiated for members through Irish Pensions Trust Ltd. I feel that this is a scheme which is particularly designed to meet the needs of solicitors and one that should commend itself to every member. I know that Irish Pensions Trust Ltd. have spent a lot of time and energy in helping us to evolve this scheme for which they have claimed no remuneration and every member of the society should be very grateful to them for their help. It is not for me to try and persuade any of you to take out a policy under this scheme unless you want to do so. There are considerable advantages in the scheme, however, particularly to the man practising on his own with fluctuating profits or to a man practising with his son who wants to make provision enabling his son gradually to take over an ever-increasing share.

I would ask you all to study the booklet carefully and if you have any queries arising thereon to get in touch with Irish Pensions Trust who will, free of charge, and without commitment, advise you further. If, having studied it, it has no interest for you then I am content.

I am glad to be able to tell you that the response to the scheme to date has been most encouraging.

May I close on a more personal note. It is indeed an honour and a privilege to have been elected your president and I am fully conscious of this. I will do my utmost to maintain the high standard set by my predecessors and to justify the trust placed in me by your council.

It is a burden I could not contemplate singlehanded. I am fortunate in having Mr. Lanigan and Mr. Taylor as my vice-presidents and I am indeed grateful to them for the ready help they have given me at all times.

The council which you elected last November must be one of the most hardworking councils ever. The programme of law reform has placed on them an unusually heavy burden but one and all are ready and willing at all times to do their share and more than their share. I cannot tell you how much I value their unstinted efforts and their support. I am deeply indebted to them one and all.

Mr. Plunkett remains, as always, the right arm of every president and I thank him most sincerely or all his help to me, and through him, all and every member of the staff who have played their full part in the efficient running of the Society.

Messrs. J. R. Quirke, Desmond Moran and T. D. McLoughlin addressed the meeting on matters arising on the president's statement. The proceedings then closed.

## MEDICAL FEES FOR EXAMINATIONS AND REPORTS

An enquiry has been received from a member as to the position generally with regard to the amounts of fees properly payable to doctors for medical examinations and subsequent reports. The member who made the enquiry had been informed by a surgeon that the minimum fee for his report would be five guineas.

It is understood that the practice on taxation of costs is to allow a fee of three guineas for a report from the client's doctor on a party and party taxation. If, however, a specialist who has not been treating the client makes an examination and report he is allowed five guineas for his first report and three guineas for each subsequent report. As between solicitor and client the Taxing Masters allow the same charges except that where the matter is difficult or unusual they would allow such fees as have actually been paid by the client's solicitor, provided of course that they were not unusually high. An unusually high fee would require the approval of the client. It is also understood that only a reasonable number of reports may be allowed on a party and party taxation, generally not more than four.

The fee for a doctor for attending at court for the purpose of giving evidence is now increased to eight guineas but apart from that the general position with regard to medical fees remains unchanged.

## MOTOR INSURERS' BUREAU OF IRELAND

An addendum to the original agreement dated the 30th November, 1955, has been signed by the Minister for Local Government and the Motor Insurers' Bureau of Ireland. The addendum is dated the 12th March, 1962, and provides that references in the original agreement to the Road Traffic Act, 1933, are to be construed as references to the Road Traffic Act, 1961. There is a proviso, however, that the Bureau will only accept liability which would be required to be covered by an approved policy under the 1933 Act. The range of compulsory insurance was extended by the 1961 Act with effect from May 1st but this is not covered by the addendum. The text of the addendum and notes thereon is available from Government

Publications Sale Office, G.P.O. Arcade, Dublin 1 (Price 4d. nett).

## CORONERS ACT, 1962

The Coroners Act, 1962, which became law on 11th April, 1962, will come into operation on 1st July, 1962, by order of the Minister for Justice. The Act is comprehensive and replaces completely the existing legislation on this subject. Section 35 prohibits a coroner from holding an inquest upon a deceased person whose will he has drawn, or under whose will he benefits, but he shall not be taken to benefit under a will merely because he is entitled to charge fees in connection with the administration of the estate. Section 31 provides that neither the verdict at the inquest nor any rider thereto shall contain a censure or exoneration of any person. The Act is available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1 (Price 3/6d. nett).

## GOVERNMENT COMMISSION ON THE OPERATION OF THE COURTS

In connection with the Government Programme of Law Reform a committee of inquiry was recently appointed by the Minister for Justice to inquire into the operation of the courts. The following are the terms of reference of the committee:

(*a*) to inquire into the operation of the courts and to consider whether the cost of litigation could be reduced and the convenience of the public and the efficient despatch of civil and criminal business more effectively secured by amending the law in relation to the jurisdiction of the various courts and by making changes, by legislation or otherwise, in practice and procedure;

(*b*) to consider whether, and if so to what extent, the existing right to jury trial in civil actions should be abolished or modified;

(*c*) to make interim reports on any matter or matters arising out of the committee's terms of reference as may from time to time appear to the committee to merit immediate attention or to warrant separate treatment.

The following are the members of the committee: The Hon. Mr. Justice Brian Walsh, Judge of the Supreme Court (Chairman); The Hon. Mr. Justice George D. Murnaghan, Judge of the High Court; The Hon. Mr. Justice Barra Ó Briain, President of the Circuit Court; Justice Cathal Ó Floinn, President of the District Court; Edward C. Micks, Senior Counsel; Sean Butler, Barrister-at-Law; Dermot P. Shaw, Solicitor; Brendan P. McCormack, LL.B., Solicitor; Dr. C. S. Andrews, D.Econ.Sc.; Dr. Juan N. Greene, M.B.; William Murray, M.A., B.Comm., C.A.; Kenneth P. O'Reilly-Hyland.

## PROCEEDINGS AGAINST SOLICITORS

By Order of the President of the High Court dated 6th April, 1962, on a petition of the Society grounded on a report of the Disciplinary Committee, it was directed that the name of Stephen J. McDonogh, who formerly practised at Tuam, Co. Galway, be struck off the Roll of Solicitors.

By order of the President of the High Court dated 4th May, 1962, on a petition of the Society grounded on a report of the Disciplinary Committee, it was directed that Eamonn P. Carroll, who practised at Ballinasloe, Co. Galway, be suspended from practice until the 5th January, 1964.

## MAYO SOLICITORS' BAR ASSOCIATION

At the annual general meeting of the Association which was held in the Courthouse, Castlebar, on April 6th, 1962, the following officers and committee were elected: President, John MacHale; Vice-President, William Dillon-Leetch; Hon. Treasurer, Miss B. Hynes; Hon. Treasurer, John F. Garavan; Committee: T. V. O'Connor, Edward Minogue, E. A. Corr, Michael Browne and Patrick U. Murphy.

## DECISIONS OF PROFESSIONAL INTEREST

*Privilege—absolute—complaint of misconduct to Bar Council.*

The Benchers of an Inn of Court, when they sit as delegates of the judges to determine questions relating to call to the Bar or disbarment or suspension are sitting as a court or tribunal recognised by law and their proceedings are absolutely privileged. That privilege does not extend to letters of complaint against members of the Bar addressed to the Bar Council which, according to whether they are of any substance or not, may be referred to the Bench of the Barrister's Inn, since such a letter does not initiate proceedings before the Bench and it is not strictly or practically necessary for the administration of justice that absolute privilege should attach to the functions of the Bar Council in relation to the Inns of Court.

*Quaere*, whether such a communication addressed to the relevant Inn of Court would have been absolutely privileged.

The appellant sent two letters to the Secretary of the Bar Council alleging professional misconduct against the respondent, who was a Queen's Counsel. When sued for libel the appellant pleaded that the letters were protected by absolute privilege. Held, by the Court of Appeal that the plea failed: Lincoln *v.* Daniels (1961) 3 W.L.R. 866; 105 S.J. 647, (Sellers, Devlin and Danckwerts L.JJ.)

*Master and servant—occupational disease.*

The duty of an employer towards a servant who is susceptible to an industrial disease does not extend to refusing to employ him in work which involves a risk. If the servant knows there is a slight risk and decides to take it, that is a matter for him.

A company hired a young woman whom it had previously employed in jobs involving contact with grease and, later, greasy water and who had on each occasion contracted dermatitis as a result. The present job was similar, but she did not protest; however, when she contracted dermatitis again she sued the company for damages for personal injuries. Held, that the company had not failed to take reasonable care for the employee: Withers *v.* Perry Chain Co. (1961) 1 W.L.R. 1314; 105 S.J. 648, C.A.

*Bankruptcy—share certificates held as security—reputed ownership.*

(Irish Bankrupt and Insolvent Act, 1857 (20 & 21 Vic. c. 60), s. 313). In Re McClement (1960) I.R. 141, where share certificates which did not contain any note on them requiring their production on a transfer were pledged by the registered owner, who later became bankrupt, and the pledgee allowed the pledgor's name to remain on the register of shareholders, Budd J. held that the shares were, for the purposes of s. 313 of the Irish Bankrupt and Insolvent Act, 1857, in the order and disposition of the bankrupt as reputed owner by the consent of the pledgee, as were also shares similarly pledged which were transferred to the bankrupt upon trust to enable him to vote at company meetings. Shares issued by way of bonus on the shares held by the bankrupt as trustee and received by him without the transferor's knowledge were, however, not in the order and disposition of the bankrupt as reputed owner by the consent of the pledgee.

*Practice—third-party procedure.*

In Andrews *v.* Dunn & Co.: Belfast Ropework Co. (Third Party) (1960 N.I. 181) the plaintiff, whose eye was injured by a needle while stitching mattresses for his employers, the defendants, alleged that the injury was caused by the snapping of twine supplied to him by the defendants. On an application for third-party directions under Ord. 16 r. 52, by the defendants who had issued a third party notice on the manufacturers of the twine, the defendants claimed that they had purchased the twine from the third party and that they could not reasonably have examined it before use. Lord MacDermott C.J. held that the defendants had made a sufficient prima facie case against the third party to entitle them to the order sought.

*Administrative law — tribunals — proceedings before Domestic Tribunal of Defendant Institute.*

In Lloyd *v.* Institute of Chartered Accountants in England and Wales (October 11, 1961) the plaintiff, a member of the defendant Institute, was employed by George S. May International Co. G.B. In August, 1961, a complaint was preferred against the plaintiff in respect of his professional activities. The complaint alleged that the plaintiff was guilty of acts or defaults discreditable to a member of the Institute in that he was employed by an organisation which in its business as consultants or advisers in management, costing and methods of business offered its services by advertising, so as to render himself liable to exclusion from the Institute. On a motion by the plaintiff to restrain the defendants from hearing or otherwise determining the question whether he had acted discreditably under the provisions of r. 21 (3) of the Institute's supplemental Royal Charter dated December 21, 1948, Wilberforce J., dismissing the motion, held, that since there was no evidence of any particular bias against the plaintiff himself but only evidence of an attitude of hostility against his employer, it would be wrong to say that an employee could not be given a fair trial in respect of his individual professional conduct. Accordingly, the issue should be left to the tribunal which the parties had contractually accepted. (*The Times*, October 12, 1961.)

*Contract—performance—remuneration at discretion of defendants.*

In Mann *v.* Shell Petroleum (October 11, 1961) M. brought an action against S. for an alleged breach of a contract under which S. promised to pay M. remuneration commensurate with the degree of success achieved by him in a mission to Cuba which M. was to undertake for S. M. alleged that he negotiated the lifting of a boycott imposed on British goods by the Castro regime, and that he was accordingly entitled to £100,000 under contract. S. denied that the boycott was lifted as the result of M.'s negotiations. Salmon J., dismissing the claim on the facts, held, that the contract fell into that class in which the principal reserved the right to

assess the amount of remuneration and to decide whether the event had occurred on which remuneration depended: it was for S. to assess honestly and on reasonable grounds the value of M.'s efforts. (*The Times*, October 12, 1961.)

*Criminal law—fresh evidence on appeal.*

In R. *v.* Parks (October 4, 1961) the Court of Criminal Appeal (Lord Parker C.J., Slade and Veale JJ.) held, allowing an appeal against conviction, that the principles upon which the Court of Criminal Appeal would act to allow fresh evidence, under s. 9 of the Criminal Appeal Act, 1907, were as follows: (i) the evidence which it was sought to have called must be evidence which was not available at the trial; (ii) it must be relevant to the issue; (iii) it must be credible evidence, in the sense of being well capable of belief; and (iv) the court would, after considering that evidence, go on to consider whether there might not have been a reasonable doubt raised by it in the minds of the jury. (W.I.R.—1961—I—1484.)

*Criminal law—murder—diminished responsibility.*

In R. *v.* Bailey (October 23, 1961) B. was charged with murder. The defence raised a plea of diminished responsibility, and called three doctors to substantiate that plea. No evidence was called by the Crown in rebuttal. The trial judge left the issue of diminished responsibility to the jury. The jury convicted of murder. The Court of Criminal Appeal (Lord Parker C.J., Ashworth and Veale JJ.) held, allowing an appeal against the conviction for murder, and substituting a verdict of manslaughter on the ground of diminished responsibility, that the verdict was unreasonable: a jury must act on the evidence before it; and if there was nothing to throw doubt on the evidence they must accept it. (*The Times*, October 24, 1961.)

*Vendor and purchaser—vendor's failure to answer requisitions on title—whether purchaser entitled to rescind the contract—form of action*

On May 5, 1961, the purchaser entered into a contract in writing to buy a 40 per cent. share in the vendor's freehold property and paid the stipulated deposit. The completion was to take place by August 6, 1961. The property was registered land and the land certificate showed an entry in the charges register relating to a covenant between W. and the vendor's predecessor in title restricting the user so long as W. was the owner of the adjoining land. In the requisitions on title the vendor's solicitors were asked about the current position of this entry to which their reply was: "We are inquiring as to this." In spite of reminders this was not adverted to again until after the commencement of proceedings. On August 11, 1961, the vendor gave notice to complete in the usual form requesting the purchaser to complete within 28 days.

On September 4, 1961, the purchaser's solicitors, in answering the notice, referred to the restrictive covenant and stated: ". . . We, therefore, do not intend to comply with your notice to complete, and . . . rescind the contract. . . ." and requested the return of the deposit. On September 12, 1961, the vendor informed the purchaser that the deposit was forfeited.

On November 15, 1961, the purchaser took out a summons seeking a declaration that the vendor had failed to discharge his obligations and claiming return of the deposit. On December 6, 1961, the vendor's solicitors, acknowledging the summons, wrote that the covenant between W. and the vendor's predecessor in title was no longer effective as W. had ceased to be the owner of the adjoining land some years previously; thus the purchaser had no right to rescind the contract. On the further contention that although failure to answer the requisition in question might have entitled the purchaser to repudiate, nevertheless the purchaser, by bringing these proceedings in this form, so far from repudiating the contract, had elected to treat it as on foot and had thereby affirmed it:—

Held, (1) that by his notice to complete the vendor had made manifest his own refusal to answer the requisition in question, and that this amounted to a sufficient breach of his obligation to entitle the purchaser to rescind, who had done so in the clearest possible terms; thereafter the parties could not revive the contract unless it was by something which amounted to a new agreement between them, because an effective rescission brought the contract to an end.

(2) That the relief sought by the summons was not inconsistent with that position, since at all times the purchaser had regarded the contract as having been validly rescinded. Accordingly, the purchaser had effectively rescinded the contract and was entitled to the repayment of the deposit with interest at 4 per cent. from May 5, 1961, until repayment.

(In re Stone and Saville's contract. *I. Weekly Law Reports*, 1962, page 460.)

*Trust and trustees—remuneration of trustees—professional charging clause—reasonable remuneration of professional trustees—beneficiaries right to have an account of the amount of the charges*

The trustees of a testator's will were his widow, an accountant and a solicitor and the will contained the usual professional charging clause. Costs amounting to £1,983 17s. 3d. and £3,072 were paid

to the accountant and solicitor respectively for their charges or costs as professional trustees. The beneficiaries entitled in remainder after the death of the widow took an action against the trustees and they alleged in their statement of claim that these sums exceeded what was reasonable remuneration and also they sought an inquiry as to what was the excess and asked that any excess so found might be replaced. The defendants applied to the plaintiffs for particulars specifying what would be the reasonable remuneration for their work and it was held by the court on this point that the beneficiaries had an absolute right (at their own risk as to costs) to have the amount of the charges investigated and that the claim for particulars was misconceived, because the defendants were thereby endeavouring to convert what in substance was an action for an account into an action for a specific sum. Cross J. in his judgment said that the defendants claimed that they wished to have the issue defined, that is to say, they wanted to have the claim for a general inquiry or account converted into a claim for a specified sum which is said to have been the excessive charge. This would have great advantages from the point of view of the defendants because they would then know the maximum which could possibly be recovered from them. The plaintiffs, being obliged to tie themselves down to a specified sum in advance, could not claim more than that, even if the tribunal thought the excess was larger. Where there was a question of an account to which the plaintiff was entitled and the defendant was an accounting party there could be no question of the plaintiff having to deliver particulars at this stage of an action. This was essentially an action for an account and could not be converted into an action for a specified sum. He held, therefore, that the defendants were not entitled to the particulars for which they asked. The matter had come before the court on a procedure summons (Re Wells deceased, Wells & ors. *v* Wells & ors. 1962 I. *All England Law Reports*, page 812.)

NOTE

This decision was affirmed by the Court of Appeal (Denning M. R. Harman and Russell L. J. J.) on the 8th May, 1962. Lord Denning giving judgment said that where reasonable charges were in question —whether of a builder, an architect, or an accountant charging for his services—the ordinary way was to give particularised accounts and for the other side to take objections set out in a schedule. This was how the matter should be dealt with. This was in substance an action for an account: the averment that too much had been charged was merely introductory and the particulars which the beneficiaries had given in their pleadings were as full as could be expected from them at this stage and were all that the trustees were entitled to. The appeal was accordingly dismissed. (Solicitors Journal May 18th, 1962 vol. 106 no. 20 page 410).

## IMPORTANT ESTATE DUTY DECISION

*Investments of Channel Island's resident not taxable in Ireland*

A recent judgment by the Supreme Court, delivered on 21st December, 1961, will have an important bearing on the question whether, in certain circumstances, investments held abroad are liable to estate duty in this country. The decision related to investments held subject only to an outstanding jointure by trustees for a man who died in the Channel Islands, where no estate duty is payable.

In a reserved judgment, the Supreme Court, consisting of Mr. Justice Lavery, Mr. Justice Kingsmill-Moore, and Mr. Justice Haugh, affirmed a High Court decision allowing a petition of Barclays Bank Executor and Trustee Co. (Channel Islands), Ltd., which asked for a declaration that no estate duty was payable by the late Henry Howe Cuffe Knox, Jersey, Channel Islands, on funds set out in the petition. The case went to the Supreme Court on an appeal by the Revenue Commissioners against Mr. Justice Teevan's decision. The appeal was dismissed with costs. Mr. Justice Kingsmill-Moore delivered the judgment to which the other judges subscribed.

Mr. Justice Teevan in his judgment had stated that Mr. Knox died on February 16th, 1954, domiciled in Jersey. At the time of his death investments (and two comparatively small sums in cash) to the value of £68,788, stood in the names of two trustees to pay to Violet Lleena Cassandra Knox an annuity of £1,500 for her life, and thereafter for Mr. Knox absolutely. The Revenue Commissioners contended that the testator had no proprietary interest in the property making up the trust fund, but only a personal right against the trustees to call on them to execute the trusts, enforceable by action if necessary, i.e., a chose in action. As the dispositions constituting the trust fund were made by Irish settlements and by the will of a Testator domiciled in Ireland, the Revenue said that the " proper law " is Irish, and they valued the testator's right as equivalent to the full value of stocks and bonds which would be liable to estate duty. Equitable interests and estates, they contended, invoke only rights in personam, and not rights in rem.

The view that equitable interests convey no right

in rem cannot be squared, as Mr. Justice Kingsmill-Moore pointed out, with the right of the beneficiary to follow the trust property in specie into the hands of anyone except a purchaser for value without notice. A beneficiary whose trustee goes bankrupt can claim the trust property.

All of the investments, as such, except £400, 4½% Land Bonds and £264, 4% Land Bonds, might be taken as situate outside this country.

Having mentioned the investments located abroad, Mr. Justice Teevan had said that the Revenue Commissioners claimed estate duty on these assets on the basis that the interest of Mr. Knox in the funds invested abroad was a chose in action (a thing of which a man has not the possession or actual enjoyment but has a right to demand it by action or other proceedings), enforceable in Ireland, and not an interest or ownership in those funds in specie. Mr. Justice Kingsmill-Moore stated that the argument for the Revenue was vitiated by an underlying assumption that, if a person had only a " chose in action ", it followed that what he had was only a right of action, and not a proprietary interest :— Stocks and shares may come under the wider meaning of a " chose in action ", but it is equally indisputable that such property can be the subject of trusts, and that equitable interests could exist in it.

Mr. Justice Kingsmill-Moore held, having considered all relevant authorities, that what the Testator died possessed of was a proprietorial interest in foreign assets, which would not be subject to estate duty here ; it was not a mere right to bring an action against the trustees under instruments whose proper law was Irish, a right which would be subject to Irish Estate Duty.

Having gone into the history affecting the trust, and its nature, Mr. Justice Teevan had said that he accepted the contention of counsel for the petitioners that the interest of Mr. Knox was an absolute equitable interest in the trust investments, subject to an incumbrance in respect of the annuity.

What passed on the death of Mr. Knox was that absolute interest, and so much of the trust funds as were located abroad must be treated as foreign. Accordingly, he held that the interest of Mr. Knox in the trust investment was an interest in specie, and he made a declaration to that effect.

The grounds of the appeal were that Mr. Justice Teevan had been wrong in holding that the interest of Mr. Knox in the property was at the date of his death an interest in specie ; in holding that no estate duty was chargeable on the funds specified and on the income assessed thereon at the date of his death and in holding that the funds were aggregable with other property in the Republic of Ireland to which Mr. Knox was entitled at the time of his death.

(Barclay's Bank Trustee Co. (Channel Islands) Ltd. *v.* Revenue Commissioners. *Irish Times*, 13th January, 1962.)

*Conacre and grazing agreement—lands charged with repayment of principal sum with interest—mortgage suit—order for possession—termination of agreement*

The plaintiff was the owner of registered lands, and by deed dated the 5th of June, 1955, he charged the lands with repayment of certain principal money and interest. The chargeant obtained an order for sale on the 28th January, 1957. By an agreement dated the 4th of January, 1958, and made between the plaintiff and the defendant, the plaintiff gave to the defendant a licence to use the lands for grazing and conacre for five separate periods of 11 months each, the first such period being from the 1st of November, 1957 to the 30th of October, 1958. The defendant was at all times aware of the mortgage suit and order of sale made in respect of the lands.

By an order in the mortgage suit dated the 10th September, 1958, the plaintiff was restrained from making further lettings of the lands and was ordered forthwith to deliver up possession of the lands. To comply with the order plaintiff requested possession of the lands from the defendant, and was refused. The defendant subsequently defaulted in the payment of an instalment of the amount due under the agreement. The plaintiff in his action sought *inter-alia* (1) a declaration that the licence granted to the defendant had been lawfully terminated, (2) possession of the lands and (3) damages for trespass. It was held by Budd J. that the grazing and conacre agreement should be construed as containing an implied condition that the agreement would be treated as at an end should the chargeant take any steps to enforce the order of the 28th of January, 1957, and seek possession of the lands.

It had been contended also on the defendant's behalf that as the plaintiff was not in actual possession of the lands he had no right to bring an action for trespass and that mere plea of ownership would not support such a claim. It was contended that the plaintiff had not any right to immediate possession and such right, since the date of the order for sale, vested in the chargeant. The learned judge, however, held that the agreement was really an agistment agreement and that the plaintiff was to be regarded as being in possession of the lands. Furthermore, the mortgagee's interest at the time the order for sale was made, did not give any right to possession as it involved only a charge over the lands. The plaintiff was therefore entitled to sue in trespass for wrongful possession as he had the legal and equitable

estate and was in possession. (Carson *v.* Jeffers and Anor. 1961 *Irish Reports*, page 44.)

## OBITUARY

MR. JAMES W. A. M. MCCABE, solicitor died on 30th April, 1962 at Mercy Hospital, Cork.

Mr. McCabe served his apprenticeship with the late Mr. James J. McCabe, 17, South Mall, Cork, was admitted in Trinity Sittings 1939, and practised at 17, South Mall, Cork.

MR. RICHARD A. J. O'BRIEN, solicitor, died on the 12th May, 1962, at a private nursing home.

Mr. O'Brien served his apprenticeship with the late Mr. Edward D'Alton, 11 St. Stephen's Green Dublin, was admitted in Hilary Sittings, 1900, and practised at 35 St. Stephen's Green, Dublin, as senior partner in the firm of Messrs. Ryan & O'Brien, up to his retirement in 1961.

MR. JAMES ROWLETTE, solicitor, died on the 13th May, 1962, at his residence, Mill Cottage, Ballincar, Sligo.

Mr. Rowlette served his apprenticeship with the late Mr. Howard McN. McCormick, Sligo, was admitted in Michaelmas Sittings, 1936, and practised at Sligo.

## THE REGISTRY

### Register A

ENGLISH SOLICITORS in Leamington Spa, Warwickshire (within easy reach of Elmdon Airport), require Irish solicitor to act as Probate and Conveyancing Managing Clerk. Salary, £1,000 per annum rising to £1,500 per annum. Pension arrangements available Box No. A193.

VACANCY for Assistant in busy office in Southern County town. Good salary. At least five years' experience desirable. Box A194.

### Register C

THE papers and practice of the late Edmund W. Mooney, solicitor, who practised under the style of William Mooney & Sons of 15 Westmoreland Street, Dublin, have now been acquired by Messrs. Rutledge Doyle & Co., solicitors, of 50 Lower O'Connell Street, Dublin.

In the goods of PATRICK O'DWYER, late of Shevry, Upperchurch in the County of Tipperary, Farmer, deceased, who died at Shevry aforesaid on the 12th March, 1962.

Will any person having any information about a Will of the above named deceased please communicate with John J. Nash, M.A., LL.B., Solicitor, Thurles, County Tipperary.

VERY REV. FATHER ALPHONSUS MULLEN, deceased.

Will any person knowing the whereabouts of a will or codicil of the Rev. Alphonsus Mullen, deceased, of Edeninfagh, Glenties, Co. Donegal, Catholic Curate, and made subsequently to the 18th September, 1952, please communicate with John J. Delap, LL.B., Solicitor, Glenties, Co. Donegal.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificates

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 8th day of June, 1962.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, James Owens. Folio number 1162. County Kildare. Lands of Grangemellon in the Barony of Kilkea and Moone, containing 62a. 1r. 0p.

2. Registered Owner, James Sheppard. Folio number 2149. County Carlow. Lands of Williamstown in the Barony of Rathvilly, containing 81a. 3r. 4p.

3. Registered Owner, James Heffernan. Folio number 5031. County Limerick. Lands of Coolanoran in the Barony of Connello Lower containing 4a. 1r. 27p.

4. Registered Owner, William Coughlan. Folios 11431 and 20410. County Cork. Lands of Kilgobbin, containing 31a. 2r. 33p. (F.11431) and Lands of Kilgobbin containing 74a. 0r. 2p., both situate in the Barony of Carbery East (East Division).

5. Registered Owner, Thomas Holland. Folio number 1080. County Queens. Lands of Derrycanton in the Barony of Upper Woods containing 51a. 2r. 36p.

6. Registered Owner, John Joseph Reynolds. Folio number 270R. County Leitrim. Lands of Moher containing 3a. 0r. 10p., and lands of Georgia or Gorteenoran containing 0a. 2r. 0p. both situate in the Barony of Mohill.

CALENDAR 1962.

The Calendar and Law Directory has been on sale since March 31st. After providing for prepaid orders a limited number are still available. Price 10/-; By post 11/3.

# THE COMMON MARKET AND THE LAW

Provisional arrangements have been made for three lectures by Mr. A. H. Robertson, Ph.D., B.L., of the Secretariat of the Council of Europe under the auspices of the Honourable Society of King's Inns in the Solicitors' Buildings, on June 26th, 27th and 28th at 8.30 p.m. Admission will be by ticket and a press announcement will be published later.

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JUNE
1962

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

MAY 24TH: The President in the chair. Also present, Messrs. Francis J. Lanigan, Brendan T. Walsh, Dinnen B. Gilmore, James J. O'Connor, Edward Treacy, Augustus Cullen, Niall S. Gaffney, Desmond Moran, T. V. O'Connor, Peter E. O'Connell, James R. C. Green, R. A. French, Eunan McCarron, William A. Osborne, John Maher, Daniel J. O'Connor, Brendan A. McGrath, Robert McD. Taylor, John Carrigan, Thomas A. O'Reilly, Peter D. M. Prentice, John J. Nash, George A. Nolan, Cornelius J. Daly and Gerald Goldberg.

**Legal Implications of the Common Market**

The President stated that with the secretary he had attended a meeting which had been called by the Chief Justice to discuss the implications of Ireland's proposed entry into the Common Market. It had been agreed at the meeting that a series of lectures should, if possible, be arranged in order to disseminate information on the legal implications of the Treaty of Rome and the European Court, and it had been suggested that the Society and the Benchers of King's Inns should arrange for and sponsor the lectures. The Council approved of the

suggestion and delegated to the President and the secretary authority to make whatever financial arrangements would be necessary.

The following was among the business transacted :

### Government Programme of Law Reform

The President stated that the reports of the working parties on the Law Relating to Trusts and the Liabilities of Innkeepers had been sent by the Society to the Department of Justice. Reports on the Law Relating to Guardianship of Infants, Registry of Deeds and on the Law Relating to Wills are in the course of preparation.

### Solicitor acting in Conveyancing Transaction where one of the parties is not represented

A local bar association asked for the opinion of the Council as to whether a rule by the Association prohibiting members from acting for a party in a conveyancing matter where the other party is not professionally represented would be proper. It was also suggested that the Society would consider introducing such a rule under section 71 of the Solicitors' Act, 1954. The Council, on a report from a committee, were of opinion that no rule of the kind mentioned should be made by the Society. It was also decided that the association concerned could make such a rule binding on its members if it wished, but that the Council cannot be taken as approving of such a rule.

## DEBT COLLECTING LETTERS

In Allen *v.* O'Callaghan (10 I.L.T.R. 131) the Court strongly disapproved of the action of a solicitor in making a demand for costs in a preliminary letter written before the institution of proceedings for a liquidated debt. The ground of the disapproval of the Court was that the costs of such a letter are not legally exigible and that it is improper for a solicitor to make a demand under threat of proceeding for payment to himself of a sum which he knows is not due. The Council are of the opinion that such demands in debt-collecting letters are unprofessional. This opinion does not apply to cases in which payment before proceedings is accepted by instalments with a condition that the debtor shall indemnify the vendor against the costs of collection or applications for costs in letters demanding discontinuance of unlawful interference with property rights or other unliquidated demands.

The Council are further of the opinion that normally a preliminary letter should be written by a solicitor to the debtor before instituting proceedings even although the costs may not be recoverable between party and party. There is, however, no impropriety in instituting proceedings without a preliminary letter if in the opinion of the solicitor for the creditor such a course is imperative in the client's interests or if the solicitor is satisfied that the client has before instructing him notified the debtor in writing that failing payment of the debt by a certain date instructions will be given to a solicitor to institute proceedings for recovery of the debt without further notice.

## THE CIRCUIT COURT, EASTERN CIRCUIT

An order has been made by the President of the Circuit Court fixing the following dates for the commencement of sittings of the Circuit Court for the Michaelmas term, 1962, in the Eastern Circuit instead of the dates already fixed: Dundalk—Tuesday, 2nd October. Drogheda—Friday, 12th October. Trim—Wednesday, 17th October. Kells—Wednesday, 24th October. Wicklow—Wednesday, 31st October. Wexford—Tuesday, 13th November. Naas—Tuesday, 27th November. Athy—Monday, 17th December.

## NOTICE

Take notice that the offices of all solicitors in the towns of Monaghan, Castleblayney and Carrickmacross will be closed on Saturdays on and from Saturday the 30th day of June, 1962.

The offices in the town of Ballybay of Mr. John Corrigan, Messrs. Graham & Co., Mr. P. J. McEntee, Mr. P. J. O'Gara and Mr. Thomas P. Owens will also remain closed on all Saturdays (except fair days) on and from 30th day of June, 1962.

## PRESENTATION OF ADMISSION PARCHMENTS

At a ceremony in the Solicitor's Library, on the 24th May, 1962, the President presented certificates of admission to the following newly admitted solicitors :—

Michael J. P. Allen, 3 St. Francis Street, Galway; Miss Mary P. M. Berkery, Slane, Co. Meath; Robert A. Downes, Glenmore, Mullingar, Co. Westmeath; Fintan M. Earley (B.C.L.), Blackrock, Drumshanbo, Co. Leitrim; William S. Geraghty (B.A., LL.B.), Galmon, Taylors Hill, Galway; Edward R. A. Glover, 66 Landscape Road, Churchtown, Dublin; Lewis J. Goldberg, Ben-Truda, Douglas, Co. Cork; Anthony C. Gore-Grimes (B.A.), Howth Lodge, Howth, Dublin (Special Certificate); Denis M. McDowell, 22 Dartmouth Square, Dublin; Desmond J. O'Malley (B.C.L.),

"Riverview", Corbally, Co. Limerick (Special Certificate); Mrs. Maire Nic Shiomoin (B.Comm.), Maunsells Road, Galway.

The President in his address said:

Ladies and Gentlemen,

It is a real pleasure to me, on behalf of the Council and the Society to present to-day, to the newly admitted solicitors, their Certificates of Enrolment.

Your names are already on the Roll and many of you may have started to practise but to-day is the public acknowledgment of your admission to the ranks of practising solicitors.

The law is one of the old and honourable professions and you, as members of that profession, have become part of the administration of the law on which all society is founded.

The solicitor particularly finds himself involved in all aspects of life from the actual practical work in the courts where the law of the land is enforced, and through which internal peace is maintained, to the day-to-day advice on personal commercial and other problems which arise. The solicitor builds up over the years an invaluable fund of experience enabling him to advise and guide his clients whose problems may seem to them to be unusual or unique. He has a very big responsibility to bear in that, by his advice he can influence and mould the conduct and actions of his clients and by his own standards and conduct can be an influence for good or ill.

He has a very large burden to carry in that he is expected to be able to advise his client on technical detailed matters of law and, at the same time to give him general advice how to act on matters that might be termed extra-legal and which are very often more matters of psychology.

He is the General Practitioner for the legal profession, expected to know something, and more than something, about everything.

You are joining the profession at a time of evolution when the world is divided and yet growing more closely together. We see the Common Market looming ahead and we do not know at this stage what this will mean for the legal profession as a whole.

The law tends, over the years, to become more and more complex and the pace at which we have to work becomes faster all the time. As a general practitioner it is impossible at the same time to be a specialist but, nevertheless, I think the day of the specialist is coming. In England in the larger firms the different partners are all specialists in their own way in different branches of law, and it may be that if we all become part of a larger community, the doors will be open for lawyers throughout the community to practise to a greater or lesser degree anywhere within the community.

Up to now, the practice of law has been reserved to those qualified in the State, and, therefore, we have not had to face competition from the specialists in other big centres but this may come and we should be prepared for it. If it does become necessary for us to develop our own specialists then it follows of necessity that solicitors will have to be grouped into larger firms because specialisation is not possible except within a group as every office should be capable of handling any legal problem.

In my view the profession in the larger cities and towns will find as time goes on, that it is more essential to group together and to specialise though probably in the country, where work is much more of a local character, this would not be practicable or necessary.

I am mentioning this particularly to-day because you, ladies and gentlemen, are embarking on your career and there is always a very great temptation to put up ones own plate and one is apt to imagine that, by so doing, one becomes one's own master, but let me tell you that this is entirely illusory, and the professional man or woman who, to the outside world, is his own boss, must perforce become the slave to his clients if he or she is to be a success.

To equip yourselves as best you can for whatever the future may hold I would advise you all strongly not to contemplate setting up on your own at an early stage. If you do you may get enough work to give you a reasonable livelihood but you are bound to lack the general experience which you will get as an assistant with an older and more experienced solicitor.

I would encourage you, therefore, for the next few years at any rate to try to gain as much practical experience as you can and, when you have done so, then it is time enough for you to consider starting up on your own either with or without a colleague.

If my views on specialisation are correct then you would be well advised from the outset to try and make yourself particularly proficient and an expert in one particular branch of the law.

In former days solicitors had the advantage of the experience of the many male clerks that were to be found in the various offices and who were almost permanent institutions. Many of these have passed on but they have not been replaced and the male clerk is becoming less and less a feature of the lawyers office. The pattern seems to be universal and the same trend is noticeable across the water. This means that the young solicitor has to rely more and more on his own efforts and he has not the fund of experience of the clerks from which to draw.

Nowadays, a solicitor relies largely on female

assistants who by their very nature tend to be transitory.

Anybody entering this profession must be prepared for hard work. A solicitor's life is a hard one but it is a satisfying career for those who dedicate themselves to it. A solicitor who works hard can make a reasonable living but he will have earned it much more strenuously than his fellow citizens in many other walks of life.

You will, inevitably, be faced with an apparent conflict of duties and come across many problems of ethics or etiquette in your early years where you may find yourselves in grave doubt as to what you should do or what advice you should give. I do want you to realise that the Law Society and the Council and the senior members of the profession are always more than anxious to help you in any way they can. After all, we were all inexperienced and young once and we all had the same problems to face so do not hesitate if you are bothered, to get in touch with Mr. Plunkett or with me or with any of the more experienced solicitors who you may know personally and I have little doubt that you will always find a ready and willing helping hand.

I would ask you, one and all, to become members of the Law Society. It is the governing body of your profession and you can all, by joining it, help in its work by giving us your contribution which will always be valuable, however small it may be, at the outset. The subscription is very small even for a newly admitted solicitor.

I have very much pleasure on behalf of the Council and the Society and on my own behalf in welcoming you into the solicitors' profession and I would wish you each and all a long, happy and successful career in the law.

## COUNTY OF TIPPERARY AND OFFALY (BIRR DIVISION) SESSIONAL BAR ASSOCIATION

At the Annual General meeting of this Association held on the 10th May, 1962, the President elected for the current year is Mr. Robert A. Frewen of Tipperary, the Honorary Secretary, Mr. John Carrigan of Thurles and the Honorary Treasurer, Mr. Martin T. Butler of Thurles. The committee is Messrs. Henry Hayes, Nenagh; P. F. Treacy, Nenagh, Michael O'Meara, Nenagh; Michael Black, Nenagh; J. J. Nash, Templemore; J. C. Devitt, Roscrea; J. C. Reedy, Birr; Francis Murphy, Clonmel; James A. Binchy, Clonmel; Donal Binchy, Clonmel; Thomas Reilly, Clonmel; W. F. O'Connell, Tipperary; N. J. O'Donnell, Tipperary and Donal T. Ryan, Cashel.

## DECISIONS OF PROFESSIONAL INTEREST

*Solicitor—deficiency in clients' account—action against accountants. Luscombe* v. *Roberts and Pascho.* (*Megaw J. 18th April,* 1962)

A solicitor practising on his own account kept all the books of account in his own hand. From 1952 onwards, and to an increasing extent in later years, he transferred sums of money, paid to his clients' account on behalf of his clients, into his office account, which was used for payment of moneys to or on account of clients, professional expenses, and private and personal expenses. By 1958 the deficiency was over £10,000. His income for tax purposes had been overstated from 1953 to 1957, and he paid tax on the overstated amount to the extent of £1,885. After discovery of the deficiency, towards the end of July, 1958, he reported the matter to the Law Society and on 8th January, 1959 the Disciplinary Committee, holding that he had failed to comply with the Solicitors' Accounts Rules and had been guilty of conduct unbefitting a solicitor, ordered him to be struck off the Roll. An appeal to the Divisional Court was dismissed. From 1946 onwards the solicitor had employed a firm of accountants for the purpose of making the required annual certificate under the Accountant's Certificate Rules and the annual return of income to the Inland Revenue, one partner in the firm being responsible for dealing with his affairs. The solicitor claimed damages against the accountants on the ground that the sole or effective cause of his misfortune was the breach by the accountants of their duty to him.

Megaw, J., said that the accountants' contractual obligations were in substance limited to acting with due and proper care as regards the submission of the annual accountant's certificate and the preparation and submission of the Inland Revenue statements. It was highly probable that, if they had carried out their duties in accordance with the required standard of care, including their duty (which was a duty to the public as well as to the solicitor) under the Accountant's Certificate Rules, the irregularities would have come to light much earlier and would have been prevented for the future. If the solicitor had been completely free from blame, he would be entitled to recover damages, in some measure, in respect of the breach of duty which would have been in part if not in whole the cause of his loss. If he was acting dishonestly in dealing with his clients' money he would not be entitled to recover from the accountants any loss of any sort arising out of or connected with his own dishonesty, and that would be so no matter how great or glaring the accountants' breach of duty to him or to the public might be. Applying the standard of proof laid down in Hornal *v.*

Neuberger Products, Ltd. (1957) I.Q.B. 247 and after anxious consideration, his lordship had come to the conclusion that the solicitor had made certain deliberately inaccurate entries in his books with intent to deceive the accountants. The accountants should have known that he had not complied with the rules, although they did not: their breach of duty was not in using young and comparatively inexperienced audit clerks in relation to the detailed work, but, principally, in inadequate supervision. The partner had failed to appreciate to a proper extent that his duty as an accountant was wider than merely to protect the solicitor but extended to protecting clients and the public against carelessness or dishonesty on the part of the solicitor himself. However, in view of the finding that the solicitor knew that what he was doing was wrong, not only a technical breach of professional rules but against the law of the land, his claim failed. Action dismissed.

*Circuit Court Decree for damages for Trespass—Costs to Plaintiff. No Poor Law Valuation—Costs measured under Rule 27, Order 58 Circuit Court Rules 1950.*

The plaintiff was the registered owner of an acre of land upon which the defendant had built part of a house, planted shrubs, flowers and vegetables, placed obstructions and allowed his cattle to graze. In the ensuing Circuit Court action it was ordered that the plaintiff recover from the defendant the costs and witnesses' expenses of the proceedings when taxed and ascertained. There was no poor law valuation of the land in question. The County Registrar was of opinion that there was no appropriate scale of costs and consequently measured a sum for costs under rule 27 of Order 58 of the Circuit Court Rules, 1950. To assist him in arriving at this sum, he first considered representations of plaintiff and defendant and decided that the actual value of the land was between £500 and £1,000; he then considered the plaintiff's Bill of Costs which was drawn according to the High Court scale less one third save that Counsel's fees were slightly higher than would be allowed if the appropriate Equity Scale applied. The defendant appealed to the Circuit Court against the County Registrar's decision. On dismissal of the appeal, he appealed to the High Court.

*Held:* the Registrar was not bound by any rules in this case, and he had acted properly and his taxation must stand.

(John P. Curtin *v.* Patricia Coakley, Irish Law Times and Solicitors' Journal, May 26th, 1962, page 148.)

*Necessity to produce Stationery Office copy of Regulation—Prosecution under Road Traffic Acts*

The Lord Chief Justice in the case of Palastanga *v.* Solman gave guidance to justices on what they should do when defending Counsel took the point that a copy from the Stationery Office of a well known statutory instrument upon which the prosecution relied had not been produced in Court. The Divisional Court had allowed an appeal by case stated against the dismissal of an information preferred by the appellant, a police inspector against the defendant Mrs. M. A. W. Solman alleging that she had on July 29th, 1961 caused a motor vehicle to stand on a road so as to cause unnecessary obstruction contrary to regulation 89 of the Motor Vehicles (Construction and Use) Regulations 1955. At the hearing, the prosecution did not produce the regulations and Counsel for the defendant successfully submitted that the burden of proving that the regulation had been made was on the prosecution and that this burden had not been discharged. In the opinion of his Lordship this was a disgraceful point to make, and he found it difficult to speak on it in moderate language. The regulation in question was well-known to everyone who administered the law and particularly to justices who dealt everyday with cases under it. His Lordship stated that he wished to reserve for a future occasion the question of whether the Order was so notorious that judicial conizance could be taken without production of it in Court. He found it unnecessary to decide this point because it seemed to him that the justices should have adjourned the matter to enable the police inspector to get a Stationery Office copy. Ashworth and Atkinson, J. J., concurred. (*The Times*, February 21st, 1962.)

*Stamp Duty on Deed of Exchange of Freehold Estate for Leasehold Interest—whether an Exchange or Conveyance on Sale*

In a recent English case the lessors of property who were also the owners of the freehold interest therein sold their interest to their lessees. The sale was carried into effect by the following complicated series of transactions designed to avoid stamp duty. The freeholders, the trustees of the Independent Order of Oddfellows held the premises subject to a lease to Littlewood's Mail Order Stores Ltd., for 99 years from June 24th, 1947 at an annual rent of £23,444. This was substantially less than a rack rent. On December the 8th Oddfellows granted to Littlewoods a lease of the same premises for 22 years and ten days from that date at an annual rent of £6 per annum which lease operated as a surrender of the existing lease. On December 9th Littlewoods

assigned their lessee's interest in this new lease to a wholly owned subsidiary Company, Fork Manufacturing Co., Ltd. This was by way of voluntary assignment. On December 10th Fork granted an underlease of the same premises to Littlewoods for 22 years at an annual rent of £42,450. On December 11th Oddfellows and Fork executed the deed of exchange which recited the lease, assignment and underlease already mentioned and a mutual agreement of the parties to exchange their respective estates and which witnessed that in consideration of an assignment thereinafter made by Fork to Oddfellows, Oddfellows transferred to Fork their freehold interest in the premises in question in return for which Fork assigned to Oddfellows for all the residue of the term thereby created the lease of December 8th. In other words Fork and Oddfellows simply changed places. On December 11th Fork by deed guaranteed the payment to Oddfellows of the rent reserved by the underlease and charged the freehold reversion with such payment to Oddfellows.

Finally on December 13th Littlewoods by deed indemnified Oddfellows against the payment of stamp duty and any penalties in connection with the entire transaction. The effect of all this was that Oddfellows were no longer owners of the fee simple subject to a long lease but instead were holders of a lease for twenty-two years which by virtue of the underlease procured them a rent nearly double that to which they had previously been entitled while Fork (and therefore indirectly Littlewoods) became the owners of the fee simple subject to the obligations of the underlease. As Lord Reid put it, the practical result was the same as if Oddfellows had simply sold the freehold to Littlewoods for twenty two annual instalments of £42,450 secured on the property. The six deeds were presented to the Commissioners of Inland Revenue for adjudication for stamp duty and the appellants objected to the assessment made in respect of two of the deeds. Objection was taken to the assessment on the voluntary assignment of December 9th by which Littlewoods assigned the new lease for £6 a year to their subsidiary company. Stamp duty had been assessed at £8,000 on an estimated value of £400,000, the value of the interest assigned. Objection was also taken to the assessment on the deed which was described as the deed of exchange and dated December 11th. It was treated as a conveyance on sale of the fee simple by reference to the head of charge "conveyance or transfer on sale" and to section 56 (2) of the Stamp Act, 1891. *Ad valorem* duty was assessed at the rate of £1 per £50 on £42,444 multiplied by 20, £16,978. It was contended that this deed was liable to the fixed rate of 10/- only as it was a deed of exchange. They appealed by way of case stated to the High Court where it was held that the former document attracted *ad valorem* stamp duty but that the latter document was liable to the 10/- fixed duty as a genuine exchange. The Crown appealed against the decision and Messrs. Littlewoods, the tax payers, cross appealed. The Court of Appeal dismissed both appeals and the Crown appealed to the House of Lords. Messrs. Littlewoods put in a cross appeal. It was held by the House of Lords that (i) the assignment of December 9th was liable to *ad valorem* stamp duty as a voluntary disposition under section 74 of the Finance (1909–10) Act 1910 and was not exempted from such duty by section 42 (1) of the Finance Act, 1930 because the beneficial interest in the property thereby conveyed was previously conveyed by the freeholders by the grant of a new lease. (ii) The deed of exchange was not liable to *ad valorem* stamp duty as a conveyance or transfer on sale, because, although it was not an exchange within the meaning of the Stamp Act, 1891 it was also not a conveyance or transfer on sale since a sale connoted among other things a price in money paid or promised. (Inland Revenue Commissioners *v.* Littlewoods Mail Order Stores Ltd., Littlewoods Mail Order Stores Ltd. *v.* Inland Revenue Commissioners, 1962 A. E. R. 279).

## INTERNATIONAL FACULTY OF COMPARATIVE LAW

The summer courses of the International Faculty of Comparative Law, open primarily to practitioners and law graduates, will be held in the Institute of the International Faculty in Luxembourg from the 23rd July to the 15th September, 1962. The course will be divided as follows :—

(1) Preliminary Course on the law of the European Community—from the 23rd July to the 4th August, 1962.

(2) General Introductory Course on Comparative law—from the 6th August to the 15th September, 1962.

(3) Special comparative course on the essential features of a contract.

(4) Special comparative course on the jurisdiction of Courts in constitutional cases.

Courses Nos. (3) and (4) will be held from the 6th August to the 15th September, 1962.

Full particulars may be obtained on application to the Secretariat of the Institute of Comparative Law, at 13 rue du Rost, Luxembourg.

## THE REGISTRY

### Register A

BARRISTER OR SOLICITOR. Private practice Northern Nigeria. Salary to £1,500. Free car, furnished accomodation. Early partnership prospects. Home leave 3 months after 21 months tour. Particulars: The Secretary, Incorporated Law Society.

## REGISTRATION OF TITLE ACTS, 1841 & 1942
## NOTICE

FOLIO 7139R COUNTY MEATH.

Registered Owner: RICHARD CRINION.

The Registered Owner has applied for a New Certificate of Title specified in the Schedule hereto the original of which is stated to have been lost or inadvertently destroyed.

A new certificate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the Original Certificate is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 4th day of July, 1962.

D. L. McALLISTER,
Registrar of Titles.

SCHEDULE

Land Certificate of Richad Crinion to 9a. or. 38p. of the lands of Roestown and 1a. 3r. 18p. of the lands of Rochestown situate in the Barony of Slane Upper and County of Meath being the lands comprised in said Folio.

## OBITUARY

MR. PATRICK CALLAN, Solicitor, died on the 24th May, 1962, at St. Michael's Hospital, Dun Laoghaire, Co. Dublin.

Mr. Callan served his apprenticeship with the late Mr. Raymond French, 32 Nassau Street, Dublin, was admitted in Michaelmas Sittings, 1935, and practised at 52 Dame Street, Dublin.

MR. HENRY CHARLES BOURKE, Solicitor, died on the 28th May, 1962, at his residence, Amana, Ballina, Co. Mayo.

Mr. Bourke served his apprenticeship with the late Mr. Robert Paget Bourke, Ballina, Co. Mayo, was admitted in Trinity Sittings, 1897, and practised at Ballina until his retirement in 1930.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:
SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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No. 3

JULY
1962

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
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*Vice-Presidents*
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ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

The President in the chair, also present, Messrs. Robert McD. Taylor, Peter E. O'Connell, Brendan T. Walsh, W.A. Osborne, Augustus Cullen, William A. Tormey, Patrick Noonan, Ralph J. Walker, Reginald J. Nolan, D. B. Gilmore, Thomas A. O'Reilly, James J. O'Connor, Peter D. M. Prentice, John J. Nash, James W. O'Donovan, Gerald Y. Goldberg, George A. Nolan, Niall S. Gaffney, John R. Halpin, Francis J. Lanigan, John C. O'Carroll, Brendan A. McGrath, Eunan McCarron, J. Bernard MacGarry, John Carrigan, James R. C. Green, R. A. French.

The following was among the business transacted:

**Privilege, Solicitor—request to give information to the police.**

A member asked the opinion of the Council on the following facts. He acted for the administratrix of a deceased intestate. The estate consisted of some money in the bank, personal effects and a farm of land which was sold. The client gave member the names and addresses of all the next of kin, some of whom resided in England, and forms of receipt and discharge were sent to them for signature. These were

all duly returned witnessed and signed. Bank drafts were then purchased and the distributive share was forwarded to each next of kin. Sometime later, one of the next of kin wrote to member and stated that she had not received her share of the estate. Her solicitors in England got in touch with member and from the correspondence which ensued it appeared that the address supplied to member by his client for the next of kin in question was not a correct address. Member had forwarded the form of receipt to the address which he had got and it had been returned apparently signed by the lady to whom it was directed. The bank draft in respect of the distributive share had also been cashed. Member has been requested by the police to make a statement setting out the facts as he knows them, as it appears that criminal proceedings are contemplated in England against his client. The Council on a report from a committee decided that (1) *prima facie* there is no question of privilege as this appears to be a case where a solicitor was consulted by a client who contemplated the committing of a fraud. (See R. *v.* Cox and Railton, 14, Q.B.D., 1953) (2) Member might go to England if required to give evidence, but should raise the question of privilege and act on the direction of the court and (3) member should not submit any signed statement to the prosecuting authorities in advance.

## FORMATION OF LIMITED COMPANIES

The Society have had consultations with the Institute of Chartered Accountants on the question of the formation of companies by chartered accountants.

Under section 58 of the Solicitors Act, 1954, it is an offence for an unqualified person within the meaning of the Act to prepare certain documents for or in expectation directly or indirectly of fee, gain or reward. In view of possible difficulties of interpretation the Society and the Institute have agreed that a chartered accountant shall not draft for reward directly or indirectly except in collaboration with a solicitor any memorandum or articles of association or any major amendment thereto. It was further agreed that a chartered accountant could continue to draft other documents required under the Companies Acts as it has been a general practice with members of the Institute to draft in the past. If any difficulties should arise between two professions they are to be dealt with in mutual consultation between the Institute and the Society.

It was further agreed that any complaint of unprofessional conduct against a member of the Society or of the Institute should be dealt with by reporting him to his professional body for such action as that body should consider appropriate.

The Council of the Society wish to point out to members engaged in the formation of limited companies that it is advisable to consult an accountant on the tax and other questions which are within the special province of members of the Institute before the memorandum and articles are settled.

## THE COMMON MARKET AND THE LAW

Three lectures were delivered in the Solicitors' Library by Mr. A. H. Robertson, Ph.D., B.L., of the Secretariat of the Council of Europe under the general heading "The Common Market and the Law". The lectures were delivered under the joint auspices of the Society and of the Honourable Society of the King's Inns. In the first lecture, entitled "The Institutions of the Economic Community", Dr. Robertson traced the history of the movement for European unity since 1945 and he gave a description of the various supranational institutions of the Economic Community, *viz*: The Commission, Council, Parliament and Court. In his second lecture Dr. Robertson dealt in detail with the various provisions of the Treaty of Rome. He said that the treaty was wrongly understood by many people to establish a Common Market but in fact it went deeper and aimed at harmonizing social, agricultural and economic as well as commercial policies. He dealt also with the free movement of labour and said that progress here had not been as rapid as the progress which had been made in the abolition of tariffs. At the moment the States had got only as far as allowing workers to accept offers of employment where the native community could not fill the job. Another point which would be of interest to Irish lawyers was how far Ireland would be under obligation to comply with decisions taken by the E.E.C. before she became a member. The case in point was the decision taken to establish the principle of equal pay for men and women. This might be a subject for negotiation.

In the third and final lecture Dr. Robertson dealt with various topics, mainly the harmonization of legislation, monopolies and restrictive trade practices, enforcement of foreign judgments and patents. Monopolies and restrictive practices were, he said, completely incompatible with the concept of the Common Market. He also dealt with the question of legal and medical and other professional qualifications and he said that eventually they would probably arrive at the stage where such qualifications would be commonly established and recognised by all members of the community.

At the conclusion a vote of thanks to Dr. Robertson was moved by the President of the Society. The Chief Justice also spoke.

## EXAMINATION DATES

1st Law—September 3rd and 4th
2nd Law—September 3rd and 4th
3rd Law—September 5th, 6th and 7th
Book-keeping, September 13th
1st Irish examination—September 14th
2nd Irish examination—September 14th and 15th

## MODERN LAW PUBLICATIONS

It is hoped to issue the publications on the Civil Liability Act, 1961 and on the Stamp Duty Legislation to members who have placed orders in the near future. The latter has been held up in order to include the Stamp Duty provisions contained in the Finance Act, 1962. Orders are still being taken for the books which are priced at 8/6d. each, including postage.

## PROCEEDINGS AGAINST SOLICITORS

By order of the President of the High Court dated the 11th May, 1962, on an application by the Society, it was directed that the name of Patrick Cunningham, who formerly practised at 18 Palmerston Gardens, Rathmines, Dublin, be struck off the Roll of Solicitors.

## STAMP DUTY ON INDENTURES OF APPRENTICESHIP

The Minister for Finance has by order appointed the 1st August, 1962, as the day on which section 17 of the Finance Act, 1962, comes into operation. Section 17 provides for the termination of the stamp duties payable on the indentures of apprenticeship of solicitors' apprentices. By regulations made under the Solicitors Acts, 1954 and 1960, the Council of the Society, with the concurrence of the President of the High Court, have made regulations coming into operation on the same day and providing for the increase of the fee payable for entry by the Registrar of Solicitors of indentures of apprenticeship from £68 to £82. The result is to transfer the sum of £14 hitherto payable on the indentures to the Society. The statutory instruments in question are the Finance Act, 1962 (Commencement of Section 17) Order 1961 (S.I. No. 130 of 1962) and the Solicitors Acts, 1954 and 1960 (Apprentices Fees) Regulations 1962 (S.I. No. 131 of 1962). The orders are available from the Stationery Office, G.P.O. Arcade, Dublin, prices 3d. nett and 6d. nett respectively.

## NEW HIGH COURT AND SUPREME COURT RULES

The Superior Court Rules Committee, with the concurrence of the Minister for Justice, have made the rules of the Superior Courts (S.I. No. 72 of 1962). The Rules will come into operation on the 1st January, 1963. Copies of the Rules may be obtained from the Government Publication Sale Office, G.P.O. Arcade, Dublin 1, price 30/- nett.

## INTOXICATING LIQUOR ACT, 1962

The above Act was signed by the President and became law on the 2nd day of August, 1962. Of particular interest to members is section 34 which applies to temporary transfers of liquor licenses and this section provides that the power of a District Justice under the previous licensing acts to transfer temporarily an on-licence on the death of the holder shall include a power to transfer the licence to any person (being a person approved of by the court and not disqualified by law) nominated by the executor or administrator of the holder or, if there be no executor or administrator, by any person having an interest in the premises to which the licence relates. The section goes on to provide that the transfer shall operate to authorise the person to whom the licence is transferred to carry on in business in the premises until the date of the sitting of the annual licensing session of the District Court in the particular court area. The Act is on sale at the Government Publication Sale Office, Henry Street Arcade, Dublin (price 4/- nett).

## VACATION ARRANGEMENTS FOR THE LIBRARY

The Library will be closed to readers from the 16th August to the 8th September, and from the 24th September to the 29th September. The Library will be open from Monday 10th September, at 10 a.m. to Friday 21st September, at 5 p.m., and continuously from Monday 1st October, 1962, at 10 a.m.

Members requiring books urgently should obtain them from the office.

## DECISIONS OF PROFESSIONAL INTEREST

*Acts of bankruptcy—execution and seizure of debtors stock in trade—solicitor making payments to various creditors.*

Section 1 (1) of the Bankruptcy Act, 1914, provides that seizure by the sheriff of goods and the holding of

the goods for twenty one days under process or order of the court amounts to an act of bankruptcy. Section 45 of the same Act provides (*inter alia*) that nothing shall invalidate an assignment by the debtor for valuable consideration prior to the date of the receiving order provided that the person to whom the assignment is made has not at that time any notice of the act of bankruptcy. Section 46 provides that a payment by any person of money to a person subsequently adjudicated a bankrupt or to a person claiming under an assignment from the bankrupt is a good discharge if the payment is made prior to the date of the receiving order and without notice of the presentation of a bankruptcy petition and is either pursuant to the ordinary course of business or is *bona fide*. The facts of this case were as follows: On September 17th, 1959, a judgment creditor levied execution under three judgments for a total sum of £1,447 4s. 3d. on the goods of D who was a grocer D signed a "walking possession agreement" under which he undertook not to remove any of the goods seized in order that he could continue trading. On October 9th, D entered into a contract for the sale of the shop which was to be completed on November 2nd. On that day the purchaser paid to D's solicitor £7,625 for the premises fixtures and goodwill and £1,101 9s. 6d. for the stock in trade. The solicitor had been acting for D all along and had notice of the execution order and the possession by the sheriff of D's stock in trade. The solicitor received a total of approximately £9,000 and out of this he paid £4,412 to the mortgagees of the premises who had joined in the sale and between November 2nd and November 13th, he paid out about £4,500 to various creditors including the balance due to the judgment creditor in pursuance of instructions given to him by D. On November 2nd, D had informed his solicitor that there were no debts other than those of which the solicitor knew and there were sufficient funds to meet them. By November 25th, the solicitor discovered that the debtor had not disclosed all his debts to him and that there were further debts amounting to £4,000 which the debtor was unable to pay. On December 11th, 1959, D was adjudicated a bankrupt on his own petition. The trustee in bankruptcy applied to the County Cork for an order for an account from the solicitor of the proceeds of the sale and the payment of the sum found due and the judge ordered (1) that the title of the trustee related back to October, 9th 1959, (twenty one days after the sheriff had taken possession) and (2) that the solicitor was accountable to the trustee for the sum of £4,114 19s. 6d. received by him on the bankrupt's behalf subsequent to and with notice of an act of bankruptcy. It was also ordered that this sum should be paid by the solicitor to the trustee. On appeal to the Divisional Court it was held (i) that the oral permission given to D after seizure of the goods to deal with them in a limited way without further reference to the sheriff was not inconsistent with his possession of the goods and that accordingly an act of bankruptcy occurred on October 9th, 1959. (ii) That the payments made to the creditors by D's solicitor out of the money in his hands were payments made "to" the bankrupt and being *bona fide* they fell within the meaning of section 46. Accordingly they were a good discharge to the solicitor. (iii) That certain of the payments were made pursuant to an assignment by the bankrupt for valuable consideration within the meaning of section 46 (*c*) and were therefore validated by that section by reason of the fact that the payees had not notice of the act of bankruptcy. The fact that the solicitor (the person making the payments) had such notice did not bring them within the section. It was therefore ordered that the County Court judge's order be set aside except in so far as it ordered that the act of bankruptcy occurred on October 9th.

The remarks of Russell J. in giving judgment are of interest to the profession because he held that the payments made by the solicitor were not made in the ordinary course of business and, therefore, in order to bring them within the section they would have to be made *bona fide*. The learned judge said that a solicitor (or any person) paying money on behalf of a debtor in a situation like this owes a duty to the debtor's creditors and the good faith to be shown to such person went beyond mere personal honesty and involved more than absence of a conscious attempt to defraud. The learned judge said: "If Mr. Bennett (the solicitor) had made the payments with the knowledge that the process would result in some creditors being paid in full and others whistling for their money we do not consider that the payments would have been made *bona fide*. It might well be that if a person in Mr. Bennett's position had a strong suspicion that the process of his payments would have the result mentioned above but took pains to avoid finding out the truth he could not be said to make them *bona fide*. But the situation in the present case was otherwise." The learned judge went on to point out that though the solicitor knew that his client had committed an act of bankruptcy and was generally insolvent the situation at the time when the purchase money came into his hands was that he thought he had sufficient to pay all the client's debts and the client had told him expressly that there were no further debts. The judge continued, "All the payments now thought to be recovered were made before he found out that Dalton had not told him the truth. There

is no suggestion that Mr. Bennett doubted his client's word or took pains to avoid discovery of a suspected truth." The learned judge had said earlier on in his judgment that it was obvious that the client only came to his solicitor and disclosed debts that were due when the creditors were pressing him so hard that he needed his solicitor's assistance to keep them at bay. (In re Dalton (a bankrupt), *ex parte* Herrington and Carmichael *v.* The Trustee 1962. 3, *Weekly Law Reports*, page 140.)

NOTE

In this country the English Act of 1914 does not apply and the Act of Bankruptcy which would probably correspond is that set out in section 21 of the Bankruptcy (Ireland) Amendment Act, 1872, as follows:

> "That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than £20 has in the case of a trader been levied by seizure and sale of his goods".

The words "and sale" should be noted.

Section 46, referred to above (providing for *bona fide* payments or payments made in the ordinary course of business and without notice of the Bankruptcy petition) has no counterpart in this country.

*Further medical evidence obtained by tribunal after hearing and before decision—functions of assessor.*

The applicant, a hospital porter, was required in the course of his employment to be inoculated against poliomyelitis. Almost immediately after an inoculation he developed rheumatism, which was later diagnosed as rheumatoid arthritis. In a claim made under the National Insurance (Industrial Injuries) Acts, 1946 to 1960, he alleged that this incapacity was a personal injury which he had suffered by accident arising out of and in the course of his employment. The local appeal tribunal decided that he had made out a case. The insurance officer appealed, and the deputy industrial injuries commissioner acceded to a request for an oral hearing, in the course of which medical evidence was given and the question was raised whether the applicant's inoculation could have caused or contributed to his rheumatoid arthritis. The deputy commissioner did not at the hearing have the assistance of an assessor under reg. 22 (6) of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948, but after the hearing and before giving his decision, he sought the assistance of a specialist in rheumatology, to whom all the case papers were submitted and to whom the deputy commissioner afterwards read his own notes of the oral evidence. In his decision, the deputy commissioner recorded the advice which he had received from the specialist, which was, in effect, that, on the balance of probabilities, the applicant's rheumatoid arthritis was not caused or aggravated by his inoculation, and stated that he found against the applicant in view of this advice. No notice of the advice received was given to the parties, nor were they given an opportunity of challenging or commenting on it. On the application for certiorari to quash the decision of the deputy commissioner,

Held: certiorari would be granted, because—

(i) as a quasi-judicial tribunal deciding a case *inter partes* after an oral hearing, the deputy commissioner was not entitled to continue privately to obtain evidence between the end of the oral hearing and his decision, without informing the parties of the advice or information so obtained, so as to give them an opportunity of commenting on it.

(ii) the function of a medical assessor under reg. 22 (6) of the Regulations of 1948, was confined to advising the commissioner on the medical evidence, and if anything more were required the proper course was to proceed under reg. 26 (1); in the present case certain passages of the advice received exceeded the functions of an assessor under reg. 22 (6) with the consequence that, if the tribunal were to rely on it, information of the advice should have been given to the parties and opportunity to call evidence or make submissions thereon. (R. *v.* Deputy Industrial Injuries Commissioner, *ex parte* Jones, 1962, 2, *All England Reports*, page 430.)

*Notary Public—application for appointment by a stockbroker.*

On July 23rd, the Chief Justice gave judgment in an application by a stockbroker for appointment as a notary public. The application was opposed by the Faculty of Notaries Public and by the Incorporated Law Society. The Chief Justice in granting the application said that he agreed with the recent trend of decisions in respect of such applications, which was to prefer applicants from the solicitors' profession. However, in this particular case he would have to have regard to the fact that a vacancy had occurred and no application for appointment from a solicitor had been forthcoming. His Lordship was satisfied that the public interest would be served by the granting of the application on condition that the applicant should undertake not to do any conveyancing or other legal work which was not appropriate to his profession as a stockbroker. The applicant was present in court and gave the required undertaking.

*Discretion of District Justice to refuse to admit a statement.*

The Supreme Court has held that a District Justice has discretion to refuse to admit a statement, even though it was made voluntarily, if it had been taken in breach of the Judge's Rules.

The matter came before the Court in an appeal by Patrick Leavy, Santry, Dublin, from a High Court judgment on a question submitted for its opinion by District Justice Molony of the Dublin Metropolitan area.

The District Justice had stated that during the hearing of a complaint against Mr. Leavy of having driven a taxi in a dangerous manner at Malahide Road, Dublin, on December 24th, 1957. Garda J. McCarrick gave evidence that he had asked Mr. Leavy if he were the owner of the car, and who had been driving it when it struck a man on December 24th, 1957, and Counsel for Mr. Leavy objected on the ground that the garda had a duty to caution Mr. Leavy before putting the question.

The District Justice allowed the solicitor for the prosecution to examine the garda as to whether at the time he put the question he had made up his mind to prosecute Mr. Leavy. The garda said he had not, as he did not know against whom a prosecution would be taken until he learned who had driven the car on the occasion.

The District Justice further stated that having heard submissions on the proposition that the answer the garda attempted to obtain would not be a voluntary statement, decided that the evidence was inadmissible.

He accordingly dismissed the summons and he asked if he had been correct in that decision. The High Court held that the evidence was admissible and from that decision Mr. Leavy appealed.

The Supreme Court—the Chief Justice, Mr. Justice Kingsmill Moore, and Mr. Justice Walsh—said that the District Justice had discretion to refuse to admit a statement even though it had been made voluntarily if it had been taken in breach of the Judge's Rules.

The District Justice had been wrong in law in holding that Mr. Leavy's answer to the garda—whether he had been driving the car—was not a voluntary statement. The case would go back to the District Justice and it would be open to him to receive or refuse the evidence. (*Irish Independent*, 7th June, 1962.)

## THE REGISTRY

### Register A.

BARRISTER OR SOLICITOR. Private practice Northern Nigeria Salary to £1,500. Free car, furnished accommodation. Early partnership prospects. Home leave 3 months after 21 months our. Particulars—Secretary, Incorporated Law Society.

SOLICITOR'S ASSISTANT, male or female, urgently required for Dublin solicitors' office. State salary required and experience if any. Box A. 195.

### Register B.

CONVEYANCING CLERK (24) with approximately two years, experience with London firm requires position as Conveyancing and Probate Clerk in Dublin. Please state salary offered. Box B. 266.

### Register C.

FOR SALE. *Halsbury* (1912 Edition), *English and Empire Digest* (1924 Edition), *Supplements*, 1940/46. Apply Box C. 169.

£10 OFFERED by Student for copy of "Principles of Equity" by T. O'Neill-Kiely or for extended loan of same. Box C. 170.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942 ISSUE OF NEW LAND CERTIFICATE

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 17th day of August, 1962.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, John Whelan. Folio number 4861 (Revised). County Leix (Queens). Lands of Raheenahoran in the Barony of Maryborough East containing 37a. 3r. 35p.

2. Registered Owner, Ellen Carver. Folio number 3208. County Cork. Lands of Kanturk in the Barony of Duhallow containing 13a. 2r. 21p.

3. Registered Owners, The Irish Land Commission. Folio numbers 12346 and 9147. County Tipperary. Lands of Castlecranna in the Barony of Owney and Arra containing 104a. 0r. 9p. and 13a. 3r. 27p. respectively.

4. Registered Owner William Nicholls. Folio number 388 County Leitrim. Lands of Rassaun in the Barony of Carrigallen containing 30a. 0r. 0p.

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AUG.-SEPT.
1962

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETING OF THE COUNCIL

JULY 26TH, 1962: The President in the Chair. Also present Messrs. Robert McD. Taylor, W. A. Osborne, Peter E. O'Connell, John Maher, Augustus Cullen, J. Bernard MacGarry, Daniel J. O'Connor, Ralph J. Walker, D. B. Gilmore, Patrick Noonan, John Carrigan, Desmond Moran, James J. O'Donovan, James R. C. Green, Desmond J. Collins, Gerald Y. Goldberg, R. A. French, Charles Hyland, T. V. O'Connor, John J. Nash, John R. Halpin, Thomas A. O'Reilly, Francis J. Lanigan, Reginald J. Nolan, Brendan A. McGrath, Brendan T. Walsh, Peter D. M. Prentice, John C. O'Carroll, George A. Nolan.

The following was among the business transacted:

#### Committee on practice and procedure of the courts

A memorandum on the subject of the Preliminary Investigation of Indictable Offences prepared by Mr. Goldberg was considered and adopted for submission to the committee subject to certain amendments.

## Government programme of law reform

A memorandum on Registry of Deeds practice was approved and it was directed that it be submitted to the Department of Justice for consideration. The Council also considered memoranda prepared by members on the following subjects: Evidence, Administration of Estates, Guardianship of Infants and Wills.

## Vacancy on the Council

The President read a letter received by him from Mr. John R. Halpin intimating his desire to resign from the Council. The President on behalf of the Council thanked Mr. Halpin for his valuable services to the profession as a member of the Council and a former President of the Society. Mr. Halpin thanked the President for his remarks.

On the proposal of the President seconded by Mr. T. V. O'Connor, Senator Thomas J. Fitzpatrick of Cavan was co-opted pursuant to bye-law 38 to fill the vacancy caused by Mr. Halpin's resignation.

## Examination results

The report of the Court of Examiners on the results of the first and second Irish examinations was adopted and the results declared as follows:—

*First Examination in Irish*

Fergus F. D. Armstrong, John B. Baily, Marguerite Joyce Boland, Ann M. T. Coady, Nicholas Coffey, Catherine P. V. Doyle, Michael P. A. Farrell, William O. H. Fry, Brian J. Magee, Cornelius L. McCarthy, Michael O'Shea, James A. Rogan, Gerald B. Sheedy, Stephen T. Strong.

15 candidates attended; 14 passed.

*Second Examination in Irish*

Brendan P. Byrne, Henry Owen Comerford, Stuart L. Cosgrave, Ian Q. Crivon, Brian J. Gardiner, Graham M. Golding, George B. Holland, Daniel Kelliher, Patrick T. Liston, Bryan F. Lynch, Neil Matthews, Brian M. McMahon, James Joseph Nestor, David W. Prentice, Malcolm Yaffe.

17 candidates attended; 15 passed.

## Conflict of interest

The Council adopted a report from a committee dealing with two queries from members, both of which involved alleged conflict of interest in Road Traffic Act cases. In one case a member was instructed to take proceedings for damages for negligence on behalf of the owner of a motor vehicle who was also a passenger in it at the time of the accident. Member had already acted for the driver of the car in the defence of a prosecution taken against him under the Road Traffic Acts and he had also advised him that the injuries which he had received were due to his own negligence and that no action would lie against the owner of the car. The insurance company concerned objected to member acting for the owner of the car in his proposed claim and member asked for guidance. The committee reported that in their opinion member should not accept instructions. In the second case a client came to a member and informed him that his car had been involved in a motor accident in which his daughter had been injured. At the time of the accident the car had been on loan to the client's son but was being driven by another person. Member informed his client that his daughter would be entitled to recover damages against him as the owner of the car and the client then instructed him to look after his daughter's claim. Some days later the client called on member and brought him a claim form which he had received from the insurance company. Member assisted his client in the completion and signing of the claim form and forwarded it on his behalf to the company. At the company's request member supplied to them some particulars about the driver of the car and in replying he advised that he was acting on behalf of his client's daughter in her proposed claim for damages arising out of the accident. The insurance company objected and said that it appeared that there was a conflict of interest and that as the client had consulted member in the first instance the client's daughter should now withdraw her instructions to him. Member stated in reply that the instructions were given to him at the outset by the client to pursue the claim on behalf of his daughter and that he took no instructions from him whatever as to defending the proceedings. Furthermore his client was not driving the car or was not in the car at the time of the accident and at no time did member confer with the driver of the car. He was merely facilitating his client in completing the claim form in which there is nothing which would prejudice the company. The committee reported that in their opinion there would be no conflict of interest having regard to the fact that member's client was not the driver of the car and that there would be no objection to member acting on behalf of his client's daughter.

## Road Traffic Act Prosecutions Costs

The following is the complete text of a letter sent by the Society to the Head Office of each Insurance

Company carrying on business in the Republic of Ireland.

DEAR SIR,

I have been directed by the Council to write to your company on the subject of the fees paid to solicitors for representing insured persons at coroners' inquests and courts of summary jurisdiction in proceedings arising from accidents covered by motor insurance policies.

Under the ordinary policy the company undertakes to pay the solicitor's fee incurred with its written consent for representation at any coroner's inquest in respect of any death which may be the subject of indemnity under the policy or for defending in any court of summary jurisdiction any proceedings in respect of any act causing an event which may be the subject of indemnity. The fee usually paid to a solicitor pre war for this work was about £3 3s. 0d. for each appearance. In April 1959 the Society published in the GAZETTE issued to members a recommendation that the minimum fee for dangerous driving charges should be £5 5s. 0d. plus a reasonable addition for time and travelling expenses where the case is heard in a town other than the town where the solicitor has his principal office. It was stated that these were (at that time) reasonable fees for normal cases and did not apply to cases of exceptional difficulty or to cases of drunkenness in charge of motor vehicles. A copy of the statement which was printed in the Society's GAZETTE in April 1959 is appended.

Solicitors, in common with all other professions and business offices, are subject to the ever increasing burden of overhead expenses due to the present inflationary trend. The effects of the eighth round wage increases on solicitors' operating expenses are becoming apparent and the Council are of opinion that the recommendations made in 1959 require revision. The Council have had the matter under consideration for some time and it has now been decided that, having regard to the factors already mentioned, the Council would not be justified in recommending to members to accept less than a fee of £7 7s. 0d. when instructed by an insurance company in the defence of Road Traffic Act Summonses in the District Court, that is to say, in all cases to which the present minimum fee of £5 5s. 0d. applies. In addition, the Council are of opinion that an additional fee, where appropriate, should be paid to a solicitor for attendance in Court for the taking of depositions in any Road Traffic Act case. It is intended to bring the Council's recommendation to the notice of members of the Society shortly but it was decided before so doing to bring its terms to the attention of your company.

Yours faithfully,
ERIC A. PLUNKETT,
*Secretary.*

The Council hope that all members will conform to the recommendation contained in the foregoing letter.

## PROGRAMME OF LECTURES 1962/63

COURSE A.—Company Law. 50 Lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Thursday at 2.15 p.m. save where otherwise notified.

COURSE B.—Conveyancing Law and Practice and Land Law, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 9 a.m. save where otherwise notified.

COURSE C.—The Procedure and Practice of the Courts, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Saturday at 9 a.m. save where otherwise notified.

COURSE D.—Taxation including death duties, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Wednesday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified.

COURSE E.—Book-keeping, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Friday at 5.15 p.m. save where otherwise notified.

COURSE F.—Probate and executorship law and practice, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 2.15 p.m. save where otherwise notified.

Students at Course A to F who fail to attend and receive credit from the lecturer for at least 40 lectures in each Course will not receive credit from the Council and must repeat any Course missed.

COURSE G.—The rights, duties and responsibilities of solicitors, 2 lectures. An apprentice, to obtain credit, must attend both lectures. The dates on which the lectures will be held will be announced at a later date.

For a selection of recommended reading see the published syllabus for the first, second and third law, and book-keeping examinations. The lecturer will not necessarily undertake to cover the entire field in each subject, or lecture out of any particular text book. He will advise the class as to its reading and will assume that each student will have read on the lines advised, in advance of each lecture, on the subject matter of the lecture. The aim of lectures will be to guide students in their work and to illustrate, explain and supplement their reading.

Fee—10 guineas for each Course except Course G for which there is no fee.

Apprentices should take the first law examination *before* attending any of the above lecture courses.

The lecture courses for each term have been arranged to coincide as closely as possible with the University terms.

## DINNER DANCE

TICKETS for the Society's annual dinner dance, which is to be held on Thursday, November 22nd, 1962, at the Shelbourne Hotel, will shortly be on sale at the hotel. Remittances 25/– per ticket made payable to the Shelbourne Hotel, with applications for table reservations, should be addressed to the Bookstall, Shelbourne Hotel, St. Stephen's Green, Dublin.

## LIST OF NEW MEMBERS FROM 1st AUGUST, 1961 TO 31st JULY, 1962

MARY P. M. BERKERY, 42/43 St. Stephen's Green, Dublin.
MAUREEN BOURKE, 42/43 St. Stephen's Green, Dublin.
PETER J. C. COYLE, 16 Earl Street, Dundalk, Co. Louth.
JOHN V. P. CRESSWELL, 3/4 Foster Place, Dublin.
ALBERT CUMMINS, Athenry, Co. Galway.
MAURICE R. CURRAN, 24 South Anne Street, Dublin.
JAMES J. DENNISON, Abbeyfeale, Co. Limerick.
ALEC DIAMOND, 12 South Frederick Street, Dublin.
BARRY G. M. DONNELLY, Athy, Co. Kildare.
EDWARD J. DUFFY, Virginia, Co. Cavan.
ADRIAN F. J. FITZGERALD, Ballinrobe, Co. Mayo.
DONAL P. GALLAGHER, Donegal.
JOSEPH GILMARTIN, Castlebar, Co. Mayo.
LEWIS J. GOLDBERG, Library House, Pembroke Street, Cork.
ANTHONY C. GORE-GRIMES, 6 Cavendish Row, Dublin.
RORY M. HOGAN, Callan, Co. Kilkenny.
BRENDAN J. JONES, Tipperary.
MARTIN S. KEAVENY, Kells, Co. Meath.
JOHN V. KELLY, Church Street, Cavan.
KENNETH KENNY, 64 Wellington Road, Dublin.
DONAL M. KING, Tralee, Co. Kerry.
TIMOTHY B. MCENIRY, 5 St. Andrew Street, Dublin.
ALAN MCGONAGLE, 8 Montgomery Road, Malpas, Newport, Monmouthshire, Wales.
DERMOT J. MOLONEY, 22 Marlboro Street, Cork.
HENRY B. C. MOORE, St. Johns, Islandbridge, Dublin.
DERMOD MORRISSEY-MURPHY, Sligo.
OWEN MULHOLLAND, 6 Sandford Road, Ranelagh, Dublin.
F. X. MULLIGAN, 27 Eustace Street, Dublin.
THOMAS F. O'CONNELL, 68 Middle Abbey Street, Dublin.
THOMAS P. O'CONNOR, 77 Lower Leeson Street, Dublin.
RODERICK D. O'DONNELL, 45 Lower Baggot Street, Dublin.
GERARD M. QUIRK, Carrick-on-Suir, Co. Tipperary.
ALBAN B. RIGNEY, 13/16 Fleet Street, Dublin.
NOEL T. SMITH, 36 South Frederick Street, Dublin.
DONALD O. STUART, 20 Westland Row, Dublin.
FERGUS P. TAAFFE, 14 D'Olier Street, Dublin.
CYRIL D. TARRANT, Arklow, Co. Wicklow.

## LAND REGISTRATION (SOLICITORS COSTS) RULES, 1962

The Registration of Title Rules Committee, with the concurrence of the Minister for Justice, have made the Land Registration (Solicitors Costs) Rules, 1962. The Rules come into operation on the 1st September, 1962.

The main change brought in by the Rules is the substitution of a higher scale of costs for voluntary transfers of registered land for the existing scale, with the difference that there is no longer an option to charge under Schedule II. The new item charges under Schedule II in S.R.G.O. of 1960 are applied, where appropriate, to registered land. The remainder is mainly a re-enactment of the existing scales.

Copies of the Rules may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin, price 1/–, postage 3d. extra.

## DECISIONS OF PROFESSIONAL INTEREST

*Aiding Champerty—Solicitor only entitled to out of pocket expenses.*

In the case of in *re* Trepca Mines Ltd. the Court of Appeal has upheld the judgment of Mr. Justice Pennycuick in an interlocutory application for a review of taxation of the costs of a solicitor. His Lordship had held that if the solicitor was aware of the existence and the terms of a champertous agreement in connection with litigation his contract of retainer in respect of that litigation was unenforceable. The case was reported in last February's issue of THE GAZETTE, at page 81, and the facts are fully set out therein. The Master of the Rolls, giving judgment, said that a solicitor was not debarred from recovering his costs merely because he knew of his client's champertous agreement. But if he himself actively participated in a champertous agreement and gave his client positive assistance in implementing the champertous bargain, he was guilty of aiding and abetting an unlawful act and could not recover his costs. In this case he was satisfied that the solicitor's conduct went beyond mere knowledge and extended

to active participation. Donovan J., delivering a concurring judgment, said that the appeal had the support of the Law Society and guidance had been requested as to the solicitor's position if a bank lent money to finance litigation. In such a case there was no maintenance if the advance was made in the ordinary course of business. (*The Times*, July 31st, 1962).

*Hire Purchase Agreement: Whether "Agreed Depreciation" a Penalty.*

In Lombank Ltd. *v.* Kennedy and Whitelaw and Lombank Ltd. *v.* Crossan, the plaintiffs, a hire purchase company, issued a specially indorsed writ claiming a sum for "agreed depreciation" of a motor car, the subject of the hire purchase agreement. The agreements had each provided for the calculation of "agreed depreciation" with reference to a percentage of the total hire purchase price. The percentage was not less than 45% and not more than 75% and it depended upon the length of time the contract subsisted. In the first mentioned case the contract was terminated by the plaintiffs for failure to pay the monthly rentals. In the second case the contract had been voluntarily terminated by the hirer and in each case the plaintiffs sought to mark judgment in default of appearance. Their applications were refused on the ground that the sum claimed in each writ was not a liquidated demand in respect of which judgment could be entered in default of appearance. On appeal it was held (1) that in each case the amount calculated under the "agreed depreciation" clause was a penal sum rather than a genuine pre-estimate of damage and (2) that the "penalty rule" can only come into operation where there had been an actionable breach of contract, and that it did not, therefore, apply to the case where the contract was voluntarily terminated by the hirer. Accordingly the appeal was dismissed in the first mentioned case and allowed in the second mentioned case. (1961 Northern Ireland Law Reports, page 192).

*Right of last speech to the Jury.*

In Weller *v.* O'Brien the plaintiff was suing as widow and administratrix of the estate of her deceased husband and was claiming damages under the Fatal Accident Acts. The action arose out of her husband's death from injuries suffered in a road accident alleged to have been caused by the negligent driving of the defendant. Liability was admitted and the action proceeded on the question of the amount of damages. In cross-examination of the plaintiff's witnesses certain documents which had not been adduced in evidence on behalf of the plaintiff were put to the witnesses by counsel for the defendant and became exhibits. The defendant called no witnesses and the question arose whether, by leading documentary evidence, he had lost the right to the last speech. The court adjourned to allow authorities to be sought but no authority was cited in argument. It was held by the trial judge that the defendant had, by leading the documentary evidence while cross-examining the plaintiff's witnesses, forfeited the right to make the final address to the jury. (1962 3 All England Law Reports, page 65.)

*The Report of an expert should not be ordered by the Court to be made available to the other side.*

In this case, re Saxton deceased, Johnston & anor. *v.* Saxton & anor., the plaintiffs, who were legally aided, claimed in an action to be entitled to the whole of the estate of a deceased testatrix. One of the issues which arose was whether a written agreement signed by the testatrix had in fact been signed by her. An interlocutory application by the plaintiffs for delivery of the agreement to an expert for examination and microchemical tests was granted and the judge, taking into account the expense involved and bearing in mind that if the defendants also got expert examination the costs were likely to fall on them having regard to the fact that the plaintiffs were legally aided, made it a condition of his order that the results of the tests be communicated to the defendants. The plaintiff appealed against this order and it was held that the condition should be struck out on the grounds that the judge should not have had regard to the fact that the plaintiffs were legally aided. It was held further that the report of an expert employed by one side in litigations should not be ordered (in the absence of consent) to be produced to the other side although reports of experts on each side were in practice often exchanged by agreement, and the condition imposing obligation on the plaintiffs could not therefore be validly imposed. (1962 3 All England Reports, page 92.)

*Conspiracy: Defamation by witnesses.*

The plaintiff, a disbarred barrister, brought an action claiming damages for conspiracy against two police officers. He alleged that the defendants had made statements in a report to the Director of Public Prosecutions, in evidence to the Central Criminal Court and at an inquiry before the Benchers of Lincoln's Inn, as a result of which he had been disbarred. The defendants in their defence took the point that the report and their evidence were absolutely privileged and so could not give rise to any cause of action. It was held by the trial judge that the plaintiff's action could not lie. The plaintiff appealed and on appeal it was held by the Court of Appeal (Sellers, Willmer and Diplock L.JJ.) that

the trial judge had been correct. Sellers L. J. said that those who took part in the administration of justice must be free from fear of civil proceedings. It had been sought to draw a distinction between actions for defamation and actions for conspiracy. Whatever the form of action there could be no difference in principle. The rule of law was that no action lay against evidence prepared, produced or procured in the course of legal proceedings. The appeal was accordingly dismissed. (Merrinan *v.* Vibart & anor. Solicitors Journal, August 10th, 1962, page 649).

*Test of Obscenity.*

A bookshop proprietor and his assistant were charged with publishing obscene articles contrary to section 2 (1) of the Obscene Publications Act, 1959 and with conspiracy to contravene the Act. Two plain-clothed police officers had bought the photographs in the shop. As a result of this the shop was searched and articles were seized which formed the basis of the conspiracy charges. The police officers, who were experienced in this type of work, agreed under cross-examination that they had seen thousands of similar photographs and that they did not arouse any feelings in them whatsoever. A submission that there was no case to go to the jury was rejected and the defendants were convicted on both counts. On appeal it was held that the test of obscenity was whether the effect of the article in question on the person was such as to tend to deprave or corrupt him. The court could not accept the prosecution's contention that there was such a thing as inherent obscenity. The degree of inherent obscenity had to be related to the susceptibility of the viewer. Accordingly the conviction on the charge of publishing obscene articles would be quashed. It was held also that the defendants were rightly convicted on the charge of conspiracy. The appeal was accordingly allowed in part. (R. *v.* Clayton, R. *v.* Halsey. Solicitors Journal, August 10th, 1962, page 652).

*Trustees Costs: Counsel's Fees: Correct basis for Taxation.*

The plaintiff trustees, who were a bank, brought a summons for a review of taxation of their costs in an administration matter. As administrators they had issued an originating summons raising a number of questions which arose on the administration of the estate and on determination thereof it was ordered that the matter be referred to the Taxing Master to tax the costs of an incidental to the application. When the matter came before the Taxing Master two items on the bill were altered. One was a brief fee for counse for the plaintiffs of 100 guineas and this was taxed to 50 guineas. The second was a refresher of 50 guineas charged in respect of the same brief for the second day of the hearing and this was taxed to 30 guineas. The summons to review the taxation was heard in chambers and Plowman J. said in the course of his judgment that it appeared to him that the Taxing Master was labouring under a misapprehension as to the facts. The Taxing Master was under the impression that the plaintiffs' solicitors had marked the brief at 100 guineas simply because senior counsel for the defendant had obtained a fee of 150 guineas and his junior had his brief marked at 100 guineas under the two thirds rule. The plaintiffs were represented by junior counsel only. It transpired from affidavits filed by the solicitors concerned that the brief fee of 100 guineas had actually been negotiated. It was further held that the test to apply in determining whether the fees agreed to be paid to counsel were proper or not is whether the trustees in agreeing them had committed such a breach of trust as to be liable to pay part of it personally. This was not the case here. Further, in determining whether the fees paid are proper in amount, it is relevant to consider the complexity of the legal questions involved, the complexity of the questions of fact involved, the amount at stake, payments made in respect of interlocutory work and the standing of counsel concerned. The Taxing Master having applied the wrong test and taxed down counsel's fees as improper it was accordingly held that the objections of the plaintiff trustees to the taxation must be allowed (In Re Whittley deceased (1962) 1 Weekly Law Reports page 922).

*Solicitors' Partnership deed: Misconduct of one partner.*

Three solicitors were parties to a partnership deed which contained the following clause—"If during the continuance of this partnership any partner shall commit or be guilty of misconduct then and in any such case the other partners may by notice in writing expel him from the partnership." It was held by Russell J. that if two partners were guilty of misconduct then the third partner could not expel them under the foregoing clause (In Re A Solicitors' Arbitration (1962), 1 Weekly Law Reports, page 353).

*Damages for personal injuries: state of unconsciousness following permanent brain injury: whether incapacity to enjoy damages relevant.*

A woman aged twenty received serious brain injuries in a motor car accident caused by the admitted negligence of the defendant. As a result she had been unconscious for three and a half years and the medical evidence was that there was no prospect of her recovery and that she would never

have any knowledge of her condition. In an action in which the sole issue was damages she was awarded £15,000 general damages, £879 18s. 11d. special damages for loss of earnings, £2,000 damages for loss of future earnings and £400 damages for loss of expectation of life. No claim was made for damages for pain and suffering. The defendants appealed on the issue of the quantum of the damages and it was held by the Court of Appeal (Sellers and Upjohn L.JJ., Diplock L.J. dissenting) that general damages must be assessed on an objective basis and should be in the nature of compensation for the injury suffered so far as money was appropriate thereto. The fact that the plaintiff would never be able to enjoy personally her award for damages and was ignorant of the loss suffered due to her condition were both irrelevant. In the circumstances the award of general damages made by the trial judge was upheld. It was further held that in assessing future loss of earnings it was wrong to take into account sums which the plaintiff would have earned during the normal span of her life had it not been shortened by injury and that, therefore, the award under this head should be reduced to £1,500. (1962 1 Q. B., page 638).

*Application for Appointment of a Receiver by way of Equitable Execution: Local Government (Superannuation) Act, 1956 : District Court Decree.*

A plaintiff obtained a decree in April 1962 in the Dublin Metropolitan District Court for the sum of £22 12s. 2d. representing the debt and £3 14s. 6d. costs making the total sum due on foot thereof £26 6s. 8d. The plaintiff subsequently learned that the defendant had given notice to Dublin Corporation, his employers, to terminate his employment with them with the intention of going to England and that he was entitled to a refund from the Corporation of contributions paid by him to the superannuation fund. The plaintiff made an application to the Circuit Court for the appointment of a receiver by way of equitable execution over a sum representing the amount which would be payable to the defendant, returnable to him under section 44 of the Local Government (Superannuation) Act, 1956. The application had to be brought in the Circuit Court as the District Court has no power to appoint such a receiver. The Circuit Court judge in dealing with the application referred first to the effect of section 61 of the Act above-referred to which makes void any alienation of the pension payable by a local authority and he stated that he felt inclined to hold that any sum payable by a local authority under the Act came within section 61 and that the section was not confined merely to pension payments. The decision was given, however, on the general question of the powers of the court and the judge held that the order sought was a method of executing a judgment and by reference to definitions 4, 8 and 9 given in the Circuit Court Rules 1950 he felt compelled to hold that the word "judgment" meant a judgment of the Circuit Court only, in this context. The application was therefore refused. (The facts of this case were kindly supplied by a member).

## OBITUARY

Mr. William E. Chapman, Solicitor, died on the 22nd August, 1962.

Mr. Chapman served his apprenticeship with the late Mr. A. S. McCoy, Waterford, was admitted in Michaelmas sittings 1913 and practised at 22 O'Connell Street, Waterford.

## THE REGISTRY

### Register A.

Partnership available in old-established and expanding practice in town near provincial city. Energetic young solicitor with some experience sought. Please reply, with full particulars to Box No. A196.

Assistant solicitor required for the undersigned city firm. Full particulars from S. S. & E. Reeves & Sons, 51, Merrion Square, Dublin, 2.

### Register C

Re Michael Mangan, deceased. Will any Solicitor or other person who drew or has possession of any Will of Michael Mangan, late of The Lots (or Knocknagoshel West), Knocknagoshel, County Kerry, farmer, who died on the 25th February, 1962, please communicate with Messrs. Maurice J. Woulfe & Son, Solicitors, Abbeyfeale, County Limerick. The deceased was a patient in hospital in Cork from 1957 to 1959.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### ISSUE OF NEW LAND CERTIFICATE.

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certifictaes, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any

such notification should state the grounds on which such Certificate is being held.

Dated the 29th day of September, 1962.

D. L. McAtlister,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

## SCHEDULE

1. Registered Owner Daniel Meagher. Folio number 24911. County Tipperary. Lands of Eastwood in the Barony of Eliogarty containing 32a. 1r. 38p.

2. Registered Owner John Byrnes. Folio number 29 R (Closed). County Galway. Lands of Attiregan in the Barony of Kilconnell containing 38a. 0r. 14p.

3. Registered Limited Owners Joseph Gurren & Mary Ellen Gurren. Folio number 1439. County Roscommon. Lands of Brackloon in the Barony of Castlereagh containing 12a. 0r. 28p.

## ADMISSIONS AS SOLICITORS

**1st August, 1961 to 31st July, 1962.**

| *Name* | *Service with* |
|---|---|
| Allen, Michael J.P., 3 St. Francis Street, Galway. | Michael J. Allen, Galway. |
| Berkery, Mary P.M., Slane, Co. Meath. | Eugene Gillan, 106, West Street, Drogheda, Co. Louth. |
| Binchy, Mary, B.A. Gortskagh, Charleville, Co. Cork. | Owen Binchy, Charleville, Co. Cork. |
| Creed, Michael B., B.C.L. Masseytown, Macroom, Co. Cork. | Jeremiah Creed, Masseytown, Macroom, Co. Cork. |
| Cresswell, John V. P., B.A., LL.B. Cullenstown, Kilternan, Co. Dublin | Ex-Barrister-at-Law. |
| Downes, Robert A., Glenmore, Mullingar, Co. Westmeath. | Joseph R. Downes, Mullingar, Co. Westmeath. |
| Earley, Fintan M., B.C.L. Blackrock, Drumshanbo, Co. Leitrim. | George Lynch, Carrick-on-Shannon, Co. Leitrim. |
| Geraghty, William S., B.A., LL.B. Galmon, Taylor's Hill, Galway. | George J. Geraghty, Eyre Square, Galway. |
| Gibbons, Ailin A., B.C.L. 16 Dollymount Avenue, Clontarf, Dublin 3. | John Gibbons, 8 Trinity Street, Dublin 2. |
| Gilmartin, Joseph, Kiltimagh, Co. Mayo. | Patrick M. O'Dwyer, Ballyhaunis, Co. Mayo. |
| Glover, Edward R. A., 66 Landscape Road, Churchtown, Dublin. | Ralph J. Walker, 15 St. Stephen's Green, Dublin 2. |
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| Lavelle, John N.M., Achill Sound, Westport, Co. Mayo. | Patrick J. Durcan, Castlebar, Co. Mayo. |
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## published since February, 1962

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In view of the fact that the new rules come into operation on the 1st January 1963 paper no. 7 in the second law examination (Practice of the High Court and Supreme Court) will be based on the new rules. Accordingly, the lectures on this subject (Course C, commencing October 8th, 1962 at 9 a.m.) will deal with the changes brought in by the rules. In order to facilitate apprentices who have already taken this course of lectures and who intend to sit for the second law examination in February 1963 the course of lectures will commence with the High Court and Supreme Court practice and this topic will have been dealt with by the lecturer by the time the examination comes on. Subject to there being sufficient accommodation apprentices are at liberty to re-attend this part of the course in order to acquaint themselves with the provisions of the new rules.

Masters are specially requested to draw the attention of their apprentices to the foregoing.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives, widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address :

SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET,
DUBLIN.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
GEORGE G. OVEREND

*Vice-Presidents*
FRANCIS J. LANIGAN
ROBERT McD. TAYLOR

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

SEPTEMBER 13TH: The President in the chair, also present, Messrs. Reginald J. Nolan, Thomas J. Fitzpatrick, D. B. Gilmore, Gerald Y. Goldberg, James J. O'Connor, Peter D. M. Prentice, Desmond J. Collins, Niall S. Gaffney, Francis J. Lanigan, John Maher, Augustus Cullen, William A. Osborne, Brendan T. Walsh, Eunan McCarron, Daniel J. O'Connor, J. Bernard MacGarry, John Carrigan, Patrick Noonan, Peter E. O'Connell, William A. Tormey.

The President, on behalf of the Council, welcomed Senator Fitzpatrick who was present and who had been co-opted at the previous meeting in place of Mr. Halpin. Senator Fitzpatrick returned thanks to the meeting.

The following was among the business transacted:

#### Land Commission Costs

The Secretary stated that he had written to the Department of Lands requesting that the necessary rules bringing the increases in costs into operation should be made immediately and that a reply had been received stating that it would be done as soon as possible.

## Law Clerks Joint Labour Committee

Senator Thomas J. Fitzpatrick was appointed to fill the vacancy among the Society's representatives on the committee in place of Mr. Dermot P. Shaw who has resigned.

## Trade Marks Bill, 1962

The Council considered the provisions of the Trade Marks Bill of 1962 and the Secretary's report thereon and decided that no action should be taken.

## Solicitor holding liquor licence

A member wrote to the Society enquiring whether he could hold a seven day publican's licence as nominee for a company, a client of his firm, and of which he was secretary. While under indentures he had, with the permission of the Society, held the licence. The property in question was due to be redeveloped and pending redevelopment there was very little trading. Member wished to know if, on his admission, he could continue to hold the licence temporarily. The Council, on a report from a committee, decided that on the basis that normal trading was not resumed, member's application should be granted for a period of six months. If member wished to hold the licence for a longer period he should re-apply after the expiration of the six months.

## Lease of premises with fine. Lessee's liabilities for costs.

A grant of premises by way of lease in consideration of a fine of £600 and reserving a rent of £6 per annum contained a stipulation that the grantee would pay the full costs of the granting of the lease including the outlay of the grantor in its entirety. On completion the grantor's solicitors furnished a bill to the grantee charging £19 19s. od. commission fee on the £600 fine, £9 scale commission fee on the rent and the following additional items to which the grantee's solicitor took objection; fees for copying and certifying documents of title £4 12s. 8d. (items 3—8), search in the Registry of Deeds £1 2s. od. (item 9), P.D. stamp £4 13s. 9d. (item 10), section 6 certificate £3 5s. od. (item 11). It was contended by the solicitor for the grantee that these items should be included in the commission fee on the fine. The grantor's solicitor on the other hand maintained that items 3—8 are outlay (*a*) not included in the commission scale fee chargeable against the vendor and (*b*) were transferred to the grantee by the contract. The same applied, in his contention, to items 10 and 11 and the matter was referred to the Council by the solicitors concerned. The Council on a report from a committee decided that the grantor's solicitors were not entitled to the fees in items 3 to 8 amounting to £4 12s. 8d. but that they were entitled to the fee of £1 2s. od. for the Registry of Deeds search (item 9) if it represented outlay paid to a searcher and that they were entitled to the fee at item 10 amounting to £4 13s. 9d. for the P.D. stamp and also to the fee of £3 5s. od. (item 11) for the section 6 certificate.

## Costs: Reduction for purchaser mortgagee

Members acted for the subsidiary of an English company which was erecting a factory in Ireland. The company were advancing the sum of £2,250 towards the purchase price of a house by their manager B, and B was represented by other solicitors in the purchase. Members drafted the form of mortgage and sent it to B's local solicitors for approval. B was liable to his own solicitors for the full commission scale fee on the purchase. The mortgage was executed and registered and members costs amounted to about £58-6-8 plus outlay. They felt that the accumulation of the commission fee on the purchase and the mortgagor's and the mortgagee's charges would be a heavy imposition on B and they enquired from the Society if they could charge a lesser fee for the mortgage. If the purchaser had obtained a loan from a building Society instead of from his own company he would pay the reduced charges usually payable in respect of building society transactions. The Council on a report from a committee decided that the members should be authorised to charge a reduced fee comparable to the fees charged by building societies.

## DUBLIN SOLICITORS' BAR ASSOCIATION

At the annual general meeting of the Dublin Solicitors' Bar Association held in the Solicitors' Buildings, Four Courts, on the 8th October 1962 the following officers and council were elected for the year 1962-63: *President*, Mr. John A. Cullen; *Vice-President*, Mr. Synge Millington; *Hon. Secretary*, Mr. Ernest J. Margetson; *Hon. Treasurer*, Mr. Edmond O. Sheil. *Council:* V. Wolfe, J. M. Farrell, E. Byrne, K. Burke, R. Knight, G. Williams, E. Barrett, G. M. Doyle and M. Kenny.

## DINNER DANCE

Tickets for the Society's Annual Dinner Dance, which is to be held in the Shelbourne Hotel, Dublin on November 22nd, are now available from the hotel at 25*s.* each. Table reservations should be made through the hotel.

The management advise that they are offering accommodation at 35/- per person, bed and breakfast, plus 10/- per person for private bathroom, if required, to any guests attending the dance.

# LAND REGISTRATION (SOLICITORS' COSTS) RULES, 1962.

S.I. No. 148 1962.

WE, the Registration of Title Rules Committee, constituted pursuant to the provisions of section 73 of the Courts of Justice Act, 1936, and section 4 of the Registration of Title Act, 1942, by virtue of the powers conferred upon us by section 74 of the Courts of Justice Act, 1936, and section 94 of the Registration of Title Act, 1891, and of every other power us in this behalf enabling, do hereby, with the concurrence of the Minister for Justice, make the annexed Rules.

DATED this 8th day of August 1962.

THOMAS TEEVAN (Judge of the High Court).

M. J. L. MacGOWAN

FRANCIS J. LANIGAN

D. L. McALLISTER

I CONCUR in the making of the annexed Rules.

DATED this 13th day of AUGUST 1962.

CHARLES J. HAUGHEY
Minister for Justice.

## Preliminary and General

Commencement.

1. These Rules shall come into operation on the 1st day of September, 1962.

Short title and citation.

2.—(1) These Rules may be cited as the Land Registration (Solicitors' Costs) Rules, 1962.

(2) These Rules shall be read with the Land Registration Rules, 1959, and shall be deemed to be incorporated therewith, and shall, so far as inconsistent therewith, alter or amend the same.

(3) These Rules and the Land Registration Rules, 1959, may be cited together as the Land Registration Rules, 1959 to 1962.

Interpretation.

3. In these Rules—

The expression "the Act of 1881" means the Solicitors' Remuneration Act, 1881;

the expression "the Acts" means the Registration of title Acts, 1891 and 1942;

the expression "the 1959 Rules" means the Land Registration Rules, 1959;

the expression "the Order of 1884" means the Solicitors' Remuneration General Order, 1884, made pursuant to the Act of 1881 and dated the 16th day of April, 1884;

the expression "the Order of 1951" means the Solicitors' Remuneration General Order, 1951, made pursuant to the Act of 1881 and dated the 11th day of December, 1951.

the expression "the Order of 1960" means the Solicitors' Remuneration General Order, 1960, made pursuant to the Act of 1881 and dated the 5th day of August, 1960.

Amendment of Rule 118 (6) of 1959 Rules.

4. Rule 118 (6) of the 1959 Rules is hereby amended by the Substitution of the words "Part III of the Second Schedule" to the Land Registration (Solicitors' Costs) Rules, 1962, for the words "Part III of the Third Schedule to these Rules".

Recission of Part VII of the 1959 Rules.

5. Part VII of the 1959 Rules and the Schedules of costs to the 1959 Rules are hereby rescinded.

Orders of 1884 and 1920 as varied to apply.

6. The remuneration of a solicitor for conveyancing or other business with registered property, not being business in any action, or transacted in any court or in the chambers of any judge or master, shall be regulated by the Orders of 1884 and 1960 as varied by these Rules.

Sales, purchases and charges.

7.—(1) The provisions of clause 2 (*a*) of the Order of 1884 shall be varied as follows:

(i) Where the property has a notice of equities or possessory title in the register that cannot be cancelled except after the examination of title prescribed by rules 36 and 37 of the 1959 Rules—

(*a*) the remuneration of the vendor's or chargor's solicitor shall be double the charges set out in Part I of Schedule I to the Order of 1884 provided that such title shall have been shown as would enable the purchaser or chargee to have the notice cancelled in the register;

(*b*) the remuneration of the purchaser's or chargee's solicitor shall be double the charges set out in Part I of Schedule I to the Order of 1884 provided that an application to cancel the notice is made when registration of the ownership or of the charge is applied for and effect is given to the investigation of the title made on the sale or charge by the cancellation of the notice in the register.

The remuneration shall cover all charges in connection with the cancellation of the notice. If cancellation of the notice in the register is not applied for and obtained, the remuneration shall be two-thirds of the foregoing remuneration.

(ii) Where—

(*a*) the property has a notice of equities or of possessory title in the register that cannot be cancelled except after the examination of title prescribed by rules 36 and 37 of the 1959 Rules, and such title as would enable the purchaser or chargee to have the notice cancelled in the register shall not have been shown, or

(*b*) the property has no notice of equities or of possessory title or has a notice thereof that may be cancelled on an application under rule 34 or 35 of the 1959 Rules, the remuneration shall be the charges set out in Part I of Schedule I to the Order of 1884. The cancellation of a notice on an application under rule 34 or 35 of the 1959 Rules shall be deemed to be part of the business in connection with the sale, or charge, and the solicitors obtaining the cancellation shall also be entitled to the remuneration therefor prescribed by rule 9 (1) (ii) of these Rules.

(2) In respect of all sales, purchases, or charges completed, or not completed, for which the remuneration prescribed by the foregoing provisions of this rule is not chargeable, the remuneration shall be the charges prescribed by clause 2 (*c*) of the Order of 1884 amended by the Order of 1960 as varied by these Rules.

Leases and fee-farm grants.

8. The provisions of clause 2 (*b*) of the Order of 1884 shall be varied as follows:

(i) The remuneration for leases or agreements for leases at rack rent (other than mining leases or leases for building purposes or agreements for the same) shall be the charges set out in the First Schedule to these Rules.

(ii) The remuneration for conveyances in fee or for any other freehold estate reserving rent (not being a fee-farm grant under the Renewable Leasehold Conversion Act or the Church Temporalities Acts), or building leases reserving rent, or other long leases not at rack rent or agreements for the same respectively, mining leases or licences or agreements for therefor shall be double the charges set out in Part II of Schedule I to the Order of 1884.

(iii) Rule 5 of the Rules applicable to Part II of Schedule I of the Order of 1884 is hereby modified so that, where the conveyance or lease is partly in consideration of a money payment or premium, the further remuneration chargeable on such payment or premium shall be ascertained as prescribed in Rule 7 of these Rules.

Other business

9.—(1) The provisions of clause 2 (*c*) of the Order of 1884 and the Order of 1960 shall be varied as follows:

(i) For all charges on any transfer (not being a transfer on sale) by a registered owner, or his personal representative where the property vests in the personal representative, including charges for instructions and for the drawing, engrossing, execution and completion of the instrument and any consent, affidavit, or statement required in connection therewith, and for the registration of the ownership and burdens (if any) created, and the discharge of the burdens (if any) discharged, to give effect to the transfer, the remuneration to the solicitor for the transaction completed shall be the charges set out in Part I of the Second Schedule to these Rules.

(ii) For all charges in connection with an application for the cancellation of a notice of equities or of possessory title in the register that may be cancelled on an application under rule 34 or 35 of the 1959 Rules, the remuneration to the solicitor who obtains the cancellation shall be the charges set out in Part II of the Second Schedule to these Rules.

(iii) On a transfer by a registered owner (not being a transfer on sale) and on a transmission on the death of such an owner, the cancellation in the register of a notice of equities or notice of a possessory title that may be cancelled on an application under rule 34 of the 1959 Rules shall be deemed to be part of the business of the solicitor in connection with the transfer or transmission, and, if obtained when registration under the transfer or transmission is applied for, the charge therefor prescribed in (ii) ante shall be chargeable as part of the charges for such business.

(iv) The costs of an applicant or a judgement creditor for which an order of the Registrar may issue under rule 118 (6) of the 1959 Rules in connection with an application under the said rule for the cancellation of a notice in the register of a deposition of an affidavit of judgment shall be those prescribed in Part III of the Second Schedule to these Rules. These costs shall be exclusive of any costs of or incidental to an application to the Court on a reference under rule 118 (5) of the 1959 Rules.

(2) Except as prescribed by the foregoing provisions hereof, the remuneration for business with registered property to which clause 2 (*c*) of the Order of 1884 applies shall be the amount of the charges prescribed by the said clause 2 (*c*) amended by the Order of 1960 as varied by these Rules.

Recission of rule II to Part I of Schedule to the Order of 1884.

10. It is hereby declared that Rule 11 of the Rules to Part I of Schedule I to the Order of 1884, which was rescinded by clause 3 of the Order of 1951, is also rescinded as far as the Land Registration Rules 1959, and these Rules are concerned.

Meaning of "Value" in Second Schedule to these Rules.

11. "Value" in the Second Schedule to these Rules means fifty times the rateable valuation of the property.

Taxation.

12.—(1) Costs prescribed by these Rules shall when taxable, be taxed by a Taxing Master of the High Court and the Rules of the High Court and Supreme Court for the time bieng relative to taxation shall apply to such costs as if the Land Registry were an Office of the High Court.

(2) In the taxation of costs the Taxing Master shall have regard to the procedure prescribed by the Acts and these Rules and shall disallow the costs of any document or part thereof that he may consider unnecessary or prolix having regard to the prescribed form and the procedure and effect of registration under the Acts.

13. The amendments contained at paragraph 3 (*d*) and 4 (*e*) of the Order of 1960 shall not apply to registered property.

14. The following instruction fee shall be substituted for the instruction fee in the Schedule to the Order of 1960: "Such fees for instructions as, having regard to the care and labour required the number and lengths of the papers to be perused, and the other circumstances of the case may be fair and reasonable".

15 In Note 6 of the Schedule to the Order of 1960 the word "later" shall be substituted for the word "earlier" in said note.

## FIRST SCHEDULE

Scale of Charges as to Leases or Agreements for Leases at Rack Rent (other than Mining Leases or Leases for Building Purposes or Agreements for the same):

Lessor's Solicitor:

For preparing, settling and completing lease and counterpart:—

| | |
|---|---|
| Where the rent does not exceed £100 ... ... ... | £15 per cent. on the rental but not less in any case than £6. |

| | |
|---|---|
| Where the rent exceeds £100 but does not exceed £500 ... | £15 in respect of the first £100 of rent and £5 per cent. in respect of each subsequent £100 of rent or any part thereof. |
| Where the rent exceeds £500 | £15 in respect of the first £100 of rent, £5 in respect of each £100 of rent up to £500, and £2 per cent. in respect of every subsequent £100 or part thereof. |
| Leesee's Solicitor: | |
| For perusing draft and completing (No sum of less than £1 yearly to be taken into account in any case). ... ... | One half of the amount payable to the Lessor's solicitor but not less in any case than £4. 4. 0d. |

In case the lease is registered a charge of £4 to the solicitor registering same.

## SECOND SCHEDULE

### PART I.

Scale of Charges for Transfer (except a Transfer on Sale) by a Registered Owner, or his Personal Representative.

| Value of property transferred | Remuneration |
|---|---|
| Not exceeding £100 ... | £3. 2. 0d. |
| Exceeding £100 but not exceeding £200 ... ... | £4. 5. 3d. |
| Exceeding £200 but not exceeding £300 ... ... | £5. 8. 6d. |
| Exceeding £300 but not exceeding £400 ... ... | £6. 4. 0d. |
| Exceeding £400 but not exceeding £500 ... ... | £7. 2. 6d. |
| Exceeding £500 but not exceeding £600 ... ... | £8. 8. 9d. |
| Exceeding £600 but not exceeding £700 ... ... | £9. 15. 0d. |
| Exceeding £700 but not exceeding £800 ... ... | £11. 1. 3d. |
| Exceeding £800 but not exceeding £900 ... ... | £12. 7. 6d. |
| Exceeding £900 but not exceeding £1,000 ... ... | £13. 13. 9d. |
| Exceeding £1,000 but not exceeding £3,000 ... ... | £13.13.9d. on the first £1,000 17s. 0d. on each subsequent £100 or part of £100. |
| Exceeding £3,000 but not exceeding £10,000 ... ... | £30. 13. 9d. on the first £3,000 and 7s. 6d. for each subsequent £100 or part of £100. |
| Exceeding £10,000 ... ... | £56. 18. 9d. on the first £10,000 and 4s. 6d. on each subsequent £100 or part of £100. |

### PART II

Scale of charges for Applications under rule 34 or 35 of the 1959 Rules

| Value of property affected by Notice of Equities | Remuneration |
|---|---|
| | £ s. d. |
| Not exceeding £250 ... ... ... | 2 6 6 |
| Exceeding £250 and not exceeding £500 | 3 2 0 |
| Exceeding £500 ... ... ... ... | 4 13 0 |

### PART III.

Costs payable under rule 118 (6) of the 1959 Rules

| | £ s. d. |
|---|---|
| Costs to Applicant: | |
| (*a*) if cancellation made without objection by judgment creditor ... | 1 11 0 |
| (*b*) if cancellation made after objection by judgment creditor ... ... | 3 2 0 |
| Costs to Judgment Creditor: | |
| On objection by him to cancellation when cancellation refused ... ... | 3 2 0 |

## EXPLANATORY NOTE.

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

These Rules, which come into operation on the 1st September, 1962, amend Rule 118 (6) of the Land Registration Rules 1959 and rescind Part VII of the said Rules and the Schedule of Costs thereto annexed and substitute new Land Registration (Solicitors' Costs) Rules and Schedule therefor.

## DECISIONS OF PROFESSIONAL INTEREST

*Communication between Husband and Wife: whether admissible in Criminal Proceedings.*

At common law there has never been a separate principle or rule that communications between a husband and wife during marriage are inadmissible in evidence on grounds of public policy (so held by Lords Reid, Morris, Hodson and Pearce, Lord Radcliffe dissenting); accordingly, except where the spouse to whom the communication is made claims privilege from disclosure under sect. 1 (*d*) of the Criminal Evidence Act, 1898, evidence as to communications between husband and wife during marriage is admissible in criminal proceedings.

The appellant, who was the mate of a Dutch ship, was convicted of non-capital murder committed at Menai Bridge. Part of the evidence for the prosecution admitted at his trial consisted of a letter he had written to his wife in Holland which amounted to a confession. The appellant had written the letter on the day of the killing, on board his ship after it had left Menai Bridge for Liverpool; he had handed the letter in a closed envelope to a member of the crew requesting him to post it as soon as the ship arrived at a port outside England. The appellant was arrested when the ship reached Liverpool, and after his arrest the member of the crew handed the envelope to the captain of the ship who handed it over to the police. The member of the crew, the captain and the translator of the letter gave evidence at the trial but the wife was not called as a witness. On appeal against conviction on the ground that the letter was wrongly admitted in evidence.

Held—The appellant was rightly convicted because, for the reasons stated above, the letter was admissible in evidence.

Appeal dismissed.

(Rumping *v.* Director of Public Prosecutions, 1962, 3 All England Reports 256).

*Sale of Land: Disclosure of Service of Notice of Disrepair: Performance of Contract.*

A vendor was entitled to a lease of two flats which were subject to control under the Rent Act 1957. On 12 October, 1961 the borough council served on the vendor a certificate of disrepair under the Rent Act, 1957 in respect of one of the flats. The effect of this was that the rent payable by the tenant of that flat was abated as from 15 January, 1962 from 28s. 3d. weekly to 15s. 7d. weekly and would remain abated unless and until repairs were carried out. The vendor's leasehold interest in the flats was sold by auction on 13 December 1961. The certificate of disrepair was not disclosed to the purchaser. The particulars of sale gave the rent of the flat as 28s. 3d. weekly. The conditions of sale provided, by condition 4, that no representation or warrant was made by the vendor that the rent payable in respect of the tenancy was that properly chargeable under the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1939, as amended by the Rent Act, 1957; and the condition provided that the purchaser should not make any requisition with regard thereto.

Held—The vendor had been bound to disclose to the purchaser the certificate of disrepair and consequent abatement of rent and was not entitled to require performance of contract by the purchaser without regard to the prospective abatement of rent condition 4 of the conditions of sale not being applicable to the future abatement of permitted rent by virtue of the certificate of disrepair that had been served. (Rosslyn and Lorimer Estates Ltd. *v.* Englefield Holdings Ltd. The Law Times, August 24th, 1962, page 473).

*Admissibility of Evidence: Use of Tape Recorder.*

Four men were charged with burglary and larceny, were cautioned and were confined in separate cells in a police station pending trial. A corridor divided the cells from each other and the police placed a recording machine in a nearby empty cell. At the trial a policeman gave evidence of having heard the defendants shouting incriminating remarks to one another across the corridor and he stated that he could confirm from his own human memory the accuracy of the records of these conversations which were on tape and which he had played back to himself for the purpose of checking and proving his own note made from memory. The tape recording was not itself used in evidence in court and there was no suggestion that the tape had been tampered with in any way between the time that the conversations took place and the time that the policeman played it back in order to check his memory. On the question of the admissibility of the policeman's evidence it was held by the Court of Criminal Appeal that this evidence was admissible because (i) the tape recorder was used by the policeman to perform the function which would otherwise have been performed by a pen or pencil in his own hand, and he used the record produced by the tape recorder to refresh his memory when he was giving evidence. Alternatively, the machine was set by the policeman to perform the function of making a record and very soon after the conversations had taken place the policeman adopted as accurate the record which the machine had made and thereupon it became his own

record and was in all respects and for all relevant purposes the equivalent of a note made by him in his own notebook, sufficiently shortly after the occurence of the conversations. He would have been entitled to refer to such a note had he made it. (ii) It was not the effect of the Judge's Rules to put a man who had been cautioned into a state of asylum free from any eavesdropping or potential use of anything he might say and the tendering of evidence of the conversations was not in breach of these rules. The appellants had been cautioned and one of them had actually said " I will keep what I have to say until I get to court " and counsel had submitted that a man who had been so cautioned was thereafter in a state of asylum and the cell into which he was put was his own " castle " and he should be entitled to feel himself free from any eavesdropping or potential use against him of anything that he might say during his incarceration in the cell. Winn J. delivering the judgment of the court said " The court cannot accept that exposition of the effect of the judges rules, nor does it feel that there is any substance at all in the complaint made by counsel for the appellant Rose that this was sharp practice on the part of the police." The learned judge went on to say that the court would not approve of the practice of setting up microphones in a cell for the purpose of recording what might be said therein but the appellants had brought on themselves what they suffered by being so fatuous as to shout incriminating observations across a corridor to one another. The usual caution given is a warning against this type of folly.

The appeals against convictions were dismissed (R. *v.* Mills and R. *v.* Rose (1962) 3 All England Reports, page 298).

*Restrictive Trade Practices Tribunal: Intimidation of Witness after Proceedings had terminated: whether Contempt of Court.*

G. an official of a trade union gave evidence at the hearing before the Registrar of Restrictive Trading Agreements of proceedings relating to an agreement between his union and an association of suppliers. The court held that the restrictions in the agreement were contrary to public policy and, therefore, void and persons party to the agreement were prevented by injunction from giving effect to it. The members of the committee of the same branch of the union as G caused him to appear at a special meeting to answer for his conduct and later also at a general meeting. At two further branch committee meetings at which G was not present, resolutions were passed purporting to deprive him of his honorary offices of branch delegate and treasurer. The Attorney General brought a motion for writs of attachment or for orders of committal against the members of the committee of the trade union for alleged contempt of court in causing G to appear before a special committee and in purporting to remove him from his honorary positions. The Restrictive Practices Court refused the motion and on appeal to the Court of Appeal it was held that those respondents whose motive, whether predominant or not, was to punish G for having given evidence, had committed contempt of court since they had victimised him, it being immaterial if one of the purposes actuating a respondent was the purpose of punishment, that he had also other motives. The Restrictive Practises Court in refusing the motion had held that the general tenor of authority had indicated that the relevant conduct in victimising or intimidating the witness must take place while the proceedings were pending in order to constitute contempt of court. Lord Denning M.R. in his judgment said that he could not agree with this and said that in his view there could be no greater contempt than to intimidate a witness before he gives his evidence or to victimise him afterwards. His Lordship said " How can we expect a witness to give his evidence freely and frankly, as he ought to do, if he is liable, as soon as the case is over to be punished for it by those who dislike the evidence he has given ? " His Lordship continued " If this sort of thing could be done in a single case with impunity the news of it would soon get round. Witnesses in other cases would be unwilling to come forward to give evidence, or, if they did come forward, they would hesitate to speak the truth, for fear of the consequences."

The appeal was allowed as against six of the ten respondents and they were ordered to pay the cost of the Attorney General. Leave to appeal to the House of Lords was granted. (Attorney General *v.* Butterworth and others (1962), 3 All England Reports page 326).

*Sale of Land for Fictitious consideration to avoid certain Regulations: Suit to recover land not maintainable.*

The respondent, who owned 139 acres of land cultivated with rubber in Malaya, in order to avoid the Rubber Regulations of 1934, under which the permissible production of holdings of rubber land of more than 100 acres was assessed by an assessment committee whereas that of less than 100 acres was assessed by the local district officer, transferred 40 acres of the land to his son, the appellant, for a purported consideration which was not in fact paid. The transfer was duly registered and a certificate of title issued to the son. Thereafter the father, having agreed to sell the 40 acres to a third party, asked his son to execute a power of attorney so as to enable him to transfer the land to the prospective purchaser. The son having refused to do so, the father brought

the present proceedings claiming that the son was a trustee of the 40 acres holding them on trust for him.

Held—That the father was not entitled to a transfer of the land from the son. He had of necessity to disclose in the proceedings that he had practised a deceit on the public administration (of which act the courts were bound to take notice even though the son had not pleaded it. (Scott *v.* Brown, Doering, McNab & Co. (1892), 2 Q.B. 724; 8 T.L.R. 755, C.A.) and he could not use the process of the courts to get the best of both worlds—to achieve his fraudulent purpose and also to get his property back.

(Palaniappa Chettiar *v.* Arunasalam Chettiar (1962) Appeal Cases page 294)

*Solicitor Guaranteeing Client's ovetdraft and being made liable thereon: deducion against profits for Income Tax.*

Following a message that a client for whom they had acted for many years, particularly in transfers of property, needed an overdraft to complete the lease of new showrooms, to pay a deposit on a house he was purchasing and to provide funds for carrying on his business, solicitors signed a guarantee of an overdraft by the client's bank of up to £500. The client subsequently went bankrupt and the solicitors were required to pay £412 under the guarantee. They sought to deduct that sum as a necessary expense of their profession for income tax purposes. On the hearing of their appeal against their assessment they called evidence that it was the practice of their firm and of other firms of solicitors to guarantee loans to enable clients to complete transactions, and the General Commissioners of Income Tax found that the guarantee was given and the loss of £412 was incurred in connection with and arising out of the solicitors' practice and for the purposes of their profession as solicitors, that they " and some other solicitors are accustomed to give guarantees in favour of clients in certain circumstances usually when the guarantee is required for what appears a temporary purpose ", and that the £412 " was wholly and exclusively expended for the purposes of " their practice as solicitors. There was no finding that the solicitors received any consideration for giving the guarantee. They allowed the deduction. On appeal.

Held—The payment under guarantee was a proper deduction in computing the solicitors' profits for income tax purposes under Case II of Sch. D, s. 123 of the Income Tax Act, 1952, as money " wholly and exclusively expended for the purposes " of their profession within s.137 (*a*) of the Act of 1952, since on the evidence the giving of guarantees for deposits on houses and leases was a general or ordinary activity of solicitors, and in law it was not necessary to establish that a solicitor could not successfully carry on his profession without giving such guarantees. (Jennings (Inspector of Taxes) *v.* Barfield & Barfield, 1962, 2 All England Law Reports, page 957.)

## EXAMINATION RESULTS

At the Preliminary Examination for intending apprentices to solicitors held on the 4th and 5th days of September the following candidates passed :— Andrew G. Ellerker, Brian J. Magee, Marguerite Hogan Magee, James A. Rogan.

4 candidates attended; 4 passed.

At examinations held on the 14th September under the Solicitors Act, 1954, the following candidates passed :—

*First Examination in Irish* : Niall Patrick Connolly, Felicity M. Foley, Michael Gleeson, Cormac Patrick Glynn, Francis J. Hanna, Michael J. A. Kelly, William J. Montgomery, Oliver C. Mullen, Patrick Harmon Murtagh, Edward Patrick McCarthy, Ann K. Neilan, James F. O'Higgins, Anne O'Toole, Mary A. R. Tormey.

17 Candidates attended; 14 passed.

The Sean O hUadhaigh Memorial Prize for 1962 was awarded to James F. O'Higgins.

*Second Examination in Irish :* One candidate attended the examination and failed to satisfy the examiners.

At the Book-keeping Examination for apprentices to solicitors held on the 13th September the following candidates passed :—

*Passed with Merit :* 1. David W. Prentice (B.A., B.Comm.), 2. Neil Matthews, 3. Michael G. Dickson, 4. Garrett P. Lombard, 5. James Monahan (B.C.L.), 6. Sylvester W. Riordan (B.A.)

*Passed :* Henry Owen Comerford, Malachy F. Concannon (B.A., B.Comm.), Patrick J. Connellan, Thomas A. Dillon-Leetch (B.C.L.), Denis M. Murnaghan, Brendan A. J. Murrin (B.C.L.) Brian M. McMahon, Thomas J. M. O'Donoghue, James G. Orange (B.C.L., LL.B.), Martin J. Ruane (B.C.L.), Norman T. J. Spendlove (M.A., B.A.I., Dip.Geog.).

23 candidates attended; 17 passed.

At the First Law Examination for apprentices to solicitors held on the 3rd and 4th days of September the following candidates passed :—

*Passed with Merit :* 1. Brian A. Carroll, 2. Denis J. Casey, 3. John E. Gore-Grimes.

*Passed:* Thomas J. Colgan (B.C.L.), Joseph T. A. Deane, John V. Glynn, William B. Glynn, Francis B. Keating, Paul W. Keogh, Patrick J. Lavan, Donnchadh D. Lehane, Thomas A. Menton, Colm C. Murphy, Michael P. McMahon, Elizabeth M. J. O'Donnell, William F. O'Driscoll (B.C.L.), Thomas J. O'Reilly, Michael Reynolds.

40 candidates attended; 18 passed.

The Centenary Prize was awarded to Brian A. Carroll.

At the Second Law Examination for apprentices to solicitors held on the 4th, 5th and 6th days of September the following candidates passed:—

*Passed with Merit:* 1. Sylvester W. Riordan (B.A.), 2. Garrett P. Lombard, 3. James N. Dudley, 4. Niall Patrick O'Neill.

*Passed:* Thomas O. Boyle (B.C.L.), Seán de Burca (B.A., B.C.L.), Malachy F. Concannon (B.A., B. Comm.), James C. Glynn, James A. Harte, George B. Holland (B.A. (Mod)., LL.B.) Michael P. Houlihan, Daniel Kelliher, Patrick T. Liston, Peter J. McMahon, James J. Nestor, Thomas J. M. O'Donoghue, David W. Prentice (B.A., B.Comm.), Michael F. Purcell, Martin J. Ruane (B.C.L.), Norman T. J. Spendlove (M.A., B.A.I., Dip.Geog.), James G. Tynan.

43 candidates attended; 21 passed.

At the Third Law Examination for apprentices to solicitors held on the 6th, 7th and 8th days of September the following candidates passed:

Bruce F. St. John Blake (B.A., LL.B.), Robert Cussen (B.C.L.), Michael G. Dickson (B.A. (Mod)., LL.B.), Joseph L. Dundon, Mary Grace Hanna (B.C.L., LL.B.), David O'N Kiely, William J. P. Kirwan (B.C.L.), John G. Lanigan (B.C.L.), William E. Leahy, Dermot Loftus, Bryan F. Lynch, Neil Matthews, James Monahan (B.C.L.), Margaret J. O'Callaghan (B.A.), James R. O'Donnell, Carmel M. O'Halloran, Patrick J. O'Shea, Thomas C. Smyth, Peter John Woods.

28 candidates attended; 19 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded a Special Certificate to Bryan F. Lynch.

## SCHOLARSHIPS, 1962

*Scholarships, 1962:* The Findlater Scholarship was awarded to James L. O'Keeffe, who served his apprenticeship with Michael R. Boland, Skibbereen, Co. Cork. The Overend Scholarship on the results of the First Law Examinations was awarded to Brian A. Carroll who is apprenticed to Edmund Carroll, Fermoy, Co. Cork.

## EXAMINATION DATES, 1963

First Law, February 4th and 5th; Second Law, February 8th and 9th; Third Law, February 5th, 6th and 7th; Book-keeping, February 25th; Preliminary, February 5th and 6th.

First Irish, February 1st; Second Irish, February 2nd.

## THE REGISTRY

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SOLICITOR seeks assistantship, city or country. Replies to Box No. B.268.

### Register C

IN THE MATTER OF: Peter Kirk late of Channonrock, County Louth who died in or about the year, 1914, Farmer and Brigid Kirk late of Channonrock, County Louth, who died in or about the year, 1922, Widow.

Will any person holding a Will of either of the above-named deceased kindly contact Messrs. Dickie, Coulter and Hamill, Solicitors, Roden Place, Dundalk, County Louth, phone number 4026.

FOR SALE: Two mahogany presses each 10′ × 4′ pigeon-holed with doors. Ideal for files. Price £40 the pair. Box No. C.171.

IN THE GOODS of William Kells, formerly of Tully, Milltown Belturbet, County Cavan and late of Hammam Court Farm, Weybridge, Surrey, England. Deceased.

Will any Solicitor having a Will executed by the above-named please communicate immediately with the undersigned, Patrick H. O'Doherty, Solicitor, Belturbet, County Cavan.

IN THE GOODS OF Mrs. Richard Collins (*nee* Mary O'Connor) late of Caherlane, Abbeyfeale, County Limerick deceased, who died at Abbeyfeale aforesaid.

Will any person having any information about a Will of the above-named deceased please communicate with James J. Dennison & Co., Solicitors, Abbeyfeale, County Limerick.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942 ISSUE OF NEW LAND CERTIFICATE

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which

original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 10th day of November, 1962.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Elizabeth J. Cunningham. Folio number 20437. County Donegal. Lands of Magherabeg in the Barony of Inishowen West containing 19a. 1r. 9p.

2. Registered Owner, John McManus (Junior). Folio number 1764. County Leitrim. Lands of Greagh in the Barony of Leitrim containing 24a. 0r. 13p.

3. Registered Owner, John Farrell. Folio number 280. County Kildare. Lands of Fennor in the Barony of West Offaly containing 91a. 0r. 0p.

4. Registered Owner, Kate Sheppard. Folio number 2126. County Carlow. Lands of Ouragh in the Barony of Rathvilly containing 59a. 2r. 20p.

5. Registered Owner, James O'Toole. Folio number 15510. County Limerick. Lands of Knockbrien in the Barony of Clanwilliam containing 7a. 1r. 15p.

## OBITUARY

MR. WILLIAM E. CHAPMAN, Solicitor, died on 22nd August 1962.

Mr. Chapman served his apprenticeship with the late Mr. Archibald S. McCoy, Waterford, was admitted in Michaelmas Sittings 1913 and practised at 22 O'Connell Street, Waterford.

MR. WILLIAM CORRIGAN, Solicitor, died on the 4th October, 1962.

Mr. Corrigan served his apprenticeship with the late Mr. Michael A. Corrigan, 3 St. Andrew Street, Dublin, was admitted in Hilary Sittings 1912 and practised at 3 St. Andrew Street, Dublin, as senior partner in the firm of Messrs. Corrigan & Corrigan.

MR. DERMOT D. FANNING, Solicitor, died on 2nd October 1962 at the Mater Hospital, Dublin.

Mr. Fanning served his apprenticeship with the late Mr. John B. Hamill, Dundalk, County Louth, was admitted in Hilary Sittings 1943 and practised at The Land Registry, Four Courts, Dublin as Examiner of Title.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives, widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

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DECEMBER
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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

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FOR CIRCULATION AMONG MEMBERS

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### PRACTISING CERTIFICATES 1963-64

(1) Members are reminded that practising certificates for the year to end 5th January, 1964 should be taken out on or about the 6th January, 1963 and not later than 5th February, 1963 in order to take effect as a qualification to practise from January 6th.

(2) Under the provisions of the Solicitors Acts, 1954-60 the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the Registrar, on the ground of illness or some other sufficient cause, dispenses with personal signature of the declaration. Dublin agents of country solicitors should therefore take up the declarations in good time and forward them to their correspondents for signature.

(3) The amount of the registration fee and Compensation Fund contribution is as follows :—

(*a*) If the certificate is issued within three years from date of admission, £11 for a Dublin solicitor and £8 for a country solicitor.

(*b*) In any other case, £26 for a Dublin solicitor, £23 for a country solicitor.

## THE PRESIDENT AND VICE-PRESIDENTS

Mr. Francis J. Lanigan of Carlow has been elected President of the Society for the coming year. Mr. Desmond J. Collins of Dublin and Mr. Patrick O'Donnell of Dungloe have been elected Vice-Presidents.

## ORDINARY GENERAL MEETING 22nd NOVEMBER, 1962

The President took the chair at 2.30 p.m.

The notice convening the meeting was by permission taken as read.

The secretary read the minutes of the ordinary general meeting held on the 24th May, 1962 which were confirmed and signed by the chairman.

The secretary read the report of the scrutineers of the ballot for the council for the year 1962/63. The chairman declared the result of the ballot in accordance with the scrutineers report as follows:

Provincial delegates returned unopposed:—Ulster: John C. O'Carroll; Munster: Edward Treacy; Leinster: Reginald J. Nolan; Connaught: Francis Armstrong.

Election of ordinary members. The following received the votes placed after their names:

1. John Carrigan 476; 2. Augustus Cullen 474; 3. Thomas A. O'Reilly 456; 4. Niall S. Gaffney 454; 5. John J. Nash 454; 6. Francis J. Lanigan 451; 7. Peter E. O'Connell 445; 8. Daniel Joseph O'Connor 441; 9. Ralph Joseph Walker 439; 10. Eunan McCarron 438; 11. Patrick Noonan 431. 12. Desmond Joseph Collins 423; 13. William A. Tormey 420; 14. Thomas J. Fitzpatrick 420; 15. Robert McDougall Taylor 417; 16. George G. Overend 415; 17. William A. Osborne 415; 18. George A. Nolan 415; 19. Patrick O'Donnell 407; 20. John Maher 395; 21. Thomas Valentine O'Connor 395; 22. Brendan A. McGrath 393; 23. Dinnen B. Gilmore 385; 24. Peter D. M. Prentice 384; 25. Timothy J. C. O'Keeffe 382; 26. James W. O'Donovan 377; 27. James R. C. Green 364; 28. Desmond Moran 357; 29. Raymond Arthur French 334; 30. Charles Hyland 328; 31. Edward Dillon 310;

The scrutineers returned the foregoing as duly elected ordinary members of the Council for the year 1962-63.

The following candidate also received the number of votes placed after her name:—Elizabeth Wright 198.

Audited accounts and balance sheets. The accounts and balance sheets circulated were adopted. Messrs. Kevans & Sons were re-appointed as the Society's auditors.

The president moving the adoption of the report of the council for the year 1961-62 said:—

It is my privilege as president to propose the adoption of the report of your Council for the year to 22nd November, 1962 which I do with great pleasure.

Before dealing with the report I have to record with regret the death, since we last met, of the following:—Patrick Callan, Dublin; Henry C. Bourke, Ballina; Dermot D. Fanning, Dublin; William E. Chapman, Waterford; William P. Corrigan, Dublin.

I would like, personally, and on behalf of the Council to express our deep sympathy with their relatives and friends.

During the last year two members of the Council resigned and their resignations were accepted with regret.

You will also have noticed that four of my former colleagues on the Council have not felt able to go forward for re-election. Those of us who have given our services to the Council know just how much time and inconvenience this, of necessity, involves and I would like publicly to express the appreciation of myself and my colleagues for all the help we have received from these men over the years.

It is invidious to mention names but I must particularly refer to Mr. John R. Halpin and Mr. James J. O'Connor. Mr. John R. Halpin first joined the Council in the year 1949, was vice-president of the Society in the years 1953/54 and 1957/58 and president in the year 1958/59. He was also chairman of the Provincial Solicitors' Association. I fear no contradiction when I say that he was one of our most distinguished presidents. During all his years on the Council he was untiring in his efforts for the good of the profession and unremitting in his attendance. He was always constructive in his ideas, at all times co-operative, kindly and genial in his approach and contributed greatly to the work of the Council over the years. I and my colleagues will greatly miss the benefit of his wise counsel, we accepted his resignation with regret and wish him and his wife many happy years to come.

Mr. James J. O'Connor was vice-president of the Society in the year 1952/53 and all together served on the council for a total of 13 years. He always brought to the Council table words of wisdom and humanity and we are very fortunate to have had the benefit of his help, advice and assistance over such a long period. My colleagues and I all regret that he cannot see his way to serve with us any longer.

We shall remain ever grateful for all that these two men have done for us and for the Society.

## Patrick O'Connor Memorial Prize

During the year Mr. Val O'Connor of Swinford presented the Society with a sum of £100 to found a prize in memory of his late father, Patrick O'Connor.

The Council gratefully accepted this donation and directed that the sum be invested and that the income be awarded annually as a prize for the best marks in the equity paper in each year.

I would like publicly to acknowledge our very great appreciation to Mr. Val O'Connor for his generosity and to express on your behalf our gratitude to him for founding this prize which I have no doubt will be eagerly sought in years to come.

## Seán O'hUadhaigh Memorial Prize

The Comhdhail Naisiunta na Gaelige indicated some time ago that they would wish to found a prize in memory of the late Sean O'hUadhaigh, to encourage proficiency and interest in spoken Irish. After discussions with the Society it was agreed that the Society would award the prize on the result of the first Irish examination. The prize is £50 and has been first awarded this year.

## Solicitors' Benevolent Association

When speaking to you last May I reminded you of your obligations to the Solicitors' Benevolent Association and asked you to join if you had not already done so and if you were already a member to try and procure at least one new member.

It is only those who have served as directors of the Association who can really appreciate the tremendous hardship which does exist for some solicitors in their old age, and often for their dependants, and I feel that it is up to all of us who are active and able to earn our living to do something towards the relief of those in distress.

I understand that 1963 will be the centenary year of the Association and that the officers are anxious that it should be marked by a special effort. The subscription to the Association is very small and the Association do hope that for next year, as a special effort, members will give an additional donation.

I need hardly say that I and my colleagues on the council would entirely endorse and encourage you to support such an effort.

## Common Market

The Council are very much alive to the fact that new problems will face us when we enter the Common Market and I think it behoves us all to endeavour to make ourselves familiar with the basic provisions of the Rome Treaty and to understand its implications on this country and, in particular, on our profession.

It was with this in mind that, in conjunction with the Benchers of the Kings Inns, a series of lectures on this topic were sponsored last June. Three lectures were given by Dr. A. H. Robertson of the Secretariat of the Council of Europe and were very well attended.

I would publicly like to state that the initiative in getting Dr. Robertson to deliver these lectures lay with the Chief Justice to whom we should all be extremely grateful. He honoured us by taking the chair at the lectures which were held in this room.

Since May, when I spoke to you last, there do not seem to have been any dramatic developments but the Council will keep this whole problem very much in mind.

## Profession

Personally, I often feel that the public at large do not appreciate or understand the range and variety of services which a solicitor has to offer. There is no doubt that prevention is better than cure but, so often, a client does not consult a solicitor until such time as he finds himself in the midst of a dispute or in some other difficulty, which has assumed undue proportions.

Of necessity, the lawyer appears most in the press in relation to litigation and this tends to be the form of the public image of both solicitors and barristers.

Members of our profession, however, with their advice and their experience of the law and of the world can, and frequently do, prevent the occurrence of disputes. They can assist in individual problems as well as in the smooth running of business and commerce, and other matters. This is the side of the profession that is little known by those who have not had occasion to benefit from it.

Of the two branches of the profession, the barrister is the technical lawyer and the solicitor comes much more in contact with the public in relation both to business and purely private affairs.

Over the years the average solicitor builds up a very large fund of practical experience on many matters not directly questions of law. For those who appreciate him he can be a very valuable confidante and can often advise on general problems which, to the client, appear unusual but which, from his experience, the solicitor has encountered before and where he can see how best to cope with the difficulties without conflict.

It is said that " the man who acts for himself has a fool for a lawyer " which only illustrates the obvious, namely that where one is personally involved it is not always easy to see the wood for the trees. The solicitor has a legally trained mind, can view any client's problem in an analytical and detached manner and can so frequently assist and advise a perplexed and worried client.

A solicitor has to be somewhat of a psychologist as well as a lawyer and some of the most rewarding of his activities are those when, without publicity, he is able to resolve what might otherwise have flared into an unpleasant dispute which, if it went to court, would bring with it all the attendant publicity.

Many disputes are due to the stubborness and obstinacy of human nature and have trivial origins but if they are allowed to develop become inflated out of all proportion and engender much bitterness.

In many countries a lawyer is looked on as the "guide, philosopher and friend." This is the image which we solicitors feel is the true one and we hope is one that will come to be accepted.

## Compensation Fund

I think the public are by now fully aware of the compensation fund which was set up under the Solicitors Act 1954 to compensate clients who may have suffered loss by the dishonesty of solicitors.

Like all innovations, this fund took a while to organise but it has been working satisfactorily over the past years. All claims which, on investigation, have been accepted by the committee which operates the fund have been, or are, in the course of being, paid. The calls on it arise from very few solicitors.

I think we must be the only profession who have voluntarily undertaken an obligation to accept responsibility for the defaults of our members.

## Finances

When he spoke to you last year Mr. Walker, my predecessor, discussed the question of the Society's finances at some length and dealt particularly with two points, first the sum of £14 stamp duty on each Indenture of Apprenticeship which was paid over to the Benchers of Kings Inns. This was an anachronism which had persisted for a very long time and I am glad to report that during the past year arrangements have been made for its abolition. The stamp duty was repealed by the Finance Act 1962 and we are no longer liable, through our apprentices, to contribute to the funds of the Kings Inns.

The question of the subsidy to the Incorporated Council of Law Reporting is still the subject of discussion between the society and the Department of Justice and we are hopeful that in due course this burden will also be removed.

## Legal Aid

Since I spoke to you last the Criminal Justice (Legal Aid) Act 1962 has become law. It has not however become effective as its operation is dependent on the making of regulations by the Minister and these regulations have not yet been made. We expect to have an opportunity to discuss the regulations with the Minister before they are made.

No steps have as yet been taken to bring in a legal aid scheme for civil cases. This must, in my view, come in the near future as legal aid is becoming an accepted feature of this modern age and, if Ireland is to become a member of the European Economic Community it should not lag behind.

Our needs would be most akin to those of our nearest neighbours and we are fortunate to have the benefit of the excellent report presented by the Steele Committee to the Government of Northern Ireland in 1960.

This Committee conducted a most exhaustive enquiry and the conclusions which were reached would have equal application to the Republic.

I understand that a Bill is being drafted in Northern Ireland to give effect to the Steele Report and that it will be introduced early next year.

We would very much welcome a legal aid scheme following the findings of the Steele Committee and we would urge the Government to adopt and implement its recommendations. The Society would be most willing to assist in implementing such a scheme. The cost to the State would not be high as a large part of the cost in the United Kingdom relates to divorce cases.

## Land Commission

For some time past the Council considered that the procedure under the Land Acts for showing title and for allocating land bonds was unnecessarily cumbersome and out-moded. In 1959 the Society submitted a memorandum to the Minister for Lands with a view to seeing whether the procedure couldn't be simplified so as to bring it in line more with ordinary conveyancing practice or with that prevailing in the Land Registry so as to cut out unnecessary delays and personal attendances. The Minister received a deputation from the Society in 1960 and following this there were long negotiations with the Department of Lands on the subject and further interviews with the Minister. I am glad to be able to report the Minister has ultimately agreed to bring in new rules which will have the effect of considerably simplifying the procedure. New costs rules will be made at the same time which will also simplify the costs structure.

We have reason to hope that the new rules will be made in the very near future.

## Education

I told you in May that any radical change in the system of apprenticeship will necessitate legislation and we were hoping that the Commission on Higher Education, to whom the Council submitted

its proposals for reform, would have reported to the Minister by this time.

The problem of legal education is not peculiar to this country and I know that our neighbours are equally concerned about the problem of how to train a would-be solicitor in the best interests of the candidate, of the profession and of the public.

In England the Law Society are fortunate in that the matter is one in their own hands and, therefore, any decision for improvement can rapidly be arranged. I am hopeful that, as and when reform comes, it will be accompanied by sufficient elasticity to enable us for the future to keep this very important matter steadily under review and up to date without the necessity of amending legislation at every stage.

We are apt to think that education of lawyers begins with the indentures of apprenticeship and ends with the admission of the solicitor, apart from the practical experience which can very often only be learnt after practice has commenced. This is, of course, quite fallacious and it is necessary for the solicitor to continue his education by keeping himself up to date with the law.

This is a problem which is not by any means peculiar to Ireland and one which is becoming more and more difficult. It is one that has to date largely been left to the individual to work out for himself. The programme of law reform initiated by the Minister for Justice will, by itself, require many of us to go back to school and learn our law all over again in the form in which we shall have to apply it for the future.

This will be a tremendous task and there is no doubt that, for those of us who have been many years in practice, it is going to be very difficult to learn and remember details of new Acts which change and modify the established practice on which we have operated and which has become almost second nature to us for long numbers of years. This problem is linked with the lack of suitable text books and I am hopeful that the Government will include as much of the English law as they consider appropriate in any amendments which they make here so as to give us the benefit of English decisions and text books. The recent Bills which have appeared seem to suggest that this will be so, which will be of considerable help to the practitioner.

How big the problem facing us is emphasised by the fact that on 15th July last the Dail gave the first reading to four major Bills, namely the Trade Marks Bill, the Patents Bill, the Hotel Proprietors Bill and the Companies Bill.

The Minister for Justice in his White Paper indicated the programme of law reform which he envisaged over that part of the law which comes within the province of his Department and, of these four Bills to which I have referred, only one, I think, is sponsored by the Minister for Justice, so that the remaining three are in addition to the general programme of law reform.

The Council are much concerned with what I may call "post-graduate" education and to the necessity of assisting the members to keep up to date.

You all have already received notification of the booklets on recent legislation which have been sponsored by the Society. Two of these, namely; *Civil Liability Act* 1961, and *The Law of Stamp Duties*, have been published and I am glad to say have been eagerly sought by members.

Three further booklets, namely *Administration of Estates Act* 1959, *Statute of Limitations*, 1957 and *Married Womens Status Act* 1957 are in various stages of printing and should be available shortly.

These are a help but it is difficult to get anybody ready and willing to undertake the task of writing what is in fact a minor text book and if there is to be a flood of legislation it will be impossible to keep publications up to date.

I would like to see the Society arrange a series of annual lectures for qualified solicitors to be given on matters which have been the subject of legislative change during the preceding year.

I, personally, feel that a lecture is more valuable than a treatise—the spoken word is more effective than any amount of print. I do realise that members in the country might not find it convenient to attend lectures in Dublin.

The Council would consider the possibility of sponsoring such a series of lectures and would welcome the views of the profession thereon as there is little object in holding lectures which involve the lecturer in considerable time in study and research if there is to be little or no support for his effort.

We would also like to hear from Bar Associations on the subject. I would have in mind the possibility of having such lectures recorded on tape which tapes could be circulated to any Bar Associations which so wished, so enabling members to hear the lectures locally. Further, I feel that such lectures should be published and sold by the Society to members on the lines of the booklets which have already appeared.

It will be quite impossible for the practitioner to keep in his mind full details of an ever-changing law. It is his function, in so far as he can, to know the general principles of the law, to know where changes have occurred, where there are traps for the unwary and to know where to find his law.

I don't see how we can expect to master the detail of the volume of new law which we anticipate and I, personally, think that a series of lectures giving us the very broad outlines and the necessary

warning lights would be of inestimable value to the profession as a whole.

## Specialisation

The foregoing leads me naturally to the question of specialisation. Solicitors are expected to know a bit about everything but the law in former days was much more straightforward and much less complex than it is to-day and it is becoming more difficult to do so.

It is not for me to attempt to tell solicitors how to run their businesses but, in all walks of life, the day of the specialist is approaching and I think members of our profession should bear this very much in mind and contemplate at all times grouping into larger units rather than splitting into smaller ones.

In a small country such as this, it is difficult to be a specialist and I think all we can hope to achieve is, while trying to be a general practitioner on the one hand, we should all endeavour to have a specialist line of our own as well.

## Annual Report

I would commend to the members a careful study of the annual report of the Council. This does not really illustrate the amount of time and attention given by members of the Council and of committees to problems submitted by them by solicitors and to matters which are of general interest to the profession as a whole. Any member reading the report in full will not fail to appreciate the wide variety of matters which have engaged the attention of the Council and of the committees over the past year.

## Conclusion

To-day you have heard read to you the names of the persons who will constitute your Council for the year 1962/63. At the conclusion of these proceedings the new Council will hold its first meeting and one of its first duties will be to adopt the bye-laws for the election of president and vice-presidents and to authorise the issue of ballot papers to the Council to elect my successor.

While the Council which elected me as president has fulfilled its function and been replaced I will continue for a matter of a few weeks until my successor has been appointed.

This, however, is really my swan song and I hope I may be forgiven if I conclude with a few personal remarks.

I am very deeply conscious of the honour which the Council and the Society paid me in electing me as president. I have endeavoured during my year to do all in my power to uphold, maintain and enhance the reputation of the Society. I have had the opportunity of travelling to many parts of the country and meeting many of my colleagues who, before then, were only names. This has been a real privilege and one of the pleasures which I will most long remember. I hope and believe that I have made many friends throughout the country and I look forward to continuing and renewing these friendships.

I have also represented your Society at numerous functions and have been the recipient of much varied hospitality.

The flow of invitations to public functions indicate to me the high regard in which your Society is held throughout the country.

Frequently I have been accompanied by my wife and we were treated as honoured guests wherever we went. We both went to Scotland to attend the annual week-end of the Scottish Law Society at Gleneagles and to England to attend the Annual Conference of the Law Society held last month in Torquay. Both at Gleneagles and Torquay my wife and I were most warmly and lavishly received and entertained and I know that these continuing and ever-growing contacts between this society and our sister societies are invaluable, and to be fostered and encouraged. The Society hope to repay some of this hospitality to our English and Scottish friends at Bundoran next May.

My wife and I with Mr. and Mrs. Ralph J. Walker, represented the Society at the International Bar Association Conference at Edinburgh last July. Several other members of the Society and their wives attended as conferees. We were all the recipients of the traditional Scottish hospitality.

I would not be human if I did not admit that we both have enjoyed all the functions which we have attended but particularly the contacts and friendships which we have made. We have been at all times very conscious that we were your ambassadors and we hope that, as such, we have done credit to the Society.

I would like to say how very grateful I am to my two vice-presidents, Mr. Frank Lanigan and Mr. Bertie Taylor, who have so ably and willingly supported me at every turn. They have always been more than ready and willing, no matter what their prior commitments, to take my place if required or to take on any duties which I asked them to undertake. I could not have been better served.

I have been more than fortunate in the Council with whom I have worked over the past twelve months. They have been diligent in their attendance and indefatigable in their energies. I think I might safely say that the burden of the work on the Council in the last year has been the heaviest ever as the programme of law reform has entailed a measure of study and research quite disproportionate to that which normally comes their way.

I have had to call upon them individually to give

their time and energies between Council meetings to preparing reports on various aspects of the law so that the Council, as a whole, could consider its attitude towards the projected reforms. Never has one single member hesitated in accepting any of the burdens which I have asked them to bear. No man could have had a more willing or co-operative team and, without their collective support, I could not possibly have carried out my duties during the year. Each president has expressed his thanks to his Council but I feel that I owe a greater debt of gratitude to the Council which has served during the last year than any previous president has owed to his Council and I would like each and all of them to know just how much I value their untiring effort.

Mr. Plunkett is the right hand of every president. He is the constant factor in the control and management of the society and no president could carry out his duties during his year of office without the help and guidance of the secretary. Mr. Plunkett is always at hand to advise the president as to what he should do and warn him as to what he should not do. It is only when one has had the responsibility oneself that one realises how much the smooth running of the Society depends on Mr. Plunkett. I am extremely grateful to him for all the help, guidance and assistance which he has at all times so freely given to me during the past year.

Mr. Gavan Duffy in the library, Mr. Fitzpatrick in the office and Mr. Cusack have always been at hand eager and anxious to do their share when the need arose. To them, to the girls in the office and to William O'Reilly, my most grateful thanks for all their help and assistance.

Before I close, may I remind you all that the next half-yearly meeting of the Society will be in Bundoran, County Donegal, on Saturday, 18th May, 1963. I hope that as many members as possible will attend not only the meeting but for the whole week-end.

It is with very great pleasure that I now formally move the adoption of our report and I will ask Mr. Lanigan formally to second the proposal.

The meeting then went into private session and the press representatives withdrew. The president, continuing his address, said :—

At the annual meeting last year the president initiated a discussion on the advisability of asking the Minister to make an Order to bring in the sections of the Solicitors (Amendment) Act, 1960, dealing with the question of accountants certificates.

The sections provide that a solicitor shall furnish a certificate to the effect that the solicitor has complied with the accounts regulations before he can obtain a practising certificate.

The operation of these Sections is in abeyance and can only be brought into effect by an Order of the Minister which Order can only be made if the Minister is so requested by the Society.

The Council made it clear to the Minister at the time the sections were being passed that it would not ask the Minister to bring such sections into operation until such time as it was satisfied that the majority of the profession were in favour of its so doing.

At the General Meeting last November it was quite clear that a large majority of those present were utterly opposed to the bringing in of the sections.

At the Extraordinary General Meeting which was held last March certain members urged that steps should be taken to bring into effect the regulations in question.

I, personally, feel that it would be an advantage to the profession in the long run and would be a considerable safeguard to the Compensation Fund if such sections were operative, and accountants certificates had to be furnished.

This does not mean that I wish in any way to press for any immediate action but I would like the profession, as a whole, to consider the matter and examine it dispassionately. After all, we are all burdened with the present contribution to the Compensation Fund and if these certificates would help to forestall claims on the Fund they would, in the long run, lighten the burden on each individual solicitor.

I would, therefore, suggest that you gentlemen and the Bar Associations throughout the country keep this matter before you and if any of the Bar Associations are satisfied that a majority of their members would favour the introduction of accountants certificates in accordance with the sections that they should notify Mr. Plunkett so that the Council can keep in touch with the feelings of the profession.

There may be divided counsels now but, as time passes, more people may come to see advantages to themselves in having these certificates and, if so, we, on the Council, should know about it.

The president then proposed and Mr. Lanigan seconded the adoption of the report.

The following members spoke to the president's address : Messrs. T. D. McLoughlin, J. C. Daly and R. J. Tierney.

The motion for the adoption of the report was carried unanimously.

On the motion of Mr. T. A. O'Reilly the president vacated the chair which was taken by Mr. Lanigan, vice-president. Mr. O'Reilly then proposed a vote of thanks to the president for his distinguished services to the profession during his year of office. The motion was carried with general acclamation.

There was no further business.

## MEETINGS OF THE COUNCIL

OCTOBER 11TH: The President in the Chair, also present Messrs. Thomas A. O'Reilly, Ralph J. Walker, D. B. Gilmore, James R. C. Green, Gerald Y. Goldberg, Charles Hyland, Peter E. O'Connell, Peter D. M. Prentice, T. V. O'Connor, George A. Nolan, Patrick Noonan, James J. O'Donovan, John J. Nash, Niall S. Gaffney, John Carrigan, Francis J. Lanigan, Reginald J. Nolan, Raymond A. French, Brendan A. McGrath, Eunan McCarron, Brendan T. Walsh, Thomas J. Fitzpatrick, John C. O'Carroll, William A. Osborne, J. Bernard MacGarry, John Maher, Augustus Cullen, Daniel J. O'Connor, Robert McD. Taylor.

The following was among the business transacted:

### Sub-sale by purchaser. Costs

A member acted for a tenant of house property which he had agreed to purchase from his landlord at £1,200. Subsequent to the signing of the contract and before the sale had been completed the purchaser agreed to resell to his brother. Member acted for all three parties and the deed of conveyance was signed by the landlord, purchaser and the sub-purchaser. The subsale was made in consideration of the money due to the first purchaser. Member enquired if he was entitled to the scale costs on the subsale and he stated that very little work had been done by him on the subsale. Presumably he had made only one investigation of title.

The Council on a report from a committee decided that member was entitled to the following fee: (1) as against the first vendor the commission scale charge on the agreed price plus Schedule II charges for the additional work consequent upon the subsale. (2) As against the first purchaser Schedule II charges for the additional work so far as not covered by (1) plus the appropriate commission scale charge in respect of the subsale. (3) As against the sub-purchaser the appropriate commission scale charge in respect of the subpurchase. This is on the assumption that all work was substantially carried out as described in the General Orders. Where one solicitor acts for vendor and purchaser the registration fee is not chargeable against the purchaser. (See Society's GAZETTE for December 1956, page 53.)

NOVEMBER 8TH: The President in the Chair, also present Messrs. John Maher, Augustus Cullen, William A. Osborne, Brendan T. Walsh, J. Bernard MacGarry, D. J. O'Connor, James R. C. Green, D. B. Gilmore, Charles Hyland, Peter D. M. Prentice, Desmond Moran, Brendan A. McGrath, George A. Nolan, Niall S. Gaffney, Francis J. Lanigan, John Carrigan, James W. O'Donovan, T. V. O'Connor, Desmond J. Collins, Patrick Noonan, Reginald J. Nolan, R. McD. Taylor, Raymond A. French, Peter E. O'Connell, Eunan McCarron.

### Incorporated Council of Law Reporting

The Council unanimously resolved that Mr. Charles Hyland be appointed as one of the Society's representatives on the Council of Law Reporting in place of Mr. Dermot P. Shaw who had resigned.

### Law Reform

The Council considered draft memoranda prepared by members on the law of evidence (Messrs. O'Reilly and O'Connell); Guardianship of infants (Messrs. Walsh and Osborne); Wills (Messrs. Prentice and Hyland) and Administration of estates (Messrs. Noonan and MacGarry) and it was directed that they be sent to the Department of Justice with the amendments agreed upon at the meeting.

### International Bar Association

Mr. Carrigan was appointed as a vice-president of the Association in place of Mr. Arthur Cox.

### Solicitor instructed to take proceedings to upset deed approved by his partner

Two members who practise in partnership submitted the following query. A client of one of the partners owned some land on a river bank and he purported to sell a right of fishing in severalty which was attached to the land to a club of eighty members. The deed of conveyance was drawn up by another solicitor and submitted to member for approval on behalf of his client. He approved the deed and the transaction was completed. It then transpired that in addition to the client about twenty other persons had a right of fishing in the same water and when they became aware of the alienation of the right by the client they objected and they came to member's partner for advice. He advised them, after taking counsel's opinion, that the alienation was bad and could be set aside and he was instructed to institute proceedings to have the deed set aside. At this stage he realised that the deed of alienation had been approved by his partner and he enquired if he was entitled to act for the plaintiffs in the contemplated proceedings in his own name. The Council, on a report from a committee, were of opinion that no member of the firm could act in the proceedings contesting the validity of the deed which had been approved by one of the partners.

NOVEMBER 22ND, 1962: The President in the Chair, also present Messrs. Francis J. Lanigan, Desmond J. Collins, T. V. O'Connor, James R. C. Green,

Desmond Moran, James W. O'Donovan, George A. Nolan, Thomas A. O'Reilly, D. B. Gilmore, Charles Hyland, Edward Dillon, John Maher, Brendan A. McGrath, William A. Osborne, Peter E. O'Connell, Augustus Cullen, Raymond A. French, Eunan McCarron, Daniel J. O'Connor, Robert McD. Taylor, Peter D. M. Prentice, John J. Nash, John Carrigan, Reginald J. Nolan, Ralph J. Walker, Patrick Noonan.

The following was among the business transacted :

## Committees of the Council

The committees for the year 1962–63 were appointed and are given hereunder :—

REGISTRAR'S COMMITTEE :

Ralph J. Walker, Chairman; Dinnen B. Gilmore, James R. C. Green, Charles Hyland, J. Desmond Moran, Francis J. Lanigan, to remain in office until 12th February, 1963, inclusive.

To take office on 13th February, 1963 : James R. C. Green, Chairman; Augustus Cullen, Charles Hyland, Desmond Moran, Dinnen G. Gilmore, Ralph J. Walker, William A. Osborne.

COMPENSATION FUND COMMITTEE :

Ralph J. Walker, Chairman; Dinnen B. Gilmore, James R. C. Green, Charles Hyland, J. Desmond Moran, Francis J. Lanigan, to remain in office until 12th February, 1963, inclusive.

To take office on 13th February, 1963 : James R. C. Green, Chairman; Augustus Cullen, Charles Hyland, Desmond Moran, Dinnen B. Gilmore, Ralph J. Walker, William A. Osborne.

FINANCE, LIBRARY AND PUBLICATIONS COMMITTEES :

George A. Nolan, Chairman; Francis Armstrong, William A. Tormey, George G. Overend, Niall S. Gaffney, John C. O'Carroll, Rory O'Connor.

PARLIAMENTARY COMMITTEE :

Senator Thomas J. Fitzpatrick, Senator John J. Nash, Patrick O'Donnell, T.D.

PRIVILEGES COMMITTEE :

Brendan A. McGrath, Chairman; John Carrigan, Gerard M. Doyle, Raymond A. French, Reginald J. Nolan, Edward Dillon, Cornelius J. Daly.

COURT OFFICES AND COSTS COMMITTEE :

James W. O'Donovan, Chairman; Daniel J. O'Connor, Thomas A. O'Reilly, Timothy O'Keeffe, Thomas V. O'Connor, Edward Treacy, Richard Knight, Rory O'Connor.

COURT OF EXAMINERS :

Peter D. M. Prentice, Chairman; Robert McD. Taylor, Eunan McCarron, John Maher, Patrick Noonan.

The President, Vice-Presidents and immediate Past President are *ex-officio* members of all the above committees other than the Registrar's and Compensation Fund Committees.

## EXTRAORDINARY MEMBERS OF THE COUNCIL

The following members of the Dublin Solicitors' Bar Association were appointed as extraordinary members of the Council for the period of office of the Council: Rory O'Connor, Richard Knight, Gerard M. Doyle.

The following members of the Council of the Southern Law Association were appointed as extraordinary members of the Council for the period of office of the Council : John B. Jermyn, Cornelius J. Daly, John R. Coakley, Edmund Hayes, Barry M. O'Meara.

## COMPENSATION FUND REPORT

The report of the Compensation Fund Committee for the year 1961–62 was considered and adopted.

## SOCIETY'S DINNER DANCE

The annual dinner dance was held in the Shelbourne Hotel, Dublin, on November 22nd and attracted an attendance of approximately 300.

## EXAMINATION DATES

Members are asked to bring to the notice of their apprentices the following dates of examinations for February, 1963 : First Law, February, 4th and 5th; Second Law, February, 6th, 7th and 8th; Third Law, February, 4th, 5th and 6th; First Irish, February, 1st; Second Irish, February, 1st and 2nd.; Book-keeping, February, 25th.

The Book-keeping examination formerly held in September of each year has, at the request of the apprentices, been transferred to the month of June. The date of the examination in June, 1963, will be announced later.

## ESTATE DUTY AND RESIDUARY ACCOUNTS. FORESTALLING QUERIES

As a result of complaints received from members regarding undue delay in the Estate Duty Office the Society has been in communication with the Revenue Commissioners on the question of the amount of time taken to assess estate duty on schedules of

assets when lodged. The Revenue Commissioners point out that in a great many cases delays are occasioned by reason of the fact that schedules of assets have to be returned with queries, sometimes more than once. In the normal course of events, estate duty is assessed within three weeks of the presentation of the schedule of assets. If the schedule has to be returned with queries there will probably be a further delay of three weeks when it is relodged with the queries dealt with. There may be even further queries which will, of course, lead to further delays. Whereas it is not possible, especially in cases of some complexity, to deal with all possible queries in advance when completing the affidavit and schedule of assets there are certain matters which continually give rise to queries and which could be dealt with when the forms are being completed in the first instance. The Revenue Commissioners have referred to the following matters and the Society has agreed to bring them to the notice of members.

## 1. Completion of the affidavit or account and attention to direction thereon

Delay will often be avoided if *all parts* are filled up fully and unambiguously and the instructions in the side notes complied with. Certain paragraphs of the Affidavit (on form A-4R those numbered 10 to 12) are designed to elicit the information whether there is or is not other property passing. If these are not completed the examiner is left in doubt as to whether other property passed on the death.

If the queries and requisitions incorporated in the affidavit (page 3 of A-4R) are either not all dealt with or are replied to ambiguously, it is necessary to return the affidavit to the solicitor for rectification or clarification. A *side note* in the Inland Revenue Affidavit draws attention to section 21, Finance Act, 1956, and indicates the information which is required so that it may be determined whether the securities in the estate qualify for the relief given by that section. If this side note is overlooked affidavits in which such securities appear have to be queried for the relevant information.

The forms on which applications for refunds of duty are made indicate that the applications should be accompanied by the receipted account showing payment of the duty to be refunded. If this instruction is ignored the application has to be referred back to the solicitor.

## 2. Goodwill

When the assets include a business (other than that of licensed vintner) it is not sufficient merely to insert a value for the goodwill or say that it was of no value. A statement should be annexed showing the basis of valuation or the grounds on which it is considered that there was no goodwill and copies of the profit and loss accounts and balance sheets for the three years prior to death should be forwarded with inland revenue affidavit, if this is possible.

## 3. Deduction of certain classes of debts:

(*a*) Debts for necessaries are not allowable in the estate of a married woman (these, generally, being the husband's liabilities unless it can be demonstrated either that she had in fact made herself primarily liable for them or that she was liable, though not primarily, and the husband was unable to pay. Where allowance for such debts is claimed a statement of the grounds on which the claim is made should be forwarded with the affidavit or account.

(*b*) Bank letters certifying overdrafts should always state the security held for the overdraft. Where the security involves Irish and non-Irish property the overdraft should be apportioned between the two classes of security.

(*c*) An income tax deduction for estate duty purposes in substantial cases should be vouched by a letter from the Inspector of Taxes certifying the amount of liability for the period to *date of death.*

## 4. Locality of Assets

Certain classes of assets may have either an Irish or non-Irish locality and if they are returned as foreign assets without explanation queries have to be raised to clarify the position.

(*a*) Policies of Assurance: It should be stated whether these are under hand or under seal; and if under hand only whether any place of payment is specified. If under seal it should be stated where the policy was found at the date of death.

(*b*) Bearer Securities: It should be stated where the bonds or share certificates were actually situate at the date of death.

(*c*) Securities which may be issued either in bearer or registered form, e.g., Shell Transport and Trading Company Ordinary and British American Tobacco Ordinary are stocks of this kind which crop up very frequently. In many cases enquiry has to be made as to the form in which they are held. This query would be avoided if it were stated in the first instance whether they were in bearer or registered form and, if in bearer, where the stock certificates were found at date of death.

### 5. Assets frequently omitted

(*a*) Where securities are quoted ex dividend the whole of the current dividend should be included. (Where such dividends are paid without deduction of tax, income tax at the standard rate may be deducted and the net dividend only returned.)

(*b*) When an estate includes British securities a refund of British tax deducted at source is due to the estate. This refund (or an estimate) should be included.

### 6. Valuation of unquoted shares in private Companies.

This matter frequently gives rise to queries and it was the subject of an agreement as to procedure between the Society and the Estate Duty Office in 1959. Briefly, the procedure is that the solicitor on receipt of instructions should immediately lodge particulars of the shares in the Estate Duty Office, and without waiting for the schedule of assets to be completed. A full note on the procedure will be found in the Society's GAZETTE for February, 1959.

### 7. Shares to which section 21 of the Finance Act, 1956 applies.

Under this section it must be shown to the satisfaction of the Revenue Commissioners that the deceased had been beneficially entitled to the securities in question from the date of the original issue thereof or for three years preceding death and if the necessary evidence in support of this is not lodged with the affidavit and schedule of assets same will have to be returned with a query.

### 8. Deceased described as "retired farmer" or "retired merchant".

Where a deceased person is so described in the estate duty affidavit the Estate Duty Office will require to have evidence as to how, when, to whom and for what consideration the lands or business were disposed of prior to death as the disposition, if made within the three years preceding death, affects the question of estate duty. This question should be dealt with when the affidavit is lodged and a copy of the relevant instrument should be lodged whenever the disposition was otherwise than by way of bona fide sale.

### 9. Age of the deceased.

The affidavit contains a space for the age of the deceased and this should always be filled in. In the past this was not a strict requirement but the Estate Duty Office indicate that in future it will be necessary to put in the age as it is required for internal statistical purposes. The information so obtained is not made available by way of a check on those in receipt of old age pensions.

The Revenue Commissioners state that if the foregoing procedure is adhered to in the completing of schedules of assets for lodgment for Estate Duty purposes much delay will be avoided by reason of the fact that a great many of the affidavits will be dealt with immediately and the duty assessed. It is pointed out that of the total of schedules of assets presented for assessment in the first instance about one third usually have to be returned with one query or another.

### Residuary Accounts

In completing Residuary Accounts

(*a*) Securities should be lised in the same order as in the inland revenue affidavit.

(*b*) Discrepancies in the amounts of holdings appearing in the residuary accounts as compared with those returned for estate duty should be fully explained. Where these are due to bonus or rights issues the dates of issue should be stated.

The Council have not lost sight of the question of delays in assessments due to staff shortages or other internal difficulties in the Revenue Commissioners Office and are continuing consultations with the office on this matter.

## REGISTRY OF DEEDS (FEES) ORDER, 1962.

The above Order has been made by the Minister for Justice and it comes into operation on the 1st of January, 1963.

The effect of the Order is to increase the fees at present authorised to be charged in the Registry of Deeds. It replaces the Registry of Deeds (Fees) Order, 1956.

## BOOK REVIEW

*The Administration of Justice in Ireland.* By V. T. H. DELANY. Dublin Institute of Public Administration, 1962. 8vo. Pp. 91. 14/6.

Dr. Delany has written primarily for administrators an excellent and concise guide to the administration of justice in Ireland; perhaps the best method of indicating the scope of the work is to summarise the contents. Dr. Delany first analyses the nature and sources of Irish law in relation to legislation, judge-made law and equity; he then gives an interesting summary to the background of the Irish

judicial system before 1800; he next examines the various Courts in Ireland from 1800 to 1921 and the constitutional changes that arose between 1921 and 1924; this short, lucid and comprehensive historical introduction takes up 40 pages.

The practitioner will probably know the contents of the second part of this booklet, which deals with such matters as—" the Courts since 1922 "—" the Criminal Jurisdiction of the courts "—" the Civil Jurisdiction "—" the personnel "—" the legal profession " and " the finances of the law ". But the matter has rarely been presented in such an attractive and readable form and our learned author can express his views concisely with clarity and precision. There are most useful diagrams regarding criminal jurisdiction on page 54 and civil jurisdiction on page 64. Our author has some interesting comments to make on legal education, and he points out that the efforts of the Law Society to introduce a compulsory university degree for potential solicitors was frustrated by an unexplained veto of the Government. Dr. Delany has produced a most readable pamphlet, in which the principles of the administration of justice are clearly and concisely explained.

C.G.D.

## THE REGISTRY

### Register A

WANTED a qualified assistant with some experience for office in Leinster town. Knowledge of costs an advantage. Particulars to Box No. A.197.

Solicitor required for well established busy Practice in Leinster, within radius of 60 miles from Dublin. Good salary with prospects of succession. Present owner will continue. Reply to Box No. A198.

### Register C

*Re* GEORGE W. O'MAHONY, deceased. Will any solicitor who drew or has possession of the Will of George W. O'Mahony, deceased, late of Gurranes North, Drimoleague, County Cork, Farmer, who died at St. Anne's Hospital, Skibbereen, in the month of October, 1961, please communicate with Daniel G. MacCarthy, Solicitor, Skibbereen, County Cork.


SOCIETY'S PHOTO-COPYING SERVICE

Any deed, document or book
15" × 10" or smaller.

*9d. per sheet.*

NOW IN OPERATION


## REGISTRATION OF TITLE ACTS, 1891 AND 1942 ISSUE OF NEW LAND CERTIFICATE

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 31st day of December, 1962.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner, Margaret Frend. Folio number, 874. County Kings. Lands of Rath in the Barony of Clonlisk containing 25a. 2r. 7p.

2. Registered Owner, Patrick Gerald Dillon. Folio number, 8315. County Mayo. Lands of Abbeyquarter in the Barony of Costello containing 10a. 2r. 4p.

3. Registered Owner, John Agar. Folio number 8471. County Kilkenny. Lands of Coolcullen in the Barony of Fassadinin containing 36a. or. 20p. and 19a. 1r. 29p. (an undivided moiety).

4. Registered Owner, William J. Bourke. Folio number 2420 (Revised). County Clare. Lands of Aughboy containing 42a. or. 27p. and lands of Coollisteige containing 10a. 1r. 21p. both situate in the Barony of Tulla Lower.

5. Registered Owner, Francis Clyne. Folio number 3833. County Leitrim. Lands of Sragarn in the Barony of Mohill containing 13a. 3r. 17p.

6. Registered Owner John Deane. Folio number 3333. County Cork. Lands of Ballyviniter Upper in the Barony of Fermoy containing 95a. or. 5p.

7. Registered Limited Owner, Maria Waldron. Folio number 3379. County Mayo. Lands of Bracklagh in the Barony of Costello containing 32a. 1r. 15p.


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Vol. 57
No. 7

JANUARY
1963

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### PRACTISING CERTIFICATES 1963-64

(1) Members are reminded that practising certificates for the year to end 5th January, 1964 should be taken out on or about the 6th January, 1963 and not later than 5th February, 1963 in order to take effect as a qualification to practise from January 6th.

(2) Under the provisions of the Solicitors Acts, 1954-60 the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the Registrar, on the ground of illness or some other sufficient cause dispenses with personal signature of the declaration. Dublin agents of country solicitors should therefore take up the declarations in good time and forward them to their correspondents for signature.

(3) The amount of the registration fee and Compensation Fund contribution is as follows :—

(*a*) If the certificate is issued within three years from date of admission, £11 for a Dublin solicitor and £8 for a country solicitor.

(*b*) In any other case, £26 for a Dublin solicitor, £23 for a country solicitor.

## POSITION VACANT

The Council invite applications for the position of Special Examiner at the Society's First and Third Law Examinations in the following subjects, Tort, Contract, Criminal Law and Practice and Commercial Law.

Particulars of the appointment may be obtained from the Secretary, Solicitors Buildings, Four Courts, Dublin 7.

## MEETINGS OF THE COUNCIL

December 13th, 1962: Mr. Overend and later the President, Mr. Lanigan in the chair and also present Messrs. Desmond J. Collins, Niall S. Gaffney, George A. Nolan, John J. Nash, Desmond Moran, Gerard M. Doyle, Edward Dillon, James R. C. Green, Charles Hyland, Peter D. M. Prentice, Timothy J. C. O'Keeffe, Ralph J. Walker, John C. O'Carroll, Brendan A. McGrath, Augustus Cullen, William A. Osborne, John Maher, John B. Jermyn, Robert McD. Taylor, Eunan McCarron, Richard Knight, Raymond A. French, Peter E. O'Connell, John Carrigan, James W. O'Donovan, Patrick Noonan, T. V. O'Connor, Dinnen B. Gilmore, Reginald J. Nolan, Thomas J. Fitzpatrick, Daniel J. O'Connor.

The meeting passed in silence a vote of sympathy with the family of the late Mr. Thomas Bolton Cooley formerly librarian to the Society. An obituary notice appears on page 66.

The following was among the business transacted:

### Lectures on the Common Market

The President read a letter from the Chief Justice on the subject of a proposed seminar for students on the law of the Common Market. It was decided to agree to the suggestion of the Chief Justice that the Society should share the expenses with the Honourable Society of King's Inns.

### New Legislation

Companies Bill 1962.

The Council considered the Companies Bill of 1962 and a memorandum prepared by the Secretary. It was decided to raise with a solicitor member of the Oireachtas the sections in the Act relating to the rights of solicitors and the solicitor and client privilege.

Local Government (Planning and Development) Bill; 1962

A memorandum on the Local Government (Planning and Development) Bill 1962 was also considered and it was decided to raise objections to section 9 and section 80 (7). The sections would appear to infringe the client's right of privilege in communications with his solicitor as provisions are contained therein which oblige a solicitor to furnish certain information to a Planning Authority. It was agreed that a solicitor may be required to supply the name and address of a client.

### Proposed vacation in the District Court

The Secretary reported on the replies to a circular sent by the Society to the secretaries of local bar associations asking for the views of the bar associations on the proposal that no District Courts should sit in the month of August (outside the Dublin Metropolitan Area) provided that special provision were made for criminal custody cases and urgent applications. The majority of the replies received were in favour of the proposal and it was agreed that the Department of Justice be so informed

### Sale of leasehold interest in registered land where no leasehold folio had been opened. Costs

Members acted for the vendors of leasehold property which was subject to the Registration of Title Acts. The title commenced with a lease from a development company to B dated 30th December 1959 and registered in the Land Registry. By sublease dated 5th June 1961 B assigned the dwelling-house the subject matter of the sale to the vendors. The transaction in question was an assignment by the vendors of their interest in the property to the purchaser for the sum of £3,500 subject to the annual rent of £11 per annum. There is no separate leasehold folio in the Registry for the lessee's interest either under the lease of the 30th December 1959 or the sublease of 5th June 1961. The latter is registered as a burden on the original folio. The registered full owners of the folio are the development company and the lease from the company to B is shown on the folio. Neither in the case of the lease or in the case of the sublease is there a note on the folio to the effect that the lessor's title to grant the lease has been investigated and found good. The contract contained a clause to the effect that the purchaser should conclusively assume that B was entitled to execute the sublease to the vendor and that he should not make any objection or requisition as to or enquire into or investigate the earlier or intermediate title whether the same appeared by recital in any document or otherwise. Members enquired as to the proper scale of costs to be charged in the matter. The Council, on a report from a committee, stated that as no leasehold folio had been opened the interest sold was not registered property within the meaning of the Land Registry rules and that the ordinary commission scale fee applicable to the sale of freehold land applied.

## COUNTY CLARE LAW ASSOCIATION

At the Annual General Meeting of the above Association held at the Courthouse, Ennis, on the 13th December, 1962, the following Officers were elected :—

*President*, Patrick P. O'Shea, Kilrush; *Vice-President*, Michael J. Walsh, Ennis; *Honorary Secretary and Treasurer*, Michael J. McMahon, Kilrush; *Committee*, Patrick J. Chambers, Ennistymon; Daniel O. Healy, Scariff; Thomas A. Lynch; Thomas F. O'Reilly and James B. MacClancy, all of Ennis.

## COMMISSIONERS OF CHARITABLE DONATIONS & BEQUESTS BOARD MEETINGS

HILARY TERM—1963

| | |
|---|---|
| Tuesday | 15th January, 1963 |
| " | 29th " 1963 |
| " | 12th February, 1963 |
| " | 26th " 1963 |
| " | 12th March, 1963 |
| " | 26th " 1963 |
| " | 9th April, 1963 |

J. S. MARTIN,
*Secretary.*

## COUNTY KILDARE SOLICITORS' BAR ASSOCIATION

The annual general meeting of the above association was held in Naas on the 28th November, 1962. Officers elected were : *President*, Mr. B. G. Donnelly, Athy; *Secretary and Treasurer*, Mr. P. J. Farrell, Naas; *Committee*, Messrs. B. O'Flynn, P. V. Boland, M. A. Salmon, B. Price and J. J. Kinnerk.

## SOLICITORS' GOLFING SOCIETY

Officers for 1963 : President, Francis J. Lanigan (President I.L.S.I.); Captain, John Maher; Treasurer, David Bell; Secretary, Henry N. Robinson, 3 Lower O'Connell Street, Dublin.

*Competitions*, 1963 :

Law Society Meeting, Bundoran, 18th May, 1963.
Captain's Prize, Baltray, 15th June, 1963.
President's Prize, Carlow, 28th September, 1963.

## RULES OF THE SUPERIOR COURTS, 1962

The new rules are now on sale at the Government Publications Sales Office, price 30/-. The attention of members is directed to the new rules governing costs and the scales of costs in Court proceedings and non-contentious probate and administration matters in appendix W to the rules. The new rules of procedure and scale of costs came into operation on 1st January, 1963.

## MODERN LAW PUBLICATIONS NOW ON SALE

No. 1. *The Civil Liability Act*, 1961 by R. M. Neville, price 8/6.

No. 2. *Stamp Duty Legislation* 1890–1962 by Eric A. Plunkett, price 8/6.

The following publications are with the printers and will shortly be available. Information as to the price will be published in the next issue of the GAZETTE.

No. 3. *Administration of Estates Act* 1959, by Joseph P. O'Connell.

No. 4. *Statute of Limitations*, 1957 by Desmond R. Counahan.

No. 5. *Married Women's Status Act* 1957 by Colum Gavan Duffy.

## SOCIETY'S DOCUMENT COPYING SERVICE

The service is now available to members on the following terms :

9d. per sheet 15" x 10" or smaller. This is the size of the ordinary Inland Revenue affidavit or grant of probate. Where documents are submitted so arranged that several documents may be copied in the one operation the total copying area not exceeding 15" x 10" the charges may be proportionately reduced. Documents submitted for copying must be accompanied by a docket or list, *in duplicate*, giving particulars of the document, the number of copies required and the name and address of the member. One copy of the list will be stamped and returned as a receipt and should be produced when the documents are collected, normally on the same or the following day.

## OBITUARY

MR. GEORGE V. MALONEY, Solicitor, died at his residence, Farnham Street, Cavan.

Mr. Maloney served his apprenticeship with the late Mr. Arthur B. Smyth, Cootehill, was admitted in Michaelmas Sittings, 1915 and practised at Cavan.

MR. JAMES L. MCLAUGHLIN, Solicitor, died on the 24th October, 1962, at St. Michael's Hospital, Dun Laoire.

Mr. McLaughlin served his apprenticeship with Mr. Thomas D. McLaughlin and was admitted at Trinity Sittings, 1934. He practised at 18 College Street, Dublin, until 1943, when he went into business.

## CALENDAR AND LAW DIRECTORY 1963

Order forms for the calendar were issued with the December number of the Society's GAZETTE. Any member requiring the 1963 edition who has not returned an order form is requested to do so immediately.

## DISTRICT COURT (COSTS) RULES 1962

The above rules which came into operation on the 1st January 1963 provide for a revised scale of solicitors' costs and counsels' fees in the District Court. A new scale is provided in respect of costs in hire-purchase matters where the amount recovered or in the case of dismiss the amount sued for exceeds £50. The present limit of the District Court jurisdiction under this heading is £100. The Rules are now available from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, price 2/- net.

## MR. THOMAS B. COOLEY

MR. THOMAS BOLTON COOLEY was born in Calary, Co. Wicklow, in 1881, and joined the staff of the Incorporated Law Society in 1908. Upon the retirement of the former librarian, Mr. Samuel Evans, B.L., in 1915, Mr. Cooley succeeded him as librarian, and he retained this post until his retirement at the end of 1950; he died in December, 1962, in the home of his son, Mr. Lewis Cooley, in Fortfield Road, Terenure, Dublin.

As librarian of the Society, Mr. Cooley endeared himself to all members by his courtesy, tact and patience. Due to the destruction of the library in 1922, Mr. Cooley arranged to save many precious volumes beforehand, and had the tremendous task of building up a new library afresh; he managed to induce many members to donate their reports; due to his untiring efforts, in five years, the Society had acquired by purchase or gift practically all the missing volumes. He also devoted much of his spare time to the preparation of the last printed catalogue of the library published in 1937, a task which required much painstaking and accurate work.

At the Ordinary General Meeting of the Society held on the 23rd November, 1950, a resolution was passed unanimously, to the effect that on the occasion of his retirement, the Society in General Meeting recorded their deep appreciation and thanks for the manner in which he had discharged the duties of his office for so many years, and for the courteous and efficient way in which he had always assisted members using the library; in the varied and intricate tasks of a law librarian, Mr. Cooley set a high standard which it has been difficult to emulate; he was dedicated to his work. His wife had pre-deceased him. To his son, we extend our deep sympathy.

C.G.D.

## DECISIONS OF PROFESSIONAL INTEREST

*Sale of Land: Purchase Money received by solicitor for the vendor: Whether received by him as vendor's agent.*

In a case decided in 1956 by the Supreme Court (Barclays Bank Ltd. *v.* Breen) the respondents, Barclays Bank Ltd., as executors of Lourdes Sinnott Murphy, deceased, decided in the course of the administration of the estate, to sell certain lands which had been owned by the deceased. By letter dated 3rd April they instructed a solicitor to act on their behalf "in dealing with any legal formalities in connection with our proof of title and ultimate disposal of the property." The solicitor stated in a letter in reply "I shall be happy to act for you in putting the title in this matter in order and disposing of the lands." The solicitor prepared the conditions of sale and the lands were sold by public auction to the appellant who paid the deposit and instructed the solicitor to act for him in the transaction. The solicitor on the 4th December 1960 wrote a letter in the following terms to the appellant, "Re Murphy to you. I would be glad to receive your cheque for £1,060 balance of the purchase money herein, as I want to send the deed of transfer to Barclays Bank for execution and it will take some time to have it stamped and registered. Will you also please confirm that this holding is to go into your name.

It has been reported to me that John Whelan of Ballylusk is trespassing on Garrynew, that he has levelled the bounds fence on the premises and cut some trees on the lands purchased by you and taken them away. I believe he told the herd man your mother gave him permission to do this but I thought you had better know. Yours very truly,"

The appellant paid the balance of the purchase money to Mr. W. E. Godfrey, solicitor who issued a receipt for it to him. The solicitor became insolvent after transferring only a part of the purchase money to the respondents. They claimed that part of the purchase money remained unpaid and they claimed payment of the amount they had not received from the solicitor, with interest, from the appellant. They succeeded in the High Court and the grounds of the decision were that the solicitor in obtaining the purchase money never purported to act as agent for the bank and that he did not receive it as agent for the bank. On appeal to the Supreme Court it

was held (1) that the letter of the 3rd April 1950 and the surrounding circumstances established that the solicitor was authorised to act as agent for the bank to receive the purchase money and give a discharge therefor. (2) That even if the solicitor had no such actual authority the plaintiffs with knowledge of the facts had ratified the receipt of the purchase money by accepting payments out of it and by subsequent correspondence. (3) That the defendant was entitled to an order for a specific performance of the contract.

At the trial Budd J. said that the cardinal factor was the letter written by the solicitor on 4th December, 1950 and that it would have to be viewed in the light of the surrounding circumstances to indicate whether or not the solicitor purported to act as the bank's agent in the collection of the purchase money from the purchaser. He said that the second sentence and the whole of the second paragraph were plainly written by the solicitor as solicitor for the purchaser. There was no indication that the solicitor purported to act for the bank or to collect the money on their behalf. He could only construe it as a demand for the purchase money by a solicitor from his own client. If the purchaser had demanded the return of his money within a week the solicitor would have had no option but to pay it back because he could not have been regarded in law as holding the money as trustee for the bank. The learned judge also held that on the evidence before him there was no indication that the bank were aware of the circumstances surrounding the solicitor's receipt of the purchase money at any time prior thereto and that they did not purport to ratify his act subsequently.

Lavery J., giving the judgment of the court on appeal, said that the issues were (1) was the sum paid to the solicitor as agent for the bank authorised to receive it and give a discharge therefor; (2) if the solicitor had no actual authority to receive and give a discharge on behalf of the bank did he purport to do so, and, if so (3) was his action subsequently ratified by the bank so as to discharge the purchaser?

On the first issue the learned judge held that the instructions given in the first instance to the solicitor and in particular the instruction to deal with "the ultimate disposal of the property" and the solicitor's reply thereto when he said in a letter "I shall be happy to act for you in disposing of the lands" gave to him a wider authority than would arise from his mere appointment as a solicitor with carriage of sale and in particular would authorise the solicitor to receive and give a discharge for the purchase money. Furthermore the correspondence indicated that the solicitor both prior to the date of instructions to sell and subsequent thereto was authorised to act on behalf of the bank generally as executor in the winding up of the Irish estate, to receive purchase money and to make thereout such payments as were necessary. In the view of the court the solicitor was authorised to act as the bank's agent in all respects in relation to the estate's Irish affairs and in particular to receive the purchase money and give a discharge therefor. The decision of the court on this issue would have been sufficient to allow the appellant's appeal but the learned judge dealt with the two other issues listed above. The court read both the letter of 4th December, 1950 and the receipt subsequently given as a demand on behalf of the bank. Certain payments were made from time to time out of the money in hands by the solicitor and at no time did either the bank or the solicitor demand from the purchaser a release for any of the money in hands. The court concluded therefore that the solicitor did claim to act as agent for the bank in receiving the money and in giving the receipt therefor.

On the third issue, that of ratification, the learned judge pointed out that it was necessary that the person who was deemed to have ratified an act done with his authority should have full knowledge of all the material circumstances in which the act was done unless he intended to ratify the act and take the risk whatever circumstances may have been. The act done in this case was simply the receipt of certain purchase money and the only material circumstance was the payment. Possibly the solvency or otherwise of the solicitor would have to be considered. Every person who allows another to receive monyes on his behalf and to retaint hem must be deemed to have satisfied himself of the solvency of such a person or to have taken the risk, if risk there be, that the agent either by original appointment or subsequent ratification may misappropriate the money or when its payment is demanded prove insolvent. The correspondence showed that at various dates between the receipt of the money by the solicitor and May 1952 various payments on account were made by the solicitor out of the purchase money in his hands. The court could not understand the course of events in any sense other than that if the bank had not in fact authorised the solicitor to receive the balance of the purchase money that they afterwards became aware that he had so received it and that with knowledge of this fact they ratified his action. Their receipt from him of various payments from the purchase money and the correspondence amounted to such ratification. The appellant was therefore entitled to claim that the purchase money had been paid by him in full and the title being in order and the bank being the registered owners discharged

from equities the appellant was entitled to an order for specific performance (Barclays Bank *v.* Breen, Irish Law Times Reports, vol. XCVI, page 179.)

*Misconduct of Barrister.*

Lord Jenkins, Lord Guest and Lord Pearce in the Privy Council dismissed this petition of Varkey, Abraham, Barrister of Gray's Inn, for special leave to appeal from a judgment of her Majesty's Full Court in the Persian Gulf dated June 14, 1962, in so far as it dismissed his appeal against his conviction by Her Majesty's Chief Court for the Persian Gulf (Bahrein) on February 5, 1962, on two charges of wilfully doing an act tending to pervert the administration of justice contrary to section 143 (*a*) of the Penal Code.

The petitioner had been sentenced to nine months' simple imprisonment on each charge, the sentences to run concurrently.

The first charge was that when acting as counsel for Abdul Puri in certain criminal proceedings pending against him in the court in Bahrein, the petitioner, at a meeting held in Puri's house for the purpose of considering the defence, counselled persons present to give such evidence as he might suggest they should give in favour of Puri. The second charge was that he instructed a potential witness in the proceedings against Puri to conceal from the court that he (the petitioner) was present at the meeting in Puri's house.

Mr. Dingle Foot, Q.C., who appeared for the petitioner, said that the main point he made was that both in the judgments of the trial judge and the full court the judges had almost completely ignored the substance of the defence. The judge in the Chief Court sat without a jury and was therefore himself in the position of being both judge and jury, but in his judgment, while he did justice to the case for the prosecution, he omitted almost completely the principal matters which were relied upon on behalf of the accused.

Lord Jenkins, after consultation, announced that their Lordships would humbly advise her Majesty that the petition should be dismissed. (The Times, Friday, October 26, 1962).

*Solicitor to pay costs.*

The Divisional Court (Lord Chief Justice, Mr. Justice Gorman and Mr. Justice Salmon) allowed this appeal of Leonard Abrahamson against the decision of the justices for Glamorgan sitting at Cowbridge, that two informations had been preferred by him against Eric Jutson out of time. The first information alleged that he had aided and abetted Peter Jutson to drive a motor car without having a driving licence; the second information alleged that he permitted a motor car to be used on a road without a policy of insurance.

The Lord Chief Justice said that on February 14, 1961 five weeks after the alleged offences, two informations were laid against the respondent and the summonses issued. Unfortunately, the respondent could not be found and those summonses were not served until September 18, 1961.

It was most unfortunate that at the trial the solicitor representing the respondent had taken a thoroughly bad point and boldly asserted that the proceedings were barred by lapse of time.

The first information came within section 104 of the Magistrates' Courts Act, 1952, and by that section it had to be laid within six months of the offence. The second information came within section 244 of the Road Traffic Act, 1960, which provided: "Summary proceeding for an offence . . . (*a*) may be brought within a period of six months from the date of the commission of the alleged offence".

The only question was: When are summary proceedings "brought"? In his Lordship's judgment they were brought when the information was laid. The case must go back to the justices to be heard and determined.

Mr. Justice Gorman and Mr. Justice Salmon agreed.

The Lord Chief Justice said that the prosecution were entitled to costs, which the Court had fixed at 15 guineas, and directed that the respondent's provincial solicitor should pay them personally. When the legal aid costs were taxed the provincial solicitor should receive no contribution. (Solicitors' Journal, November 2nd, 1962, p. 880).

*Justices changing their minds: order of Certiorari to quash dismissal of prosecution.*

The Divisional Court on this application by the prosecutor, Derek Final, granted an order of *certiorari* to quash a decision of Essex justices sitting at Chingford on June 26, 1962, whereby they dismissed an information alleging that Arthur Thomas Keen, of Centre Drive, Epping, permitted to be used on a road a motor vehicle parts of which, namely, the rear axle securing mechanism, were in such condition that danger was likely to be caused, contrary to regulation 73 and 104 of Motor Vehicles (Construction and Use) Regulations, 1955. The Court also granted an order of *mandamus*, requiring the justices to record a conviction and a fine of £3.

The Lord Chief Justice said that at the hearing before the justices, after the chairman had announced the decision of the Court to the effect that the defendant would be fined £3 for the offence, the solicitor appearing for the defendant argued that

the case had not been proved. The justices, after hearing his argument, dismissed the information.

Although there was a dispute as to the words used by the chairman when he first announced the decision, it was clear that, whatever the version was, he intended and was understood to find that the case had been proved and the fine would be £3.

It was clear from the authorities that there could be a complete and effective conviction although it had not been entered in the register. Counsel for the defendant, while admitting that principle, argued that it did not follow that justices were *functus officio* when they had announced their decision. It was his submission that, before passing from the case or dispersing, the justices could change their minds and substitute either an acquittal or a conviction.

Reliance was placed, *inter alia*, on Warne *v.* Martin ((1954) Crim. L.R. 936) where the justices expressed the view that they would have changed their minds if it had been in their power to do so. The appeal was allowed by this Court and the case sent back for conviction. The shorthand writer had read the transcript of the short judgment of Lord Goddard, the Lord Chief Justice, in that case from which it appeared that no cases had been cited in argument. That case, therefore, was decided *per incuriam*. There was no doubt that the justices were *functus officio* when they announced their decision. Therefore the orders of *certiorari* and *mandamus* would be granted. (Regina *v.* Essex Justices—*Ex parte* Final, *The Times*, November 8th, 1962.)

*Payment from High Court Funds to Judgment Debtor in Circuit Court.*

In *Re O'Grady-Wallis v. O'Grady*—(1941) *Irish Jurist* at page 60, Gavan Duffy J. had suggested that in a proper case, the High Court will upon an application made on notice to the judgment debtor, order payment to a receiver by way of equitable execution appointed by the Circuit Court, of a sufficient sum out of funds in the High Court belonging to the judgment debtor, to satisfy the Circuit Court judgment and the costs properly incurred.

A recent application of this suggestion was made by the President of the High Court, Mr. Justice Davitt, on 6th November, 1962, in the case of *Kennedy v. Spencer*. In that case, a judgment had been obtained in the Circuit Court in Clonmel in the case of Margaret Hogan and John Maher as personal representatives of Jeremiah Hogan deceased against Cornelius Kennedy for £140 4s. 6d. inclusive of costs. An order was obtained in the Clonmel Circuit Court appointing the said John Maher receiver by way of Equitable Execution over so much of the funds standing to the credit of this action in the High Court as would suffice to satisfy the said Circuit Court Judgment. The Plaintiff Kennedy did not appear, but it was stated that there was a sum of £861 standing to his credit in the High Court. The learned President accordingly ordered that the Accountant should pay to the defendant John Maher by way of Equitable Execution of the said funds standing to the credit of this action the sum of £153 17s. 6d. to be applied by him in satisfaction of the said judgment, and the sum of £3 3s. 0d. costs awarded to the Plaintiff by the Circuit Court on 1st November 1962, and the further costs of 10 guineas on the application.

*Estate Agent's Commission on a Sale proving abortive.*

The Court of Appeal in England has recently held that an estate agent is not entitled to recover commission from his client, the vendor, where a sale has fallen through.

The owners of a café business, who carried on business in leasehold premises, instructed the defendant estate agents to find a purchaser for it. The vendors signed a printed form containing particulars of the business by which they appointed the defendants to be their agents and instructed them to do their "utmost to introduce to us a person willing and able to purchase the business, upon the terms overleaf." The form then stated between brackets, "Commission 10 per cent., minimum £50." Overleaf it was provided as follows: "Terms: (the estate agents) will do its utmost to introduce to us as vendors a person willing and able to purchase the business described overleaf, upon the following terms: (i) (the estate agent's) commission of 10 per cent. on the agreed price, subject to a minimum of £50, will be payable in any of the following events:—(*a*) If a sale results to a person introduced to the vendor by (the estate agents). (*b*) If a prospective purchaser introduced as aforesaid signs a binding contract for sale. (*c*) If (the estate agents), or solicitors for either vendor or purchaser, receive a deposit on the agreed price from a person willing and able to purchase the business, who has made a firm offer at the agreed price. (*d*) If (the estate agents), or solicitors for either vendor or purchaser, receive a deposit on the agreed price from a person who does not withdraw the deposit within a period of 30 days from the actual date of deposit."

The agents found a purchaser who paid to them a deposit of £90 on the basis of the agreed price of £900. The purchaser duly signed a contract to purchase the property which incorporated the National Conditions of Sale. Ultimately the lessor, whose consent was required to the assignment of the lease to the purchaser, refused his consent on the ground that the intending purchaser's financial

references were not satisfactory, and thereupon the vendors rescinded the contract under the power reserved to them by the National Conditions of Sale. The purchaser then asked for the return of her deposit of £90. The agents refused to return the deposit and the purchaser started proceedings against both the vendors and the agents for its return. The vendors also started proceedings for the return of the deposit. The County Court judge gave judgment for the purchaser against the vendors and for the vendors against the agents.

The Court of Appeal dismissed the agents' appeal from the decision of the County Court Judge. The case turned upon the meaning of the words "willing and able" and particularly upon the latter word. The appellants relied upon conditions (*b*) and (*d*) it being their contention that they had introduced "a person willing and able to purchase" the business within clause (*c*), or, alternatively, the case fell within (*d*), since they had been paid a deposit which had not been withdrawn within a period of thirty days. The court rejected the contention that the word "able" meant merely financially able. Denning W. R. said that a purchaser must be able in the case of the leasehold to satisfy the lessor that he is a suitable tenant so that the lessor is willing to accept him as a tenant and to give his consent to the assignment. Otherwise he is not an "able" purchaser; for he is not able to complete the purchase. "Able" means able not only to sign a contract but to go on and complete the purchase.

The Court was also of the opinion that in the ordinary way of business when an estate agent is going to supply a purchaser the understanding of most people is that commission is payable out of the purchase price when the matter is concluded. The Court accordingly held that if the agent seeks to depart from the ordinary well understood term he must make it perfectly plain in his contract and if he produced a document which is capable of two constructions, one reasonable and the other unreasonable, the Court will strive to give the document the reasonable interpretation. In the particular contract it was provided that the agents were instructed "to do their utmost to introduce to us a person willing and able to purchase the business". The Court said that this could not mean that the agents earned their commission by doing "their utmost" if their utmost did not produce any result. What was meant therefore was that the agents were entitled to their commission when they introduced a willing and able purchaser and an able purchaser meant one who was in a position to go through with the sale. (Dellafiora *v.* Lester 1962-3 *All England Reports*, page 393, *The Law Times*, October 26th, 1962, page 595.)

## THE REGISTRY

### Register B.

CONVEYANCING AND PROBATE CLERK with two years' experience with present employers in London requires similar position in Ireland, preferably in Dublin. Full particulars supplied on request. Box B269.

### Register C.

Will any person knowing anything of the whereabouts of a Will of Joseph Denis Doyle, formerly of Dublin and recently living in London, aged about 80 years, who died in December 1962, please communicate with Messrs. George D. Fottrell & Sons, Solicitors, 30 Lower Baggot Street, Dublin.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### ISSUE OF NEW LAND CERTIFICATES

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 2nd day of February, 1963.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street, Dublin.

### SCHEDULE

1. Registered Owner Daniel O'Mahony. Folio number 715 R. County Cork. Lands of Booladurragha North in the Barony of Kinatalloon containing 248a. or. 20p.

2. Registered Owner R. Naylor & Sons Limited. Folio number 21. County Louth. Lands of Bellurgan in the Barony of Dundalk, Lower containing 13a. 3r. 0p.

3. Registered Owner James Lennon. Folio number 6153. County Longford. Lands of Glen in the Barony of Ardagh containing 32a. or. 5p.

4. Registered Owner Bridget Anne Tracey. Folio number 11109. County Tipperary. Lands of Ballycraggan in the Barony of Ormond Lower containing 14a. or. 37p.

5. Registered Owner Philip Reilly. Folio number 16738. County Cavan. Lands of Mountprospect in the Barony of Castlerahan containing 19a. 2r. 0p.

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FEBRUARY
1963

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### IMPORTANT

TO MASTERS AND THEIR APPRENTICES

The Director in charge of the Study of Investment in Education appointed by the Government in association with OECD requires certain statistics about University and Professional education. The Society is sending a questionnaire to apprentices and a report will be prepared by the Society from the answers. Masters and their Apprentices are asked to cooperate and to have the replies returned promptly.

### MEETING OF THE COUNCIL

January 10th: The President in the chair, also present Messrs. John J. Nash, George G. Overend, John Carrigan, Desmond J. Collins, Thomas J. Fitzpatrick, John C. O'Carroll, Daniel J. O'Connor, Peter E. O'Connell, William A. Osborne, Brendan A. McGrath, Ralph J. Walker, Charles Hyland, Dinnen B. Gilmore, Gerard M. Doyle, Edward J. Dillon, Desmond Moran, Patrick Noonan, Peter D. M. Prentice, T. V. O'Connor, Robert McD. Taylor, John Maher, William A. Tormey, Eunan

McCarron, Rory O'Connor, Richard Knight, Thomas A. O'Reilly, Raymond A. French.

The following was among the business transacted :

### Arbitration for professional employees

The Secretary reported on a meeting of salaried solicitors held in connection with a draft scheme for conciliation and arbitration for local authority officers (which would apply to solicitors in the employment of local authorities) submitted by the County Managers Association. The Council directed that the Society should join as a signatory with the Irish Medical Association and the Engineers Association in applying to the appropriate Ministers for legislation to set up machinery available to professional men in local authority and similar service for arbitration as to their salaries and conditions of employment. Mr. Brendan A. McGrath was authorised to attend a meeting of the various professional bodies and to state that the Society would support the proposed application.

### Legal Aid

The Secretary reported that a letter had been written to the Department of Justice requesting that a deputation be received from the Society on the regulations and scales of costs to be made under the Criminal Justice Legal Aid Bill, 1961. It was decided that the Bar Council should be requested to exchange information with the Society and to send a joint deputation to the Minister. The President with Messrs. Rory O'Connor and Herman Good were appointed as the Society's deputation.

### Press notices advertising sale of property

The Council, on a report from a committee, made the following recommendation for the guidance of members :—

> In publishing any advertisement for the sale of house property, members are recommended to confine themselves to the essential details such as the situation, accommodation, tenure and rateable valuation of property, and to avoid the use of colourful phrases describing the location or some special feature of the property, as employed by auctioneers in their advertisements.

The above recommendation applies to cases where property is advertised over the name of a solicitor without an auctioneer.

### Circuit Court. Counsel's fees on successful defence in defamation action

Members acted for a defendant in a slander action in the Circuit Court. The plaintiff sued for £600 and obtained a decree of £75. Counsel for the defendant marked his brief for the hearing at £14 14s. od. and this was apparently based on the Circuit Court Rules, 1954, which provide a brief fee of £14 14s. od. where the amount claimed exceeds £500. Members stated to the Society that they thought that this was meant to cover only the defendant's party and party costs where the defendant was successful and that it was not a basis upon which a solicitor and client bill should be drawn having regard to the fact that in cases such as this the plaintiff invariably sues for the entire amount of the jurisdiction of the court. Members further pointed out that the fee on the brief for the plaintiff's counsel on taxation of the party and party bill would be £5 5s. od.

The Council on a report from a committee were of opinion that the fixing of counsel's fees is a matter for the instructing solicitor and counsel and that on the facts stated counsel was not necessarily restricted as against the client to the fee which would be allowed as between party and party on the amount of the decree.

## DISCIPLINARY COMMITTEE

The President of the High Court has appointed Mr. George A. Nolan to be a member of the Disciplinary Committee.

## DISABILITY BENEFIT AND WORKMENS' COMPENSATION ACTS PAYMENTS

A member has written to this Society drawing attention to the rights of a workman who is entitled to compensation under the Workmen's Compensation Acts in relation to the disability benefit payable under the Social Welfare Acts. Some members may not be aware that where an injured workman is entitled to disability benefit he can claim the difference, if any, between such benefit and the amount of his weekly allowance for workman's compensation. The benefit so paid is not refundable. Where, therefore, the workman is entitled to disability benefit at a rate exceeding the amount to which he is entitled under the Workmen's Compensation Acts as, for example, a married man with three or more children, it would be worth his while to make a claim for the amount by which the disability benefit to which he is entitled is in excess of the workman's compensation allowance. Such a person is, in fact, entitled to disability benefit at a rate exceeding the maximum allowance under the Workmen's Compensation Acts. The rate of disability benefit is as follows :—

| | £ | s. | d. |
|---|---|---|---|
| Workman himself ... ... ... | 1 | 17 | 6 |
| Wife ... ... ... ... ... | 1 | 5 | 0 |
| First child under 16 years ... ... | | 13 | 0 |
| Second child under 16 years ... ... | | 13 | 0 |
| Each additional child under 16 years ... | | 8 | 0 |
| total ... | £4 | 16 | 6 |

The conditions for payment of full benefit are (1) that not less than 26 employment contributions have been paid on behalf of the claimant, and (2) that 48 contributions have been paid or credited to the claimant for the contribution year preceding the year in which benefit is claimed (i.e., to the preceding 31st December).

## COUNTY KERRY LAW SOCIETY

At the annual general meeting of the above society held at the Court House, Tralee, on the 1st day of December, 1962, the following officers and committee were appointed for the year 1962/63: President: Mr. Gerald Baily; Vice-President: Mr. John D. O'Connell; Chairman: Mr. Charles J. Downing; Secretary and Treasurer: Mr. Donal M. King; Committee: Messrs. D. E. Browne, D. J. Courtney, W. A. Crowley, H. J. Downing, J. J. Grace, M. L. O'Connell, J. J. O'Donnell, J. S. O'Reilly and D. Twomey.

## DECISIONS OF PROFESSIONAL INTEREST

*Vendor and purchaser—contract with date of completion left blank—intention of parties*

In March, 1959, a prospective purchaser entered into negotiations for the purchase of a house with the vendor, at whose suggestion it was agreed that the vendor's solicitor should act for both parties; it was further agreed that completion should take place on September 30, 1959. In June, 1959, the purchaser paid the defendant a deposit. On July 2, 1959, the solicitor sent a written form of contract to the purchaser who signed it and sent it to the vendor who also signed it on July 5, 1959, and took it to the solicitor. On July 7, the vendor informed the solicitor that he wished to extend the completion date until the end of October instead of September and told him that the contract was to be held "pro tem. for instructions". Both the vendor and the purchaser thought that the contract would not become binding unless and until it had been exchanged. The contract was undated and the date for completion left blank but it was subject to the National Conditions of Sale by which the date could be ascertained if the parties failed to agree. Shortly after receiving the contract the solicitor dated it and filled in the date for completion as September 30, 1959. On August 11, 1959, the purchaser and the vendor orally agreed that the date for completion should be postponed until October 16, 1959, but that alteration of the date was never put in the contract. The vendor subsequently refused to complete the contract.

In an action by the purchaser for specific performance Wilberforce J. held there was no enforceable contract. On appeal by the plaintiff:—

Held, that as the parties had agreed to September 30 as the date for completion and had signed the contract (the solicitor quite properly inserting at a later stage September 30 as the date for completion) there was a binding agreement which could not be varied by oral evidence of uncommunicated thoughts or reservations of the vendor; alternatively, that if no completion date had been agreed, condition 4 of the National Conditions of Sale provided a time for completion and that therefore the purchaser was entitled to specific performance of the contract, or there was a sufficient memorandum in writing by virtue of certain letters of an oral agreement on August 11 making October 16 the date for completion. (Smith *v.* Mansi, 1963 1 *Weekly Law Reports*, page 26.)

*Costs wasted—responsibility of solicitors for costs thrown away*

A husband petitioned for divorce. The petition was duly served on the wife, who took it to her solicitors. She was seen by T, a partner in the firm; she handed him the petition and told him that she wished to defend the suit. She said that she no longer lived at the address shown in the petition. She also handed him a letter from the husband's solicitors addressed to her at her new address. Subsequently, T sent the wife a number of letters addressed to her old address, but he received no reply to any of these letters. In the result, the wife heard nothing about the proceedings until after the husband had been granted a decree nisi in an undefended suit. The wife changed her solicitors and successfully moved the Divisional Court for an order rescinding the decree nisi and directing a rehearing of the suit, leave being given to the wife to file an answer to the petition. The question arose as to who should pay the husband's costs thrown away.

Cairns, J., said that it was the duty of a solicitor to make quite sure that he had his client's correct address. The fact that no reply was received to communications sent to the wife should have put T on inquiry. In the result, T, in perfect good faith but with a lack of that diligence which it was the duty of solicitors to observe, failed to ascertain or, if he did ascertain, failed to note, his client's change of address, an indication of which was apparent from documents in his possession. It was a case in which an order under r. 8 (1) (*c*) of the Supreme Court Costs Rules, 1959, would be made against the firm in which T was, at the material time, a partner condemning them in the costs thrown away by the husband in the abortive suit and also in the costs incurred by him in the wife's motion for the

rehearing. (D. *v.* D. *Solicitors' Journal*, November 30th, 1962.)

*Computing profits for income tax—cash basis and earnings basis*

The profits of a partnership firm, consisting of two chartered accountants, carrying on the business of general accountancy and auditing practices, formed in 1932, were assessed throughout the period of 1932 to 1953 inclusive on a cash basis for income tax purposes. The assessments for the years 1954 to 1958 were made on an earnings basis, and on a cash basis for the subsequent year. The firm's profits for the years in question as computed on a cash basis differed from the same profits as computed on an earnings basis. The Commissioners decided that, in computing for income tax purposes the profits or gains of an accountant, the earnings basis was to be preferred by reason of its greater accuracy. The firm appealed against the assessments for the years 1954 to 1958.

Ungoed-Thomas, J., said that he had to consider only the particular years before him and to decide whether for those years an earnings basis was or was not the appropriate method of computing profits for tax purposes. On the evidence, the earnings basis appeared to be the more accurate and better method of assessing the profits of accountants. It was also clear from the decided cases that, although only one method of assessment should be used for any one tax year, there was nothing to prevent different methods of assessment from being used for different years. It was held, accordingly, that the change to the earnings basis in 1954 was properly made, and it could not be overridden by reason of the further change back to the cash basis in 1958. The appeal against the assessments was dismissed.

(Wetton, Page & Co. *v.* Attwooll (Inspector of Taxes), *Solicitors' Journal*, November 30th, 1962 and [1963] 1 All. E.R. 166).

*Payment into court of fixed costs*

The plaintiff sustained injuries when she fell off a moving bus. She claimed damages against the defendants, the owners of the bus, for negligence limited to £100. The plaintiff's solicitors instructed counsel to draft the particulars of claim, obtained a police report, and made inquiries as to witnesses. Their disbursements exceeded £2. The defendants paid £80 into court within eight days in satisfaction of the plaintiff's claim, together with £5 on account of the fixed costs. The fixed costs comprised £3 for the court fee and £3 for the costs on the summons. The plaintiff's solicitors accepted the £80 in satisfaction of the claim but refused to accept fixed costs only, since the £2 they would receive would be less than their disbursements. On an application pursuant to Ord. 11, r. 7 (3) (*c*), of the County Court Rules, 1936, Judge Rowe Harding ordered that the plaintiff's costs be taxed and that the taxed costs be paid by the defendants. The defendants appealed.

Pearson, L. J., said that, although the judge had a discretion to allow more than the fixed costs when the defendants' payment in was taken out by the plaintiff in satisfaction of her claim, it had been clearly laid down that his discretion was only to be exercised when there was some unusual or abnormal feature in the case. If, e.g., the solicitors had incurred exceptional expense by paying 100 guineas for medical reports, a special order as to costs would have been justified. But the work undertaken by the solicitors was no different from that normally done by solicitors in this type of case, and therefore fixed costs only should have been awarded. Accordingly, the judge had erred in principle and the appeal would be allowed.

Ormerod and Donovan, L.JJ., agreed.

(Herbert *v.* Rhondda Transport Co. Ltd., *Solicitors' Journal*, November 30th, 1962, page 958.)

*Should receipt of a disability pension be taken into account when assessing damages for loss of earnings?*

On 5th August, 1958, a technical sergeant in the United States Air Force stationed in England was severely injured when the motor lorry in which he was a passenger, driven by a British employee of the United States Air Force, collided with another motor lorry driven by a British soldier in the course of his military duty. In an action by the sergeant for damages for personal injury and financial loss, the defendants, the War Office and the civilian driver, admitted negligence but contended that the veteran's benefit, amounting to $217 a month, to which the sergeant became entitled under United States law, on his discharge as disabled in June, 1959, should be taken into account in assessing damages for loss of earnings. Lawton, J., having awarded £7,000 damages for pain, suffering and loss of amenities, awarded in addition £25,111 for loss of earnings, holding himself bound by Payne *v.* Railway Executive (1952) 1 K.B. 26, to disregard the pension in assessing the damages; had he not been so bound he would have awarded £14,111. The defendants appealed.

Lord Denning, M.R., said that the general principle, settled in British Transport Commission *v.* Gourley (1956) A.C. 185, was that a plaintiff should recover for his loss but for no more than his loss, and that the award of damages was to compensate him and not to punish the wrongdoer. He should therefore give credit for all sums received

in diminution of his loss, save in so far as it would not be fair or just to require him to do so. Where an employer was under no obligation to pay a disability pension but could withhold or reduce it at his discretion it would not be fair to take such a pension into account (see per Singleton, L.J., in Payne's case, *supra*), and it was open to the court to accept that as a ground of binding force and to discard the other reason given by Cohen, L.J. But in this case it was fair and just that regard should be had to the fact that the plaintiff was already, as of right, in receipt of nearly half his pay. He ought not to receive compensation twice over. The pension must be taken into account and the damages should be reduced by £18,000 to £14,111 instead of £32,111. The appeal should be allowed.

Donovan, L.J., dissenting, said that the ratio of Payne's case covered this case and was not impliedly overruled by Gourley's case, *supra*, which was concerned with the different question whether account should be taken, not of an asset, but of liability to income tax. The pension here was not payable as compensation for the damage inflicted by a tort but was payable on the occasion of the accident and was not, strictly speaking, compensation for the tort. His lordship would have dismissed the appeal.

Diplock, L.J., concurring in allowing the appeal, said that the ratio of Payne's case, *supra*, was based on the principle that damages for negligence were punitive. The decision in Gourley's case authoritatively settled the principle that such damages were compensatory. Appeal allowed.

(Browning *v.* War Office and another, *Solicitors' Journal*, November 30th, 1962, page 957.)

*Solicitor's oppressive conduct of litigation—personal liability for costs*

A wife petitioned the Court for a decree of judicial separation on the ground of her husband's cruelty to which an appearance was entered by the husband. Subsequently the husband decided to defend the proceedings and to cross-petition for dissolution, but no answer was filed on his behalf. The wife then obtained a decree of judicial separation, her petition having been set down as an undefended cause. The husband received no notice of the setting down of the petition. This was so held by the Court. On the husband's petition to the Court to reverse the decree on the grounds that he had not had an opportunity to defend the proceedings the wife's solicitor deliberately elected to fight the issue of whether or not the husband had received notice knowing that they could not prove that he had. The Court reversed the decree obtained by the wife under section 14, subsection 3 of the Matrimonial Causes Act, 1950. This section provides that the court may, on application by petition by either a wife or husband against whom the decree of judicial separation has been made any time after the making of the decree reverse it on the grounds that it was obtained in the *absence* of the person making the application. The wife's solicitors were ordered to pay 150 guineas towards the costs of the husband on the ground that their conduct of the proceedings for the reversal of the decree had been oppressive. The appeal of the wife's solicitors against this decision to the Court of Appeal was dismissed and it was held that their conduct which had resulted in the delaying the setting aside of the decree and causing the husband to become liable for substantial costs, was oppressive and that the order against them to pay the costs should stand. The Court found that the solicitors had been wanting in their duty as solicitors and as officers of the court and the jurisdiction to order them to pay costs was, in the view of Dankwerts, L.J., both punitive and compensatory.

(Wilkinson *v.* Wilkinson and anor. (1962) 3 W.L.R., page 1.)

The Incorporated Council of Law Reporting for Ireland invites applications from members of the legal profession for the writing of a text-book on "Probate Practice and Procedure in the High Court and Circuit Court".

The book should be an up-to-date text-book on Irish practice and procedure for the use of practising lawyers and students; it should be designed to cover all aspects of Irish practice and procedure in Probate proceedings (contentious and non-contentious), but should not deal at any great length with the general law on the subject which is available in current text-books. The work should contain approximately 300 pages with references to, and a full list of, all the relevant cases, statutes and Rules; in addition there should be a full index.

Applications, with qualifications of the applicant and a synopsis of the proposed lay-out, should be sent to the Honorary Secretary on or before the 22nd April, 1963.

Any further information required may be obtained from: The Honorary Secretary, the Incorporated Council of Law Reporting for Ireland, Law Library, Four Courts, Dublin 7.

## THE REGISTRY

### Register C

STUDENT requires Bowen's *Statutory Land Purchase*, 1928 and Osborne's *County Court Practice*, 1910. Highest prices offered Box C.172.

JEREMIAH J. O'CONNOR, deceased, late of Drinagh, Morris Mill, Ennistymon, Co. Clare. Died on the 19th December, 1962. Will any person knowing the whereabouts of a Will made by the above deceased communicate with Maurice O'Sullivan, Solicitor, Listowel, Co. Kerry.

ALEXANDER C. McCARTHY, deceased. Will any solicitor who drew or has possession of a will of Alexander C. McCarthy, late of the Standard Hotel, Harcourt Street, Dublin, who died on the 27th December, 1962, please communicate with McCann, White & Fitzgerald, Solicitors, 72 St. Stephen's Green, Dublin.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### ISSUE OF NEW LAND CERTIFICATE

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 15th day of March, 1963.

D. L. McALLISTER,
Registrar of Titles.

CENTRAL OFFICE,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner, John Buckley. Folio number 37572. County Cork. Lands of Ballinaspig Beg in the Barony of Cork containing 0a. 1r. 11p.

2. Registered Owner, Denis P. O'Connor. Folio number 1789R. County Limerick. Lands of Kilkinlea Nos. 1 and 2 in the Barony of Glenquin containing 52a. 3r. 30p. and 1a. 0r. 0p. respectively.

3. Registered Owner, Patrick Fitzgerald. Folios number 3009 and 3010. County Cork. Lands of Ballinbrittig in the Barony of Barrymore containing 28a. 2r. 29p. and 74a. 1r. 38p. respectively.

4. Registered Owner, Letitia O'Beirne. Folio number 23210, County Roscommon. Lands of (1) Shankill, (2 & 3) Cherryfield or Drishaghan in the Barony of Roscommon containing 13a. 2r. 4p., 6a. 3r. 0p. and 22 perches respectively.

## STATUTES OF THE OIREACHTAS, 1962

| *No.* | *Title* | *Signed by the President* |
|---|---|---|
| 1. | Garda Síochána Act, 1962 | 10th January, 1962 |
| 2. | Pilotage (Amendment) Act, 1962 | 21st February, 1962 |
| 3. | Road Fund (Grants) (Temporary Provision) Act, 1962 | 27th March, 1962 |
| 4. | Cement (Amendment) Act, 1962 | 27th March, 1962 |
| 5. | Short Titles Act, 1962 | 28th March, 1962 |
| 6. | Central Fund Act, 1962 | 28th March, 1962 |
| 7. | Royal Hospital Kilmainham Act, 1962 | 28th March, 1962 |
| 8. | State Lands (Workhouses) Act, 1962 | 3rd April, 1962 |
| 9. | Coroners Act, 1962 | 9th April, 1962 |
| 10. | Imposition of Duties (Confirmation of Orders) Act, 1962 | 17th April, 1962 |
| 11. | Geneva Conventions Act, 1962 | 17th April, 1962 |
| 12. | Criminal Justice (Legal Aid) Act, 1962 | 13th June, 1962 |
| 13. | Street and House to House Collection Act, 1962 | 25th June, 1962 |
| 14. | Pharmacy Act, 1962 | 25th June, 1962 |
| 15. | Finance Act, 1962 | 25th July, 1962 |
| 16. | Restrictive Trade Practices (Motor Spirit and Motor Vehicle Lubricating Oil) (Confirmation of Orders) Act, 1962 | 25th July, 1962 |
| 17. | Social Welfare (Miscellaneous Provisions) Act, 1962 | 25th July, 1926 |
| 18. | Courts (Supplemental Provisions) (Amendment) Act, 1962 | 31st July, 1962 |
| 19. | Appropriation Act, 1962 | 1st August, 1662 |
| 20. | Restriction of Imports Act, 1962 | 1st August, 1962 |
| 21. | Intoxicating Liquor Act, 1962 | 2nd August, 1962 |
| 22. | Army Pensions Act, 1962 | 4th August, 1962 |
| 23. | Rates on Agricultural Land (Relief) Act, 1962 | 8th August, 1962 |
| 24. | Electricity Supply (Amendment) Act, 1962 | 7th August, 1962 |
| 25. | State Guarantees (Transport) Act, 1962 | 7th August, 1962 |
| 26. | Local Government Sanitary Services Act, 1962 | 8th August, 1962 |
| 27. | Housing (Loans and Grants) Act, 1962 | 10th August, 1962 |
| 28. | Vocational Education (Amendment) Act, 1962 | 21st November, 1962 |
| 29. | Statute Law Revision (Pre-Union Irish Statutes) Act, 1962 | 24th November, 1962 |
| 30. | Restrictive Trade Practices (Cookers and Ranges) (Confirmation of Order) Act, 1962 | 11th December, 1962 |
| 31. | Fisheries (Amendment) Act, 1962 | 12th December, 1962 |
| 32. | Oireachtas (Allowances to Members) Act, 1962 | 25th December, 1962 |
| 33. | Military Service (Pensions) Increase Act, 1962 | 25th December, 1962 |
| 34. | Army Pensions (Increase) Act, 1962 | 25th December, 1962 |
| 35. | Connaught Rangers (Pensions) Act, 1962 | 25th December, 1962 |
| 36. | MacSwiney (Pension) (Increase) Act, 1962 | 25th December, 1962 |
| 37. | Sugar Manufacture (Amendment) Act, 1962 | 25th December, 1962 |
| 38. | Exchange Control (Continuance) Act, 1962 | 25th December, 1962 |

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Bovine Tuberculosis—Co. Louth and Co. Meath appointed attested areas after 21st November, 1962—192/1962.

Bovine Tuberculosis—Movement of cattle regulated in Dublin City and County after 22nd November, 1962—193/1962.

Bovine Tuberculosis—Co. Offaly and Co. Westmeath declared attested areas after 13th October, 1962—196/1962.

Bovine Tuberculosis—Co. Carlow and Co. Wicklow declared attested areas after 19th February, 1963—23/1963.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

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### LECTURES ON CURRENT STATUTORY CHANGES

The Council propose to arrange for a number of lectures each year on current changes in the law so that practitioners may keep themselves up to date. This is particularly important having regard to the present programme of law reform. The lectures will be tape recorded and will be hired to any Bar Association wishing to avail of the service. The Council invite applications from members of the Society who will be willing to deliver these lectures on a fee basis. Further particulars may be received from the Secretary on application.

### WEEKEND MEETING, BUNDORAN

The Society's week-end meeting will be held in Bundoran from the 17th to 20th May. Details of the meeting and forms of application for tickets for the dinner dance have already been circulated to all members and members wishing to attend should return the forms with the appropriate remittances if they have not done so already. Members are advised to make their reservations with the hotel as soon as possible.

## MODERN LAW PUBLICATIONS

The following publications are now on sale :

1. *Civil Liability Act*, 1961—Richard M. Neville, LL.M. Price 8/6. Post free.
2. *The Stamp Duty Legislation*, 1890–1962—Eric A. Plunkett, Price 8/6. Post free.
3. *Administration of Estates Act*, 1959—Joseph P. O'Connell, B.A., LL.B. Price 8/6. Post free.
4. *Statute of Limitations*, 1957—Desmond R. Counahan, LL.D. Price 10/6. Post free.
5. *Married Women's Status Act*, 1957—Colum Gavan Duffy, M.A., LL.B. Price 10/6. Post free.

## MEETINGS OF THE COUNCIL

FEBRUARY 7TH : The President in the chair, also present Messrs. Desmond J. Collins, Dinnen B. Gilmore, James R. C. Green, Peter D. M. Prentice, John Carrigan, Thomas J. Fitzpatrick, Niall S. Gaffney, George G. Overend, Ralph J. Walker, Thomas A. O'Reilly, John Maher, Charles Hyland, Rory O'Connor, Richard Knight, Desmond Moran, Eunan McCarron, Robert McD. Taylor, T. V. O'Connor, Gerard M. Doyle, Edward Dillon, Brendan A. McGrath, George A. Nolan, John J. Nash, Peter E. O'Connell, Daniel J. O'Connor, James W. O'Donovan, Raymond A. French.

The meeting passed in silence a vote of sympathy with the family of the late Henry P. Mayne, a former President of the Society.

The President stated that a telegram of condolence on the death of Cardinal D'Alton had been sent by the Society to His Grace, the Archbishop of Dublin, and an acknowledgment received.

The following was among the business transacted :

### Presentation of admission parchments

It was resolved that in the future admission parchments will be provided at the expense of the Society for presentation to newly admitted solicitors.

### Road Traffic Act prosecutions. Costs.

The following resolution was passed unanimously by the Council :

1. In the opinion of this Society seven guineas is the minimum proper fee which should be accepted by a member for either (*a*) attending 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, or (*c*) attending to observe such proceedings *and* in any of such cases supplying a proper report of the proceedings, provided that where the proceedings are conducted in a town other than the town where a solicitor has his principal office there should be a reasonable addition for time and travelling expenses.
2. A proper report on the proceedings means a report giving the names of the witnesses with a summary of the evidence given by each and an appreciation of the effect of the evidence on the question of civil liability for damages.
3. A minimum fee does not apply in cases of exceptional difficulty or responsibility. Reasonable additional fees should be paid in such cases.

The Secretary was directed to send a copy of the foregoing resolution to the secretary of each bar association.

### District Court Rules Committee

On the expiration of the term of office of Mr. Edward H. Byrne, one of the Society's representatives on the committee who had indicated that he did not wish to be re-appointed, it was unanimously resolved that Mr. Richard Knight be appointed in his place. The Council thanked Mr. Byrne for his services.

### Adjudication of a lease, costs

Members submitted to the Council an agreed statement of the following facts for consideration :

A client agreed to employ a builder to build a house on a certain plot and the builder agreed to procure a lease of the plot to the client. The agreement for the lease contained the following clause :

> " 2 (*b*) The said lease and a counterpart thereof shall be prepared, stamped and registered by the lessor's solicitor whose legal fees of £12 12s. od. shall be paid by the lessee. All stamp duty, registration fees and other outlay of or incidental thereto shall be paid by the lessee."

The lease was duly prepared and executed by the parties but when presented for stamping the marking officer required adjudication and the lease was in due course adjudicated and finally stamped and registered. The lessor's solicitors claimed an extra fee of £4 4s. od. in respect of the adjudication but the lessee's solicitors contended that the bulk fee of

£12 12s. od. was all that was payable. It was argued by the lessor's solicitors that the word "stamped" in clause 2 (*b*) did not cover adjudication which was instead covered by the words "or incidental thereto". The lessee's solicitors contended that the obligation to stamp and register could not be carried out unless the lease was first adjudicated and that the lease, being one of many granted by the lessor, they must have known that adjudication was required and a specified fee should have been included in the contract if it was intended to claim one.

The Council on a report from a committee decided that the lessor's solicitors were not entitled to the extra fee of £4 4s. od. claimed in respect of the adjudication of the deed as it is included in the agreed fee of £12 12s. od. lessor's costs to be paid by the lessee under clause 2 (*b*) of the contract.

### Recovery of a gaming debt.

A member was instructed by a client to recover a gaming debt due to him by a bookmaker and advised that no action lay. The Society has advised members in the past that the institution or threat of such proceedings is unprofessional. Member referred to the statement to that effect in the Society's GAZETTE for February, 1958, and enquired if there would be any objection to his writing on the instructions of his client to the bookmaker concerned stating that he had received instructions to oppose the renewal of the bookmaker's licence failing payment of his client's claim.

The Council on a report from a committee stated that there could be no objection to member writing to the bookmaker on the client's instructions stating simply that he had received instructions to oppose the renewal of his licence.

MARCH 7TH: The President in the chair, also present Messrs. Thomas A. O'Reilly, Desmond J. Collins, George G. Overend, Niall S. Gaffney, John J. Nash, Edward Dillon, Desmond Moran, Raymond A. French, Peter D. M. Prentice, Edmund Hayes, James R. C. Green, Thomas J. Fitzpatrick, Dinnen B. Gilmore, Ralph J. Walker, Peter E. O'Connell, John C. O'Carroll, Reginald J. Nolan, Timothy J. C. O'Keeffe, Francis Armstrong, Augustus Cullen, John Maher, Robert McD. Taylor, John Carrigan, William A. Osborne, Rory O'Connor, Patrick O'Donnell, Eunan McCarron, James W. O'Donovan, Patrick Noonan, Gerard M. Doyle, Richard Knight, Charles Hyland, George A. Nolan, Brendan A. McGrath, Daniel J. O'Connor.

### Examination results

The report of the Court of Examiners on the results of the preliminary, first and second Irish and first law examinations was adopted and the results declared as follows:

At the preliminary examination for intending apprentices to solicitors held on the 5th and 6th days of February the following candidates passed:

*Passed with merit:* Charles C. R. M. Staunton.

*Passed:* Andrew J. O. Donnelly, Conor C. Foley, Oliver Mullen.

4 candidates attended; 4 passed.

The Council has awarded a Special Certificate to Charles C. R. M. Staunton.

At examinations held on the 1st February under the Solicitors Act, 1954, the following candidates passed:

*First examination in Irish:* Philip Brady, Eric Brunker, Oliver D. Byrne, Rosemary Caine, David Cox, Brian A. Gartlan, James Heney, Roger F. Hurley, Pamela M. F. Hussey, Richard V. Lovegrove, Donal T. McAuliffe, Paul M. McLoughlin, Michael J. McMenamin, Michael J. D. Mangan, Brendan O'Mahony.

18 candidates attended; 15 passed.

*Second examination in Irish:* Patrick J. Connellan, Joseph T. A. Deane, James N. Dudley, Thomas D. Durcan, John Vincent Glynn, John Gore-Grimes, John Paul Hayes, Michael B. Hegarty, Peter J. McMahon, Patrick F. O'Donnell, William F. O'Driscoll, Anna M. O'Shea, Austin Turnbull.

13 candidates attended; 13 passed.

At the first law examination for apprentices to solicitors held on the 4th and 5th days of February, the following candidates passed:

William M. Cahir, Thomas W. Enright, Yvonne Fagan, Sarah Gallian, Thomas F. Griffin, Michael B. Hegarty, Declan J. Howley, Eugene P. Hunt (B.A.), Kieran C. McDermott, Cyril M. Osborne, Mary B. Raleigh (B.A.), John J. Rochford (B.C.L.), Ian A. Scott, John R. Sweeney, Austin Turnbull, Brendan D. Walsh.

26 candidates attended; 16 passed.

The Centenary prize was not awarded.

### Compensation Fund payments

A report from the Compensation Fund Committee recommending payment of claims made against the fund was adopted unanimously.

### Solicitor incurring expense on behalf of client. Disclosure of client's name and address

Members acted for plaintiffs in proceedings for negligence in February, 1957. For the purpose of the proceedings they required an account for the

towing and garaging of a motor car involved in an accident and members wrote to a garage proprietor requesting an account, which came to approximately £25. It was stated that the garage proprietor received instructions from members' firm to carry out the work. The account was apparently submitted to the solicitor for the insurance company acting for the defendant and the claim was settled. The garage proprietor did not receive payment nor did he hear whether or not the claim had been settled. Members' clients have left the country and members have no funds in hands. An opinion from the Council was required as to whether or not members were personally liable and whether or not they could properly now furnish their client's present address to the solicitor for the garage proprietor in order to enable him to proceed for the recovery of the amount due to his client.

The Council on a report from a committee were of opinion that (*a*) if members acted on behalf of a principal who was disclosed to the creditor they were not personally liable; (*b*) if they did not disclose their principal it appeared that they were personally liable; (*c*) there could be no objection to the disclosure by members of their client's present address if in fact they had disclosed his name and address when giving their instructions initially. The fact that the client's original address was given would in the absence of evidence to the contrary be an authorisation to disclose his new address.

## SECTION 58, LOCAL GOVERNMENT ACT, 1941

The attention of members is directed to the above section, the text of which reads as follows :—

> "Where a sum is due to any person by a local authority and, at the same time, a sum is due to such local authority by such person in respect of rates or would be so due but for the fact that such sum has been advanced and paid to such local authority by a rate collector, the former sum may be set off against the latter either, as may be appropriate, in whole or in part."

The right given to a local authority under this section will apparently defeat any lien or charge given by a client to a solicitor for costs against a grant or payment of any description due to the client from the local authority.

## UNDERTAKING BY SOLICITOR WITHDRAWAL OF RETAINER

The Council have been considering the difficulty in which a solicitor can find himself where he has given an undertaking on behalf of a client and the client subsequently withdraws his retainer and instructs some other solicitor. Depending upon the terms of the undertaking given a solicitor could in certain circumstances find himself in the position of grave embarrassment. For example, if a client instructed a solicitor to give an undertaking to a bank to pay over in discharge of an overdraft moneys coming into his hands belonging to the client and if the client subsequently terminated the retainer and called upon the solicitor to account to him for all further moneys coming into his hands or already held and not paid over in accordance with the undertaking the solicitor might find himself liable to proceedings by the former client for the recovery of his money on the one hand and proceedings by the bank on foot of his undertaking on the other hand.

The Council have approved of the following form of authority and retainer which a solicitor could use on being instructed and prior to giving any undertaking on behalf of the client. The solicitor should write to the client as follows :—

Dear Mr. A. (client),

In order to complete this matter I shall have to give an undertaking to which will bind me professionally to (set out terms of the undertaking).

I must have your irrevocable authority and retainer in order to give this undertaking and if you will write that you agree I shall proceed with the matter immediately.

Yours faithfully,
(solicitor).

An unconditional affirmative reply in writing from the client will constitute the necessary authority. The solicitor would then be in a position, if the client purported to terminate his retainer, to act according to the undertaking given by him.

The letter in reply from the client should be stamped with the appropriate Revenue duty.

## MEDICAL EXAMINATIONS AND REPORTS

The Council has had under consideration for some time the general question of medical examinations and reports. The particular aspects of the matters which have engaged the attention of the Council are (1) the question of medical reports by doctors on their patients who have been involved in road accidents being made available to insurance companies and (2) the scope of medical examinations and reports on workmen in workmen's compensation cases. The Society took these questions up with the Irish Medical Association and an approved statement to be issued in the Journal of the Association was drafted. The following is the text of the statement and it is understood that it is to

be published in the current issue of the Association's Journal.

"It is a breach of professional privilege for a doctor to disclose to an insurance company information concerning a patient obtained as a result of a patient and doctor relationship. The prohibition against disclosing such information clearly applies to any practitioner on the staff of a local authority or other public or private hospital who obtains information concerning a patient in the hospital either by casual observation or in the course of treatment of the patient by virtue of his position on the hospital staff, just as it applies to a doctor who is engaged specifically by the patient to make an examination and report for that patient's use.

"Where a doctor conducts an examination of an injured person on behalf of an insurance company for the benefit of the company and discloses to the patient or his advisers that he is acting in the interests of the insurance company different considerations naturally apply. In cases not within the Workmen's Compensation Act the patient's medical adviser will be present at the examination. In examinations under section 33 of the Workmen's Compensation Act, 1934, where the patient attends without his medical adviser the following is a statement of what the Association regard as the proper professional practice—(1) the duty of a medical practitioner who is instructed by an employer or an insurance company under section 33 of the Workmen's Compensation Act, 1934, is to ascertain the medical condition and state of health of the workman, (2) the medical practitioner should not accept instructions from the employer or the insurance company which would oblige him to exceed his professional duty under head (1). (3) Questions put to the workman in the course of the medical examination are in the discretion of the medical practitioner but should be restricted to the workman's physical condition and state of health except inasmuch as it may be necessary to ascertain the surrounding circumstances and background for the purpose of forming an opinion on his medical condition and state of health. (4) Irrespective of any questions put to the workman in the course of the examination any written or oral report by a medical practitioner to the employer or insurance company should be restricted to the medical issues and any information on the issue of legal liability ascertained in the course of the examination should not be disclosed."

## HOTEL PROPRIETORS BILL, 1962

The Minister for Justice, Mr. Haughey, speaking in Dáil Éireann on the second stage of the Hotel Proprietors Bill, 1962, said:

"Before I conclude, I should like to express my appreciation of the assistance afforded to me in connection with the preparation of the Bill by the Council of the Incorporated Law Society who submitted an excellent memorandum dealing with the existing law and making suggestions as to the manner in which it should be amended." (Dáil Debate, 6th December, 1962.)

The memorandum on the Bill was drafted for the Council by Mr. Brendan A. McGrath of Dublin and Mr. T. V. O'Connor of Swinford.

## SEMINAR IN AMERICAN STUDIES LAW SESSION JULY 14th TO AUGUST 10th, 1963

The above will be held at Salzburg and the lectures in the various topics, followed by questions and discussions, will be designed to present an introduction to American legal institutions and lay a foundation for the more specialised work of the seminars. Members wishing to enrol should contact Mr. Harry W. Day, Directory, Salzburg Seminar in American Studies, Schloss Leopoldskron, Salzburg, Austria.

Seminars, meeting three times a week in small groups of approximately twelve will explore a specialised area through the study and discussion of legal materials, such as court opinions. Each person enrolling will be included in a seminar for one or other of the various topics set out below:

1. Contracts problems in international transactions.
2. Anti-trust law.
3. Criminal law and procedure.
4. Problems in constitutional law.
5. The decisional process in judicial administration.

## ROAD TRAFFIC ACT, 1961

During the debates in the Dáil on the enactment of the Road Traffic Act, 1961, the Minister for Local Government undertook that he would have published annually a statement as to the orders, regulations, bye-laws and rules made thereunder and in force for the time being. The first of such statements has been received by the Society from the Department and it covers the position as at 1st March, 1963, including statutory instruments made before 1st March and due to come into force shortly after that date. The booklet contains a list of the sections of the Road Traffic Act, 1961 currently in force together with particulars of repeals and amendments, a list of all orders made under the Act and still in force, orders made under the Act and since revoked, particulars of the

provisions of the 1933 Act repealed by the 1961 Act, orders made under the repeal provisions of the 1933 Act and still in force and so on.

The Society will be able to supply to members a copy of the booklet on request. The price has not yet been fixed but it will be reasonable. Enquiries should be directed to the Secretary.

## DECISIONS OF PROFESSIONAL INTEREST

*The right of the Revenue Commissioners to elect for a penalty on the hearing of a criminal charge is the exercise of a judicial function and is consequently repugnant to the Constitution*

The Supreme Court in the case of Deaton *v.* The Attorney General and Revenue Commissioners has allowed an appeal against an order of Mr. Justice Kenny dismissing an action for a declaration that such of the provisions of the Customs Acts and in particular of section 186 of the Customs Consolidation Act, 1876, as purport to confer on the Revenue Commissioners the right to elect on the hearing of a criminal charge as to the punishment by way of penalty or otherwise to be imposed are repugnant to the Constitution. The plaintiff had claimed in addition to this declaration an injunction to restrain the defendant, the Attorney General, from proceeding or attempting to proceed with two summonses charging the plaintiff with keeping certain goods and being knowingly concerned in dealing with certain goods contrary to section 186 of the Customs Consolidation Act, 1876.

The penalty provision of section 186 of the Act of 1876 is that every person who is guilty of an offence under the section shall for each such offence forfeit either treble the value of the goods, including the duty payable thereon, or £100 at the election of the Commissioners of Customs (now the Revenue Commissioners) and the offender may either be detained or proceeded against by summons. The Revenue Commissioners had purported to elect for the penalty of £327 17s. 3d. and the plaintiff claimed that the above-mentioned section was unconstitutional either as amounting to an administration of justice by persons not being a court established under the Constitution or as being an interference with the courts in a purely judicial domain.

The Chief Justice, delivering the judgment of the court, said that it had been decided by the court in the case of Melling *v.* Ó Mathghamhna that proceedings under section 186 of the Act of 1876 were criminal in character. The selection of the sentence to be imposed in a criminal matter where the accused had been found guilty was traditionally a function of the judges or the courts. Apart from the case under consideration the attention of the court had not been called to any instance in which this function had been vested in any other person or body than a judge or court. It had been argued that this was not an exclusively judicial function because it is competent for the legislature to prescribe a fixed penalty for an offence and, thereby, it is said, to select the punishment to be imposed in a particular case. While the selection of a punishment by the legislature is a legislative act and a judicial act when performed by a judge, it is also an administrative and executive act as in this case when the selection of the punishment is committed to a branch of a State department.

In the opinion of the court this argument was unsound. There was a clear distinction to be drawn between the prescription of a fixed penalty and the selection of a penalty for a particular case. The prescription of a fixed penalty is a statement of a general rule which applied to every person who was convicted of the particular offence. The legislature did not, however, prescribe the penalty to be imposed on an individual in a particular case. It stated the general rule and the application of that rule was for the courts. Where, however, the rule is stated by reference to a range of penalties to be chosen from according to the circumstances of the particular case and choice or selection of penalty had to be made the matter, at this point, passed from the legislative domain and it was a function which was traditionally within the domain of the courts. Where a range of penalties had been prescribed the individual citizen found guilty of an offence was safe-guarded from the executive's displeasure by the choice of penalty being determined by an independent judge and this safe-guard was needed.

The selection of a punishment to be imposed was therefore a part of the administration of justice and as such could not be committed to the hands of the executive as Parliament purported to do in section 186 of the Consolidation Act, 1876. The Constitution invalidated this section only to such extent as it was inconsistent with or repugnant to the Constitution and accordingly the section would remain intact but for the words "at the election of the Commissioners of Customs." which should be deleted therefrom.

*Cause of action arising before discovery of injury—Statute of Limitations*

The House of Lords dismissed an appeal from a decision of the Court of Appeal affirming Mr. Justice Glyn-Jones in holding that claims by seven steel dressers and the widows of two others who had died, for damages for negligence or breaches of statutory duty alleged to have been the cause of their contracting pneumoconiosis, were statute

barred by the effect of section 2 of the Limitation Act, 1939, and accordingly failed. The trial judge had found that the disease had been caused by reason of the employer's breach of statutory duty, but that as the causes of action had accrued in each case more than six years before the issue of the writs the actions failed.

The evidence in the case was that a person who was susceptible to pneumoconiosis and inhaled noxious dust over the years would have suffered substantial injury to his lungs long before his injury could be discovered by any means yet known to medical science. Even if the workman were able to have *x*-ray photographs at regular intervals a large part or even the whole of the three year period of limitation would have elapsed before they could even with the best possible advice instruct the raising of an action. The present law requires their lordships to dismiss the appeal and it was suggested that some amendment of the law was urgently necessary.

All the members of the court expressed regret at the decision which had to be come to and Lord Reid said that it appeared to him to be unreasonable and unjustifiable in principle that a cause of action should be held to accrue before it was possible to discover any injury, and that if the matter were covered by the common law he would have held that a cause of action ought not to be held to accrue until either the injured person had discovered the injury or it would be possible for him to discover it if he took reasonable steps. The present question depended on the Limitation Act, 1939, and section 26 of the Act appeared to make it impossible to reach the result which he had indicated. The necessary implication from the section was that where fraud or mistake were not involved time began to run whether or not the damage could be discovered. The mischief in the present case could only be prevented by further legislation. (*The Times*, January 17th, 1963.)

*Note.*—The legal position is exactly the same in this country. The corresponding sections in the Statute of Limitations, 1957, are sections 71 and 72, the wording of which follows section 26 of the English Act.

*Proceedings issued in the wrong office of the court are a nullity and not a procedural defect capable of being remedied*

The Court of Appeal in England dismissed an appeal by the plaintiff against a judgment of Mr. Justice Wilberforce upholding the dismissal by the District Registrar of the Pontyprid District Registry of a summons brought by the plaintiff to remove her case to the Central Office of the High Court in London.

The facts were that Alfred Pritchard died on March 14th, 1961, leaving an estate of £914 and a will that made no provision for his widow. Probate was granted to the executors therein named on 10th April, 1961. Under the Inheritance (Family Provisions) Act, 1938, the widow has six months from the date of the grant of probate to take proceedings in the High Court to secure reasonable provision for herself out of the estate. The widow instructed a solicitor to take such proceedings and he prepared an originating summons in the High Court in which he named his client his plaintiff and the executors of the will as defendants. The summons was accepted and sealed in the District Registry and dated October 9th, 1961. The document was accepted by the executors who entered an appearance in the District Registry and by the consent of both parties the residuary legatees were also joined and entered an appearance in the District Registry.

On January 11th, 1962, the District Registrar stated that he thought the proceedings had been wrongly issued and he doubted whether he had any power to deal with the matter owing to the following rules of the Supreme Court, Order LIV. Rule 4 (*f*) provides that an application to the High Court under the above-mentioned Act shall be made in the Chancery Division by originating summons interpartes. Rule 4 (*b*) provides that an originating summons shall be sealed in the Central Office.

On March 6th, 1962, the plaintiff's solicitors took out a summons for the removal by the District Registrar of the case to the Central Office. The application was refused on the ground that the proceedings were a nullity and Wilberforce J. on appeal held with the Registrar. The plaintiff relied on order LXX rule 1 of the rules which provides that "non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the court of a judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular or amended, or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit."

Lord Justice Upjohn said that order LXX was a wide rule to which the court should give a wide construction but if the proceedings were a nullity the rule was inapplicable. Order LXX applied to all defects in procedure unless the defect was fundamental "to the proceedings". There were several classes of nullity and one of these was a proceeding which had never started at all owing to some fundamental defect on issuing the proceedings. The proceedings in the present case were proceedings of this nature. Section 225 of the

Supreme Court of Judicature (Consolidation) Act, 1925, defined an action as "a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court." The originating summons was a creature of the rules of the Supreme Court. The issue of proceedings must be issued with the seal of the issuing office. If proceedings were issued in the wrong office the defect could be cured with a statute or the rules of the Supreme Court gave the power to transfer to the right office. There was no such power in the present case and the proceedings were a nullity. The appeal should accordingly be dismissed.

Lord Justice Danckwerts concurring said that an originating summons required the seal of the Central Office. The originating summons in this case had no such seal and had no more application to the matter to be decided than a dog licence. The defect was incurable as there were no operative proceedings to be transferred to the Central Office.

An interesting feature in this case was a very strong dissenting judgment delivered by Lord Denning. Lord Denning said that the High Court had ample jurisdiction to correct this type of error and should do so. The defendants were not prejudiced and had never raised the matter. He thought that the originating summons could surely be removed from the District Registry to London under order LXX rule 1 (already referred to). The only mistake made by the plaintiff's solicitor was to overlook an obscure rule for which he might be excused. There was no rule which prevented the plaintiff, for example, from issuing a writ instead of an originating summons. If the proceedings had been commenced by writ the writ could have been issued in the District Registry and would have been good. If a writ were a nullity why should an originating summons be a nullity? In his opinion the issue of an originating summons in the District Registry was not a nullity. However, he said, his brethren were of a different opinion. The proud boast of Lord Justice Bowen that it was no longer possible for an honest litigant in H.M. Supreme Court to be defeated by a mere technicality, slip or mistaken step in litigation could now no longer be made. In his conclusion, "we have not followed the handwriting of our predecessors. We have marred our copybook with blots and the more is the pity of it." (Re Pritchard deceased, *The Guardian*, February 15th, 1963.)

*Intervention in fatal injuries action by widow after settlement in favour of dependant*

The Court dismissed the appeal of George Frederick Williams and British Road Services Ltd. against an order of Mr. Justice Megaw on June 6th, 1962. The judge had permitted a widow to intervene in an action under the Fatal Accidents Acts on behalf of a dependent child of the widow's deceased husband, notwithstanding that the proceedings under those Acts had been stayed after a settlement had been made between the defendants and the infant's solicitors.

Leslie Watkin was fatally injured in a road accident near Rugeley, which was caused by the negligence of two lorry drivers, the employees of the defendants. The first defendant was George Frederick Williams, of Cash Lane, Eccleshall, and the second defendant was British Road Services Ltd.

The deceased left two dependants, his widow Barbara Watkins, who was with him at the time of the accident and was injured in it, and an illegitimate daughter, Sheila Anne Cooper, who at the time of the accident was about 10 years old.

On March 1st, 1960, an action was begun on behalf of the infant plaintiff under the Fatal Accidents Acts, 1846 to 1959, for damages caused by the negligence of the defendants' employees in killing the deceased. The action was settled by the solicitors acting for the infant plaintiff and by the solicitor acting for the defendants, and, on May 18th, 1960, the settlement was approved by the Registrar of the Birmingham District Registry on the terms that in consideration of a sum of £450 paid by the defendants for the benefit of the infant, all further proceedings in the action were stayed.

On the very next day the solicitors for the widow wrote to the defendant solicitors stating that the widow too had a claim under the Fatal Accidents Acts, 1846 to 1959. The defendant solicitors replied that the proceedings under the Acts had already been issued and terminated under the Acts and that therefore the widow's claim was barred as she had not been a party to the one action allowed by the Acts, namely the infant's proceedings.

The widow then applied to the Birmingham Registry Office for leave to intervene in the infant's action against the defendants and to have the order of May 18th, 1960, set aside.

She argued that the proceedings were null and void and should be set aside because of the irregularities in the infant's proceedings. For instance, it was said that among other things the infant was not stated to appear on the writ and on the record as suing by her mother, and that no declaration had been made specifying either the person in whose behalf the action was brought or the nature of the claim as required by section 4 of the Act of 1846. The widow wished to amend the writ so as to make it clear she had a claim. She would claim on behalf of herself and the infant plaintiff, or alternatively the infant plaintiff would claim in her own behalf, and in that of the dependent widow. The Registrar

refused her leave. The widow then appealed to the High Court.

Mr. Justice Megaw allowed her appeal in Chambers on June 6th, 1962. He ordered that the widow be permitted to intervene and that the infant plaintiff should amend her writ so that she claimed in her own behalf and in that of the widow. The defendants then appealed against this judgment to the Court of Appeal.

Lord Denning, giving judgment, said that it was clear that the writ itself was not a nullity and that a dependant could bring an action by himself on behalf of another; for although the endorsement on the writ might be irregular, the irregularity could be removed by a statement of claim setting out the full particulars. It would be most prejudicial if when one dependant had been overlooked in an action the proceedings could be held to be a nullity, for this might enable a defendant to take advantage of the Statute of Limitations against the actual plaintiff in the action. Irregularities did not of themselves render the proceedings and the orders of the Registrar null and void.

The Court ought to set aside the decision of the District Registrar, remove the stay and make an order in the form decided by Mr. Justice Megaw protecting the infant's interest but permitting the widow to claim. He would dismiss the appeal.

Lord Justice Danckwerts and Lord Justice Davies agreed.

The appeal was dismissed with costs. Leave to appeal to the House of Lords was refused.

(Cooper *v.* Williams and anor. *The Guardian*, February 27th, 1963.)

*Effect of a notice to quit*

The landlord of an agricultural holding, held by a tenant on a tenancy from year to year under an agreement made in 1943, served on the tenant a valid notice to quit to expire on 29th September, 1960. On September 8th, 1960, the landlord served on the tenant a further notice to quit expiring on September 29th, 1961. The tenant endorsed on the second notice to quit the receipt thereof without prejudice to further agreement and thereafter rent was paid and accepted up to September 29th, 1961. The landlord sought possession on that date and in an action by him for possession it was held that his claim failed on the grounds that the legal effect of giving the second notice to quit had been to create a new tenancy immediately after the tenancy subsisting under the 1943 agreement expired pursuant to the first notice to quit and this new tenancy was a tenancy for one year. The further grounds were that the second notice to quit was ineffective to determine the new tenancy because it had been given before the commencement thereof. It was stated in the course of the judgment that a notice to quit is a notice given by an existing landlord to an existing tenant and if that view be right a person cannot give a valid notice to quit before he is become a landlord and the recipient of his notice has become the tenant, or before legal relations exist between them which otherwise permit of such a notice (Lower *v.* Sorrell, 1962 All England Reports, page 1074).

*Note.*—It is quite probable that the above case would not be followed in this country if the occasion arose due to the decision of the Irish Court of Appeal in the case of Lord Inchiquin *v.* Lyons. XX L.R. Ir. 474).

In that case a notice to quit was served and before the expiry date an agreement was reached between the landlord and the tenant for an increase in the rent. The notice to quit was accordingly not acted upon and some years later the landlord served a new notice to quit and sought possession of the lands. It was held that a notice to quit which is, during its currency, abandoned by the consent of both parties and not acted on does not per se put an end to the tenancy from year to year and consequently would not operate to create a new tenancy. In this case the Irish Court of Appeal distinguished the case of Tayleur *v.* Wilden (1868 L.R. 3 Exch. 303) which was followed in the case above reported. It is quite probable, therefore, that if an Irish court had to decide on the facts above reported that it would be held that the tacit abandonment or waiver of the first notice to quit by the service and acceptance of a new notice to quit did not operate to determine the original tenancy on the expiry of the first notice to quit and that no new tenancy was created.


## CALENDAR AND LAW DIRECTORY, 1963

The Society's CALENDAR AND LAW DIRECTORY for 1963 is now on sale to members. Price 10/– (Postage, 1/3 extra.)


## THE REGISTRY

### Register A.

ENERGETIC young assistant at least 5 years qualified required for provincial country practice. Good experience of conveyancing and Probate essential. Please reply, with full particulars of experience to Box No. A199.

## Register B.

CONVEYANCING SOLICITOR. Fourteen years' experience and wide knowledge of all branches of conveyancing wishes to hear of vacancy. Box No. B.270.

## Register C.

REVEREND Thomas MacCleary deceased, late of Rathconnell Rectory, Bracklyn, County Westmeath, who died on 30th December, 1962. Would any person knowing of the existence of a Will made by above deceased, please communicate with: W. O. Armstrong, Solicitor, Kells, Co. Meath.

FOR SALE: Dictaphone Set (Microphone)—2 Dictating, 2 Transcribing and Shaving machine. Box No. C173.

WILL any person having information about a Will of Thomas Ryan, deceased, late of 14 Trabeg Avenue, Belvedere Lawn, Douglas Road, Cork, and formerly of 3 Sexton Street, Limerick, and who died on the 21st January, 1963, please communicate with Brian W. Russell, Solicitor, 85 South Mall, Cork.

## OBITUARY

MR. HENRY P. MAYNE, Solicitor, died on the 24th January, 1963, at his residence, Summersit, Derrydarragh, Co. Longford.

Mr. Mayne served his apprenticeship with the late Mr. Milward Jones and the late Mr. Alexander C. Cameron, both of 6 Dawson Street, Dublin, was admitted in Hilary Sittings, 1902 and practised at 6 Dawson Street, Dublin, as senior partner in the firm of Messrs. Milward Jones, Mayne & Knapp.

He was a member of the Council of the Society from 1926 to 1949; Vice-President for the year 1930–31 and President for the year 1939–40.

MR. JOHN E. WALLACE, Solicitor, died on the 4th March, 1963, at the County Hospital, Mullingar, Co. Westmeath.

Mr. Wallace served his apprenticeship with the late Mr. Thomas W. Delany, Longford, was admitted in Michaelmas Sittings, 1910 and practised at Mullingar, Co. Westmeath as senior partner in the firm of Messrs. N. J. Downes & Co.

MR. JOHN RYAN, Solicitor, died on 7th March, 1963, at the Mater Private Home.

Mr. Ryan served his apprenticeship with Mr. James O'Connor, 57 Dame Street, Dublin, was admitted in Michaelmas Sittings, 1925, and practised at 1 Dame Street, Dublin, under the style of Messrs. James O'Connor & Co.

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APRIL
1963

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## MEETING OF THE COUNCIL

28TH MARCH: The President in the chair, also present Messrs. Dinnen B. Gilmore, James R. C. Green, Ralph J. Walker, Edward Dillon, Thomas A. O'Reilly, Desmond Moran, George G. Overend, Rory O'Connor, William A. Osborne, Augustus Cullen, Robert McD. Taylor, Raymond A. French, William A. Tormey, John C. O'Carroll, Eunan McCarron, John J. Nash, Gerard M. Doyle, Thomas J. Fitzpatrick, Peter D. M. Prentice, Reginald J. Nolan, Daniel J. O'Connor, John Carrigan, Brendan A. McGrath, Patrick Noonan, Peter E. O'Connell, T. V. O'Connor, Patrick O'Donnell.

The meeting passed in silence a vote of sympathy with Mr. John Maher on the death of his wife.

The following was among the business transacted:

### Companies Bill, 1962

It was decided that the Society should submit to the Department of Industry and Commerce a memorandum setting out the views of the Council on the above Bill. A working party consisting of Messrs. George G. Overend, Daniel J. O'Connor and Patrick Kilroy was appointed to draft the memorandum.

## Land Commission costs and procedure

The Secretary reported that it appeared that the new rules on Land Commission costs and procedure have not yet been drafted as no word concerning the rules has been had by the Society from the department. The Secretary was directed to take the matter up with the department again.

## Solicitors acting for building development companies. Furnishing of title

A member wrote to the Society with reference to the current practice in building development schemes where a builder either grants leases directly to the purchasers of houses, or has an agreement with the owner of the land upon which the houses are built whereby the owner grants leases to the persons nominated by the builder. The purchaser in turn contracts with the builder for the construction of the house and in most cases he is seeking a loan from either an insurance company or bank. In many cases the lease to the purchaser is granted to him before the house is built and the question of the title supplied by the lessor arises when the purchaser has to raise a loan and offer the completed house as security or where he sells his house at a later date. Member stated that in very many cases the title offered to prospective purchasers is insufficient and is not a good marketable title and he asked for the opinion of the Council on the duties of a solicitor acting for a lessor or builder especially where the prospective purchaser is not represented by a solicitor. It was also suggested that the solicitor acting for the lessor should give a proper marketable title to all lessees who do not have a solicitor acting for them.

The Council on a report from a committee stated that (1) where a solicitor acts for both lessor and lessee he is under a professional duty to take all necessary steps and give all necessary advice to protect the interest of the lessee. This includes either furnishing the lessee with all necessary documents of title on payment by him of the usual scrivenery charges, to enable him to sell or obtain a mortgage on the security of the premises and make title for a subsequent purchaser's mortgage, or, at least, advising him that his interests would be prejudiced if he did not obtain the necessary evidence of title. (2) If a solicitor acts for a lessor and deals with a lessee who is not professionally represented he should inform the lessee that he is not protecting his interests.

## Building development contracts and building development advertisements

The Council have considered the general question of the contracts and advertisements used by builders in connection with building development schemes and have directed that the statement on the question of advertisements which was published in the Society's GAZETTE for July, 1954, be republished for the guidance of members. The statement reads as follows:

> The Council have decided to publish their considered view that it is unprofessional for a solicitor acting for a lessor or builder to act also for the purchaser or lessee if the advertisements published can reasonably be regarded as suggesting that the lessee or purchaser should retain the lessor's or builder's solicitor. It is also unprofessional for a solicitor acting for a lessor or builder to permit a client to use his name in any advertisement which contains a reference to costs. The Council further consider that where an advertisement which is objectionable for any of the above reasons is published by a lessor or builder it is the duty of the solicitor acting for either on becoming aware of the advertisement to request that it should be discontinued or corrected and to intimate that he would be obliged to refuse to act unless this is done.

The same principle applies to all clauses and conditions in any agreement signed by a prospective purchaser or lessee of a building site. The Society has no objection in principle to the builder or lessor accepting responsibility for the costs of granting the lease provided that the lessee or purchaser is not given to understand that these costs will be paid for him only if he employs the solicitor acting for the builder or lessor. Any arrangement of that kind would be objectionable. If the builder is willing to pay the purchaser-mortgagor's solicitors costs of obtaining a loan the Society has no objection to this provided it is made clear by the builder, or the builder's solicitor if he is consulted by the mortgagor, that the mortgagor is free to employ the services of any solicitor of his own choice and that the builder would pay that solicitor. Any suggestion to the effect that such costs would be paid by the builder only if the mortgagor employs the builder's solicitor would, in the opinion of Council, infringe the Professional Practice Regulation prohibiting unfair attraction of business.

## PARTICULARS DELIVERED STAMP

Members are referred to a statement appearing under the above heading in the GAZETTE for May, 1962, at page 2. In the final sentence it was stated that in view of the provisions of the statutes it appeared that the Particulars Delivered stamp should be impressed in all cases whether required by the Revenue Commissioners or not and that the solicitor

is entitled to the usual fee therefor. The reason for this was that there appeared to be a strict statutory obligation to have the stamp impressed on the deed in all cases. However, there are regulations which were made by the Commissioners of Inland Revenue under section 4 of the Finance (1909–10) Act, 1910 and the Finance Act, 1920 and these regulations exclude specifically from the obligation to furnish particulars and to have the stamp impressed conveyances to which the Land Purchase (Ireland) Acts apply which are to be registered under the Local Registration of Title (Ireland) Act, 1891. The Stamp Office take the view that (*a*) a holding in respect of which the land purchase annuity has been redeemed is not a case to which the Land Purchase Acts apply and in such a case a P.D. stamp should be impressed and (*b*) where there is a subsisting annuity the Land Purchase Acts apply and the P.D. stamp need not be impressed. With regard to vested cottages under the Labourers Act, 1936, it would appear that section 19 (1) of that Act brings all vested cottages within the scope of the regulation already referred to and consequently a P.D. stamp need not be impressed in any case of a transfer of a vested cottage under this Act. The Stamp Office are in agreement with this view.

The regulations above referred to will be found at page 331 in the 17th edition of *Alpe on Stamp Duties* (1923).

## INDEX TO THE STATUTORY INSTRUMENTS 1948-1960

The above has been published by the Government Publications Office and is now on sale at the Sale Office, G.P.O. Arcade, Dublin 1. Price 21/-, postage 1/2d. extra.

The work covers the statutory instruments made during the period January 1st, 1948 to December 31st, 1960 and is a continuance of the series of indexes already published. The index is in two main parts.

Part I is an alphabetical list of statutes and subsidiary legislation and under each statute is grouped alphabetically the statutory instruments made thereunder. This list also contains particulars of the enabling section in the particular statute and a reference to the volume in which the particuar statutory instrument is published.

Part II is an alphabetical last of statutory instruments showing the enactment under which each is made.

## DONEGAL SOLICITORS' ASSOCIATION

The officers of the above association for the year 1963 are as follows: President: J. A. Osborne, Milford; Vice-President: F. Gallagher, Donegal; Hon. Secretary and Treasurer: T. A. Morrow, Raphoe; Council: P. O'Donnell, Dungloe; J. G. Sweeney, Ballyshannon; P. J. O'Doherty, Carndonagh; P. J. McDermott, Ballybofey.

## EXAMINATION RESULTS

At the book-keeping examination for apprentices to solicitors held on the 25th February, the following candidates passed:—

*Passed with merit:* 1. Michael A. Lucas; 2. Niall P. O'Neill; 3. Daniel J. Kelliher; 4. Daniel J. Hamilton and Patrick T. Liston, equal.

*Passed:* William S. Barrett, Henry C. P. Barry, Michael A. Buckley, Ian Q. Crivon, Joseph T. A. Deane, Graham M. Golding, B.A. (Mod)., Ll.B.; John V. Glynn, George B. Holland, B.A. (Mod)., Ll.B.; Michael B. Malone, B.C.L.; Giles F. Montgomery, Margaret J. O'Callaghan, B.A.; John C. O'Donnell, Patrick F. O'Donnell, B.C.L.; Cyril M. Osborne, Michael Purcell.

26 candidates attended; 20 passed.

At the second law examination for apprentices to solicitors held on the 6th, 7th and 8th days of February, the following candidates passed:—

*Passed with merit:* 1. Michael V. O'Mahony, B.C.L.; 2. Bryan M. E. McMahon, B.C.L.

*Passed:* Henry C. P. Barry, Michael A. Buckley, Henry Owen Comerford, Michael G. Daly, B.C.L., LL.B.; Peter B. Fagan, John F. P. Glynn, B.A., B.C.L.; Daniel J. Hamilton, Giles F. Montgomery, Brendan A. J. Murrin, B.C.L.; Michael G. O'Connell, B.C.L.; Bryan L. O'Flaherty, Christopher T. N. O'Meara.

33 candidates attended; 14 passed.

At the third law examination for apprentices to solicitors held on the 4th, 5th and 6th days of February the following candidates passed:—

*Passed with merit:* 1. Garret P. Lombard.

*Passed:* Seán de Burca, B.A., B.C.L.; Malachy F. Concannon, B.A., B.Comm.; Patrick J. Connellan; Brian J. Gardiner, B.C.L.; Graham M. Golding, B.A. (Mod.), Ll.B.; George B. Holland, B.A. (Mod.), Ll.B.; Michael P. Houlihan; Delphine A. C. Kelly, B.A.; Helen M. Kirwan, B.C.L.; Peter J. McMahon; Thomas J. M. O'Donoghue; Sylvester W. Riordan, B.A.; Norman T. J. Spendlove, M.A., B.A.I., Dip.Geog., A.M., I.C.E.I.; James Gregory Tynan.

24 candidates attended; 15 passed.

On the combined results of the second and third law examinations the Council has awarded a Special Certificate to Garrett P. Lombard and Sylvester W. Riordan, B.A.

## MAYO SOLICITORS' BAR ASSOCIATION

At the annual general meeting of the association held in Castlebar on April 3rd, the following officers were elected:—President: J. MacHale; Vice President: P. J. Durcan; Hon. Secretary: D. Lambe; Hon. Treasurer: B. Hynes.

Committee: Messrs. E. A. Corr, J. King, P. Brennan, W. Dillon-Leetch and T. V. O'Connor.

## THE CIRCUIT COURT. DUBLIN CIRCUIT. SERVICE OF DOCUMENTS.

An order has been made by Judge Conroy pursuant to order 10, rule 3 of the Circuit Court Rules, 1950, as amended, directing service of Circuit Court civil bills and other originating documents in the Swords area by registered post for a period of three months from the date of the order (19th April 1963) or until appointment of a summons server whichever event shall first happen.

## THE DISTRICT COURT, DISTRICT NO. 10. SERVICE OF SUMMONSES

An order has been made by District Justice O'Donoghue under rule 46(2) of the District Court Rules 1948 as substituted by rule 5 of the District Court Rules (No. 1) 1962 providing for service of summonses in the Balbriggan area by registered post. The order remains in force until a summons server is appointed.

The order is dated for 23rd April 1963.

## BOOK-KEEPING EXAMINATION

The book-keeping examination will be held on Monday, June 24th. The last day for giving notice of intention to enter for the examination is Monday, May 27th.

## DECISIONS OF PROFESSIONAL INTEREST

*County Court costs—money paid into court*

The Court of appeal allowed an appeal by a plaintiff, Mr. Sol Gold, salesman, of Willesden Lane, N.W., from the decision of the County Court, which had held that it had no power under the County Court Rules, 1936, to award the plaintiff any costs where a payment was made into Court by the defendants, Introductions Ltd., of Shaftesbury Avenue, W., in respect of the plaintiff's claim and the plaintiff did not serve a notice of acceptance until more than four days after receiving notice of the payment in.

Order 11, rule 11, of the County Court Rules, 1936, provides: "If a plaintiff fails to give notice of acceptance within the time limited by Rule 7 or Rule 9 of this Order, he may give notice of acceptance subsequently, but the money in court shall not be paid out without an order of the court and the court may order the plaintiff to pay any costs reasonably incurred by the defendant since the date of payment into court, including the costs of attending court to obtain the order."

The Master of the Rolls said that on August 7, 1962, Mr. Gold brought an action in the County Court against the defendant company claiming commission of £307 1s. 3d. based on commission of £8 for each pig sold by him to customers in Kenya and the Rhodesias. The defendants, within eight days, on August 15, paid into court a sum of £59 1s. 3d. together with £5 scale costs, and put in a defence that the commission of £8 a pig was payable only when the pigs were paid for, so that the amount claimed by the plaintiff was not due. The plaintiff did not take that sum out of court. The action went on; there were applications for particulars by each side; and as time went on the defendants paid more money into court, until they had paid £83 altogether, admitting liability. The plaintiff did not take it out within the four days' limit provided under Order 11, rule 9, of the County Court Rules; and the action continued, particulars being delivered by each side. Then, on November 29, the plaintiff gave notice that he accepted the sum of £83 in satisfaction of his claim.

The whole question was, that having been done, to what costs was the plaintiff entitled? It was plain that under Order 11, rule 11, the court could order—as it had ordered—that the plaintiff should pay the defendants' costs from the date of the payment in to the date when the money was taken out. But it was said that the plaintiff could not recover any costs—not even his scale costs of £5—and the Judge had so held, deciding that the effect of rule 11 was to enable the court to award costs to the defendant but not award costs to the plaintiff where notice of acceptance had not been given within four days.

If that was right, it would be a surprising result, for it would mean that a plaintiff who had brought his action quite properly and carried it on for a long time with a payment eventually being made into court, could not get the costs up to the date of the payment in. But looking at the rules in Order 11, his Lordship thought that that was not the result. In his view rules 7 and 9 should be imported into rule 11, so that if a plaintiff gave notice of acceptance after the four days everything had to happen as it would have done under rule 9; and under that rule the plaintiff might lodge for taxation a bill of the

costs incurred by him before the receipt of notice of payment into court. In other words, the plaintiff could still get his costs up to the time of payment into court; but the sanction was that thereafter he was liable to be ordered to pay all the defendants' costs from that date. On that interpretation of the rules the plaintiff here would be entitled to his costs up to the date of the payment in which he accepted and the defendants should have their costs thereafter.

If that interpretation was not correct, this would be a case where as the rules did not specifically provide for what should be done about costs, Order 47, rule 1, would apply, and the Court in the exercise of its discretion as to costs should make the same order in favour of the plaintiff. The appeal should be allowed and the Court would order that there should be paid out to the plaintiff the sum of £83 1s. 3d. from the moneys held in court, that the plaintiff's costs of the action up to October 2, 1962, be paid by the defendants, and that the defendants' costs from October 2 to the date of the County Court hearing should be paid by the plaintiff.

(Gold *v.* Introductions Ltd., *The Times*, March 19, 1963. *Solicitor's Journal*, March 29, page 253.)

*Wrongful dismissal—breach of principles of natural justice*

The House of Lords has allowed the appeal by Charles Ridge, formerly Chief Constable of Brighton, from the dismissal by the Court of Appeal of his appeal against the judgment of the High Court dismissing his action against the Brighton Watch Committee in which action he asked for a declaration that their termination of his appointment as Chief Constable was illegal and for payment of his salary from that date or, alternatively, payment of pension and damages. The House of Lords declared that the purported termination by the Watch Committee of the appellant's appointment was null and void as having been effected contrary to the principles of natural justice and it was ordered that the matter be remitted to the Queen's Bench Division to do as should be just and consistent with the decision of the House. It was stated that Mr. Ridge did not now seek re-instatement but sought to assert his rights to a pension.

The appellant was appointed Chief Constable of Brighton Police Force in 1956, the appointment being subject to the Police Acts and Regulations. On October 27th, 1957, he was arrested and charged with other persons with conspiracy to obstruct the course of justice and on October 28th was suspended from duty by the Borough Watch Committee. On February 8th, 1958, he was acquitted by the jury of the criminal charge preferred against him but was subjected to some judicial criticism by the trial judge who was passing sentence on the other persons prosecuted with him. Mr. Ridge applied for re-instatement and on March 7th, 1958, the Watch Committee decided that he had been negligent in the discharge of his duties as Chief Constable and in purported exercise of the powers conferred on them by section 191 (4) of the Municipal Corporations Act, 1882, they dismissed him. No specific charges were formulated against Mr. Ridge and the committee in arriving at their decision considered among other things his statements in evidence at his trial and the observations of the trial judge. An appeal by him to the Home Secretary was dismissed.

Section 191 (4) of the Municipal Corporations Act, 1882, provides that a Watch Committee may at any time suspend and dismiss any borough constable whom they think negligent in the discharge of his duty or otherwise unfit for the same.

Lord Reid giving the judgment of the court said that the authorities establish clearly that in a case of this nature a man could not be dismissed on the grounds of negligence without being first informed of the nature of the charges against him and given an opportunity to reply to them.

The appellant had also maintained that the Watch Committee should have proceeded under the regulations made under the Police Act, 1919. It was held that a dismissal under the section already referred to came within the ambit of these regulations and the Watch Committee in dismissing the appellant had not acted under them.

(*The Times*, March 15th, 1963.)

*Solicitor acting for both mortgagor and mortgagee in receipt of confidential information affecting security*

The plaintiff in this case was an American citizen and the defendant a Canadian barrister and solicitor. The defendant acted on behalf of a client, a Mr. Kerwin, president of Shannon Falls Ltd. who carried on the business of a trout farm and fishery. The company wished to develop the property as a motel and restaurant and generally as a tourist resort and the plaintiff became interested in investing money for that purpose in the company. The plaintiff met the defendant who was the company's solicitor and he gave to her particulars of the lands and properties which would be given as security for the proposed mortgage. The plaintiff eventually agreed to take a mortgage on the company's property for the sum of $25,000 on the security of the parcels of land described as parcel B and H and the defendant was instructed by the plaintiff to act on her behalf in the transaction. The court was satisfied that the

defendant was well aware at the time in his capacity as solicitor to the company that parcel H and parcel B were both incumbered with mortgages already and that there were judgments against the company. He did not take any steps to ensure that the plaintiff's mortgage would have priority over the existing mortgages. In his defence it was urged that this could be done. It was found by the court that on receipt of the mortgage loan of money the defendant and his client Mr. Kerwin proceeded within three days to disperse all but $1,000 of this fund to various creditors of the company. It was held that the plaintiff's claim did not rest solely on the breach of the solicitor's duty in registering and perfecting his client's security but that the relationship created between them was one from which flowed duties more important and more extensive. The court was satisfied that the defendant was aware that the plaintiff was relying upon his knowledge and experience to guide her in investing in a foreign country under a legal system with which she was unfamiliar. He was possessed of certain information which he knew could be vital to her decision to carry on or stop the transaction. Whereas there is no objection to the common employment of one solicitor by both mortgagor and mortgagee a conflict may arise when the solicitor is in receipt of confidential information as against the mortgagor which he knows or should know will affect the decision of the mortgagee. In such circumstances he cannot act fairly in a fiduciary relationship for either and if he continues to do so he may be liable for the consequences that ensue.

The court gave judgment for the plaintiff and directed an assignment of the plaintiff's interest in the mortgage to the defendant upon his satisfying the decree for damages and costs.

(*Western Weekly Law Reports* (*British Columbia*), Vol. 40, 1962, page 129.)

*Defence costs paid by company—whether taxable emolument*

The High Court allowed an appeal by a company director against the decision of Special Commissioners who had held that the amount of £641 spent by the company for his defence at his trial for causing the death of a pedestrian by reckless or dangerous driving (of which he was acquitted) was spent for his benefit and was chargeable to income tax under Schedule E as part of his emoluments for the year 1958–59.

Buckley J. giving judgment said that Mr. Rendell was a full-time director of the company and, on July 23rd, 1958, while returning to the head office of the company after making a call on its business, the car belonging to the company and driven by the taxpayer left the road and killed a pedestrian. Mr. Rendell instructed his secretary to get in touch wtih the Automobile Association to arrange for a solicitor to give him legal advice. The managing director of the company, however, contacted the company's solicitors, by whom he was advised that if the taxpayer was convicted, he would be imprisoned and his conviction might involve the company in liability. If the taxpayer went to prison the company might have lost business and the managing director instructed the company's solicitors to spare no reasonable expense to obtain the taxpayer's acquittal.

The taxpayer was subsequently charged with causing the death of another person by reckless or dangerous driving and was acquitted. His defence was undertaken by the company's solicitors without consulting the taxpayer. The company paid the bill of costs of his defence, which amounted to £641.

Counsel for the taxpayer contended that the sum was expended by the company for its own business purposes and it was not an expense incurred in providing a benefit for the taxpayer.

Counsel for the Crown contended that the whole of the sum of £641 was an expense incurred by the company in or in connection with the provision for the taxpayer of a benefit or facility, and it was to be treated as his emoluments assessable to income tax.

The crucial point in this case was whether what was provided to the taxpayer by the company was of benefit to him. Obviously what was provided for him was of benefit to him, but if the company chose to be extravagant it would be hard that the taxpayer should be charged for that.

What ought to be considered was the sum the company must have reasonably spent for the defence and only that sum could be regarded as spent beneficially for the taxpayer; so far as the company chose to spend more than required, it must be assumed that it was for the company's own benefit and not for the benefit of the taxpayer. The case should be referred back to Special Commissioners to find as a matter of fact what sum was reasonable for the defence of the taxpayer and he would be chargeable for that sum only.

(Rendell *v.* Went (Inspector of Taxes), *The Times*, March 19th, 1963. *Solicitors Journal*, March 29th, page 253.)

*Application to the court for settlement of a mental patient's property—basis for taxation of costs of applicant and other interested parties*

An application was made to the Court of Protection in England for a settlement of a patient's property under sections 102 and 103 of the Mental Health Act, 1959. Certain relatives applied for the

settlement, the official solicitor appeared on behalf of the patient and the receiver and a relative of the patient representing a class of persons who might be affected were also represented. Having disposed of the substance of the application Wilberforce J. dealt with the question of the costs. The rules applicable were Rules 28 to 31 of the Supreme Court Costs Rules and the relevant text runs as follows:

"Rule 28 (1) This rule applies to costs which by or under these rules or any order or direction of the court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis."

From the rules it appears that taxation on a solicitor and own client basis could not be directed and in any event it was inappropriate that such a taxation should be directed in as much as once the client expressly or impliedly approves the costs they are conclusively presumed to have been reasonably incurred and so cannot be challenged by or on behalf of the person who has to pay them. To hold otherwise would put the patient at the mercy of other parties both as to the nature of the costs incurred and as to their amount. The rules further provided that taxation on a trustee basis could not, in general, be directed except in favour of a person holding a trust fund in that capacity. There was a general discretion under rule 28 (3) to order taxation on a common fund basis. It was held that it was proper in a normal case to order taxation on a common fund basis of the costs of the successful applicant and the costs of all other interested parties appearing on the application. The costs of the official solicitor would be taxed on a solicitor and own client basis since he appeared for the patient as his client. (Re C.E.F.D. (1963) 1 All England Reports, page 685.)

*Note:* The corresponding rules in the Rules of the Superior Courts, 1962, are contained in order 99, rule 5, paragraph 11 (1), (2) and (3). Subparagraph (3) provides that the court in awarding costs may if it thinks fit order that the costs be taxed on a solicitor and client basis. The words "solicitor and client" are in substitution for the words "common fund" contained in rule 28 (3) referred to above. It is understood that in this country the costs are allowed only on a party and party basis in cases of this nature.

*Counsel's discretion as to calling a witness*

The Court of Criminal Appeal in England dismissed an appeal by Albert Frank Vincent Gatt against a conviction at the Central Criminal Court when he was found guilty by a jury on a count of causing grievous bodily harm with intent upon, and other counts involving grievous bodily harm and wilful treatment of his infant son Carmello Gatt for which he was sentenced to six years imprisonment. The court had given leave to appeal and adjourned the hearing of the appeal to enable witnesses to be called.

It was contended on behalf of the appellant that at the trial before the jury the appellant's wife although physically present and available to give evidence had not been called because counsel then conducting the defence, without reference to the appellant or the wife, had decided not to call her. The defence was that the child's injuries had been caused by falling from his cot. It was submitted that if the jury had heard Mrs. Gatt's evidence the verdict might have been very different. Counsel stated that he had received a letter from counsel who conducted the defence before the jury and he stated in his letter that as far as he could remember the reasons which prompted him in his discretion not to call Mrs. Gatt were that her condition was highly nervous and almost hysterical and that he formed the view that she would not make a good witness and would make a very bad impression on the jury. He felt that the best interests of his client would be served in not calling her. It was submitted that this had been a grave error of judgment on counsel's part and that had the appellant's wife been called the jury would have returned a different verdict. The appellant and his wife then gave evidence before the Court of Criminal Appeal and two further witnesses were also called.

The Lord Chief Justice giving judgment said that the prosecution case was that this was a shocking case of child cruelty. When leave to appeal had been granted the court felt that there was something to be enquired into lest there had been a miscarriage of justice. The jury had been told that there was one other eyewitness whom they had not heard, namely the appellant's wife. At the close of the prosecution's case the court had adjourned to enable instructions to be taken from the appellant but he had not given any instructions to his counsel to call his wife in evidence and counsel accordingly used his discretion and did not call her. Nevertheless

the court had permitted the wife and two further witnesses to be called and in the opinion of the court the wife's evidence was utterly incredible. The court had come to the conclusion early in Mrs. Gatt's cross-examination that no jury would have believed her. The court was of the opinion that the appellant's counsel had used his discretion wisely at the hearing before the jury. In the circumstances the appeal would be dismissed.

(R. *v.* Gatt, *The Times*, 5th April, 1963.)

*Meaning of the word "solicitor"—appeal from the Disciplinary Committee of the Law Society*

The appellant, who was admitted a solicitor in 1949, practised first with a firm of solicitors and then on his own account, both addresses appearing on the practising roll. In August, 1961, he became bankrupt and could not hold a practising certificate, but a month later, H, a firm of solicitors, were given permission by the Law Society to employ the appellant while still an undischarged bankrupt. In April, 1962, allegations concerning the appellant while he was in practice on his own account were made and a hearing by the Disciplinary Committee of the Law Society was fixed for 28th June, 1962. Notices were sent to the two addresses appearing on the roll and to his private address, from which he had moved, but none was sent to him at the address of H. The appellant's trustee in bankruptcy informed him by telephone of the date of the hearing but the appellant misheard it. The committee found that the appellant had been in arrears with his accounts and had misappropriated clients' money, and ordered his name to be struck off the roll. He appealed to the court on the ground, *inter alia*, that he had not been properly served with the notices under r. 30 of the Solicitors (Disciplinary Proceedings) Rules, 1957.

Lord Parker, C.J., said that if the appellant was a solicitor then the Law Society had complied with r. 30, but it had been argued that for the purposes of the rules a solicitor was a person who held a practising certificate. The appellant had no such certificate and it was argued that the notices should have been sent to his last known business address, which was the address of H. Rule 37 provided that expressions used in the rules should have the same meaning as in the Solicitors Act, 1957. By s. 86 of the Act, a solicitor was defined as "solicitor of the Supreme Court", but it had been argued that the definition should be read with s. 1, and it would then be seen that a person had to have a practising certificate to be a solicitor. That construction was wrong and a person could be a solicitor without having a certificate.

Ashworth and Winn, JJ., agreed. Appeal dismissed.

(In re A solicitor, *Solicitors' Journal*, March 15th, 1963, page 216.)

*Private prosecutor represented by counsel—costs*

The applicants carried on business as a self-service store, where they suffered loss from a number of shoplifters. On 20th August, 1962, private prosecutions were instituted against three women for shoplifting. Upon their conviction, counsel representing the applicants applied to the justices for an order for costs against each of the three women, but the justices refused the application. The applicants thereupon applied for an order of certiorari to quash the refusal of the justices to grant the applicants an order for costs, and for an order of mandamus requiring the justices to hear and determine an application for such an order under s. 5 of the Costs in Criminal Cases Act, 1952.

Lord Parker, C.J., said that any increases in cases of shoplifting added to the work of a magistrates' court. On behalf of the applicants it was stated that the justices had not made an order for costs under s. 5 of the 1952 Act since April, 1962, and that some members of the bench had expressed strong views about the prosecutions. The time came when the applicants felt that they ought to be represented by counsel in every prosecution for shoplifting. In respect of the three cases, the justices refused the application for costs because the trivial nature of the cases did not warrant representation by counsel. There was no suggestion of any improper motive on the part of the justices in exercising their discretion. Under s. 5 of the 1952 Act, justices had a discretion to award costs occasioned by the appearance of counsel and solicitors, and also to meet the expenses incurred by the prosecutor and witnesses. It might well be that in all three cases there ought to have been an order for some costs, to meet solicitors' costs and expenses incurred by the prosecutor and witnesses. The court was satisfied, however, that the matter, as presented to the justices, related only to costs of counsel rather than to any other costs. The justices were entitled to say that representation by counsel was unnecessary because of the trivial nature of the cases, and that they would make no order for payment of the costs thereof.

Ashworth and Winn, JJ., agreed. Application refused.

(R. *v.* Feltham Justices; *ex parte* Waitrose Ltd., *Solicitors' Journal*, March 29th, 1963, page 256.)

*Search warrant for solicitors' office*

The Divisional Court, on an application by the partners in Messrs. Bull & Bull, solicitors, of Stone

Buildings, Lincoln's Inn, gave leave to apply for an order of certiorari to quash a warrant granted by a Bow Street magistrate on February 25th, 1963, authorising the police to search for and seize any documents reasonably suspected of having been forged and which might be at the applicants' offices at 11, Stone Buildings, Lincoln's Inn.

Mr. Foster said that this was regarded as such an important matter from the point of view of the profession that the Law Society had been consulted and the application was being made with their encouragement. The warrant related to documents concerning a client of the firm. The magistrate had had before him an information sworn by a detective superintendent to the effect that the person concerned had been arrested. It had also been said that there was reasonable cause to believe that forged documents might be found in the custody or possession of the firm. The warrant was invalid because the information on which it was issued did not mention any facts which would lead the magistrate to believe that the firm had any forged documents without lawful excuse. The warrant was absolutely general in its terms and covered all documents at 11, Stone Buildings whether they concerned clients of the firm, the firm's own documents or those relating to employees. The warrant was also invalid because it disregarded the privilege of solicitors.

The Lord Chief Justice said that the Court would grant leave to apply for an order of certiorari.

(*Ex Parte* Bull and others, *The Times*, March 29th, 1963.)

*Contempt by advocate*

The Privy Council dismissed an appeal by an advocate, from a judgment and decree of the Supreme Court of Ceylon dated May 20th, 1960, whereby he was convicted under section 40 (*a*) of the Industrial Disputes Act, 1950, as amended, of contempt against or in disrespect of the authority of an Industrial Court and fined Rs. 500 or in default of payment ordered to undergo six months rigorous imprisonment.

The appellant represented the Petroleum Service Station Workers' Union in a dispute between the union and Mr. P. R. Perera, dealer, Shell Petroleum Station at Minigama, whether Mr. Perera's refusal to employ four named workmen was justified.

The rule nisi issued by the Supreme Court on the appellant required him to show cause why he should not be punished for contempt for having read out in the Industrial Court the following statement:—

"In the circumstances the union having felt that this court by its order had indicated that an impartial inquiry could not be had before it has appealed to the Minister to intervene in the matter. The union is therefore compelled to withdraw from these proceedings and will not consider itself bound by any order made *ex parte* which the union submits would be contrary to the letter and spirit of the Industrial Disputes Act."

The appellant after handing in the statement, withdrew from the proceedings, and the question in this appeal was whether the statement could amount to contempt where it was made by the appellant in pursuance of, or what he honestly believed to be, his duty as counsel representing a party to a proceeding in Court.

Section 40A provided that: "(1) Where any person (*a*) without sufficient reason publishes any statement . . . that brings any . . . Industrial Court . . into disrepute . . . (he) shall be deemed to commit the offence of contempt. . . ."

Lord Guest, giving their Lordships' advice, said that the questions before the Supreme Court were (1) whether the statement made by the appellant at the hearing before the Industrial Court brought the Court into disrepute and (2) if so, whether the statement was made without sufficient reason. The Supreme Court held that the statement was an act constituted to bring the Industrial Court into disrepute. Counsel for the appellant had difficulty in resisting the conclusion that such a finding was warranted. Their Lordships agreed with the conclusion reached by the Supreme Court upon that matter.

In regard to the second question, whether the statement was made without sufficient reason, counsel for the appellant argued that, as the appellant acted in good faith and in accordance with what he believed to be his professional duty in bringing to the notice of the court that his client had applied to the Minister of Labour to have the court reconstituted, the statement was made with sufficient reason.

It was not and could not be contended that because the appellant was acting on instructions he was entitled to any special privilege. In reading from the typewritten document he accepted responsibility for its contents. There was really no call for any statement at all on behalf of the union.

But whether the appellant's appearance for the union was in order or not, their Lordships considered that there was no justification at all for his statement that an impartial inquiry could not be expected before the Industrial Court. That was the sting in the contempt and it was deliberate and quite unnecessary in the circumstances. Counsel for the appellant argued that it could not be contempt for counsel to allege partiality of a court as this would unduly restrict counsel's arguments on a hearing in certiorari proceedings. But different considerations

applied when an attack was made in a court of review on the impartiality of a lower court. It might be neccessary in certain cases for counsel in compliance with his duty to his client to allege partiality of the lower court. But where the allegation of partiality was made in the circumstances under which the appellant's statement was made their Lordships considered that no adequate justification existed.

In their Lordships' opinion the Supreme Court were entitled to find the appellant guilty of contempt and they would humbly advise Her Majesty that the appeal be dismissed. The respondent did not ask for costs. There would, therefore, be no order for costs.

(Vidyasagara *v.* The Queen, *The Times*, April 2nd, 1963.)

## THE REGISTRY

### Register B.

CONVEYANCING SOLICITOR fourteen years experience and wide knowledge of all branches of conveyancing wishes to hear of vacancy. Box No. B 270.

### Register C.

FOR SALE Statutes 1922-1949 (inclusive) new condition : Box No. C 174.

Will any person having information about a will of Patrick Colbert, of Rathcanning, Dungourney, Midleton, Co. Cork who died on the 7th February 1963, please communicate with J. F. St. J. O'Neill & Co., Solicitors, Midleton, Co. Cork.

## NOTICE OF PARTNERSHIP

NOTICE is hereby given that the practice heretofore carried on by Gerald F. O'Flynn, Solicitor, at 59 South Mall, Cork, will as from the 6th day of April 1963 be carried on by the said Gerald F. O'Flynn, Michael C. O'Driscoll and Francis J. O'Flynn Solicitors in partnership under the style or firm of " O'Flynn & O'Driscoll " at 59 South Mall aforesaid.

## REGISTRATION OF TITLE ACTS, 1891 & 1942.

### NOTICE

FOLIO 25799 COUNTY MAYO

REGISTERED OWNER: MICHAEL McGRATH

The Registered Owner has applied for a New Certificate of Title specified in the schedule hereto the original of which is stated to have been lost or inadvertently destroyed.

A New Certificate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the Original Certificate is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 14th day of May, 1963.

D. L. McALLISTER,
Registrar of Titles.

SCHEDULE.

Land Certificate of Michael McGrath to 29 perches of the land of Bellass situate in the Barony of Tirawley and County of Mayo being the lands comprised in said Folio.

## OBITUARY

MR. HERBERT McCLOUGHAN, Solicitor, died on the 9th March, 1963, at Letterkenny, Co. Donegal.

Mr. McCloughan served his apprenticeship with the late Mr. William Kelly, Letterkenny, Co. Donegal, was admitted in Hilary Sittings, 1927, and practised at Letterkenny, Co. Donegal under the style of Messrs. John Wray & Co.

MR. ROBERT I. ARCHER, Solicitor, died on the 15th March, 1963, at the Meath Hospital, Dublin.

Mr. Archer served his apprenticeship with the late Mr. Norris Goddard, 1 Upper Mount Street, Dublin, was admitted in Michaelmas Sittings, 1914, and practised at 3 Inns Quay, Dublin.

MR. FRANCIS P. JOHNSTON, Solicitor, died on the 17th April, 1963 at his residence, 12 Castle Road, Dundalk, Co. Louth.

Mr. Johnston served his apprenticeship with the late Mr. William E. Rogers, Dundalk, was admitted in Trinity Sittings, 1903, and practised at Dundalk, Co. Louth as senior partner in the firm of Messrs. Francis P. Johnston & Son.

## LIBRARY ACQUISITIONS

*List of Books ordered in Library to April*, 1963.

### A.—BOOKS ORDERED.

*All England Law Reports—Noter-Up and Index*, 1961 ; Bebr—*Judicial Control of European Community*, 1962 ; Best—*Law of Evidence*, 12th Edition, 1922 ; Bernard—*Irish Church Acts of* 1869 *and* 1871 *and decisions relating thereto*, 1876 ; Bernard—*Decisions under the Irish Church Act* 1869 *and details of Annuities*

*of Church Temporalities*, 1871; Blanco-White—*Industrial Property and Copyright*, 3rd Edition, 1963; Bolton—*Criminal Injuries (Ireland) Acts, of 1919 and* 1920-1922; Brierly—*Law of Nations*, 6th Edition, Ed. Waldock, 1963; British Institute of International and Comparative Law—*The Encouragement and Protection of Investment in Developing Countries*, 1962; British Institute of International and Comparative Law—*Restrictive Practices, Patents, Trade Marks and unfair Competition in the Common Market*, 1962; Bromley (P.M.)—*Family Law*, 2nd Edition, 1962.

Campbell and Thompson—*Common Market Law, First Supplement*, 1963; Charlesworth—*Law of Negligence*, 4th Edition, 1962; Charlesworth—*Merchantile Law*, 9th Edition, 1960; Colin-Clark—*Plain Facts about the Common Market*, 1962; Comyn—*Exercises on Abstracts of Title*, 5th Edition, 1895; Cross and Jones—*Cases on Criminal Law; Current Law Citator*, 1947-1961; *Current Law Yearbook*, 1961; Davies—*The Law of Road Traffic*, 3rd Edition, 1961; Delany—*Law of Charities in Ireland*, 2nd Edition, 1962.

Ellison Kahn—*The New South African Constitution of* 1962; Emden and Watson—*Law relating to Building Contracts and Practice*, 6th Edition, 1962; *Encyclopaedia of Road Traffic Laws*, 3rd Edition by Mahaffy and Dodson, 2 Volumes, 1961; England—*Commercial Court users' Conference Report*, 1962; England—*Board of Trade! Jenkins Report of the Company Law Committee, June* 1962; England—*Public General Acts*, 1961 and 1962; England—*Chronological Table of the Statutes*, 1235-1961; *English Statutes—Index to Statutes, to* 1960; (*English*) *Catholic Directory*, 1962 and 1963; *English and Empire Digest*—Replacement Volume 20, Election to Equity, 1962; *English and Empire Digest*—Replacement Volume 21 (Estate Duties to Execution), 1962; *English and Empire Digest*—Third Cumulative Supplement, 1962. *Part* 1—Replacement Volumes, *Part* 2—Unreplaced Volumes; *English and Empire Digest*—Replacement Volume 25; *English and Empire Digest*—Replacement Volume 29 (Inns and Innkeepers—Insurance—Interpleader), 1963; Fox-Smith—*Hire-purchase, Credit and Finance.*

Glanville-Williams—*Criminal Law, The General Part*, 2nd Edition, 1961; Goode—*Hire-Purchase Law and Practice*, 1962; Green—*Law relating to Bills of Sale in Ireland*, 1882; Green—*Bills of Sale, (Ireland) Amendment Act*, 1883-(1884); Hall—*Law of Seashore*, 1875; Halsbury—*Laws of England, Simonds Edition*, Vol. 37—*Theatres to Town and Country Planning*, 1962; Halsbury—*Law of England, Cumulative Supplement*, 1962; Halsbury—*Laws of England, Simonds Edition*, Vol. 38—(*Trade and Labour to Trusts*), 1962, Vol. 39—(*Valuers to Wills*), 1963; Hamilton—*Law relating to Charities in Ireland*, 1881; Hanbury—*Modern Equity*, 8th Edition, 1962; Harrison—*Digest of Tax Cases*, 1958 Supplement; Heap—*Outline of Planning Law*, 4th Edition, 1963; Heywood and Massey—*Count of Protection Practice*, 8th Edition, 1961; Houseman—*Law of Life Assurance*, 5th Edition, 1961; Hughes and Dixon—*The Landlord and Tenant Act*, 1931.

International Bar Association—*8th Conference Report, July*, 1960; Ireland—*Index to Statutory Instruments* (1948-1960), 1963; Ireland—*Acts of the Oireachtas*, 1959 and 1960; Ireland—*Statistical Abstract*, 1961; Ireland—*Rules of the Superior Courts*, 1962 (*S.I. No. 72 of* 1962); *Irish Catholic Directory*, 1963.

James—*Introduction to English Law*, 4th Edition, 1962; Josling—*Change of Name*, 3rd Edition, 1962; Justice—*Contempt of Court*; Justice—*Legal Penalties*; Justice—*The Citizen and Administration*; Keeton—*The Modern Law of Charities*, 1962; Kelly—*Conveyancing Draftsman*! 11th Edition. 1962; Kemp and Kemp—*The Quantum of Damages*, Vol. II—*Fatal Injuries*, 2nd Edition, 1962; Kenny—*Outlines of Criminal Law*, 18th Edition, 1963; Kerr—*Law of Receivers*, 13th Edition, 1963; Larkin—*Irish High Court Practice* (1928); *Law List*, 1962; *Law Reports and Weekly Law Reports—Consolidated Index* (1951-1960) *and Indexes for* 1961 *and* 1962; Law Society, London—*Digest of Council Decisions*, Vol. 1—*Conveyancing Practice and Costs, Third Cumulative Supplement to 31st December*, 1961; Leach—*Practical Points of Leases*, 1961; Lindley—*Law of Partnership*, 12th Edition, 1962; Marsden—*The Rule Against Perpetuities*, 1883; Megarry—*The Rent Acts*, 9th Edition, 1961; Megarry—*Manual of Real Property*, 3rd Edition, 1962; Megarry—*Lawyer and Litigant in England*, 1962; McGillivray—*Insurance Law*, 5th Edition, 2 Volumes, 1961; Moore—*Law of Charities in Ireland*, 1906; Morris and Barton Leach—*The Rule against Perpetuities*, 2nd Edition, 1962; Munkman—*Law relating to employers Liability*, 5th Edition, 1962.

Nathan—*The Charities Act*, 1960-1962; Nokes—*Introduction to Evidence*, 3rd Edition, 1962; Northern Ireland—*Statutes*, 1961; Northern Ireland—*Chronological Table of Statutes to* 1960 *and* 1961; Paget—*Law of Banking*, 6th Edition, 1961; Paterson—*The Licensing Acts*, 1962; Pennington—*Companies in the Common Market*, 1962; Phillips—*Accounts of Executors, Administrators, and Trustees*, 1945; Pratt and MacKenzie—*Law of Highways*, 20th Edition, 1962; Quirke—*Forged, Anonymous and Suspect Documents*, 1930.

Redgrave—*Factories Acts*, 20th Edition, 1962; Ringrose—*Where to Look for Your Law*, 12th Edition, 1962; Roper—*Back Duty Manual*, 2nd Edition, 1961; Samuels—*Factory Law*; Shannon—*Modern Law Manual for Practioners*, 2nd Edition, 1946;

Smith & Thomas—*Casebook of Contract*, 2nd Edition, 1961; Snell—*Principles of Equity*, 18th Edition, 1920; Stoljar—*Law of Agency*, 1st Edition, 1961; Strachan—*Practical Conveyancing*, 1901.; Sturge & Lewis—*Basic Rules of the Supreme Court*, 1961.; Suffern—*Law relating to Compulsory Purchase and Sale of Lands in Ireland*, 1882; Sweet & Maxwell—*Guide to Law Reports and Statutes*, 4th Edition, 1962; Treagus & Rainbird—*Butterworth's Costs in Civil Litigation*, 2nd Edition, 2 Vols., 1962. Wade—*Administrative Law*; Wellington—*The King's Coroner*, Vol. 11, 1906; Welson—*Accident Insurance Claims*, 2nd Edition, 1962; Weinberg—*Take-Over Bids and Amalgamations*, 1963; Williams—*The Law of Wills*, 1961; Williams—*The Law of Wills*, 2nd Edition, 1962.; Wilshere—*Analysis of Taswell-Langmead's English Constitutional History*, 4th Edition, 1919; Woolley—*Handbook on the Death Duties*, 5th Edition, 1945; *Works and Phrases—Judicially defined.* Pocket Supplement, 1962. 5 Volumes; Wrensfordsley—*The Renewable Leasehold Conversion Act*, 1849-1854; *Writers & Artists Year-Book*, 1963.

## B. MISCELLANEOUS DONATIONS AND EXCHANGES.

*Church of Ireland Constitution*, 1960; *Canadian Bar Review—Index of Vols.* 1-40, (1921-1960), 1962; Dublin University (Trinity College)—*Calendar*, 1962-63; Edinburgh University—*Calendar*, 1962-63; European Economic Commission—*Monthly Bulletin (in French) from* 1959; European Economic Commission—*Text of Treaty of Rome and Protocols (In English)*, 1957; European Economic Commission—*Text of Treaty of Association with Greece (In French)*, 1961; Glasgow University—*Calendar*, 1962-63; Incorporated Law Society—*Calendar*, 1962; International Law List, 1963; Ireland—*Bound Volume of Statutory Instruments*, 1959; Law Society, London—*Miscellaneous Lectures on Contract, Tort, Conveyancing, etc.*; Liverpool University—*Calendar*, 1962-63; London University—*Calendar*, 1962-36; *New South Wales Law Almanack* ,1963; Queen's University, Belfast—*Calendar*, 1962-63; Scottish Law List, 1963; University College Cork—*Calendar*, 1962-63; University College Dublin—*Calendar*, 1962-63; University College Galway—*Calendar*, 1962-63; University of Wales—*Calendar*, 1962-63; Victoria University, Manchester—*Calendar*, 1962-63.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETING OF THE COUNCIL

25TH APRIL, 1963: The President in the chair, also present Messrs. Reginald J. Nolan, Daniel J. O'Connor, Augustus Cullen, Dinnen B. Gilmore, Raymond A. French, John Maher, T. V. O'Connor, James R. C. Green, John J. Nash, George A. Nolan, Niall S. Gaffney, Desmond Moran, Ralph J. Walker, Charles Hyland, John Carrigan, Edward J. Dillon, George G. Overend, Thomas A. O'Reilly, Desmond J. Collins, James W. O'Donovan, Patrick Noonan, Gerard M. Doyle, Peter E. O'Connell, Brendan A. McGrath, Eunan McCarron, Rory O'Connor, Edmund Hayes, Richard Knight, Robert McD. Taylor, William A. Osborne, Patrick O'Donnell.

The following was among the business transacted:

#### Appointment of Extraordinary Member

Mr. Ralph J. Neilson, a member of the Council of the Incorporated Law Society of Northern Ireland, was appointed an extraordinary member of the Council in place of Mr. Charles MacLaughlin.

#### Appointment of Special Examiner

The Council on a recommendation from the Court of Examiners appointed Mr. Brian J. O'Connor, M.A., LL.B., solicitor, to be the Society's special

examiner in tort contract commercial law and practice and criminal law in place of Dr. Counahan who has resigned. Mr. O'Connor was admitted in Michaelmas term 1955 and he practises at 72 St. Stephen's Green, Dublin.

### Solicitor instructed in proceedings in respect of a claim for which there is no proper legal basis

A member acted for a statutory body against a member of the public for recoupment of part of the expenses for rendering certain services to dependents of the defendant. The amount sought was stated to be just and reasonable and the defendant would appear to be morally bound to pay it. Owing to what appeared to be a matter of inadvertence in the drafting of the relevant statutes the liability sought to be enforced is not in fact imposed by the statute on the defendant and member had to advise his clients, therefore, that the claim was not legally sound and that the defendant could raise a perfect defence to it. Nevertheless the clients instructed member to issue a civil bill and this was done. No defence was entered and member was instructed to mark judgment. His clients would have to swear an affidavit of debt that the money was "actually due and owing" and assuming that they were prepared to swear this affidavit member enquired if he was justified in filing it in the proper office. Member believed that in so far as the affidavit of debt purported to state that the money was legally due it was in fact false.

The Council, on a report from a committee, were of the opinion that the solicitor should not proceed any further in the matter. Member could not be a party to the filing of an affidavit which would use the court machinery to cause an obvious miscarriage of justice. If, however, there was a scintilla of argument in favour of the claim on legal grounds member would not be obliged to act as a judge against his own client and might file the affidavit. If there is no scintilla of legal argument in favour of the claim he should refuse to act further.

### Application by a solicitor for a client's Land Certificate in order to exercise a lien for costs

A member acted for a defendant in an equity suit in the Circuit Court which related to the title to registered land. The court found in favour of the plaintiff and a decree was given. On his client's instructions member served a notice of appeal to the High Court on circuit and when the time came near for the hearing of the appeal he asked his client to make a payment towards his costs as it was felt that it would be necessary to brief senior counsel. No reply was received by member to his letter and he could not get any further instructions from his client. The client did not appear at all at the sitting of the High Court on circuit and was not represented and as member was on record he appeared and informed the court that he had no further instructions. The High Court accordingly on the hearing of the plaintiff's evidence confirmed the order of the Circuit Court. Member has furnished to his client a bill of costs in respect of the Circuit Court proceedings and appeal but his request for payment has been ignored. He stated that his retainer was never actually withdrawn and he enquired if he would be within his rights in applying on behalf of his client for the land certificate (which has not yet been issued) in respect of the lands which were the subject matter of the action, presumably to exercise over it his lien for costs. He would apply as solicitor for the registered owner, his client.

The Council, on a report from a committee, were of opinion that on the facts given by member his client, although the registered owner, might not be the full owner of the lands. In the circumstances member should not apply for the land certificate.

## ORDINARY GENERAL MEETING

The General Meeting of the Society was held in the Great Southern Hotel, Bundoran, on Saturday, the 18th May, 1963. The President, Mr. Francis J. Lanigan, took the chair. The notice convening the meeting was taken as read and the minutes of the last meeting held on the 23rd November 1962 were also taken as read.

Mr. J. O'Doherty, Chairman of the Bundoran Urban District Council, and Mr. Gallagher, Vice-President of the Donegal Solicitors' Association welcomed the Society to Bundoran.

The President, speaking in reply, said :—

Mr. O'Doherty, Mr. Gallagher and members of the Incorporated Law Society, I am very glad to rise to reply on behalf of our members to the welcome extended to us by your Mr. O'Doherty on behalf of the people of Bundoran in your capacity as Chairman of the Bundoran Urban District Council and by Mr. Gallagher as Vice-President of the Donegal Solicitors' Association.

This is the third time that the half yearly meeting of the Society has been held outside Dublin. As you will recollect four years ago the first departure was to Killarney under the presidency of Mr. John Halpin, two years ago the meeting was held in Galway under the presidency of Mr. Ralph J. Walker. Each of these ventures was an outstanding success and encouraged our Council to leave the Capital again this year.

Having been to the south and west it is now only fitting that a visit be paid to the most northern county in Ireland and I am grateful to the members of the Donegal Solicitors' Association who have done so much to ensure the success of this weekend and to see to the comfort and enjoyment of those attending. They have been tireless and painstaking in doing all the hard

work behind the scenes to organise the occasion and have very kindly invited us to a cocktail party to be held before our dinner-dance tonight. On your behalf I thank them for their generosity.

I am sure that you will all join with me in sending every good wish to the president of the Donegal Solicitors' Association, Mr. J. Allan Osborne, whose advanced years prevented him from attending here today. Mr. Osborne commenced practice in 1894 and is the father of our profession. He attained the age of 91 last week and he is still in active practice, a record that can hardly be surpassed in legal longevity. I think the choice of Donegal for our meeting was a good one as you have here scenery unsurpassed in mountain, lake and seascape and although we are now in what was originally the Fort of the Foreigner we shall leave after this weekend with the new knowledge and awareness of one of the most beautiful counties in Ireland and its kindly and hospitable people. Your county has contributed richly to the history and culture of our land being once the kingdom of the O'Donnells, famous princes of the past, and the home of the Four Masters who compiled here their famous Annals over four centuries ago.

## Rule of Law

I am very proud to have the privilege of addressing you here today as a president of your Society and am even more proud to greet you all as fellow lawyers.

The solicitors' profession fills a very vital role in all civilized communities and is most necessary for the preservation of the right of the individual especially when such an individual comes in conflict with a Department of State or a powerful body such as a local authority or large corporation.

In this modern world with its complex society planning at various levels is becoming more and more prevalent and the rights of the individual are more than ever in need of protection. It is not for one moment suggested that any of our legislators at Government or local authority level would knowingly seek to impose undue or unnecessary hardship on any individual person or class of person but should such a case arise the one protection to the individual is the capable lawyer fearless to act and speak in his client's interest.

You have seen in other countries what has happened to the individual and indeed to large classes of individuals when totalitarian influences gain the upperhand and the rule of law is abrogated or conveniently forgotten. This could not have happened had those countries a strong and virile legal profession conscious of their duties and privileges to defend the right and trained to protect the inherent rights and interests of the most humble citizen.

Lawyers in Ireland are heirs to a proud tradition of independence and willingness to serve the public whatever the consequence. We of this present generation carry a tremendous responsibility to do all in our power to promote the rule of law, not only in our country but amongst the nations of the world.

## International Bar Association

Your Council continues to keep in close contact with the International Bar Association which we joined in 1956 under the leadership of our then president, Mr. Dermot Shaw. Meetings of the International Bar Association are held every second year and have been attended by a delegation from your Council headed by the president for the time being. The last meeting was held in Edinburgh in 1962 when your Council was represented under the leadership of Mr. George Overend.

The next meeting of the International Bar Association is scheduled for Mexico City towards the end of July, 1964, and I have noted from correspondence that I have received in the matter that Mr. John Carrigan, Senator John Nash, Mr. Dermot Shaw and Mr. Ralph Walker represent our country on the several committees of the conference.

Although a year has yet to pass before the conference will be held and the distance is considerable the Law Society of England have been in correspondence with our Society with a view to ascertaining if a chartered flight by air can be arranged for delegates attending from Europe. If they are successful in their efforts the cost of the journey would be very substantially reduced.

I mention this matter now as I should like to stress that attendance at conferences of the International Bar Association is open to all members of affiliated societies and accordingly any member of the Incorporated Law Society of Ireland who wishes to attend such a conference is perfectly free so to do. The conference in Mexico affords an opportunity of seeing new lands and new people and to meet practitioners of different systems of law.

## Law Reform

The reform and codification of our laws has always been an object of concern for your Council and we are very happy to see that this necessary and desirable object is now being pressed. I should like to place on record our appreciation of the steps now being taken in that regard by our present Minister for Justice and to assure him and his Department that the Society is wholeheartedly behind him in his efforts and are ready to place at his disposal the diverse experience of our members in country and city.

My distinguished predecessor, Mr. George G. Overend, during his year of office, instituted the practice whereby members of the Council, usually two in number, prepared and submitted to the Council a memorandum on the particular branch of the law requiring codification or reform. Many such memoranda were prepared and in due course were sent to the Department of Justice. I am happy to say that many of our recommendations were accepted and have been or will be reflected in legislation. I think the thanks of the Society are due to those members of the Council who devoted their time and ability in painstaking research and I am happy to note that their work was given public recognition in Dáil Éireann by the Minister on the debate on what is now the Hotel Proprietors Act, 1963.

Your Council is only too well aware of the difficulties of our practitioners owing to the lack of modern textbooks dealing with our changing laws and in an attempt to ameliorate the position have procured the publication of booklets dealing with the Civil Liability Act, 1961, Stamp Duty Legislation, the Administration of Estates Act, 1959, the Statute of Limitations Act, 1957 and the Married Woman's Status Act, 1957.

These booklets are not and were never intended to be exhaustive treatises on the branch of the law with which they deal but do afford to the practitioner a concise and clear statement of the changes effected by modern legislation.

A further booklet on contracts and the investigation of title on sale of property is in course of preparation and it is also hoped that the Council will be able to publish a booklet on Probate practice.

It is gratifying that work of this sort is not confined to the Council and to note that under the auspices of the Provincial Solicitors' Association a booklet will shortly be published dealing with estate duty.

When my predecessor, Mr. Overend, addressed you in General Meeting last November, he expressed the hope that the Society would arrange a series of annual lectures for qualified solicitors to be given on matters which had been the subject of legislative change during the preceding year. Your Council is now engaged in arranging a number of lectures of this nature and with a view to facilitating practitioners who would find it inconvenient to travel to Dublin

intend to have the lectures taperecorded and made available for hire by any Bar Association wishing to obtain same.

### Legal Aid

The Criminal Justice Legal Aid Act, 1962, is now on the Statute Roll but as yet no regulations have been made bringing it into force or setting out the procedure to be followed and the fees to be paid. Your Council have given considerable attention to this matter and have submitted a detailed memorandum thereon to the Minister for Justice. I have myself seen the Minister on this novel and important matter and have assured him that our profession look upon legal aid in criminal matters as a substantial advance in the social legislation of the State and are anxious to make it work. We have stressed the cardinal principle that subject to considerations as to distance a person accused of a crime must be entitled to engage the lawyer of his own choice to defend him and further that the fees to be paid to solicitors under the scheme must be commensurate to the work done and the responsibility involved.

I understand that a scheme for legal aid in civil matters is also envisaged but I believe that it will not be introduced until sufficient time will have elapsed to see how the matter works on the criminal side of the Courts.

### Solicitors' Benevolent Association

Last January I had the privilege of seconding the adoption of the Annual Report of the Solicitors' Benevolent Association as it entered its centenary year. I then appealed to every solicitor who was not a subscriber to the Association to join and I make no apology in repeating this appeal to contribute to what is our own particularly private and personal charity.

It may not be known generally that the Solicitors' Benevolent Association covers not only that part of Ireland in which you and I practise but also covers and caters for the entire country both North and South and gives relief when required without limit as to border or any other like consideration.

The annual subscription of £1 has remained unchanged over the last one hundred years although the needs of the Association have expanded to a tremendous degree since its foundation. To mark its centenary the directors of the Solicitors' Benevolent Association founded a new annuity to be called "The Solicitors' Benevolent Association Centenary Annuity" and have appealed to their members for support to this foundation. I am glad to be able to tell you that the response of the profession has been generous but I again add my voice to the appeal and urge every solicitor in Ireland, North and South, to become an active member.

### Bar Associations

Bar Associations as always form the foundation upon which the organization of our profession exists and today there is even more necessity for professional men to form themselves into associations to promote the well-being of their members and protect their interests.

Every solicitor practising in the State should be a member of his local Bar association and I am asking you as members of the Incorporated Law Society to try and achieve this result each in your own locality. At the same time you might impress on each fellow practitioner the desirability of becoming a member of the Incorporated Law Society by pointing out what has been done by the Society in the past and by giving an assurance that the Council of your Society are ever vigilant in protecting the interests of the profession and in dealing with matters affecting their well-being in this rapidly changing world.

I have attended a number of social functions sponsored by the local Bar Associations and have been impressed by the feeling of goodwill that exists between the members and the loyalty shown to the association. This loyalty and goodwill can do nothing but good in furthering the interest not only of the local members but of the profession as a whole.

### Solicitors' Apprentices Debating Society

The education of solicitors' apprentices who will form the lawyers of the future is one of the most important tasks entrusted to your Council and one of which they are very conscious.

Although not strictly within the confines of such education with its system of lectures and examinations the Solicitors' Apprentices' Debating Society plays an important part. I ask any of you who have apprentices to our profession to encourage them to join the Solicitors' Apprentices' Debating Society which will give them a unique opportunity to practise the art of public speaking and improve their advocacy when they are admitted to the roll of solicitors.

### Conclusion

At this summer meeting I have dealt but very briefly with matters of common interest to our profession, may I close by expressing the hope and earnest wish that during the remainder of my year in office I may maintain the high standard set by my predecessors. In expressing this wish I am fortified by the assistance given and always available to me by every member of the Council and by my Vice-Presidents, Mr. Desmond Collins and Mr. Patrick O'Donnell. To each and every member of the Council I owe a deep debt of gratitude.

Mr. Plunkett is as always a tower of strength and I am more than grateful to him for his guidance and assistance in the past and which I know will always be forthcoming for the remainder of my term.

In accordance with byelaw 28 the following were appointed scrutineers for the ballot of the election of Council for the year 1963/64:— John R. McC. Blakeney, Thomas Jackson, Brendan P. McCormack, Alexander J. McDonald, Roderick J. Tierney

The following motion was proposed by Mr. Desmond J. Collins and was seconded by Mr. Niall S. Gaffney:—

> That byelaw 3 of the Society be and is hereby amended by the substitution of "6th January" for "1st day of May" in lines 5 and 9 and by the substitution of "1st July" for "Michaelmas Sittings" in lines 7 and 8 and that any necessary consequential amendments in the byelaws be made to give effect thereto.

The motion, the effect of which is that members' annual subscriptions to the Society will be payable in January of each year from January 1964, instead of in May, as heretofore, was passed unanimously.

Messrs. Edmund Carroll and T. D. McLoughlin addressed the meeting under general business and the meeting was then declared closed by the President.

## SOCIAL EVENTS

On Saturday afternoon a number of the members took part in a Golf Competition organised by the Solicitors' Golf Society.

On Saturday evening members and their wives were guests of the Donegal Solicitors' Association for a cocktail party after which there was a Dinner Dance. Over 200 members attended the Dinner Dance. Among the guests present were His Honour Judge Ryan, the President of Law Society of England and Mrs. Lawson, the Vice-President of the Law Society of England and Mrs. Long, the President of the Law Society of Scotland and Mrs. Watson, and the President of the Incorporated Law Society of Northern Ireland and Mrs. Rankin.

On Sunday members attended the showing of the film "The Lawyers".

## INCOME TAX. ASSESSMENT ON "COSTS EARNED" BASIS

A committee of the Council in the course of dealing with a query from a member relating to assessment of his profits under schedule E considered the general question of the assessments of a solicitor's profits on a "costs earned" or "costs furnished" basis as opposed to a "costs received" basis. On an assessment under the last mentioned basis, as is suggested by the term, a solicitor is assessed for the year on the actual profit costs received by him during the year regardless of when earned. On a "costs furnished" basis for assessment the solicitor is assessed on the total profit figure for the bills of costs furnished by him during the year of assessment. On a "costs earned" basis of assessment the figure for costs furnished for the year is taken and on to this is added the figure for costs earned but in respect of which no bill has been furnished up to the end of the year and there is deducted from the total so obtained the figure for costs earned but in respect of which no bill was furnished at the beginning of the year. The three bases of assessment might be illustrated as follows:—

| | £ |
|---|---|
| 1. Costs received (say 1962 accounting year) | |
| Costs earned and paid in the year ... | 5,000 |
| Costs received on bills furnished in the previous or earlier years ... | 500 |
| Total ... | £5,500 |
| 2. Costs furnished (say 1962 accounting year) | |
| Total costs (excluding outlay) on bills furnished in the year (although relating to 1962 and the previous year or years) ... ... ... | 6,000 |
| 3. Costs earned (say 1962 accounting year) | £ |
| Costs furnished during the year ... | 6,000 |
| *Add:* | |
| (*a*) estimated costs earned in 1962 on cases completed but unfurnished ... ... ... ... | 1,000 |
| *Add:* | |
| (*b*) estimated costs earned on cases current at the end of the year ... | 2,000 |
| | £9,000 |
| *Deduct:* | |
| (*a*) and (*b*) provided at the end of the 1961 accounting year ... | 4,000 |
| Returned for assessment 1962 ... | £5,000 |

and this is the way the Costs Account would appear in the books of the imaginary person concerned :—

*Costs Account*

| | | | | |
|---|---|---|---|---|
| 1961 | To Balance ... ... | £4,000 | | |
| 1962 | By Costs received ... | | | £5,500 |
| | To Transfer to the credit of Clients ... ... | 5,500 | | |
| | By Costs furnished and charged to Clients ... | | | 6,000 |
| | By Balance ... ... | | | 3,000 |
| | To Revenue Account: | | | |
| | Costs earned ... ... | 5,000 | | |
| | | £14,500 | | £14,500 |
| 1962 | To Balance ... ... | £3,000 | | |

and if we assume the office expenses, such as Salaries, Telephone, Stationery, Rent, etc., at £3,500 we find that the Net Profit Costs would be :—

| | |
|---|---|
| Costs received basis ... | £2,000 |
| ,, Furnished basis ... | 2,500 |
| ,, Earned basis ... ... | 1,500 |

The committee had before them also the recent English decision of Wetton Page & Co. *v.* Attwooll (1963 1 All England Reports, page 166) from which it appears that the Inspector of Taxes can elect upon

which basis a solicitor or any professional man is to be assessed and can, in fact, change the basis of assessment for good cause. This case is reported in the February 1962 issue of the GAZETTE at page 74. In this case the court expressed the view that the costs earned basis is preferable to any of the others as being more accurate.

It seems clear that neither the costs furnished nor the costs received basis gives a clear picture of what is really earned in the period for which any assessment is made. The earnings basis has the advantage of avoiding the fluctuations which occur in the other two and it appears that quite a number of solicitors have adopted this basis and in so doing have been relieved of liability to sur-tax which might otherwise arise from time to time.

## CERTIFICATE OF DISCHARGE FROM DEATH DUTIES

It is possible that some members may be experiencing difficulties when acting on behalf of executors or administrators in an estate which is liable to death duties and in which the assets include leasehold property. In such cases, where an application is made for a certificate of discharge from death duties, the certificate is given on form 149 which contains a proviso that if the property is sold within six years the Revenue are entitled to raise again the question of the valuation thereof. This will arise where the property has been referred to the Valuation Office (as it always is) and the Valuation Office have "raised no question" as to the valuation instead of officially determining the value. In such a case the solicitor acting for the executor or administrator has to withhold a certain sum of money, usually out of the residue, to provide for the excess duty which may have to be paid and in many cases the executor will be under pressure from the residuary legatees if this money has to be held for a period of six years. It is, of course, necessary to retain some of the assets to cover this contingency where the above-mentioned certificate is issued especially where the executor is not himself a beneficiary of the estate.

In case some members are unaware of the fact, it should be pointed out that there is a section in the Finance Act, 1894, which will enable the executor or administrator to apply to the Estate Duty Office to determine the rate of estate duty to be paid in respect of the property and to issue a certificate to that effect. Members are referred to section 11 (2) of the Finance Act, 1894, and to section 14 of the Finance Act, 1907. The Society was in correspondence with the Estate Duty Office about this matter in the past (see GAZETTE for August 1944, page 21, April 1948, page 61 and August 1948, page 23) and at that time the Estate Duty Office stated that whereas they were advised as a general rule they could not be compelled to determine officially the rate of duty under the sections above referred to they would be prepared to receive any such applications and it is understood that they are granted in most cases.

## INTERNATIONAL BAR ASSOCIATION TENTH CONFERENCE MEXICO CITY JULY 27th—31st, 1964

The Society has received a communication from the International Bar Association seeking information as to the number of members from this Society who would be likely to visit Mexico City in 1964 in connection with the 10th conference of the I.B.A. Efforts are being made to organise a charter flight to Mexico City, probably from London Airport. The organisers require information from each member body for the purpose of making the necessary arrangements for charter flights. On present information it looks as though the cost per person on a charter flight would be about £140 return from London Airport to Mexico City as against the normal return fare of about £260 and a group flight (25 persons or more) return flight of about £205. This information is naturally on the basis of the current rates for flights to Mexico City. Any members of the Society who are interested in these arrangements are requested to communicate with the Secretary from whom further information can be obtained.

## INTERNATIONAL FACULTY OF COMPARATIVE LAW

The Faculty of Comparative Law which is part of the International University of Comparative Sciences at Luxembourg provides intensive courses in the organisation and law of the European communities and courses in comparative law and institutions during its two sessions per year, one of five weeks in the Spring and another of six weeks in the Summer. The Summer course this year will be held at Luxembourg from 15th July to 7th September. The courses are open to law graduates or persons holding legal professional qualifications. They are organised in such a way that English speaking participants are able to follow the complete course. Scholarships for the courses are awarded to suitable applicants.

The latest date of application for the Summer session is the 15th June and application forms may be obtained from the Secretariat, 13 rue du Rost, Luxembourg.

## UNDERTAKINGS TO PRODUCE CERTIFICATES OF DISCHARGE FROM SCHEDULES A AND B INCOME TAX

A solicitor who finds himself required to give, on a closing of a sale, an undertaking to produce a certificate of discharge from Schedules A and B Income Tax under section 6 of the Finance Act, 1928, should, it is hardly necessary to say, satisfy himself as to his ability to discharge his undertaking. This involves satisfying himself as to his client's liability for tax and if he is quite satisfied that the client has no such liability or that it has been cleared he can, with safety, give the undertaking in order to close the sale. There are, however, certain hidden dangers of which some members may not be aware and one of these might best be illustrated by the following example:—Supposing a client who is selling his own dwellinghouse is in a salaried job and the total of his income from his salary, which would be assessable under Schedule D, added to the total under Schedule A from the property of the house is exceeded by his various personal allowances, marriage allowances, etc. He is then in a position of being liable to a " tax on charges ", that is to say, he must when paying his ground rent deduct tax at the full standard rate and account therefor to the Revenue. He is, in effect, in the position of a collector of taxes but is not, of course, paying any tax on his own income. Suppose, also, that his tax position is such that any small increase in his income would bring him " over the line " and make him liable for both Schedule D and Schedule A tax. The solicitor on looking into his client's tax position, might feel quite justified in giving an undertaking to the solicitor acting for the purchaser of the premises to produce a certificate of discharge from Schedule A tax thereon as he would feel quite confident of being able to secure such a certificate without any difficulty, especially if his client had made returns over the years and had not been found liable to tax. However, if the client concealed from the solicitor, either fraudulently or without any fraudulent intent, a third source of income, say, from a small business carried on as a sideline or an income accruing to his wife and if this were to come to the notice of the Revenue after the sale had been completed and the undertaking given the solicitor could then find himself in a serious position. The client would find himself liable to Schedule D and, what is more important from the point of view of the solicitor giving the undertaking, Schedule A tax, and it could go back a good number of years. The primary liability to the purchaser in respect of the Schedule A tax would then fall on the solicitor on foot of his undertaking who would, in turn, have to look to his client.

## SHARING PROFITS WITH UNQUALIFIED PERSONS

A member recently answered a press advertisement from a party who advertised that he was willing to undertake legal work on a part time basis. Member answered the advertisement and got in touch with the advertiser and it transpired that he was an unqualified law clerk. He stated to member that his terms for carrying out the work would be one-quarter the professional charges allowed for each of the items actually done according to the scales in operation. The member concerned asked the Council for their opinion as to whether or not such a course would be open to objection and the Council, on a report from a committee, stated to member that he should not enter upon the arrangement proposed.

The authority for this is regulation 7 of the Professional Practice (Conduct and Disciplinary) Regulations, 1955 (S.I. No. 151 of 1955) 1963 calendar page 135, in which it is provided that a solicitor shall not agree to share with any unqualified persons his profit costs in respect of any business either contentious or non-contentious. Certain limited and special situations are excepted from this rule but the general rule is as stated above.

Apart from the question of profit sharing with an unqualified person the Council do not approve of the employment of part time legal agencies for any legal work except in the recognised field of searches and costs drawing. A statement to that effect will be found in the GAZETTE for October/November 1960, at page 54.

## COUNTY CAVAN SOLICITORS' ASSOCIATION

At the annual general meeting of the Association on the 7th May, 1963 the following committee was elected: Messrs. S. J. Gannon, Killeshandra, P. Cusack, Ballyjamesduff, P. N. Smith, Cavan, T. C. Vance, Bailieborough, James Smith, Arva, G. V. Maloney, Cavan, Senator T. J. Fitzpatrick, Cavan and P. J. O'Reilly, Bailieborough.

Mr. James Smith was appointed President and Mr. G. V. Maloney was appointed Secretary.

## DECISION OF PROFESSIONAL INTEREST

*Irish citizen charged with alleged offences under an English statute which does not apply in Ireland—warrant for arrest issued in England*

On the 6th December, 1960, the prosecutor was taken into custody by a member of the Garda

Síochána on foot of two warrants signed by a Justice of the Peace for the Borough of Kingston-upon-Thames, London and duly endorsed for execution in Ireland by a Deputy Commissioner of the Garda Síochána. The prosecutor was arrested and brought to the Bridewell in Dublin for the purpose of being handed over to the English police. The warrants contained recitals that informations on oath had been laid against the prosecutor alleging offences under sections 154 (13) and 156 (*a*) of the Bankruptcy Act, 1914, as amended. This Act is an English statute which never applied in Ireland. The prosecutor obtained a conditional order of habeas corpus and subjiciendum directed to the station sergeant at the Bridewell and on the application to make absolute the conditional order the cause shown was allowed and the conditional order discharged. Against this order the prosecutor appealed on the grounds, inter alia, that there was no evidence that the acts alleged in the warrants constituted a crime or offence under English law.

It was held by the Supreme Court (reversing the High Court) that the cause shown should be disallowed and the conditional order of habeas corpus made absolute.

Walsh J. who delivered the judgment of the court stated, in the course of his judgment, that there was no evidence that the matters complained against the applicant in the warrants are offences or crimes, under English law. Adopting the view of Gavan Duffy P., in the State (Dowling) *v.* Brennan and Kingston 71 I.L.T.R., 90, 131, (1937) I.R. 483, at p. 509, Mr. Justice Walsh said that he was of opinion that the appropriate authority in Ireland should decline to affix his indorsement to such a warrant until he is satisfied on proper evidence that the warrant was issued for a crime or an offence according to the law for the time being in force in the country in which the warrant originated.

(The State *v.* Sergeant Samuel Bell, *Irish Law Times*, April 27th, 1963, page 114.)

## THE REGISTRY

### Register A

SOLICITOR'S practice for sale in progressive midland town. Box No. A200.

SOLICITOR'S office and practice for sale in Munster Town. Box. No. A.201.

A DUBLIN SOLICITOR disposing of substantial Country Agency. Enquiries to Box A.202.

### Register C

In the Goods of ARTHUR CLAXTON, late of Dysart, Portlaoise (formerly " Maryborough ") in the County of Laois (formerly Queen's County), Farmer, deceased, who died on or about the 18th day of April, 1963. Will any solicitor having in his possession and custody the Original Will of the above deceased, or knowing its whereabouts please communicate with the under-named solicitors. Dated the 20th May, 1963. Horace Turpin & Son, Solicitors, Portlaoise, Laois.

WILL any Solicitor having knowledge of a will of John Bernard Rooney late of The Clarence Hotel, Dublin, who died in a Dublin Hospital on the 20th March, 1962, kindly communicate with Reid & Sweeney, Solicitors, Ballyshannon, Co. Donegal.

ESTATE of Miss Catherine McKevitt, late of 56, Bath Street, Irishtown, Dublin. The undermentioned solicitor is anxious to trace any original Will of the above named deceased. Would any solicitor who may have knowledge of the whereabouts of any such document kindly communicate with Peter Woods, Solicitor, Dundalk.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 14th day of June, 1963.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner Charles Leslie Hale. Folio number 14613. County Galway. Lands of Inishlackan in the Barony of Ballynaninch containing 4a. 2r. 28p.

2. Registered Owner James Feehan. Folio number 1569. County Queens. Lands of Ballickmoyler in the Barony of Slievernargy containing 36½ perches.

3. Registered Owner Marie Josephine Lyons. Folio number 449(R). County Longford. Lands

of Derryglogher in the Barony of Moydow containing 326a. 2r. 7p.

4. Registered Owner Margaret Ryan. Folio number 19829. County Limerick. Lands of Ballynagarde in the Barony of Clanwilliam containing 19a. 2r. 20p.

5. Registered Owner James Gilroy. Folio number 1000. County Sligo. Lands of Grange in the Barony of Carbury containing 7a. 2r. 26p.

6. Registered Owners Most Rev. Michael Fogarty, Very Rev. John Scanlan and William Sullivan. Folio number 5757. County Tipperary. Lands of Ballykinash in the Barony of Ormond Lower containing 1a. 2r. 19$\frac{2}{5}$p.

7. Registered Owner Coras Iompair Eireann. Folio number 2389. County Monaghan. Lands of Carn in the Barony of Dartree containing 0a. 2r. 9p.

8. Registered Owner Edward Barry. Folio number 13744. County Cork. Lands of Arundelmills in the Barony of Ibane and Barryroe containing 4a. 3r. 39p.

9. Registered Owner John C. Callan. Folio number 16588 (Revised). County Cavan. Lands of Dunaree in the Barony of Clankee containing 17a. 2r. 24p.

10. Registered Owner Phillip Dolan. Folio number 15853. County Cavan. Lands of Tuam in the Barony of Tullyhaw containing 2a. 2r. 10p.

11. Registered Owner Samuel Freeman. Folio number 9228. County Donegal. Lands of Carnamoyle containing 16a. 3r. 37p. and an undivided moiety of the other part of the lands of Carnamoyle containing 44a. 0r. 10p. both situate in the Barony of Inishowen West.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives, widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:

SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET
DUBLIN.


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1963

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### ASSISTANT TO THE SECRETARY

Applications are invited from solicitors for the above post which is progressive. Particulars from the Secretary, Solicitors' Buildings, Four Courts.

### MEETINGS OF THE COUNCIL

30TH MAY: The President in the chair, also present Messrs. Thomas A. O'Reilly, Edward Dillon, Dinnen B. Gilmore, Robert McD. Taylor, Gerard M. Doyle, William A. Osborne, Desmond J. Collins, George G. Overend, John Carrigan, James R. C. Green, Patrick Noonan, Reginald J. Nolan, T. V. O'Connor, Desmond Moran, Augustus Cullen, Eunan McCarron, Daniel J. O'Connor, John Maher, John J. Nash, George A. Nolan, Patrick O'Donnell, James W. O'Donovan, Brendan A. McGrath, Raymond A. French.

The following was among the business transacted:

#### Donegal Solicitors' Association

The meeting resolved that the best thanks of the Society was due to the officers and members of the association for the hard work done by them for the Society's half-yearly meeting at Bundoran and also for the hospitality shown to members and their wives attending the meeting.

#### Legal Diary

The Secretary gave details of the arrangement for the publication of the legal diary by new publishers. The arrangement which has been made between the

publishers on the one hand and the Society, the Bar Council, the judges and the Departments of Justice and Finance on the other hand was approved by the Council and it was resolved that the Secretary should sign on behalf of the Society the draft memorandum of agreement which was read to the meeting.

## Solicitor's liability for medical fee for report. Implied undertaking

A member acted for an injured workman who proposed to bring an application against his former employer under the Workmans' Compensation Acts. Member wrote to a medical specialist stating as follows : "I act for the above in his claim under the Workmans' Compensation Act against X for an injury to his right eye and you operated on him and have been treating him at the Eye and Ear Hospital. In order to file his claim I require a medical report setting out his ailments and his present and future condition. Will you please send me such a report at your convenience with a note of your fee which I hope to provide for you on termination of the proceedings." A report was furnished by the specialist from which it was clear that the application would fail together with an account for £5 5s. Member replied stating that he had hoped to base his claim under the Workmans' Compensation Acts but in view of the report he did not propose to do so. He further stated that he had no funds to discharge the account. The specialist replied stating that the report had been sent on the understanding that member would be responsible for his fee and he insisted that the amount be paid. The specialist raised the matter with the Society and asked for a ruling to transmit to his professional association of which he was honorary secretary. . Member stated to the Society that he had given no personal undertaking, that he supplied the name and address of the client when writing and stated clearly that he was acting on behalf of the client. The Council on a report from a committee were of the opinion (*a*) that there was no personal undertaking and (*b*) having regard to the particular wording used by member in the correspondence with the specialist, "will you please send me such a report at your convenience with a note of your fee which I hope to provide for you on termination of the proceedings," member should assume personal responsibility for the fee. The committee reporting on the matter took the view that member ought, unless he intended to accept personal responsibility, to have made it clear that he would not pay the fee except in the event of the successful termination of the proceedings and to that extent the committee thought that the specialist may have been unintentionally misled.

## Company nameplates outside solicitor's office

A member asked for the opinion of the Council as to whether there would be any objection to his having nameplates of the offices of the various companies for which he acts as registrar at his letterbox. He stated that several companies had their registered office at his office and he pointed out that correspondence addressed to these companies frequently went astray as it was delivered into one or other of the five other offices in the same building. The Council on a report from a committee were of opinion that no objection should be taken to the course suggested.

## PRESENTATION OF ADMISSION PARCHMENTS

At a ceremony held in the Solicitors' Buildings the President, Mr. Francis J. Lanigan, presented Admission Parchments to newly admitted solicitors. The President, addressing the gathering, said :—

I have great pleasure in being here today to present certificates of enrollment to newly admitted solicitors and on behalf of the Council of the Incorporated Law Society of Ireland to welcome them to the profession.

You have become Members of an old and honourable profession and one with great traditions of independence, integrity and service to the public. I am glad to have the privilege of addressing you as fellow lawyers and I do not think that in so doing I can pay you any higher compliment. A solicitor of today must be a lot more than an expounder of our law, complex as it may be. In your years of practice you will find that you will tend to be guide, philosopher and friend to your clients who will often be called upon to advise on problems of a social and personal nature.

A solicitor today, quite apart from the law, must know something about practically everything and I feel that the knowledge which you gain in general practice will give you a greater insight into human nature and assist you materially in advising clients who seek your assistance.

To the layman the law is complex, its procedure difficult and the problems that it raises are hard to solve. We as lawyers recognize this to be so but in a complex modern society it would appear inevitable. This puts a responsibility on our profession greater than it has ever been in the past and one which

I am sure you will shoulder in a manner in keeping with the great traditions of Irish lawyers. Today is the day of the specialist and although most of you will be in general practice I think the solicitor of the future must consider specialization in some particular branch of the law. This has happened in England to a large extent and the need for specialization will inevitably extend to this country if it has not done so already in the larger centres of population.

I am asking each one of you to become a member of the Incorporated Law Society and to support your Council in protecting the interests of our profession and in their efforts to improve the lot, of each individual solicitor whether he be newly admitted or many years in practice. I would ask you also to join your local bar association. The local associations are the foundation upon which the organization of our profession is built and in present times are more necessary than ever in the interest of our profession.

Previous Presidents on occasions like unto this have advised newly admitted solicitors not to seek to establish individual practice but to gain experience, say as an assistant in a large firm of solicitors or with an experienced practitioner. Whilst this is advice which I did not take when I was in the position in which you are today I recognize the wisdom of the advice. Therefore while not seeking to dissuade any of you who intend to work on individual lines I would recommend that you give serious consideration to the desirability of gaining that knowledge which can only come from experience in a situation which will enable you in times of difficulty to seek the assistance of a colleague of many years standing.

Whatever way you pursue your professional life I wish you well and extend to you a hearty welcome to our profession.

The following Solicitors received their parchments:—

Sean Burke (B.A., B.C.L.), 40 Dartry Road, Rathmines, Dublin; Patrick J. Connellan, Church Street, Longford; Brian J. Gardiner (B.C.L.), 4 St. Albans Park, Ballsbridge, Dublin; William J. P. Kirwan (B.C.L), "Hilary," Howth Road, Raheny, Dublin; Helen M. Kirwan (B.C.L.), "Hilary", Howth Road, Raheny, Dublin; Garrett P. Lombard, Avenue House, Gorey, Co. Wexford (Special Certificate); Peter Joseph McMahon, Portnablagh, Letterkenny, Co. Donegal; Margaret H. O'Callaghan (B.A.), Carberry, Silchester Road, Dun Laoghaire, Co. Dublin; Carmel Mercedes O'Halloran, 67 Sandford Road, Dublin; Sylvester V. Riordan (B.A.), Coolbawn, Barnhill Road, Dalkey, Dublin (Special Certificate); Thomas C. Smyth, 15t St. Mary's Road, Dundalk, Co. Louth; Daire Walsh, Ard-na-Glaise, Stillorgan Park, Blackrock, Co. Dublin.

## COUNTY OF TIPPERARY AND OFFALY (BIRR DIVISION) SESSIONAL BAR ASSOCIATION

At the annual general meeting of the association held in Thurles on 22nd May, 1963, the following officers were elected: President, Dominick H. Kearns, Portumna; Honorary Secretary, John Carrigan, Thurles; Honorary Treasurer, Martin T. Butler, Thurles; Committee: Michael C. Black, Nenagh, Henry Hayes, Nenagh, Michael O'Meara, Nenagh, Patrick F. Treacy, Nenagh, John C. Devitt, Roscrea, Donal G. Binchy, Clonmel, Robert A. Frewen, Tipperary, Francis Murphy, Clonmel, N. J. O'Donnell, Tipperary, T. J. Reilly, Clonmel, Edgar J. Ryan, Killenaule, Richard D. Kennedy, Tipperary, Donald T. Ryan, Cashel.

## SERVICE BY REGISTERED POST

Owing to the resignation of a summons server for the Wicklow area the Circuit Judge has made an order permitting service of Circuit Court documents by prepaid registered post for three months from 1st June, 1963, or the earlier appointment of a summons server.

## SOLICITORS' GOLFING SOCIETY

The following are the results of the Society's Spring meeting held at Baltray on the 15th of June. *Challenge Cup and Captain's Prize:* D. P. Shaw (10), Mullingar, 2 up. J. P. McGeough (8), Monaghan, all sq. *St. Patrick's Plate:* John Maher (10), Dublin, 5 up. M. S. Matthews (12), Drogheda, 1 down. *Veteran's Cup:* T. F. McKeever (8), Dublin, 1 up. E. Gillen (19), Drogheda, 3 down. *Member more than 30 miles from Baltray:* D. O. Stuart (9), Dublin, 1 down. *Best 1st Nine:* Justice John Carr (9), Dublin, 2 up. *Best 2nd Nine:* W. A. Tormey (10), Athlone, all sq. 3 *Cards by lot:* M. A. O'Carroll (10), Athlone, 2 down.

Next Outing: Carlow, 28th September, for President's Prize.

## CARLOW BAR ASSOCIATION

The following have been elected officers and committee of the above Association for the year 1963:—President, Hugh O'Donnell, Carlow; Honorary Secretary and Honorary Treasurer, Robert J. Kehoe, Carlow. Committee: Francis J. Lanigan, Carlow, Patrick Cody, Bagenalstown, A. W. Jeffers, Tullow and Carlow, Desmond Early, Carlow,

## COMMITTEE ON COURT PRACTICE AND PROCEDURE

The Committee on Court Practice and Procedure are at present considering the question of civil jury trial with a view to making recommendations to the Minister for Justice as to whether this mode of trial should be modified or abolished. The Committee are prepared to hear evidence from members of the legal profession on this matter. Persons wishing to attend a meeting of the Committee for this purpose should write to the Secretary at the Four Courts, Dublin, or ring 76642, Extension 42.

## DECISIONS OF PROFESSIONAL INTEREST

*Order against solicitor to pay costs reversed*

The Court of Appeal has reversed the decision of a Divisional Court which had ordered a solicitor to pay fifteen guineas the costs of a successful appeal by the prosecution from a decision of justices dismissing summonses in a road traffic case. This case was reported in the January issue of the GAZETTE at page 68. The informations were laid against the accused, whom the solicitor represented before the justices, in February 1961 five weeks after the alleged offence. The respondent could not then be found and the summonses were not served until September 18th, 1961. The solicitor had taken the point that the proceedings were barred by lapse of time and this was held by the Divisional Court to be a bad point. The particular section upon which the point was taken provides that summary proceedings for the offence should be "brought" within six months from the date of commission of the alleged offence and the solicitor had submitted that the proceedings were not "brought" until the summons was served.

In the Court of Appeal it was stated by Lord Denning M. R. that the solicitor appearing as he was on behalf of the accused had a duty to take any arguable or even bad point which could honestly be put before the court on behalf of his client. An advocate had not to determine whether a point was good or bad. His duty was to take any point available and it would only become misconduct if it was dishonest, if he knowingly took a point and thereby deceived the court. Nothing short of that would amount to misconduct in an advocate. Lord Denning described the point taken as "fairly arguable." Another of the judges thought that it was "faintly arguable." In addition it was held that no order should be made against the solicitor to pay costs in pursuance of the jurisdiction over solicitors unless fair notice is given to the solicitor of the matter alleged against him as misconduct and unless he was given a fair opportunity of being heard in answer. In this case the solicitor had not been given such an opportunity and on that ground alone, apart from the fact that in the opinion of the Court of Appeal there had been no misconduct, the decision of the Divisional Court should be reversed. (*The Law Times*, May 3rd, 1963).

*Mere presence at an affray not sufficient for a conviction of aiding and abetting*

The Court of Criminal Appeal in England allowed the appeal of three defendants against their convictions at Lincoln Assizes on February 8th 1963. The appellants were accused and convicted of aiding and abetting an affray at Scunthorpe on September 8th, 1962 in which a number of Somalis fought with a number of white men and one Somali was killed. The basis of the appeal was a complaint that the trial judge had wrongly directed the jury as to the law of aiding and abetting an affray. All the appellants had stood and watched at the fight and it was the prosecution's case at the trial that they were thereby aiding and abetting it. The judge has a printed direction on the law which he handed to each member of the jury and paragraph 4 of this direction ran as follows: "Every person is however a party and guilty who (1) agrees that such a fight should take place and in pursuance of that agreement is later present at it. (2) Without such agreement unlawfully joins in such fight or being present chooses to remain either (*a*) knowing that his continued presence encourages the fight or (*b*) intending to join in the fight if his help was needed by his side." Exception was taken by the defence to paragraph 4 (2) (*b*) and it was said that in effect the judge had told the jury that they were in duty bound to convict an accused person who was proved to have been present at an affray if it was also proved that he nursed an intent to join in if his help was needed. This was said to be so notwithstanding that he did nothing by word or deed to execute his intention. If this were right a man might be convicted for his thoughts. In the opinion of the court encouragement in one form or another was the minimum requirement before an accused person could be a principal in the second degree of any crime. In the present case paragraph 4 (2) (*b*) amounted to a basic misdirection for the jury might well have thought they were bound to

convict the accused if they were satisfied that the accused were voluntarily present at the fight and might have joined in at a later stage. The appeals were accordingly allowed.

(R. *v.* Allan and others, *The Guardian*, June 19th, 1963).

*Duty of an umpire in taxing and settling costs of an arbitration award*

The English Arbitration Act 1950 gives power, in certain circumstances, to have the remuneration of umpires and arbitrators taxed. Section 18 (1) gives to the arbitrator or umpire a discretion as to the costs of the reference and of the award. Where he awards costs he may either leave them to be taxed by the taxing machinery of the court in whole or in part or he may himself " tax or settle the amount of costs to be paid." A common practice is for the umpire to separate the costs of the award from the costs of the reference. The costs of the award are the arbitrator's and umpire's fees and any expenses which they may have incurred and the costs of the reference are the costs incurred by the party to whom costs are awarded other than the costs of the award. The costs of the award are " taxed or settled " by the umpire and the costs of the reference are frequently left to the taxing machinery of the court. In a motion by a ship owner to set aside or remit the award of an umpire made in the form of a special case under section 21 (1) (*b*) of the Arbitration Act 1950 the facts were as follows: On May 31st 1953 the owner entered into a charter party with the charterers whereby a vessel was chartered to them for a voyage and the agreement provided for arbitration in the event of a dispute arising. Each side was to nominate an arbitrator. A dispute did arise and the arbitrators appointed being unable to agree after a meeting of two hours appointed an umpire. In making his award the umpire ordered that the costs of the award amounting to £612 3s. be paid by the owner. He further ordered that the owner pay to the charterers the costs of the reference. The fees of the two arbitrators were £183 15s. and £157 10s. respectively. The owner brought a motion to set aside the award on the grounds that the umpire had misconducted himself by settling his own and the arbitrators' remuneration at a figure which was wholly excessive. The court held that the umpire's jurisdiction to tax and settle costs involved the application by him of his own independent mind and judgment to the fees demanded and the work done in order to be satisfied that the fees were fair and reasonable, bearing in mind the interests of the party who have to pay them as well as the legitimate interests of the arbitrators. It appeared from an affidavit sworn by the umpire that he did not regard it in any way his business to consider and assess the value of the service of the arbitrators or the remuneration which they could fairly claim to be paid. He simply included in the award the amounts which they asked him to include. The words in the section gave a power to " tax or settle " and the umpire had now done this and accordingly was guilty of technical misconduct. It was ordered that the award be remitted for reconsideration of the provision as to costs of the award.

(Government of Ceylon *v.* Chandris, 1963 2 *All England Reports*, page 1).

*Confidential report on a minor not disclosed to one of the parties in a wardship matter*

The mother of two infant children applied by originating summons that the infants be made wards of court and for custody, care and control and access. The father was a respondent to the application, there being conflict between the parties as to custody, etc. On the issue of the summons, the infants became wards of court and the master subsequently ordered that they be joined as respondents, and that the official solicitor be their guardian *ad litem*. In due course, the official solicitor lodged a statement of facts in which he submitted that the mother should take the infants to be seen by a named medical specialist, and at the same time he lodged a confidential report. The master ordered that the mother take the infants to the specialist and subsequently the official solicitor lodged a further statement accompanied by a further confidential report annexed to which were reports of the specialist. Both statements but neither of the confidential reports were disclosed to the parties.

The mother contended, on a preliminary point, that she was entitled as of right to see the whole of the reports of the official solicitor, including the confidential reports and medical reports annexed thereto.

The High Court rejected the mother's contention and on appeal it was held that it was a fundamental concept of justice and fundamental to any judical inquiry that a properly interested party must have the right to see all information put before a judge which he takes into account and to comment on it and, if needs be, to combat it. Accordingly before a judge took into account a confidential report submitted by the official solicitor it must be disclosed to the parties if they so desired.

(In *re K.* (*Infants*) L.R. *Ch.* 1963, page 382).

## QUOTING OF CASE REFERENCES IN CORRESPONDENCE

At the direction of the Council letters were sent to all Government Departments requesting that in all cases where they were in correspondence with solicitors the solicitor's reference or number should be quoted. The departments concerned have acknowledged the Society's correspondence and in some cases have stated that the practice had always been adopted with them or that it would be adopted. The Registrar of Titles has asked the Council to point out to members that in many of the applications received in the office, e.g. applications for registration, land certificates, copy documents, etc. (in most cases containing stamps or postal orders in payment of fees) there is no covering letter of any kind. This causes considerable waste of time in the Land Registry as the staff officer opening the post is obliged by way of reference in such cases to make out a "dummy" letter for the documents and fees. Members are requested to send a covering letter in all such cases and to quote all departmental reference numbers.

## FINANCE BILL 1963

The following are some of the sections in the Finance Bill, as introduced, which are important for practitioners :

### PART I

#### Income Tax

*Section* 2 provides that the income of athletic games or sports bodies which is directly applied to promoting athletic games or sports is to be exempt from Income Tax.

*Section* 3 substitutes a new provision for section 34 of the Income Tax Act, 1918 (which enables a business loss to be set off against the taxpayer's other income of the same year). The time limit for making claims is extended from one to two years and appeal procedure similar to that which operates in the case of assessments is applied. The section deals also with matters relating to the computation of relief.

*Section* 5 provides that capital allowances such as those in respect of machinery or plant or industrial buildings may be taken into account to augment or create a trading loss.

*Section* 6 provides that income from farming will be charged by reference to actual profits where the farming activities are carried on by a trader or professional man, or by a person holding an office or employment under a trading company who owns more than 25 per cent. of the company's ordinary share capital.

*Section* 7 provides that expenses incurred by employers in setting up or amending an approved superannuation scheme for employees or office holders will be deductible in computing business or professional income.

*Section* 13 increases from three to six years the period within which a person who is over-assessed to tax by reason of an error or mistake in his Income Tax return can claim relief.

*Section* 18 provides that the existing time limit for making assessments on estates of deceased persons, that is, three years from the end of the year of assessment in which death takes place, will apply to a case where a grant of representation is made, or a corrective affidavit is lodged, in that year. Otherwise the time limit is to be two years from the end of the year of assessment in which a grant is extracted or in which a corrective affidavit is lodged.

### PART II

#### Customs and Excise

*Section* 34 provides for various amendments of the law relating to customs penalties, provides for the trial of customs offences on indictment where the penalty exceeds or may exceed £100, and provides that the Probation of Offenders Act, 1907, shall not apply to customs offences.

### PART III

#### Death Duties

*Section* 36, by raising the existing limit from £500 to £1,000, secures that, where money on deposit in joint names does not exceed £1,000, a banker may, if one of the joint depositors dies, pay the amount on deposit to the survivor or survivors without having obtained a clearance from the Revenue Commissioners in relation to death duties.

## PART IV

### Corporation Profits Tax

*Section* 37 imposes, with effect as from 1 January, 1962, a new 5 per cent. charge to Corporation Profits Tax on all company profits up to £2,500 and an additional 5 per cent. charge on profits in excess of that figure. The section provides, however, for a two year period, an abatement of one-half of the charge imposed on companies whose profits do not exceed £2,500.

*Section* 38 applies to Corporation Profits Tax the penalty provisions contained in section 227 of the Income Tax Act, 1918, as proposed to be amended by section 14 of the Bill.

*Section* 39 provides for Corporation Profits Tax purposes, a reduced measure of relief in respect of exports corresponding to that provided, for Income Tax purposes, by section 20 of the Bill.

## PART V

### Stamp Duties

*Section* 41 provides that a conveyance, transfer or leases of lands to a body corporate incorporated in the State otherwise than under the Companies Acts 1908–1959, if stamped with the proper duty, will not require to bear the adjudication stamp before being deemed to be duly stamped. The section is to come into operation on 1st August 1963 or on the date of passing of the Act, whichever shall be later.

## PART VI

### Turnover Tax

*Section* 45 contains definitions.

*Section* 46 provides that the tax shall be charged on moneys received in respect of the activities described. These include the sale and hiring of goods and the provision of services in the course of business. They include also betting and gaming and the promotion of lotteries, newspaper competitions and entertainments.

*Section* 47 specifies the persons who will be liable to pay the tax. It provides exemption for the goods and services described in the First Schedule and gives the Minister for Finance power by order to extend the list of exemptions. It also allows persons whose receipts do not exceed £500 a month in the case of the sale of goods, and £100 a month in the case of other activities, the option of choosing not to be accountable for tax.

*Section* 48 provides that all persons liable to pay tax will register with the Revenue Commissioners.

*Section* 49 provides that tax shall not be levied on moneys received from a registered person for goods or services purchased by him for purposes of the business or other activities in respect of which he is registered. This will not apply to goods (specified in the Second Schedule) commonly used for personal purposes unless the registered person is a dealer in them.

*Section* 50 provides that tax shall be charged on the value of goods withdrawn from stock by a registered person for his personal use or for the use of any other person, even though a sale has not taken place.

*Section* 51 empowers the Revenue Commissioners to make regulations with regard to the administration of the tax.

*Section* 52 provides that the tax is to be paid monthly, and sets out the rates of the tax.

*Section* 53 authorises the Revenue Commissioners to estimate the amount of tax due by an accountable person who fails to furnish particulars of his turnover.

*Section* 54 charges interest on tax overdue at the rate of 1 per cent. for each month or part of a month during which tax remains unpaid.

*Section* 55 provides for the recovery of Turnover Tax by procedures used for Income Tax recovery.

*Sections* 56 *to* 61 provide penalties for default, negligence, fraud and collusion and state how they are to be recovered. These measures are similar to those provided for offences as regards Income Tax. The Revenue Commissioners will have powers of mitigation.

*Section* 62 provides that, where the person accountable for tax is not resident in the State, the Revenue Commissioners may look to any agent, manager or factor who is so resident and has acted on behalf of the accountable person.

*Section* 63 charges the tax on non-exempt goods imported by unregistered persons at the rate of 2½ per cent. of the value of the goods increased by the amount of any duty thereon.

*Section* 64 applies to the tax the provisions of the Provisional Collection of Taxes Act, 1927, and of the Imposition of Duties Act, 1957.

*Section* 65 provides that Turnover Tax will be paid to the Collector-General.

## PART VIII

### Penalties and Assessments: Income Tax, Sur-tax and Corporation Profits Tax

Part VIII introduces new penalty provisions for Income Tax, Sur-tax and Corporation Profits Tax.

*Section* 71 provides that the new penalties are to apply only to acts of commission or omission after the passing of the Bill.

*Section* 72 fixes penalties for failure to give certain information, specified in the Third Schedule, which broadly concerns a person's own liability, the liability of other persons or the deduction of tax in certain circumstances.

*Section* 73 specifies penalties for negligently or fraudulently submitting incorrect returns and statements of the kind referred to in the Third Schedule. Account is taken of the amount of tax evaded where the person's own liability is involved. Otherwise the penalty is a fixed sum.

*Section* 74 specifies the method of computing, in a penalty, the element of tax evaded.

*Section* 75 provides for penalties on a company or other body of persons and also on the secretary or other responsible officer.

*Section* 76 provides that proceedings for the recovery of penalties may be continued or commenced against the personal representative of a deceased person and provides a time limit for taking such proceedings.

*Section* 77 provides for a penalty on any person who aids and abets another in submitting incorrect information for purposes of Income Tax or Sur-tax.

*Section* 78 provides a firm basis for computing the element of tax evaded.

*Section* 79 enables penalties to be recovered by means of civil proceedings in the High Court. The procedure proposed follows the same lines as those already in operation in High Court proceedings for the recovery of tax.

*Section* 80 applies to Corporation Profits Tax the penalty provisions in the Fourth Schedule which are similar to those proposed in relation to Income Tax.

*Section* 81, besides being concerned with definitions, enables the Revenue authorities to allow extra time for compliance with the provisions requiring the submission of returns, etc.

## PART IX

### Taxation of Rents and Certain Other Payments: Income Tax and Sur-tax

Part IX of the Bill is concerned with the taxation of profits derived from the letting of land or buildings.

In the case of short leases (not exceeding fifty years), the profit (rent less outgoings) arising to the lessor in any year, so far as it exceeds the amount on which he bears tax under Schedule A, will be chargeable by direct assessment under Case VI of Schedule D.

The legislation provides for the taxation by deduction of rents under long leases (exceeding fifty years) and certain other annual payments such as fee farm rents and rentcharges.

*Section* 82 defines various expressions and lays down rules for fixing the term of a lease.

*Section* 83 provides that the Schedule D assessment is to be on a " current year " basis, and sets out the deductions to be made in arriving at the amount chargeable. It also authorises apportionments of rateable valuations and of rents.

*Section* 84 provides that, where non-business premises are subject to rent-control, the amount which would be otherwise chargeable under Schedule D is to be reduced by 40 per cent., subject to a maximum reduction of £200 for any taxpayer. If the premises are not rent-controlled the reduction is 20 per cent., subject to a maximum of £100. (The total reduction for any taxpayer is limited to £200).

Controlled properties let at rents not exceeding £52 a year are not to be taken into account in applying the £200 limitation.

*Section* 85 provides that, where a premium is payable under a short lease, the premium or a proportion of it is to be treated as rent. It also provides for the taxation of a premium payable to, for example, a superior lessor.

*Section* 86 excludes a case in which, taking one year with another, the rent payable is less than the cost to the lessor of fulfilling his obligations under the lease.

*Section* 87 provides that payments in respect of rights over premises received by a person other than the occupier are to be dealt with in the same way as rent under a short lease.

*Section* 88 provides that where a person has income from several lettings, the total amount on which he is chargeable may be included in one assessment.

*Section* 89 provides that if, for certain reasons, a lessor sustains a loss in any year, it may be set off against profits from other lettings in the same year or carried forward to later years.

*Section* 90 provides for revision of assessments where the rent, or a part of it, proves to be irrecoverable or is voluntarily foregone by the lessor.

*Section* 91 is concerned with the case in which a premium has been paid under a short lease and the premises are occupied for business purposes. So much of the premium as is, under section 85, treated as rent in the lessor's hands is to be regarded, in calculating the business profits of the lessee, as having been paid by way of rent over the term of the lease.

*Section* 92 makes provision similar to that of section 91 in regard to the case where the whole or a part of the premises is sublet. It also provides for the case in which a premium is payable on a sub-lease.

*Section* 93, which replaces existing rules, provides for the taxation, by deduction, of rents under long leases (such as ground rents) and of other annual payments out of property chargeable to tax under Schedule A; and also of rents, royalties and other payments in respect of (or in respect of rights over) property not so chargeable (such as quarries, mines and railways).

*Section* 94 empowers Inspectors of Taxes to obtain information relevant to the computing of liabilities.

*Section* 95 provides that the provisions under which rents from business premises have hitherto been taxable under Schedule D are not to apply for 1963–64 and subsequent years. It also preserves the exemption enjoyed by charities from tax in respect of rents and provides that expenditure taken into account in computing liability under this Part will not qualify also for "maintenance" relief.

## PART X

### Miscellaneous

*Section* 97 provides retrospective exemption from Income Tax and Corporation Profits Tax in respect of profits arising from the running of lotteries and pools licensed under the Gaming and Lotteries Act, 1956.

*Section* 98 removes, in relation to companies in process of winding-up, bankrupts and insolvent estates, the priority of payment over unsecured creditors to which the Revenue was entitled by virtue of section 38 (2) of the Finance Act, 1924.

*Section* 99 and the Fifth Schedule to the Act provide new forms of execution for use in proceedings in the High Court and in the Circuit Court for the recovery of taxes and duties. This provision supplants section 27 of the Finance Act, 1946, and the Third Schedule to that Act which have been held to be defective.

*Section* 100 confirms the right of a county registrar or sheriff, when executing a certificate for the recovery of tax under section 7 of the Finance Act, 1923 (as extended by section 55 of the Finance Act, 1958), to levy also the appropriate fees and expenses. It also validates past levies which included such sums.

*Section* 101 amends section 14 of the Finance Act, 1962, to secure that in proceedings in the District Court for the recovery of Income Tax a decree will issue, not only for the tax, but also for any interest payable on it.

The Finance Bill has not yet been passed and may be amended in committee. Any change in the foregoing will be published in the next issue.

## THE REGISTRY

### Register B

Dublin Solicitors desire to acquire old established solicitors business. Enquiries to box B.271.

## OBITUARY

MR. SAMUEL R. C. HEMPHILL, Solicitor, died on the 5th June, 1963 at his residence, "Sunnyside", Blackrock, Co. Dublin.

Mr. Hemphill served his apprenticeship with the late Mr. Samuel Hemphill and was admitted in Hilary Sittings, 1892. He was a partner in the firm of Cathcart and Hemphill until his retirement in 1952.

MR. PATRICK J. LITTLE, Solicitor, died on the 16th May, 1963, at his residence, "Clonlea" Sandyford, Co. Dublin.

Mr. Little served his apprenticeship with the late Mr. Francis J. Little and he was admitted in Hilary Sittings, 1914. He practised at 12 Dawson Street, Dublin as a member of the firm of Little, Prous and O hUadhaigh.

MR. MICHAEL E. FITZGERALD, Solicitor, died on the 23rd May, 1963 in Paris.

He was apprenticed to the late Mr. Thomas F. Monks and was admitted in Trinity Sittings, 1930.

MR. THOMAS E. F. BENNETT, Solicitor, died at his residence, Violet House, Vico Road, Dalkey on the 27th May, 1963.

Mr. Bennett was apprenticed to Mr. Patrick F. Rooney and he was admitted in Easter Sittings, 1933.

MR. BERNARD DARCY, Solicitor, died at St. Michael's Hospital, Dun Laoire on the 4th June, 1963.

Mr. Darcy was apprenticed to the late Mr. Francis J. Little and subsequently to Mr. John E. Cullen and he was admitted in Hilary Sittings, 1936.

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# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

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## MEETINGS OF THE COUNCIL

20TH JUNE, 1963: The President in the chair, also present Messrs. Robert McD. Taylor, Reginald J. Nolan, Charles Hyland, Dinnen B. Gilmore, Ralph J. Walker, Edward J. Dillon, James R. C. Green, Desmond Moran, Timothy J. C. O'Keeffe, Patrick Noonan, George G. Overend, John Carrigan, Desmond J. Collins, John Maher, Richard Knight, William A. Osborne, Daniel J. O'Connor, Eunan McCarron, Brendan A. McGrath, Patrick O'Donnell, Niall S. Gaffney, George A. Nolan, John J. Nash, Peter E. O'Connell, Raymond A. French, Peter D. M. Prentice.

The President reported that a telegram of condolence had been sent to the Apostolic Nuncio on the death of His Holiness Pope John XXIII and that a letter of thanks had been received.

The following was among the business transacted:

### Land Commission Costs

The new Land Commission Rules covering costs and procedure have not yet been signed by the Minister and are not yet Law. The Council considered a Memorandum prepared by Mr. Cyril O'Neill on the proposed rules and it was decided that the Secretary should request the Minister to

receive a deputation from the Society with a view to the introduction of a provision enabling a solicitor to charge a negotiation fee where he does conduct negotiations and also to deal with other matters arising out of the draft rules. The deputation were also given discretion to deal finally with the matter. The deputation consists of the President, the Secretary and Mr. Dermot P. Shaw.

## Costs of obtaining Certificate of Discharge from Income Tax

The Council specially reconsidered on request the existing ruling on the costs of a solicitor for the vendor for applying for and obtaining a Section 6 Certificate. The existing ruling to the effect that the work of obtaining a Certificate should be included in the Commission scale fee and that no further charge should be made against the vendor or the purchaser (except in cases where it is necessary to make a return) was referred to a Committee and the Committee reported that a charge of approximately £2 10s. (maximum) is at present being allowed by the Taxing Masters as a charge against the vendor for obtaining the Certificate. This is at variance with the Society's ruling and it appeared also that many solicitors have for many years been charging a fee for doing this work. It appeared that the Tax Masters allow for this work on the basis that it could not have been in the minds of the rule makers when fixing the scale fees under the 1884 Solicitors Remuneration Act.

The Council have accordingly decided to reverse the existing ruling and having regard to the practice of the Taxing Masters the Council are now of opinion that the fee is chargeable in addition to the commission scale fee and is payable by the vendor to his own solicitor in all cases.

## Compensation Fund Payments

On a report from the Compensation Fund Committee the Council admitted for payment claims amounting to £5,290 13s. 3d.

## Dealings with Clients' Creditors—Solicitor's Duty

A member acted for a garage proprietor who had failed in business. The garage premises were mortgaged to a finance company for an amount owing to them and when the client gave up business and went abroad he let the premises for a substantial weekly rent which member collected on his behalf and placed to the credit of his account for distribution among his creditors. The client's instructions to member were that he would make substantial regular payments himself to the finance company and that the amount recovered in rent in respect of the garage premises should be applied by member in payment of the amounts due to his other (unsecured) creditors. On this basis member acted for the client and he informed the various creditors of the position. In consideration of this, several of them withheld proceedings. The finance company were also aware of the situation and when the client failed in his obligation towards them they obtained from him an authority directed towards the tenant of the premises and authorising the tenant to pay the rent directly to them, the finance company. The company ask member to continue to collect the rent from the tenant on their behalf and to account to them for it. Member enquired whether or not it would be proper for him to do this and also as to what course he should adopt.

The Council on a report from a committee gave the opinion that member should (*a*) retain moneys which he had collected, down to the termination of his authority and deal with them in accordance with his obligations under the representations made to the creditors (other than the finance company) on his client's instructions, (*b*) refuse to act for the finance company in collecting the rent and account directly to his client for any rent collected since the termination of his authority and (*c*) inform the creditors of the termination of his authority.

As regards the general practice in cases of this kind the Council were of opinion that a solicitor instructed by a debtor to negotiate with creditors to obtain time on the basis that the creditors' claims will be paid by instalments or otherwise out of moneys coming into his hands should be careful not to leave the creditors under the impression that their claims are being secured if the client's instructions are revocable. Furthermore that the creditors should be advised immediately of any change in the position affecting their rights.

## Solicitor's duty where Grant has issued and a subsequent Will appears

A member put the following query to a committee of the Council. His predecessor had acted for a client of the firm in the extraction of a grant of probate and the Grant was issued in 1945. The Will appointed the client executor and sole beneficiary. A son of the client and executor called on member and stated that he thought that the deceased had bequeathed certain lands to him. Member relying on the grant of probate, told him that the will contained no such provision but some time later the client came in again with copy of a later will to which probate had not been issued. Member then read through his predecessor's correspondence file and it appeared clear from this that there was in fact a later will and that it was in the possession of a

solicitor who is no longer in practice. There was on the file a letter from this solicitor stating that he had the will. It appeared that member's predecessor had completely overlooked this when preparing the papers for probate and the papers were sworn in respect of the earlier will. Member was also reasonably certain that no deliberate fraud had been perpetrated by the client. Member immediately informed the executor of the position and he stated that the grant would have to be brought in together with an affidavit setting out the facts. He also telephoned the Probate Office and stated the facts without giving the names. The Probate Office stated that it would be necessary for the executor to make a full disclosure and member pointed out that he thought that he was under certain professional obligations as to secrecy in relation to the instructions given to his predecessor by the executor. Member wrote several letters to the executor asking him to call to discuss the matter but these letters were ignored and he enquired if his reporting of the facts to the Probate Registrar would amount to a breach of professional secrecy. Member pointed out that if he failed to report the full position to the Registrar his conduct might amount to a contempt of the Court of which he is an officer. The Council on a report from a committee were of opinion that member should send to the Probate Office a copy of the letter received by his predecessor from the solicitor disclosing the existence of the other will and that he should advise the client and that solicitor of the action taken.

### Instructions to sue on a Wagering Contract

The Council on a report from a committee advised a member who had been instructed to recover an amount which arose out of a wagering transaction that he could, on the client's instructions, write a letter requesting payment of the amount alleged to be due but without any request for costs. The letter should contain no threat of proceedings failing payment and member was advised that he should take no further step in the matter.

## LIBRARY VACATION ARRANGEMENTS

The Library will be closed from 5 p.m. on Thursday, 15th August, 1963 until Monday, 9th September, 1963 at 10 a.m.

The Library will be open for the sitting of the Vacation Court on Wednesday, 28th August, but will be closed on Tuesday, 17th September. The Library will be closed from Friday, 27th September, 1963 at 5 p.m. until Monday, 7th October, 1963 at 10 a.m. Members requiring books urgently should apply to the General Office.

## EXAMINATION DATES

1st Law, September 2nd and 3rd; 2nd Law, September 2nd and 3rd; 3rd Law, September 4th, 5th and 6th; Preliminary Examination, September 3rd; 1st Irish Examination, September 13th; 2nd Irish Examination, September 13th and 14th.

## PROCEEDINGS AGAINST SOLICITORS

By order of the President of the High Court dated the 30th May, 1963, on an application by the Society, it was ordered that the name of Thomas Crowley who formerly practised at Dunmore, Co. Galway, be struck off the roll of solicitors. A stay on the operation of the order was granted until the 15th June, 1963.

## UNIVERSITY OF DUBLIN TRINITY COLLEGE

Mr. F. E. Dowrick, M.A., F.T.C.D., having resigned from the office of Registrar of the Law School, the Board of the College has appointed the Regius Professor of Laws, Dr. V. T. H. Delany, to be Registrar of the School in his place. In future, all enquiries respecting the Law School should be directed to Professor Delany.

The Board has also appointed Mr. Dowrick to be the tutor responsible for the collegiate interests of all students, including solicitors' apprentices, attending courses in the Law School.

## COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

The Commissioners of Charitable Donations and Bequests will meet on the 19th September during the Long Vacation to facilitate the dispatch of urgent business.

## LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) BILL, 1963

This Bill, which has passed the Committee stage in Dáil Éireann, has embodied in it the new principle of obligation on all local authorities to prepare a plan within three years of a date to be appointed by the Minister for Local Government. (Section 19.) There is also a general obligation on every owner or occupier of land to obtain permission for the development thereof and " development " is defined as " the carrying out of works on, in, or under land or the making of any material change in the use of any structures or other land". Special reference is made to advertisement hoardings, caravan sites and deposit of rubbish, builders' waste, mining or industrial waste, etc. (Section 24 and Section 3.)

The following sections will be of interest to practitioners :—

Section 8, which provides for the maintenance of a Register by the Planning Authority for the purposes of the Act in respect of all lands within the area and containing entries of all relevant matters. The Register is to incorporate a map to enable a person to trace any entry thereon and an applicant may obtain a certificate of any entry in the Register for a fee. It is not clear from the section if the Planning Authority will give something in the nature of a search showing all entries relating to specified premises. It is apparently the duty of the applicant to inspect the Register himself and then make application for certificates in relation to particular entries.

Section 9, which obliges the occupier of any premises or any person receiving rent to give when required to the Planning Authority particulars of the estate or interest by virtue of which he occupies the premises or the name and address and the estate or interest (so far as they are known to him) of every person having an estate or interest in the land.

Section 75 (1), which provides for the disposal of land by a Planning Authority for the purposes of the Act, and that the consent of the Minister may in certain cases be required. (It is not clear what effect the refusal of or failure to obtain consent would have upon a *bona fide* purchaser of the premises for value and it would seem, therefore, that any person purchasing such land should ensure, by means of a requisition on title, that the consent of the Minister has been given.)

Under Sub-section (4) of Section 75 neither the Landlord and Tenant Acts, 1931 and 1958 nor the Rent Restrictions Act, 1960, apply to a lease granted by a Planning Authority where the land has been acquired by the Authority for the purposes of the Act and the Authority consider that they will not require the use of the land for any of their functions for a particular period. Such a lease is to be expressed to be a lease granted for the purposes of the particular sub-section.

Section 82 provides that regulations may be made for any matters relating to references and appeals and under sub-section 4 any person conducting an oral hearing may require an officer of the Planning Authority to give information in relation thereto which would be reasonably required. Under Sub-section 7 any person may be required to attend and give evidence in relation to any matter in question at the hearing and to produce any books, deeds, contracts, accounts, vouchers, maps, plans or other documents in his possession or control relating to the subject matter of the appeal or reference.

## SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) BILL, 1963

The above Bill, which was introduced recently, gives effect to the budget increases in social assistance payments and for the increase in the rates of social insurance benefits and contributions from January, 1964. The Bill also provides for an increase in the maximum yearly means which a person may have in order to qualify for a non-contributory old age pension. Section 2 of the Bill provides for increasing all rates of non-contributory old age and blind pensions by 2/6 per week and it comes into operation on the 1st November, 1963.

## CORONERS' ACT, 1962 (FEES AND EXPENSES) REGULATIONS, 1963

The above regulations (S.I. No. 145 of 1963) were signed by the Minister for Justice on the 25th July, 1963. They prescribe various fees and expenses for the purposes of the Coroners' Act, 1962 *viz.* : the fee to be paid to a Coroner who holds an inquest outside his own district, the fee chargeable by a Coroner or a County Registrar for furnishing copies of inquest documents, the fees and expenses payable in respect of postmortem and special examinations and the attendance of witnesses at inquests and the removal or custody of a body. They replace the existing regulations (S.I. No. 92 of 1962). The regulations may be obtained from the Government Publications Sales Office, G.P.O. Arcade, Dublin, price 9d.

## FINANCE BILL, 1963

The following is an excerpt from the Official Report of the Dáil Debates relating to Section 16 of the Finance Bill, 1963. This section provides that the Revenue Commissioners may require any person in receipt of profits from a trade, profession or vocation to produce accounts and books relating thereto, or to make them available for inspection and copying.

"MR. SWEETMAN : I move amendment No. 8 :

To add to the section a new sub-section as follows :

'(3) Nothing in this section shall oblige a solicitor to disclose, contrary to professional privilege, any information concerning the affairs of any client of his or to produce any book or account from which any information concerning any client can be obtained.'

Again, I want to ensure in relation to anti-evasion sections that the evader is properly caught within the net. At the same time, I want to be quite clear that in cases where there is professional privilege, nothing is done that could defeat that privilege. It seems to me there is a possibility of Section 16 as framed at present being utilised by the Revenue Commissioners for the purpose of requiring solicitors to do something which would be a breach of the privilege they owe to their clients.

I want to stress to the Minister that in relation to privilege it is not the privilege of the solicitor but of the client that is at stake. The solicitor is not in any way concerned except as the custodian of the rights of his client. On the basis of the section as it stands, a situation could arise where the Revenue Commissioners could utilise the provision to require a solicitor to deliver his client's accounts and could take copies of the client's accounts, not for the purpose of verifying the solicitor's returns, which would be a proper thing to do, but to take copies from the client's account for the purpose of thereafter raising an assessment on the client concerned.

That obviously would be a gross breach of privilege and would cut across the whole theory and practice, which is essential in any democracy, that when a person consults his lawyer about a situation in which he finds himself, it will be completely and absolutely confidential, guarded as closely as the closest State secret. It seems to me this section would permit the Revenue Commissioners to seek for breach of that privilege and, through inspection of the accounts or papers of a solicitor, obtain information not for the purpose of checking the solicitor's own profit return for assessment but for the purpose of checking those of his client. Nobody could possibly stand over such a practice.

DR. RYAN: I do not see how any Deputy could have fears in respect of solicitors in a case like this. This lays down that the Revenue Commissioners may demand information with regard to the person's accounts and so on. It is obvious that if a solicitor were asked to give information—it is most unlikely that he will be asked—he would very promptly refuse to give it. He could say he is privileged. On the other hand, there would, I think, be a danger in putting in the amendment because if a person feared he was going to be asked about a certain item in his accounts, he might send that document to his solicitor and ask him to have it looked into. There is an obvious danger there.

MR. SWEETMAN: Can we have an administrative undertaking from the Minister that the section will not be used in any circumstances for disclosure of anything that is privileged? I would accept such an undertaking.

DR. RYAN: I would ask the Deputy to observe that this can be administered only by the Revenue Commissioners and not by an inspector.

MR. SWEETMAN: That is why I am prepared to accept an undertaking.

DR. RYAN: The Revenue Commissioners would have to give an order to an inspector to prosecute a solicitor, if he claimed privilege. It is not likely they will do that. I do not know that I could give the Deputy the undertaking.

MR. SWEETMAN: With that on the records of the House, there will be an almighty row if anybody ever attempts it.

Amendment, by leave, withdrawn.

Section 16 agreed to."

(*Dáil Debates*, 9th July, 1963. Cols. 443–445.)

## INVITATION FROM THE STATE BAR OF WISCONSIN.

The following letter received from the Secretary of the Special Committee of "World Peace Through Law" is published for the information of any members who may be planning to visit the United States:—

"June 1, 1963

Members of the Bench and Bar

Gentlemen:

It is our pleasure to bring you greetings from the members of the State Bar of Wisconsin, the organized bar of the State of Wisconsin, encompassing in its membership all persons admitted to the practice of law in the State of Wisconsin.

Our purpose in writing you is to extend a personal invitation to each of you who should be planning a visit to the United States to accept hospitality from the members of the bar of the State of Wisconsin while you are visiting our state. In accordance with the objectives of the "People To People Programme" initiated by former President Dwight D. Eisenhower and continued by President John F. Kennedy, it is our hope to establish close personal relationships between members of your bar

and those of our own as a result of which the threat of war might become more remote and the hope of peace more certain of attainment.

If you should be planning a visit to the United States and expect to be in the State of Wisconsin, we shall be pleased to receive a communication from you indicating the dates during which you expect to be in our State. Upon receipt of your communication we shall make arrangements for the accommodation of yourself and your family in the home of a Wisconsin lawyer whose guest you will be for the several days of your visit. We shall, in addition, and at your option, prepare a special programme for you through which, it is our hope, you will be able to become acquainted with judges of our courts, leaders and members of the bar, the structure and operation of our judicial system, and whatever else of a legal nature might be of special interest to you.

If you will kindly address your communication to Professor O'Connell at the address below, we shall be happy to reply to you forthwith.

Yours truly,

THE SPECIAL COMMITTEE ON
WORLD PEACE THROUGH LAW

Professor Robert J. O'Connell,
Marquette University School of Law
1103 West Wisconsin Avenue
Milwaukee 3, Wisconsin, U.S.A."

## "OUR REF. :....."

One of the minor irritations of life is the letter with the caption at the top left hand corner something like this :

Our ref : NX/5883/201.
Your ref : .....

Government Departments, business people and solicitors have all from time to time failed to cite the numbers or other references of correspondents, failing to realise that it is not only a matter of courtesy but convenient practice for all concerned. The Department of Finance recently issued a circular to Government Departments drawing their attention to the matter. The Council in turn wish to remind practitioners that they ought in dealing with colleagues or members of other professions to cite the correspondent's file number or case reference and should extend the same courtesy and facility to Government Departments.

## DECISIONS OF PROFESSIONAL INTEREST

*Fixed salary "First Charge" on profits—partnership agreement*

By a partnership deed, made in August, 1951, the junior partner, who was to be a salaried partner, "shall be paid a fixed salary of £1,200 as a first charge on the profits and in addition thereto one-third share of the next profits arising from the Reigate branch," the balance of the remaining profits of the firm to belong to the senior partner. Owing to the defalcations of a clerk the firm made less than £1,200 profit in 1957 and 1958. The partnership was dissolved in 1959. In a winding-up action the judge gave the usual directions for accounts and inquiries. On the question whether the junior partner's salary was payable irrespective of profits or only out of profits he held that it was payable only out of profits, and that for those years in which the profits were below £1,200 the junior partner's salary should be reduced correspondingly. The junior partner appealed. Upjohn, L.J., said that the judge had come to the right conclusion on the interpretation of the clause. If the junior partner were entitled to a fixed salary of £1,200 irrespective of profits, the words "as a first charge on the profits" were otiose. What the clause meant was that the junior partner was to be paid his salary out of profits in priority to any other payments to the other partners. It might be that the words meant that the junior partner could recoup any deficiency in his salary in one year out of profits made in subsequent years when they exceeded £1,200. That point, however, had not been taken below or in argument on the appeal and was therefore not open for decision. The appeal would be dismissed.

(Marsh *v.* Stacey—*Solicitors' Journal*, June 28th, page 512.)

*Case not pleaded*

The plaintiff claimed damages for personal injuries sustained in an accident when, in the course of his employment by the defendants, he was helping in the operation of a machine cutting and crushing metal tubes. His case as pleaded and given in evidence was that at the time of the accident he was standing on the opposite side of the machine to that of the operator, though there was a general allegation that the machine was not securely guarded. The trial judge rejected the plaintiff's evidence as to his position at the time of the accident, and accepted that of the defendants that he was on the operating side of the machine. The judge held, however, that, on the defendants' evidence, they were to blame for the accident and that, in view of the general allega-

tion, no amendment of the pleadings was necessary, and he awarded the plaintiff £465 10s. damages. The defendants appealed.

Willmer, L.J., said that the general allegation in the pleadings had to be considered in the general context of the plaintiff's pleaded case, which was totally different from the judge's findings. His lordship could not agree with the judge's view that an amendment of the pleadings was not necessary or that, notwithstanding the departure from the plaintiff's pleaded case, the defendants were not caused substantial embarrassment. The general principle as to pleadings stated in the opening paragraph of Lord Radcliffe's judgment in Esso Petroleum Co., Ltd. *v.* Southport Corporation (1956) A.C. 218, at p. 241, applied, although his lordship did not say that there might not be cases where a plaintiff whose own story had been disbelieved could recover damages on the defendants' story. His lordship would allow the appeal.

Danckwerts and Diplock, L.JJ., delivered concurring judgments. Appeal allowed.

(Kerr *v.* James Bridge Copper Works, Ltd. *Solicitors' Journal*, July 12th, 1963, page 552.)

The decision of the English Court of Appeal in Hedley Byrne & Co. Ltd. *v.* Heller & Partners Ltd. (reported in the GAZETTE for October/November, 1961 at page 50) has been affirmed by the House of Lords. In this case the appellants who were advertising agents wanted to place certain forward advertising orders on behalf of a certain firm, E Ltd. The terms were that the appellants would be primarily liable for the cost thereof and before doing so they instructed their own bankers to enquire from the respondents, Heller & Partners, who were bankers for E Ltd. for references as to the firm's financial position. Two enquiries were made one by telephone and a subsequent enquiry in a letter which was replied to. In each case the reference was given by the respondents "without responsibility" on their part. It was clear at the trial that the respondents should not have given the reference which they did as they should have known well that E Ltd. had financial commitments amounting to £50,000 in the form of an overdraft with them but neither the Court of Appeal nor the House of Lords addressed itself to the issue of negligence. Relying on the references given, the appellants placed orders totalling £22,000. E Ltd. subsequently went into liquidation and the appellants were able to recover only a small part of their loss. It was held by the Court of Appeal (upholding the trial judge) that (1) there was no general duty imposed on the respondents to take care when answering queries and (2) the fact of respondents financing the firm created a special relationship between the respondents and the subject of their reference but this was not sufficient to create a duty to take care in giving the reference. The House of Lords in dismissing the appeal held that in this particular case, but for the respondents' disclaimer, the circumstances might have given rise to a duty of care on their part, yet their disclaimer of responsibility for their replies on the occasion of the first enquiry was adequate to exclude the assumption by them of a legal duty of care, with the consequence that they were not liable for any negligence. It would appear, therefore, that if in the ordinary course of business or professional affairs a person seeks information or advice from another who is not under contractual or fiduciary obligation to give the information or advice, in circumstances in which a reasonable man so asked would know that he was being trusted, or that his skill or judgment was relied on, *and the person asked chooses to give the information or advice without clearly so qualifying his answer as to show that he does not accept responsibility*, then that person accepts a legal duty to exercise care and will be liable for negligence if damage results.

(1963 All E.R. 575.)

As this statement was not necessary for the actual decision it appears to be an *obiter dictum*, but it is nonetheless important for solicitors and other who give testaments or character references or give general advice.

*Note.*—In giving this decision the House of Lords disapproved of the judgment of the Court of Appeal in the leading case of Candler *v.* Crane, Christmas & Co. (1951 1 All E.R. 426) which had been applied by the Court of Appeal in giving judgment in the present case. It was held by the Court of Appeal in Candler *v.* Crane, Christmas & Co. that in the absence of contractual or fiduciary relationship between the parties the defendants owed no duty to the defendants to exercise care in preparing a set of accounts upon which the plaintiff had had relied and that the plaintiff could not therefore maintain against them an action for negligence. The House of Lords in this present case held that the fact that the person receiving the information was likely to act in reliance on it (i.e., the circumstances were that a reasonable man would be expected to know that his skill and judgment were being relied upon) would be sufficient to create liability in negligence. In this particular case it was only the respondents specific disclaimer of responsibility which had saved them.

*Defence costs paid by company—whether taxable emolument*

The Court of Appeal in England has recently reversed a decision by the High Court allowing an appeal by a company director against the decision of the special commissioners who had held that the amount of £641 spent by the company for his defence at his trial for causing the death of a pedestrian by reckless or dangerous driving was spent for his benefit and was chargeable to income tax under Schedule E. This case was reported in the GAZETTE for April, 1963, at page 94. The tax payer was the company director and the accident in question occurred while he was driving a motor car, the property of the company. The company undertook the cost of his defence and he was acquitted. The High Court judge had referred the case back to the commissioners for them to find out what was a reasonable sum for the purpose of the defence and he held that the director was only assessable to tax in such a sum. The Court of Appeal disagreed with this view and held that the company had clearly incurred an expense in the sum of £641 with the provision of a benefit to the tax payer. Since he was a director of the company the condition precedent to liability specified in Section 161 (1) of the Income Tax Act, 1952, had been satisfied. The expense was to be treated as perquisite of his office as director and must be included in the Schedule E assessment. It had been argued that the company incurred the expense primarily in its own interest and only secondarily in the interests of the director and that accordingly no benefit was provided within the meaning of the Section. The Court of Appeal did not accept this interpretation. It has also been argued that the tax payer would not have spent £641 in his own defence and that he would have spent only £60 or £70. The affect of the Statute, however, was to lay the charge not upon the benefit but upon the sum actually paid by the company as an expense. There was nothing in the language of the Act to justify the Court enquiring how much of the expense would have been incurred by the director if left to provide for himself. (Rendell *v.* Went (Inspector of Taxes) 1963 Tax reports, page 111.)

*Misappropriation by solicitor of fees received for counsel and shorthand writers*

In a case before the Court of Criminal Appeal the appellant, a former solicitor, received from a client a cheque for £1,663 9s. 7d. in payment of his bill. The bill included £639 17s., as disbursements for counsels' fees. These fees were not paid to counsel. The appellant paid the cheque into his own bank account and he was charged under Section 20 (1) (iv) (*b*) of the Larceny Act, 1916, with fraudulent conversion. The particulars alleged were that the appellant, having received a cheque on account of the client fraudulently converted part of the proceeds thereof to his own use and benefit. The relevant part of the sub-section reads as follows: "every person who . . . (iv) (*a*) being entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; or (*b*) having either solely or jointly with any other person received any property for or on account of any other person; fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof; shall be guilty of a misdemeanour."

Admissions by the appellant in evidence at the trial showed that the sum in question was fraudulently converted by the appellant to his own use. In his appeal the appellant contended that in effect the Solicitors Accounts Regulations required that he should pay the cheque into his own bank account and that thereupon the money became his own and, secondly, that the charge was wrongly laid under Section 20 (1) (iv) (*b*) as distinct from Section 20 (1) (iv) (*a*) because the particulars alleged receipt of the cheque on behalf of the client while as in fact the client had drawn the cheque.

It was held (i) that the fact that a particular sum was paid into a particular banking account by a solicitor, albeit pursuant to statutory obligation, did not affect the rights of persons interested in the sum or any duty of the solicitor either towards his client or towards third persons in regard to the disposal thereof; the relevant provisions of the Solicitors Act and of the accounts regulations were domestic matters and it remained a question of fact in each case where the money was so received as to bring the case within section 20 (1) (iv) (*b*) of the 1916 Act. In the present case the £639 17s. was shown to have been fraudulently converted by the appellant to his own use, (ii) although the proceeds of the cheque were received by the appellant as to part for or on account of another person within the wording of section 21 (iv) (*b*) so that a charge under that enactment lay, yet the cheque was not received on account of the client as alleged in the particulars. Therefore, although the Statement of Offence was unobjectionable the particulars were defective and should have been amended at the trial. As the appellant had not been embarrassed in his defence by the particulars the court would, under Section 4 of the Criminal Appeal Act, 1907, dismiss the appeal. (R. *v.* Yule 1963 2. All England Reports, page 781.)

*Order against solicitor to pay costs reversed*

The case reported at page 14 of the last issue of the GAZETTE under the above heading is that of Abraham *v.* Jutson, and the full judgment in the case will be found in (1963) 2. All England Reports at page 402.

*Solicitor—negligence*

Before 1956 the plaintiff, a lorry driver aged thirty-three had been treated for a tubercular condition. In January, 1956, he had a fall from a lorry on to his right shoulder or elbow which caused him pain so that he could not drive, and in February he was dismissed from his employment. In March, he started work with new employers and, on 26th March, 1956, whilst getting into the cab of a lorry, he fell on to his right shoulder. The pain prevented him from working and from September to December, 1956, he was in hospital with a tubercular right shoulder, and had to have an arthrodesis of the joint. While he was in hospital, his father consulted the defendant, a solicitor, who was instructed to bring an action against the March employers for negligence. The claim was an allegation that the employers had been negligent in the maintenance of the lorry, with the result that the grab-handle which the plaintiff had used to get into the cab of the lorry, had come away in his hand causing him to fall. The defendant's managing clerks dealt with the matter but, notwithstanding a denial of liability by the employers, did not issue a writ within three years of the accident. The plaintiff brought an action for damages against the defendant, alleging professional negligence. During the course of the trial negligence was admitted.

Edmund Davies, J., said that, following Kitchen *v.* Royal Air Force Association (1958) I W.L.R. 563, there were three questions which had to be answered in assessing damages. (*a*) Were there grounds for thinking that the plaintiff ought to have succeeded in establishing that his fall in March, 1956, was caused by the negligence of his employers, their servants or agents? (*b*) If it was thought that he had more than an outside change of winning that action, what damages might he reasonably have expected to recover? (*c*) Bearing in mind the plaintiff's chances of success, what damages ought to be awarded against the defendant, or, in other words, how should the plaintiff's prospects of success in the action be evaluated? As regards question (*a*) the evidence was conflicting as to the condition and maintenance of the lorry, but it was at least thirteen years old. It was impossible to be satisfied that the plaintiff would have been successful, but he had a fair chance of success. Question (*b*) was more difficult, and the physical consequences of the accident at most aggravated a latent tuberculosis The evidence was inconclusive, but the plaintiff was not bound to fail in establishing that the second fall was the cause of his tubercular shoulder, and the trial judge might have had to consider the effect of both accidents. There had been no signs of tuberculosis since December, 1956, and his present, partial disability was caused by the arthrodesis of his shoulder which prevented him from raising his arm more than sixty degrees. He had been fit and could have worked since the middle of 1957. If the plaintiff had had a total victory, he could have reasonably expected damages of £3,000. As regards question (*c*), to evaluate his loss of his chose in action was to estimate the risk of his success or failure and, allowing for all contingencies, the sum was £1,000. Judgment for the plaintiff accordingly. (Yardley *v.* Coombes, *Solicitors' Journal*, July 19th, 1963, page 575.)

## THE REGISTRY

### Register A

SOLICITOR'S old established and attractive practice for immediate sale in large midland town, with or without residential accommodation. Enquiries and particulars in confidence to Box No. A203.

### Register B

DUBLIN solicitors desire to acquire old established solicitor's business. Enquiries to Box B271.

LADY solicitor, B.A., 4 years general experience, available October. Interview. Box B272.

### Register C

WILL any person having information about a Will of Peter Carron late of Headford, in the County of Galway, Veterinary Surgeon, who died on the 3rd July, 1963, please communicate with: Bennett Thompson & Co., Solicitors, 12 Molesworth Street, Dublin.

IN THE ESTATE OF: Patrick Mullally, late of Ballywalter, Mullinahone, Co. Tipperary, Farmer, deceased, who died, on the 14th August, 1962. Will any Solicitor or other person having custody of or any information as to a Will of the above deceased please communicate with the undersigned: J. J. O'Shee, Murphy & Co., Solicitors, New Quay, Clonmel.

### Register D

FOR SALE: "The Irish Justice Of The Peace", by James O'Connor, 1911 edition. Box D101.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still inexistence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 19th day of August, 1963.

D. L. McALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
Dublin.

SCHEDULE.

1. Registered Owner Sabina Gilmore. Folio number 7141. County Mayo. Lands of Carrownluggaun in the Barony of Costello, containing arh. 5¼ perches.

2. Registered Owner Hugh Kelly. Folio number 1022. County Limerick. Lands of Newtown (Parish of Inch St. Lawrence) in the Barony of Clanwilliam, containing 37a. 1r. 31p. and lands of Newtown (Parish of Cahirconlish) in the Barony of Clanwilliam containing 17a. 3r. 35p.

3. Registered Owner Rose Murray. Folio number 353. County Leitrim. Lands of Corracor in the Barony of Carigallen, containing 25a. or. 20p.

## OBITUARY

MR. MICHAEL J. MAGUIRE, State Solicitor, Longford, died on the 18th July, 1963 at Granard.

Mr. Maguire served his apprenticeship with the late Thomas W. Delany of Longford and he was admitted in Hilary Sittings 1931.

MR. ARTHUR C. HOULIHAN, Solicitor, died on the 18th July, 1963 at his residence, Mount Dudley, Roscrea, Co. Tipperary.

Mr. Houlihan served his apprenticeship with the late William J. Menton of Roscrea and he was admitted in Trinity Sittings 1906.

MR. MARTIN A. SALMON, Solicitor, died 25th July, 1963 at his residence 35, South Main Street, Naas, Co. Kildare.

Mr. Salmon served his apprenticeship with Mr. Dermot J. O'Rourke, Solicitor, Naas and subsequently with Mr. Peter Canning of Naas. He was admitted in Michaelmas Sittings 1946 and he practised at Naas as a member of the firm of Brown and McCann.

MRS. WILLIAM L. CARROLL, B.A., D.P.A., Solicitor (formerly ANNIE JOSEPHINE McGUINNESS), died on the 1st August, 1963 in Dublin.

Mrs. Carroll served her apprenticeship with John C. Garvey, Solicitor, Castlebar, and she was admitted in Michaelmas Sittings, 1947.

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AUGUST-SEPTEMBER
1963

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## MEETINGS OF THE COUNCIL

JULY 25TH: The President in the chair, also present Messrs. Desmond J. Collins, George G. Overend, Brendan A. McGrath, Peter D. M. Prentice, James R. C. Green, Desmond Moran, Richard Knight, Ralph J. Walker, D. B. Gilmore, Robert McD. Taylor, John Maher, Roderick O'Connor, Edward J. Dillon, Daniel J. O'Connor, Peter E. O'Connell, John Carrigan, James W. O'Donovan, Patrick Noonan, Thomas A. O'Reilly and Francis Armstrong.

The following was among the business transacted:

### Inland Revenue Affidavits

It was decided to make representations to the Estate Duty authorities to simplify the form of the Inland Revenue Affidavit, to request that it be changed to a standard size similar to the form used in England.

### Compensation Fund Payments

The Council on a report from the Compensation Fund Committee, approved payments amounting to £9,887 13s. 10d.

## International Bar Association

It was decided that the President for the time being should attend the 10th Conference of the International Bar Association to be held at Mexico City in 1964.

## EXAMINATION RESULTS

On a report from the Court of Examiners the Council declared the following results of the Book-keeping, and 1st and 2nd Irish examinations held in July, 1963.

*Book-Keeping Examination*

*Passed with merit :* 1. Francis P. Gleeson ; 2. James N. Dudley ; 3. Denis J. Casey.

*Passed :* Brendan P. Byrne, Thomas J. Colgan, B.C.L. ; Anthony E. Collins, B.A., B.Comm. ; Stuart L. Cosgrave, Peter B. Fagan, Laurence A. Farrell, Sarah M. Gallivan, John F. P. Glynn, Declan J. Howley, Delphine A. C. Kelly, B.A. ; Paul W. Keogh, Dermot Loftus, James J. Nestor, Thomas A. O'Donnell, William F. O'Driscoll, Bryan L. O'Flaherty, B.C.L. ; Austin Turnbull, Edmond M. Veale, B.C.L.

28 candidates attended ; 21 passed.

*First Examination in Irish :* Eric H. W. Bradshaw, Sean P. Corrigan, Maeve T. Ua Dhonnchadha, Andrew J. O. Donnelly, Andrew G. Ellerker, Conor C. Foley, Desmond J. Houlihan, Harold S. H. Jennings, Patrick J. Kevans, James D. Lavery, Kieran M. F. Murphy, Francis J. O. McGuinness, Donnchadh Ó Buachalla, Homan F. Potterton, Michael C. Reilly, Nicholas K. Robinson, Charles C. R. de Lacy Staunton, Angela M. Sweetman.

18 candidates attended ; 18 passed.

*Second Examination in Irish :* William S. Barrett, Anthony E. Collins, B.A., B.Comm. ; Thomas W. Enright, Yvonne Fagan, Sarah M. Gallivan, Francis P. Gleeson, William B. Glynn, Donnchadh D. Lehane, Thomas A. Menton, Peter F. R. Murphy, Thomas D. J. O'Brien, Bryan L. O'Flaherty, B.C.L. ; Thomas J. O'Reilly, John J. Rochford, B.C.L. ; Ian A. Scott.

17 candidates attended ; 15 passed.

## PROGRAMME OF LECTURES 1963/64

COURSE A.—Company Law. 50 Lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Thursday at 2.15 p.m. save where otherwise notified.

COURSE B.—Conveyancing Law and Practice and Land Law, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 9 a.m. save where otherwise notified.

COURSE C.—The Procedure and Practice of the Courts, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Saturday at 9 a.m. save where otherwise notified.

COURSE D.—Taxation including death duties, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Wednesday at 9 a.m. and Saturday at 10 a.m. save where otherwise notified.

COURSE E.—Book-keeping, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Monday and Friday at 5.15 p.m. save where otherwise notified.

COURSE F.—Probate and executorship law and practice, 50 lectures delivered as follows :—Michaelmas Sittings—20 ; Hilary Sittings—20 ; Easter Sittings—10. Lectures each Tuesday and Friday at 2.15 p.m. save where otherwise notified.

Students at Course A to F who fail to attend and receive credit from the lecturer for at least 40 lectures in each Course will not receive credit from the Council and must repeat any Course missed.

COURSE G.—The rights, duties and responsibilities of solicitors, 2 lectures. An apprentice, to obtain credit, must attend both lectures. The dates on which the lectures will be held will be announced at a later date.

For a selection of recommended reading see the published syllabus for the first, second and third law, and book-keeping examinations. The lecturer will not necessarily undertake to cover the entire field in each subject, or lecture out of any particular text book. He will advise the class as to its reading and will assume that each student will have read on the lines advised, in advance of each lecture, on the subject matter of the lecture. The aim of lecturer will be to guide students in their work and to illustrate, explain and supplement their reading.

Fee—10 guineas for each Course except Course G for which there is no fee.

## PENSION ANNUITY SCHEME

A pension sickness and accident insurance scheme is available to members of the Society. It was arranged by the Society with Irish Pensions Trust Limited in or about the end of 1961 and at that time a booklet containing details of the schemes available were circulated to all members. A copy of the booklet may be had from Irish Pensions Trust Limited and all enquiries for further information should be directed to the Trust. The address of the Trust is 38 Fitzwilliam Square, Dublin, and the Cork address is 46 South Mall.

Apprentices should take the first law examination *before* attending any of the above lecture courses.

The lecture courses for each term have been arranged to coincide as closely as possible with the University terms.

## LIST OF NEW MEMBERS FROM 1st AUGUST, 1962 TO 31st JULY, 1963

Michael J. P. Allen, 51 Merrion Square, Dublin.
William D. Andrews, 3 Lr. O'Connell St., Dublin.
James C. Brennan, 6 Cavendish Row, Dublin.
Daniel Brilley, City Hall, Dublin.
Peter J. Callery, Dingle, Co. Kerry.
Colin A. Chapman, Waterford.
Gerard Charlton, 14 Westland Row, Dublin.
Michael G. Cody, Bagenalstown, Co. Carlow.
Patrick J. Connellan, Longford.
Patrick A. Dorrian, Donegal.
John M. Foley, Bagenalstown, Co. Carlow.
Martin Haran, 6 Foster Place, Dublin.
John N. M. Lavelle, Achill Sound, Westport, Co. Mayo.
Bryan F. Lynch, 12 Lower Ormond Quay, Dublin.
Thomas Mullaney, Sligo.
Kevin P. McMorrow, Leopardstown Road, Sandyford, Co. Dublin.
Eamonn O'Carroll, Parliament Street, Kilkenny.
John A. O'Gorman, Tullow, Co. Carlow.
Francis J. O'Mahony, Newlands Rd., Clondalkin, Dublin.
Patrick J. O'Shea, Midleton, Co. Cork.
Noel M. J. Purcell, 16 Dawson Street, Dublin.
Alexander C. P. Ross, Dublin Castle, Dublin.
Francis H. C. Salmon, 47 Lower Leeson Street, Dublin.

## BROCHURE ON PREPARATION FOR CONDITIONS OF FREER TRADE

The Committee on Industrial Organisation have published a brochure stressing the urgency of the need for industrial adaptation to conditions of freer trade and outlining the measures towards that end which may require to be taken by individual firms and industries as well as the various forms of State financial assistance available for that purpose. Copies have been sent to manufacturing firms throughout the country and the Department have requested the Society to suggest to its members that they should use any contacts they may have with the managements of industrial firms to emphasise the urgent necessity for adaptation to meet the competition which will arise from freer trading conditions. Copies of the brochure are obtainable free of charge from the offices of the Department of Industry and Commerce (Room 208), Kildare Street, Dublin.

## TURNOVER TAX

The Revenue Commissioners have issued a short booklet entitled *Guide to the Turnover Tax*. The booklet is intended for the information of the public in general as it sets out in very simple terms the principles of the tax and the requirements to be fulfilled by all persons affected by it. However, it will be useful to any member who wishes to get a clear overall picture of the tax and its operation. Many members will no doubt in the coming weeks be called upon to advise their clients who find themselves affected by the tax. The booklet is available free of charge on application to any post office or income tax office.

## SOCIETY'S DINNER DANCE

The Society's Annual Dinner Dance will be held as usual this year on the same date as the Autumn Ordinary General Meeting, that is to say November 21st, 1963 and it will be in the Shelbourne Hotel. Tickets will shortly be on sale at the hotel. Fuller details will be circularised to all members in due course.

## MODERN LAW PUBLICATIONS

The following publications are now on sale:

1. *Civil Liability Act*, 1961—Richard M. Neville, LL.M. Price 8/6. Post free.
2. *The Stamp Duty Legislation*, 1890–1962—Eric A. Plunkett, Price 8/6. Post free.
3. *Administration of Estates Act*, 1959—Joseph P. O'Connell, B.A., LL.B. Price 8/6. Post free.
4. *Statute of Limitations*, 1957—Desmond R. Counahan, LL.D. Price 10/6. Post free.
5. *Married Women's Status Act*, 1957—Colum Gavan Duffy, M.A., LL.B. Price 10/6. Post free.

## UNDERTAKING FOR IMMUNITY FROM INCOME TAX PENALTY PROCEEDINGS

The Minister for Finance announced in Dáil Éireann in the course of his budget speech on the 23rd April, 1963, that following on his intention to accept recommendations from the Income Tax Commission on tax evasion, an opportunity would be given to all persons who so wish to make a full disclosure of their tax position to the Revenue, and by so doing they would avoid incurring any penalties. A form of undertaking to be signed by taxpayers in order to avail of these terms has now been prepared and copies may be had on application to the Chief Inspector of Taxes, Special Branch, 19–22 Dame Street, Dublin, The Chief Inspector of Taxes, Investigation Branch, 61 Middle Abbey Street, Dublin, or from the office of any Inspector of Taxes. The undertaking if availed of, should be completed and lodged with the Revenue Commissioners by the 31st March, 1964 and the undertaking is to give information to the Revenue to enable the Revenue to complete the amount of tax underpaid by the 30th June, 1964. An extract from the Minister's budget speech is printed on the back of the form of undertaking.

## SAVING STAMP DUTY ON GIFTS OF LAND

An article in *Law Notes* (July, 1963, page 173, Vol. 82, No. 7) contains a suggestion for a means whereby stamp duty may be avoided on a voluntary disposition of property. The scheme depends on a House of Lords decision of Stanyfort *v.* Inland Revenue Commissioners (1930) AC 339. The example given is that of a donor who wishes to settle property absolutely on his wife.

Four deeds are required to effect the settlement. They are as follows :—

(I) A Deed of Trust to which there are four parties (i) the settlor, (ii) the wife of the settlor, (iii) the settlor and his solicitor and (iv) two other persons who are to be trustees of the trust instrument. The trusts are (i) such trusts and with and subject to such powers and provisions as the donor and his solicitor shall from time to time by any deed or deeds revocable or irrevocable jointly appoint and (ii) in default of and until and subject to any such appointment in trust for the wife in fee simple. This document will also declare that the trustees are appointed for the purposes of the Settled Land Acts and that the statutory power of appointing new trustees applies. The donees of the power of appointment should be the settlor and his solicitor as if the trustees or the wife herself were given this power the Revenue could assess duty on the deed.

(II) The second document is a vesting deed whereby the donor declares that the land with the property is vested in the wife in fee simple on the trusts declared by document I.

(III) This is a simple deed whereby the donor and his solicitor release and give up their joint general powers under document I. This document should not be in existence or even in draft form at the time of the execution of document I and document II or if it is the Revenue may claim that it attracts ad valorem duty appropriate to a voluntary disposition under the "All One Transaction Rule".

(IV) The fourth and last document is a deed of discharge by the trustees of the trust instrument in favour of the wife. This deed recites the vesting deed (Document II) and the fact that all equitable interests and powers under the trust instrument have ceased and determined. As a result of this the trustees declare that they are discharged from the trusts of the trust instrument (Document I). This deed merely records that the settlement created by document I is at an end. The legal estate already being in the wife by virtue of document II, she becomes absolute owner in fee simple of the property and would be able to deal with the property as her own and treat any money arising as a result of any transaction carried out by her as hers beneficially. According to the author of the article the stamp duty in each of the four deeds would be 10s. only that is, assuming that the decision in the case is regarded as being the law.

## EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

To mark the 10th anniversary (September 3) of the entry into force of the European Convention on Human Rights and Fundamental Freedoms, the Directorate of Information of the Council of Europe has published a supplement to the *Council of Europe News* outlining the background to the Convention and the main developments under it.

Sufficient copies of the supplement are being reserved for members of the Incorporated Law Society, and are available free.

Ireland has taken a leading part in implementing the machinery of the Convention. It has extended to its citizens the right of individual petition to the Human Rights Commission, and was the first country to agree to accept the jurisdiction of the proposed European Court of Human Rights, which came into operation when the necessary minimum of eight countries was reached.

The supplement will serve as a useful introduction to the Convention, and can be had on request from the National Correspondent of the Directorate of Information, Council of Europe. His address is 42 Dawson Street, Dublin.

## DECISIONS OF PROFESSIONAL INTEREST

*Confidential report on a minor not disclosed to one of the parties in a wardship matter*

In a case reported under the above heading in the June, 1963 issue of the GAZETTE at page 15 it was held by the Court of Appeal in England that a confidential report of the official solicitor should be made available to the mother of the minor, the subject of the report, in wardship proceedings. This decision has now been reversed by the House of Lords. Lord Evershed giving the judgment of the Court said that there could not be an absolute right on the mother's part in this case to see the official solicitor's report. The judicial proceedings in this case were for the benefit of the infant and for the purpose of making a decision about his or her immediate future upbringing or control. For such a purpose the infant was in relation to the Court in a special position distinct from that of the other parties for he or she was a ward of the Court exercising the ancient prerogative of parental jurisdiction. If this were the case, then it could not be right that the Court was always compelled in circumstances such as had arisen here to choose the lesser of two evils and to do that which in the Court's view would be against the infant's interest and to console itself in so doing by regarding the result as a distressing consequence of a broken home. In conclusion His Lordship observed that the submitting of confidential reports as a general practise was not to be recommended but only in those circumstances when the official solicitor felt strongly that the information which he had obtained should be submitted confidentially. (Official Solicitor *v.* K. (Infants) & Another, *Solicitors' Journal*, August 2nd, page 617.)

*Possessory title—whether offer to purchase is an acknowledgment of title*

In 1947 the plaintiff occupied a vacant bomb site which he used for car parking and other purposes, and he erected a fence around it. He remained there until September, 1961, when the defendants as weekly tenants of the freeholders entered on the site. The plaintiff brought an action against them for trespass. In 1954 he had written two letters to the freeholders offering to purchase the property. It was held by the trial judge and also by the Court of Appeal upholding him that the offer in writing by the plaintiff to the freeholders to buy the property constituted an acknowledgement and his action was dismissed. In the Court of Appeal it was said that what constituted an acknowledgment of title in any particular case depended on the proper construction of the document in question and all the surrounding circumstances. Although the plaintiff had not, by offering to purchase the property, acknowledged that the vendors had a marketable title to it, what he had acknowledged was that, as between himself and them, they had the better title, and that seemed to be all that was required. (Edginton *v.* Clarke & Anor. *Solicitors' Journal*, August 2nd, page 617.)

*Fatal injuries claim—subsequent re-marriage*

In June, 1959, C., aged 22, was killed in a collision between a motor bicycle which he was riding and a motor-car. C.'s widow brought an action for damages under the Fatal Accidents Act, 1846, and the Law Reform (Miscellaneous Provisions) Act, 1934, against the executors of the driver of the motor-car. The action was heard in January, 1962, when the widow, who had no children, was aged 24. The trial judge found that C. was one-third to blame for the accident, that the amount by which the widow would have been likely to benefit in the future was £6 a week, and assessed the damages at £4,000, saying that the widow was a presentable young lady who would have opportunities, if she were so minded, of re-marriage and that it was right to make some real diminution in the amount of damages awarded because of that factor. Owing to the fact that she had broken down when giving evidence at the trial, the widow had not been asked about the possibility of re-marriage. In March, 1962 before the expiry of the time for giving notice of appeal, she re-married. On appeal by the defendants against the amount of damages awarded, they sought leave under R.S.C. Ord. 58, r. 9 (2), to adduce evidence of the widow's re-marriage on the ground that if it was granted they would contend that, by her re-marriage, the widow had not lost the financial support assessed by the judge. The defendants tendered no evidence as to the amount by which the re-marriage was benefiting the widow.

HELD: the appeal would be allowed and the amount of damages awarded reduced because where, as here, the re-marriage occurred soon after the trial,

the case should be decided on the known fact of marriage, of which evidence would be admitted on the appeal; accordingly, the damages assessed would be reduced by one half to £2,000, a figure which, in the opinion of the Court of Appeal, was as much as the trial judge would have awarded had he known that the re-marriage was likely to take place as early as it did.

Per Harman, L.J., and Pearson, L.J.: we do not decide what the position would have been if the re-marriage had occurred after the expiry of the time limited for serving notice of appeal.

(Curwen *v.* James and Others.) (1963, 2 All E.R. page 619.)

*Whether victimisation of a witness amounts to contempt of Court.*

In an action against a landlord his tenant was subpoenad by the landlord's opponent in litigation and gave evidence against the landlord. The next day the landlord gave the tenant notice to quit. In an action by the tenant against the landlord for damages the county court judge found that the landlord's motive in giving the tenant notice was desire to punish the tenant for having given evidence against him. The county court judge awarded damages to the tenant on the basis that an action for damages for contempt of court was maintainable in law. On appeal,

HELD (Lord Denning, M.R., dissenting): An action for damages did not lie for contempt of court in the present case, because (*a*) the object of the court's jurisdiction to punish for contempt of court was the protection of the administration of justice, not the protection of the individual affected, and (*b*) the same act (viz., in the present case, the giving of notice to quit) could not be both lawful and unlawful, viz., valid in the sphere of contract and wrongful in the sphere of tort.

The Court considered the dicta of Lord Denning, M.R., in A.G. *v.* Butterworth (1962 3 All E.R., page 329). A short note of this case is published in the Society's GAZETTE for October/November, 1962, at page 47. (Chapman *v.* Honig) 1963 2 All E.R. p. 513.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 16th day of September, 1963.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner, Katie Leahy, Folio number 1401. County Limerick. Lands of Grange East in the Barony of Clanwilliam containing 28a. or. 29p.

2. Registered Owner, Michael J. Hanley, Folio number 11867. County Roscommon. Lands of Carrowcrin in the Barony of Ballintobber South containing 100a. or. 30p.

## ADMISSION AS SOLICITORS

### 1st August, 1962 to 31st July, 1963.

| *Name* | *Service with* |
|---|---|
| BLAKE, BRUCE F. ST. JOHN, B.A., LL.B.<br>Eyre Square,<br>Galway. | FRANCIS DEVINE and HARRY MCCRACKEN,<br>89 St. Stephen's Green and HENRY ST. J. BLAKE and GEORGE J. GERAGHTY,<br>Galway. |
| BOURKE, SEAN, B.A., B.C.L.,<br>40 Dartry Road,<br>Rathmines,<br>Dublin. | JAMES V. AITKEN,<br>24 Upper Ormond Quay,<br>Dublin. |
| CALLERY, PETER J.,<br>Cloonahee House,<br>Elphin,<br>Co. Roscommon. | JOHN KELLY,<br>Elphin,<br>Co. Roscommon. |
| CHAPMAN, COLIN A., B.A.,<br>The Cliff,<br>Tramore,<br>Co. Waterford. | WILLIAM E. CHAPMAN,<br>Cathedral Square,<br>Waterford. |
| CONNELLAN, PATRICK J.,<br>Church Street,<br>Longford. | PATRICK JOSEPH BRANIGAN,<br>Longford. |
| CUSSEN, ROBERT MCC., B.C.L.,<br>Newcastle West,<br>Co. Limerick. | ROBERT J. CUSSEN,<br>Newcastle West,<br>Co. Limerick. |
| DICKSON MICHAEL J.,<br>B.A. (Mod.), LL.B.,<br>9 Nutley Park,<br>Dublin. | GEORGE G. OVEREND,<br>31 Fitzwilliam Square,<br>Dublin. |
| DILLON LEETCH, THOMAS A., B.C.L.,<br>Ballyhaunis,<br>Co. Mayo. | JOHN DILLON-LEETCH,<br>Ballyhaunis,<br>Co. Mayo. |

| *Name* | *Service with* |
|---|---|
| DUNDON, JOSEPH L., 101 O'Connell Street, Limerick. | JOHN L. DUNDON, 101 O'Connell Street, Limerick, and EDWARD TREACY, 92 O'Connell Street, Limerick. |
| GARDINER, BRIAN J., B.C.L., 4 St. Alban's Park, Ballsbridge, Dublin. | FRANCIS X. MULLIGAN, 27 Eustace Street, Dublin. |
| HANNA, MARY G., B.C.L., LL.B., Marymount, Fortwilliam Park, Belfast. | JAMES F. FITZPATRICK, 20 Wicklow Street, Dublin. |
| KIELY, DAVID O'N., Ashfield House, Kilkenny. | TIMOTHY O'N. KIELY, Patrick Street, Kilkenny. |
| KIRWIN, HELEN M., B.C.L., "Hilary," Howth Road, Raheny, Dublin. | TIMOTHY J. KIRWAN, 25 Wicklow Street, Dublin. |
| KIRWAN, WILLIAM J. P., "Hilary," Howth Road, Raheny, Dublin. | TIMOTHY J. KIRWAN, 25 Wicklow Street, Dublin. |
| LANIGAN, JOHN G., Wind Gap Cottage, Dublin Road, Kilkenny. | THOMAS G. LANIGAN, 81 High Street, Kilkenny. |
| LEAHY, WILLIAM E., Millbrook, Ballysimon, Co. Limerick. | WILLIAM LEAHY, 50 O'Connell Street, Limerick. |
| LOMBARD, GARRET P., Avenue House, Gorey, Co. Wexford. | MATTHEW G. R. LARDINER, Gorey, Co. Wexford, and GERRARD A. WALSH, Gorey, Co. Wexford. |
| LYNCH, BRYAN F., Brunnhilde, Dungriffen Road, Dublin. | MARCUS A. LYNCH and GREGORY A. LYNCH, 12 Lower Ormond Quay, Dublin. |
| MCMAHON, PETER JOSEPH, Portnablagh, Letterkenny, Co. Donegal. | MARY CATHERINE HUGHES, 11 Hume Street, Dublin. |
| MATTHEWS, NEIL M., Baltray, Co. Louth. | MALACHY S. MATTHEWS, Drogheda, Co. Louth. |
| MONAHAN, JAMES, B.C.L., Thomond House, Abbey Street, Ennis, Co. Clare. | MICHAEL J. WALSHE, Ennis, Co. Clare. |
| Ó'BROLCHAIN, BLANAID D., B.A., 13 Marlborough Road, Donnybrook, Dublin. | ARTHUR COX, 42/43 St. Stephen's Green, Dublin. |
| O'CALLAGHAN, MARGARET J., B.A., Carbery, Silchester Road, Glenageary, Dublin. | JOHN BURKE, 68 South Mall, Cork. |
| O'DONNELL, JAMES R., Tirconnell, Ennis Road, Limerick. | THOMAS E. O'DONNELL, Limerick. |
| O'FLYNN, FRANCIS J., The Gables, St. Patrick's Hill, Cork. | GERALD F. O'FLYNN, 59 South Mall, Cork. |
| O'HALLORAN, CARMEL M., 67 Sandford Road, Ranelagh, Dublin. | JOHN A. G. CULLEN, 46 Dawson Street, Dublin. |
| O'KEEFE, JAMES L., Gortnacloghy, Skibbereen, Co. Cork. | MICHAEL R. BOLAND, Skibbereen, Co. Cork. |
| ORANGE, JAMES G., B.C.L.; LL.B., Glenties, Co. Donegal. | DENIS M. RONAN, 3 Lincoln Place, Dublin. |
| O'SHEA, PATRICK J., 77 Main Street, Midleton, Co. Cork. | BRYAN J. MURPHY, 27 South Mall, Cork. |
| RIORDAN, SYLVESTER W., B.A. (N.U.I.), Coolbawn, Barnhill Road, Dalkey, Dublin. | HENRY J. FRIZELLE, Enniscorthy, Co. Wexford, |
| SMYTH, THOMAS C., 15 St. Mary's Road, Dundalk, Co. Louth. | PHILIP MCCOURT, Dundalk, Co. Louth. |
| WALSHE, DAIRE, Ard-na-Glaise, Stillorgan Park, Blackrock, Co. Dublin. | EUNAN MCCARRON, 18 Hume Street, Dublin. |
| WOODS, PETER J., Ghan House, Carlingford, Co. Louth. | PETER WOODS, 18 Francis Street, Dundalk, Co. Louth. |
| YAFFE, MALCOLM, B.A., LL.B., 111 Westfield Road, Dublin. | MICHAEL NOYK, 12 College Green, Dublin. |

# INDEX OF STATUTORY INSTRUMENTS

## published since February, 1963.

### AGRICULTURE, LANDS AND FISHERIES.

SUBJECT MATTER AND REFERENCE NUMBERS.


Bovine Tuberculosis Testing of Tubercular Cattle to be made within 30 days prior to sale or movement into an attested area—76/1963.

Bovine Tuberculosis—Counties Dublin, Laoighis and Wexford declared Attested Areas after 15 April 1963—55/1963.

Bovine Tuberculosis—Control of Movement and Public Sales of Cattle in Counties Cork, Kerry, Kilkenny, Limerick and Waterford after 15 June 1963—110/1963.

Bovine Tuberculosis—Herd owners for said counties to have their herds tuberculin tested—109/1963.
Grain Board—Assignment of Additional Functions—160/1963.
Fishing Nets—Smaller Mesh allowed up to 1 June 1964—47/1964.
Lobsters—New minimum size of 83 m.m. declared from 1 May 1963—52/1963.
Pigs and Bacon Commission—Certificates of Chief Officers to be Prima Facia Evidence—80/1963.
Pigs and Bacon Commission Minimum Prices Orders—13/1963.
Pigs and Bacon Commission Grading Orders—48/1963, 132/1963, 152/1963.
River Erne—Special Licence for Profit Net £5 after 1 August 1963—147/1963.
Wheat—Prices to be paid to growers for milliable wheat of 1963 Harvest—149/1963.

## COMMODITIES, GOODS AND SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Cork District Milk Board—Minimum Prices for Milk—66/1963.
Drumcollihier, Co. Limerick—Undeveloped Areas Act 1952 extended to this District—56/1963.
Dublin District Milk Board (Minimum Prices for Milk)—67/1963.
Gas—Contribution to be made by Gas Undertakings for 1963 fixed at 2/4 per million cubic feet of gas sold.
Milk—Levy of 1.375d. per gallon imposed on creamery proprietors after 1 June 1963—72/1963.
Milk—Maximum Retail Prices fixed in Dublin Sale District until 30 April 1964—27/1963, 64/1963, 143/1963.

## CONTROL OF IMPORTS AND EXPORTS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Assembled Motor Vehicle Chassis—Imports limited to 50 in 1963—221/1963.
Assembled Motor Vehicle Chassis with Bodies—Imports limited to 20 in 1963—220/1963.
Boots and Shoes Limited to 75,000 pairs to 30 June 1963—218/1962.
Boots and Shoes—Limited to 75,000 pairs to 31 December 1963—94/1963.
Brushes, Brooms and Mops—Imports limited to 12,500 articles to 30 June 1963—41/1963.
Brushes, Brooms and Mops—Imports limited to 41,250 articles to 31 March 1964—97/1963.
Cycle Tyres—Import Quota Restrictions if manufactured in Western Europe and U.S.A.—118/1963.
Hats, Caps, Hoods and Straps limited to 30,000 Articles in 1963—224/1962.
Metal Screws—Limited to 30,000 Gross to 30 June 1964—99/1963.
Laminated Springs—Imports limited to Value of £1,650 to 31 March 1964—98/1963.
Laminated Springs—Imports limited to Value of £500 to 30 June 1963—42/1963.
Motor Car Body Parts limited to 10 in 1963—223/1962.
Pneumatic Tyres for Motors—Imports limited to 25,000—237/1962.
Pneumatic Tyres for Bicycles—Imports limited to 45,000 to 30 June 1963—238/1962.
Pneumatic Tyres for Motor Vehicles—limited to 38,500 to 31 January 1964—93/1963.
Pneumatic Tyres for Tricycles—limited to 200 to 31 January 1964—101/1964.
Rubber Boots and Shoes—limited to 25,000 pairs to 30 June 1963—239/1962.
Rubber Boots and Shoes—limited to 55,000 pairs to 31 December 1963—102/1963.
Rubber-proofed Clothing—Imports limited to 1,000 Articles in 1963—219/1962.
Road Vehicle Bodies—limited to 50 in 1963—222/1963.
Silk or Artificial Silk Hose—Imports limited to 190,000 pairs to 30 June 1963—37/1963.
Sugar Syrups—Export prohibited after 25 April 1963 save with licence—59/1963.
Sugar—Further Export Controls imposed after 1 September, 1963—170/1963.
Superphosphates—limited to 550 tons to 30 June 1964—100/1964.
Silk or Artificial Silk Hose—limited to 418,000 pairs to 29 February 1964—95/1964.
Woven Wool and Worsted Fabrics—Imports limited to 600,000 square yards to 30 June 1963—38/1963.
Woven Wool and Worsted Fabrics—Imports limited to 900,000 square yards to 31 December 1963—96/1963.

## COUNTY AND TOWN MANAGEMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Donegal Co. Council may grant Licences for Camping in Fanad and Rosguill—144/1963.
Kerry Co. Health District may grant Licences for Camping—54/1963.
Listowel U. D. C. may grant Licences for Camping—51/1963.
Local Government (Sanitary Services) Act 1948 (Section 34) (Part of County of Donegal) Order 1963—144/1963.
Local Government (Sanitary Services) Act 1962—Sections 2 and 3 in operation from 1 July 1963—116/1963.
Private Water Supplies and Sewerage Facilities Regulations 1963—117/1963.
Vocational Education—Allowances to Committee Members to attend meetings revised—114/1963.
Vocational Education—Grants may be made in 1962–63 towards cost of providing improved accommodation for Schools—44/1963.

## CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Iron and Steel Bars, Rods, Sections and Sheets—Customs Duty suspended until 31 December 1963—146/1963.
Iron and Steel Products—Customs Duty suspended until 31 July 1963—70/1963.
Softwood subjected to full Customs Duty of 45% after 4 June 1963—90/1963.
Shannon Customs Free Airport—Some restrictions removed—137/1963.
Tinplate—Customs Duty suspended after 1 August 1963—136/1963.

## EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Apprenticeship Act—10/- fixed as initial fee for Registration in the Register of Apprentices—53/1963.
Braids Industry—Women may be employed between 7 a.m. and 11 p.m.—85/1963.

Creameries Joint Labour Committee—New minimum rates and conditions of employment fixed after 2 September 1963—134/1963.
Electricians—Age of Entry under Apprenticeship Act Rules 1963.
Electricians—Educational Qualifications under Apprenticeship Act Rules 1963.
Electricians Apprenticeship Classification Rules 1963.
Fruit and Vegetable Canning and Freezing Industry—Women may be employed between 7 a.m. and 11 p.m.—130/1963.
Iron Castings Industry—Women may be employed between 7 a.m. and 11 p.m.—133/1963.
Irish Dental Association may carry on negotiations for conditions of employment without Negotiation Licence—63/1963.
Irish Medical Association may carry on negotiations for conditions of employment without Negotiation Licence—58/1963.
Men's Clothing and Shirtmaking Industry—Persons under 18 may be employed between 8 a.m. and 10 p.m. in Men's Shirtmaking Industry in Drogheda—140/1963.
Motor Mechanics—Age of Entry (15 yrs.) under Apprenticeship Act Rules 1963.
Motor Mechanics—Educational Qualifications (Intermediate) under Apprenticeship Act Rules 1963.
Motor Mechanics Apprenticeship Classification Rules 1963.
Paper Box Joint Labour Committee abolished as from 25 June 1963—113/1963.
Sugar Packaging Industry—Women may be employed between 7 a.m. and 11 p.m.—46/1963.
Trade Union Act (Exclusion from Section 6) Orders 1963—58/1963, 63/1963.
Veneer Industry—Women may be employed between 7 a.m. and 11 p.m.—86/1963.

## FINANCE AND CENTRAL GOVERNMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Death Duties—Conditions prescribed under which 5¾% National Loan, 1982–1987, may be accepted in payment of death duties—45/1963.
Electoral Act 1963—Part 2 dealing with Registration of Electors in force from 12 July 1963—121/1963.
Local Government Act 1941—Minister for Defence designated as appropriate Minister for Civil Defence under Part II of the Act—43/1963.
Registration and Forms of Local and Parliamentary Electors—169/1963.
Statistics—Provisions for Statutory Census of Industrial Production—71/1963.
Turnover Tax—19 August, 1963, appointed day—162/1963.
Turnover Tax—Funeral Undertakings exempted—163/1963.
Turnover Tax—Lotteries exempted—164/1963.
Turnover Tax—Bets at Coursing Meetings exempted—165/1963.

## HARBOURS AND HYDRO-ELECTRIC WORKS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Cobh Admiralty Pier to be reconstructed by Cork Harbour Board—150/1963.
Cork Harbour Commissioners may charge specified rates on Containers after 14 June 1963—107/1963.
Limerick Harbour Commissioners to carry out improvements in Limerick Dock—135/1963.
Galway Harbour Works to be improved—151/1963.

## HEALTH.

SUBJECT MATTER AND REFERENCE NUMBERS.

Clare Registrar's District—Lisdoonvarna E.D. transferred from Ballyvaghan Registrar's District to Roadford Registrar's District—89/1963.
Clare—Lisdoonvarna E.D. transferred to Roadford Dispensary District—84/1963.
Disabled Persons (Maintenance Allowances) Regulations 1963—142/1963.
Disabled Persons (Rehabilitation) Regulations 1963—141/1963.
Dublin Dental Hospital Board to succeed the Incorporated Dental Hospital of Ireland—129/1963.
Fluoridation of Water Supplies—Regulations affecting—Cork City—29/1963.
Fluoridation of Water Supplies—Regulations affecting—Limerick Borough—30/1963.
Fluoridation of Water Supplies—Regulations affecting—Waterford Borough—31/1963.
Galway County Health District—Ardrahan Dispensary District abolished and added to East and Kinvara Dispensary Districts after 1 June 1963—61/1963.
Galway Registrar's District—Boundaries of East and Kinvara Districts made co-terminous with S.I. No. 61 of 1963—81/1963.
Health Authorities may provide a Rehabilitation Service under the Health Act 1953—142/1963.
Health—Age Limit for specified District Medical Officers declared to be 70 years—119/1963.
Maintenance allowances to disabled Persons increased to 27/6 per week after 1 November 1963—142/1963.
Medical Preparations listed in First and Second Schedule—Sale prohibited save with Medical Prescription after 27 May 1963—82/1963.
Health Authorities Act 1960—Section 19 in force in area of Waterford Health Authority from 20 May 1963—83/1963.

## JUSTICE, EXTERNAL AFFAIRS AND DEFENCE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Coroners Act 1962 (Fees and Expenses) Regulations 1963 replacing S.I. 92/1962 from 1 January 1963—145/1963.
Garda Síochana—New Scales of Pay in force from January, 1963—166/1963.
Solicitors (Compensation Fund) Regulations 1963 in force from 21 June 1963—115/1963.
Supreme Court and High Court—Some fees amended from 8 March 1963—35/1963.
Superior Court Rules (No. 1) 1963—105/1963.

## MISCELLANEOUS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Authorised Coursing Meetings exempted from levy to Greyhound Board until 1 September 1968—122/1963.
Game Birds—Annual close seasons prescribed—123/1963.
Greyhounds—Regulations re Public Sales which must be carried out by Licensed Auctioneers—34/1963.
Greyhound Race Track (Totalisator) (Operating) (Amendment) Regulations 1963—33/1963.
Greyhound Race Tracks—Schooling Tracks exempted from some Regulations—73/1963.
Greyhound Race Track (Racing) (Amendment) Regulations 1963—111/1963.

Holidays (Employees) Act 1961—Wholetime Insurance Agents brought within Act—139/1963.

Inland Post Amendment (No. 12) Warrant 1963—153/1963.

Post Office Maximum Weight for Parcels for Ireland and G.B. increased from 15 to 22 lbs. from 26 August 1963—153/1963.

Secondary Teachers Superannuation Scheme 1963—Payment of Grants to Teachers who had retired before 1950—112/1963.

Summer Time in force from 22 March, 1964 to 25 October, 1964—167/1963.

Wild Birds—Taking or Killing prohibited in The Lough, Cork City—124/1963.

Wireless Telegraphy (Control of Interference from Electric Motors) Regulations 1963 in force from 1 December 1963—108/1963.

## SOCIAL SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Insurance (Intermittent Unemployment) Act 1942 (Amendment of Rates of Weekly Contributions and Supplementary Benefit) Regulations 1963—128/1963.

Social Welfare (Assistance Decisions and Appeals) (Amendment) Regulations 1963—127/1963.

Social Welfare (General Benefit) (Amendment) Regulations 1963—126/1963.

Social Welfare (Modification of Insurance) (Amendment) Regulations, 1963—168/1963.

Unemployment Assistance (Second Period) Order 1963—91/1963.

Unemployment Assistance—Date of Publication of 1961 census certified to be 22 March 1963—104/1963.

## TRANSPORT AND TRAFFIC.

SUBJECT MATTER AND REFERENCE NUMBERS.

Air Navigation and Transport Act 1959—Parts 3 and 4 and Schedule in force from 3 August 1963—148/1963.

Air Navigation and Transport (Fares and Rates) Order 1963 revoked from 12 July 1963—120/1963.

Air Navigation (Nationality and Registration of Aircraft) Order 1963—88/1963.

Air Navigation and Transport (Fares and Rates to U.S.A.)—87/1963.

Air Navigation—Revised Fees to be paid for Certificates, Licences, Examinations, Tests, Inspections and Investigations after 4 May 1963—65/1963.

Carriage of Wheat Order 1954—154/1963.

C.I.E. can maintain automatically-controlled barriers at Commons Level Crossing, Castlebellingham, Co. Louth—161/1963.

Cork Parking Bye-Laws, 1963—158/1963.

Dublin Airport—Parking Fees increased after 1 May 1963—68/1963.

Dublin Appointed Stands (Street Service Vehicles) Bye-Laws 1963—50/1963.

Limerick Parking Bye-Laws 1963—62/1963.

Mallow Parking Bye-Laws, 1963—159/1963.

Street Service Vehicles in Dublin (Lost Property) Bye-Laws 1963—32/1963.

Tralee Parking Bye-Laws 1963—79/1963.

Transport Act 1958—Redundancy Compensation Provisions extended to Secretary's Dept. of C.I.E.—36/1963.

Transport Act 1958—Redundancy Compensation Provisions extended to various Sections of C.I.E.—125/1963.

Transport Act 1958—Redundancy Compensation Provisions extended to C.I.E. Bus Conductors and Drivers—103/1963.

## THE REGISTRY

### Register C

WILL any person having information as to a Will of Albert Bolton Cooley, late of Nairobi, Kenya, who died on the 10th February, 1963, and who from 1950 to 1952 resided at Triernane Lodge, Ballickmogher, Carlow, please communicate with Walker, Son & Mason, Solicitors, 15 Molesworth Street, Dublin 2.

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No. 5

OCTOBER-NOVEMBER
1963

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
FRANCIS J. LANIGAN

*Vice-Presidents*
DESMOND J. COLLINS
PATRICK O'DONNELL

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

SEPTEMBER 12TH: The President in the chair, also present Messrs. Desmond Collins, Dinnen B. Gilmore, Reginald J. Nolan, Edward J. Dillon, Rory O'Connor, Richard Knight, John Maher, Peter E. O'Connell, Patrick Noonan, Desmond Moran, John C. O'Carroll, William Tormey, Augustus Cullen, Ralph J. Walker, Eunan McCarron, Charles Hyland, Timothy J. C. O'Keeffe, Peter D. M. Prentice, Daniel J. O'Connor, Thomas J. Fitzpatrick, Francis Armstrong, John J. Nash, Niall S. Gaffney, George G. Overend, R. A. French, Patrick O'Donnell and G. M. Doyle.

The following was among the business transacted:

#### Compensation Fund Payments Fee

Council authorised the secretary to obtain overdraft facilities for the payment of recent claims admitted by the Compensation Fund Committee.

#### Assistant to the Secretary

The Council appointed Mr. Thomas C. Smyth, solicitor, to the post of Assistant to the Secretary in place of Mr. Thomas F. Cusack who had resigned. Mr. Smyth was admitted on 25th April, 1963 and practised at Dundalk, from the time of his admission.

### Week-end Meeting 1965

It was decided that the weekend meeting of the Society to be held in 1965 should be at Athlone and the Secretary was instructed to get in touch with the Midland Bar Association to request their co-operation.

### Registration of Titles Bill 1963

The Council referred the Bill to the Parliamentary Committee for consideration and also to the Dublin Bar Association and to the Southern Law Association for the opinions of their respective Councils.

### Liability for costs of a sale by way of long lease

A Committee of the Council reported on the following matter submitted to them for arbitration.

A building contractor by agreement dated 19th September, 1962 agreed to sell to the purchaser therein mentioned by way of lease certain premises for 999 years at a fine of £3,000 and a yearly rent of £15. In the agreement no mention was made of the liability of the purchaser for costs except for a provision that "the vendor shall execute a lease of the premises such lease to be prepared by and at the expense of the purchaser". On receiving one part of the agreement referred to duly executed by the purchaser the vendor's solicitors stated in correspondence that in view of the fact the the purchaser would be paying to them the costs of the lease they had prepared the draft and were sending it on for approval. The purchaser's solicitor denied any liability for costs and stated that he could not approve of the draft lease as submitted unless his requisitions on title were answered. He returned the draft lease approved of on the understanding that his outstanding requisitions on title would be complied with. He contended that in view of the fact that the transaction was in reality a sale carried out by way of lease the normal common law rule relating to the liability of a lessee for the lessor's costs did not apply and that it was the same as an ordinary sale. He further contended that the vendor's solicitors were not entitled to seek the costs of preparing the draft lease as they took it upon themselves without his consent or agreement to prepare such draft lease.

The following questions were submitted for arbitration:

1. Whether in view of the fact that the purchaser had not consented to the preparation by the vendor of the lease the purchaser should be responsible for the vendor's costs of preparing same.
2. Whether the purchaser is responsible for the vendor's costs for furnishing title.
3. If reply to (2) is yes, the amount of the costs for which the purchaser would be so responsible.

The Council on a report from the Committee rule that:

1. The transaction was a sale governed by the decision in Sims Clarke *v.* Ilet Limited (opinion 79. (*a*) ) and accordingly neither party was liable for the costs of the other.
2. The purchaser was entitled to get, free of charge, whatever title was to be given under the contract and accordingly (3) did not arise.

### Solicitors' name on advertising hoarding

A member enquired if it would be in order for him to give permission to builders who were clients of his to exhibit advertising boards and hoardings advertising houses for sale under their name with brief particulars of the houses followed by the words "For full particulars apply to XY & Co. solicitors" (including the professional address of the firm) or, alternatively, giving the name of the firm without the description solicitor, and the address.

The Council on a report from the Committee stated that the exhibition of the name of the firm of solicitors on an advertising hoarding in any connection would be objectionable.

## WORLD PEACE THROUGH THE RULE OF LAW

### World Conference at Athens—June 30th to July 6th, 1963

#### Utopia Limited?

World Peace through the Rule of Law is the brainchild of the American Bar Association. In 1958, a committee of that Association under the chairmanship of Thomas E. Dewey was set up to examine the whole field of international law and legal institutions and to see what could be done by lawyers to meet the needs in both fields. The only civilised way to deal with the dangers and disputes which arise between the nations of the world—and indeed between individuals—is by the due process of law, and not by force. There is, the Americans say, adequate legal machinery at hand for this purpose; the fault lies in the failure of the nations to use it. And because of this, it is the duty of the lawyers of the world to use their not incon-

siderable influence to endeavour to persuade the nations to settle their disputes in international courts and not by the trial of war. Now, how is this to be achieved? It is clear that, if any success is to be obtained in this sphere, it can only be arrived at by conditioning those who are responsible for the government of their countries and, not only those indeed, but also by indoctrinating their peoples with the idea that, if peace is better than war, then the rule of law must be superior to the use of force.

In the world in which we live to-day, this simple fact seems far from attainment. National governments do, and will, submit disputes to international courts when, and only when, it suits them to do so, and, only if they are so minded, do they pay any attention whatsoever to the judgments of these courts.

The special committee set up by the American Bar Association, now under the chairmanship of Charles S. Rhyne, who is its driving force, reviewed the situation generally and in detail, organising regional meetings throughout America and from these meetings the following conclusions amongst others were drawn:

(1) A world and regional conference of lawyers should be held.
(2) That conferences should concentrate on means of improving satisfactory international institutions and the creation of new ones necessary if the Rule of Law is to achieve among nations the stability it has generally achieved within nations.
(3) The United Nations should be strengthened by urging increased application of, and adherence to, the International Rule of Law.
(4) The legal profession of the nations of the world should undertake a long range continuous effort to achieve the foregoing.

Accordingly four regional conferences were held in 1961/62 in Costa Rica, Tokyo, Lagos and Rome, and two delegates from each country were invited in their personal capacities. Mr. George Overend and I were invited to represent Ireland at Rome and subsequently at the World Conference in Athens.

This is no place to speak of Greece, of the Peleponnese, of blazing dawns and purple sunsets, of the glories of Mycenae, Epidavrus and Delphi, of azure skies and warm seas, of Corinth and of Athens. It must suffice to say that the world conference opened in the somewhat asceptic luxuriousness of the Athens Hilton Hotel on July 1st.

Lawyers, delegates of one hundred and five nations, attended this conference. They were of every colour creed and of every tongue but it was disappointing that lawyers from behind the Iron Curtain did not attend although a Russian delegate was present in Rome in 1962.

It began with an invocation by the Archbishop of Athens and after being called to order by Mr. Charles S. Rhyne, the General Chairman, under the Presidency of Mr. Dimitrios Zepos, the delegates were addressed by Mr. Spyros Pallis the President of the Athens Bar Association, by Mr. Sylvester C. Smyth, President of the American Bar Association, the Honourable Earl Warren, Chief Justice of the United States, the Prime Minister of Greece, the Mayor of Athens and His Majesty King Paul of Greece. After this inaugural session the delegates were received by the King and the Queen.

In the afternoon there was a plenary session at which the objectives of the conference were discussed and suggestions made by delegates. This discussion followed the obvious lines and to some extent served merely as a "loosening-up" rather than for any actual benefit having regard to the fact that the working sessions for the following days were carefully prepared and designed to cover all the aspects of the work to be done and the objectives to be discussed and, if possible, attained.

*On Tuesday July 2nd* the following working sessions took place.

(*a*) Increasing use and usefulness of the International Court of Justice.
(*b*) The creation and jurisdiction of regional and specialised courts.
(*c*) Law rules to encourage international investment.
(*d*) Law to facilitate international economic associations and trade.

There is little point nor indeed any necessity to go into the discussions here in detail save to say, as far as the writer of this Report is concerned, with reference to topics (*a*) and (*b*), that there was a full and extremely useful discussion on both these topics with reference to the necessity for creating an obligation to use the international court of justice for peaceful settlement, with suggestions as to how decrees of that court might be enforced. The discussion covered internal disputes disrupting internal peace and external disputes possibly leading to war. Furthermore it was strongly suggested that the greatest benefit from the international court of justice might be obtained if regional courts with branches in various areas of the world were set up. These regional courts would make it easier and a good deal less expensive for governments to deal with the international court and that there should

be an appeal from the regional courts to the international court if required.

In the afternoon the working sessions dealt with

(*e*) Increasing scope and effectiveness of arbitration, conciliation and other means of resolving international disputes.

(*f*) Developing law rules and legal institutions for disarmament programmes. Mr Carrigan attended topic (*f*) and assisted Mr. J. C. White of New Zealand to prepare and propose a resolution asking for a special committee to prepare a draft plan for an organisation to direct and supervise a disarmament agreement. This proposal was accepted unanimously by the delegates at the final plenary sessions.

*Wednesday July 3rd*—The working sessions for this day were as follows :

(1) Creating law for outer space and space communications.

(2) The United Nations and regional political organisations as a source of law rules and legal institutions.

(3) International co-operation on legal education and research.

(4) Encouraging international unification of private law.

Topic 1 (Space) was exceptionally well done. It is fair to say that the majority of delegates attended this working session in complete ignorance. They left it remarkably well briefed and instructed. The panel had previously been called together and it had been decided what each member would say. No speaker duplicated another and furthermore it had been arranged that a scientist would sit on the panel and explain exactly the scientific aspects of this matter before any of the legal aspects were decided, a step which, for the uninitiated, was of prime importance.

The remaining topics may be taken together with those of *Thursday July 4th* :

(*a*) organising lawyers internationally for effective cooperative action and

(*b*) stating the general principles of international law. Discussion was confined to seeking ways and means for international organisations of lawyers to give effect to the objects of this conference and to encourage law schools and law societies to place a greater emphasis on the teaching of international law than they do at present.

Considerable interest was taken by almost all the delegates, in international cooperation on legal education, and in international unification of laws and particularly in organising lawyers internationally and in international law generally. Among these topics were some of the most successful held at the conference, and while some of the suggestions were for continuing and other education were nothing less than startling, the topic dealing with the international organising of lawyers was paramount. This clearly was the key topic. Something may be done if local and national law societies and bar associations are prepared to organise and assist. If they do not do so however then it will be almost impossible to traverse the resulting slough of apathy and indifference.

*Friday July 5th* was given over to a plenary session in considering a lawyers' work programme and a work programme for the future. Emphasis was again placed on the fact that lawyers must be internationally organised and that this should be carried out through law societies and local bar associations. After a good deal of discussion the work programme was adopted with some amendments. It is a formidable document and far too long to reproduce in a short report. It is sufficient to say that it ranges over all possible aspects of international law which might arise under the topics discussed and it was passed and referred to the executive committee to decide on the action to be taken in the future.

Among the resolutions adopted before the conference ended was that a world centre be set up to unite the members of the legal profession of the world for the purpose of furthering the objectives of the conference. The centre is to cooperate with existing organisation and to encourage the teaching and study of international law, recommend and assist exchanges of students, scholars, jurists and other leaders of the legal profession and disseminate the results of such international studies and research. It was also agreed, but not at all unanimously, to establish up a "World Law Day" and a "World Rule of Law Year" (the latter to be something on the lines of the International Geophysical Year) a proposal which left a large number of the Europeans aghast.

One matter however became more and more clear to the writer as the conference proceeded. It is of prime importance now and for the future that lawyers should have a reasonable grounding in international law. Here in Ireland we are usually last to involve ourselves in things international, removed as we are from continental Europe by two seas. But we are improving. Air transport and the Common Market have shaken us out of our complacency.

The need for at least one continental language has now generally been admitted by our educators. We, in the legal profession, have yet to admit the need for some training in international law, which, as the world shrinks, becomes more and more necessary with every year that passes.

There is no doubt whatsoever that this world confernce has given, for those, at any rate, who attended it, a considerable impetus to the establishment of objectives to obtain world peace through the rule of law. One may be sceptical of the success of these objectives and one may be perhaps confused as to how these objectives may, in the future, be achieved, but it is true to say that there is no doubt that, after attending this conference, one is not as sceptical nor as confused as one was before. Neither is there any doubt that it is the intention of the sponsors of the conference to press forward vigorously on the lines directed by the conference. How this is to be done remains to be seen. There is a long road ahead and the end may never be reached. It has to be admitted that, in the last result, final success can only be achieved when the governments of the world agree to use the international court of justice to settle disputes. At present this can be no more than an ideal, a Utopian hope. But at any rate a beginning has been made.

JOHN CARRIGAN.

## THE DISTRICT COURT

The District Court Rules Committee, with the concurrence of the Minister for Justice, have made rules, to come into operation on 2nd March, 1964, revoking the existing rules relating to Default and Special Default procedures for the recovery of a Debt or Liquidated Money Demand and prescribing new procedures for the marking of Judgment in the Office in such cases. Further Rules, which come into operation on the same date, have also been made, regulating the practice and procedure of the District Court, in relation to proceedings founded on Hire Purchase Agreements, for the recovery of possession of goods solely or together with any other claim and prescribing forms of Civil Process and Decree relating thereto in compliance with the provisions of the Hire Purchase Acts. It is anticipated that these statutory instruments will be available for purchase from the Government publications Sale Office, towards the end of November, 1963, and the attention of Members is drawn to these new rules so that they may avoid over purchasing all the forms presently in use in relation to the default and special default procedure and in addition the present forms of ordinary Civil Process and Ordinary Decree as both of the latter will on the coming into operation of the New Rules, have only limited application.

## COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS

### BOARD MEETINGS

### MICHAELMAS TERM—1963

| | |
|---|---|
| Tuesday | 8th October, 1963 |
| „ | 22nd „ „ |
| „ | 5th November, 1963 |
| „ | 19th „ „ |
| „ | 3rd December, „ |
| „ | 17th „ „ |

## DUBLIN SOLICITORS' BAR ASSOCIATION

At the Annual General Meeting of the above Association the following officers and Council were elected for the year 1962/63 : *President*, Mr. Synge Millington ; *Vice-President*, Mr. Michael Farrelly ; *Hon. Secretary*, Mr. Ernest Margetson ; *Hon-Treasurer*, Mr. Edmund O'Sheil. *Council* : V. Woulfe, E. Byrne, K. Burke, R. Knight, G. A. Williams, G. Doyle, P. McMahon, A. O'h-Uadhaigh and M. Kenny.

## SOLICITORS' GOLFING SOCIETY

### AUTUMN MEETING AT CARLOW

28th September, 1963

*Results*

*Challenge Cup and President's Prize*: G. M. Doyle (20) Dublin—44 pts. ; J. O'Donnell (12) Kilkenny—40 pts.

*Ryan Challenge Cup*: W. J. Ryan (14) Abbeyleix—39 pts. ; E. W. Hughes (13) (Graignenamanagh)—38 pts.

*Member more than 30 miles from Carlow*: D. Bell (15) Dublin—37 pts.

*Best 1st Nine*: D. J. Collins (11) Dublin)—21 pts.

*Best 2nd Nine*: P. J. Gearty (11) Longford—21 pts.

*Best of 3 cards by Lot*: J. J. Breen (8) Wexford—36 pts.

## EXAMINATION RESULTS

At the preliminary examination for intending apprentices to solicitors held on the 3rd and 4th days of September the following candidates passed : Rosemary Caine, T. Desmond Fleming, Michael A. Tormey.

3 candidates attended; 3 passed.

At examinations held on the 13th September under the Solicitors Act 1954 the following candidates passed :

*First Examination in Irish*: Colm A. Cavanagh, William Early, Laurence R. Egan, Pauline H. C.

Fagan, Patrick Fitzgibbon, Thomas D. Fleming, Garrett P. Gill, Derek Hall Greenlee, Catherine M. L. Harrington, John F. Hayes, Desmond P. Hogan, Patrick H. Johnston, John M. T. King, John Patrick Matthews, Timothy A. Murphy, Francis D. Meagher, Matthew J. Mitchell (B.A.), Donal T. McCarthy, Brendan J. McDonnell, John F. Neilan, Michael O'Driscoll, Michael J. A. Tormey.

24 candidates attended; 22 passed.

The Sean O hUadhaigh Memorial Prize for 1963 was awarded to Francis J. O. McGuinness.

*Second Examination in Irish*: Kieran McDermott.

4 candidates attended; 1 passed.

At the First Law examination for apprentices to solicitors held on the 4th and 5th days of September the following candidates passed.

*Passed with Merit*: Enda P. O'Carroll.

*Passed*: Philomena F. T. Armstrong, John F. M. Darley, John Henry Dockrell, John M. Fitzpatrick, Finola M. Foley, Anthony G. Hayes, John Paul Hayes, Vincent Morrin, Anna M. O'Shea, Gordon J. Ross, Rebecca Sweeney, Brian G. Mc. D. Taylor.

31 candidates attended; 13 passed.

The Centenary Prize was awarded to Enda P. O'Carroll.

At the Second Law Examination for apprentices to solicitors held on the 2nd and 3rd days of September the following candidates passed:

*Passed with Merit*: (1) Brian A. Carroll (B.C.L.); (2) Denis J. Casey; (3) Francis P. Gleeson.

*Passed*: Charles J. Bergin, John G. Black, Michael J. Butler (B.C.L.), Brendan P. Byrne (B.C.L.), Anthony E. Collins (B.A., B.Comm.), Stuart L. Cosgrave, John Fanning, Laurence A. Farrell, William B. Glynn, Thomas F. Griffin, Francis B. Keating, Patrick J. Lavan, Michael A. Lucas, Michael B. Malone (B.C.L.), Thomas A. Menton, Denis M. Murnaghan, William F. O'Driscoll (B.C.L.), Thomas J. O'Reilly, Mary B. Raleigh (B.A.), Michael Reynolds, John J. Rochford (B.C.L.), Austin Turnbull, Edmond M. Veale (B.C.L.).

47 candidates attended; 26 passed.

At the Third Law Examination for apprentices to solicitors held on the 4th, 5th and 6th days of September the following candidates passed: Henry Owen Comerford, James N. Dudley (B.A.), Francis P. Gleeson, James C. Glynn, Daniel J. Hamilton, James A. Harte, Daniel Kelliher, Patrick T. Liston, Giles F. Montgomery, James J. Nestor, Michael G. O'Connell (B.C.L.), Niall P. O'Neill, David W. Prentice (B.A., B.Comm.), Michael Purcell.

24 candidates attended; 14 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded Special Certificates to: James N. Dudley (B.A.), Francis P. Gleeson.

The Patrick O'Connor Memorial Prize for 1963 was awarded to: Brian A. Carroll (B.C.L.).

## SCHOLARSHIPS 1963

The Overend Scholarship on the results of the First Law Examinations was awarded to Enda P. O'Carroll who is apprenticed to John C. O'Carroll, Carrickmacross, County Monaghan.

The Findlater Scholarship was not awarded.

## BOOK REVIEW

*Practice and Procedure in Administration and Mortgage Suits in Ireland* by JOHN W. SCANLON. 8vo, pp. xxix, 198. Dublin, Incorporated Council of Law Reporting for Ireland, 1963, 36/-.

Law students who have to study the procedure in administration and mortgage suits on the Chancery side of the High Court have always been intrigued with the difficulties which this study presented. Mr. Scanlon has succeeded in writing a legal treatise on this complicated and intricate subject with a clarity and precision which only an expert like himself possesses. Each item has been separately numbered, and clear sub-divisions of each subject-matter have been made, and each case has been annotated in relation to the subject-matter. There is also a most useful Rules Reconcilation Table in which the corresponding Orders and Rules of 1905 are given with those of 1962. Only a master of his subject like Mr. Scanlon could have hoped to store so much knowledge into such a small compass, and this he has done with consummate skill. In view of the masterly way in which the book has been written, it will be essential for all those who wish to solve intricate problems of Chancery practice with ease. The printers are to be commended for the manner in which the type and paragraphs have been clearly set out. Amongst the few books published on Irish law, this one is outstanding, and essential to all practitioners.

C.G.D.

## MR. JUSTICE BRENNAN AND INDIVIDUAL FREEDOM

Mr. Justice Brennan, Associate Justice of the United States Supreme Court, visited Dublin and sat in the Supreme Court last July. The following

paragraph is taken from an article which the learned judge had written in the March 1963 issue of the American Bar Association Journal:—

"A first office of a lawyer in our society is to protect individual rights, especially those secured to people accused of trespassing society's laws. American lawyers cannot be mere private practitioners of the law. That phrase—'government by law'—is no empty platitude. It is the essence of a free society. No nation possesses a code which is better designed to assure the civilized and decent administration of justice—this is the hall mark of a free society. But that code will provide only paper protection if our people are more concerned with prosecutions that are overturned, than with fundamental principles that are upheld. Because it is only in upholding fundamental principles, even at the expense of freeing some not-very-nice people, that the protections for nice people are maintained."

## P.A.Y.E. TEST CASE
## SOLICITOR'S CLAIMS FOR WORK

In a Magistrates Court in England recently an action was brought by the Inland Revenue which stated, that a solicitor objected to doing a Tax man's work under the P.A.Y.E. system for nothing. The solicitor refused to admit liability for non payment of £12 2s., outstanding income tax for the 1962/63 period. Refusal was based on two principles firstly that no man could be forced to work for nothing and secondly that only by Act of Parliament could personal liberty be interfered with. The Inland Revenue contended that it was a subject's duty to carry out statutory duties and that there was no entitlement to remuneration by employers for deducting tax. Under the Legal Aid Scheme a solicitor was paid for his services, and the collection of tax was a service for which he should also be paid. The Magistrates made an order against the solicitor, who stated it was his intention to appeal the decision.

## CLAIMS AGAINST ESTATES IN THE U.S.A.

A member of the Society recently wrote stating that he acted for beneficiaries in Ireland who had received a communication from an investigation bureau in the United States informing them that they were entitled to a share in an estate and offering to investigate and prosecute the claim in return for a commission of 40% of the amount recovered. Member advised the clients that the rate of commission was excessive but had no further information to enable him to trace the situation of the assets, the date or place of death of the deceased or any other information which would enable him to proceed with the matter. The Society took the matter up with the Department of External Affairs and, as the result of investigations by the Department, the State and County where the deceased had died was ascertained. Further investigation revealed that the deceased had died some three years ago and that the public administrator had filed a petition for letters of administration. As the heirs at law were unknown the assets were distributed to the State. The Department advised the Society that an attorney in the State concerned advised the Consul General that an escheated estate may be reclaimed for the legal heir within five years of the date on which the final decree was made. For this purpose however very full documentary evidence is required since the Attorney General's office acting on behalf of the State opposes claims of heirs which would have the effect of depriving the State of the escheated funds.

The facts of the present case are of interest from two aspects. Solicitors for Irish beneficiaries may, by means of enquiries through the Department of External Affairs, be able to trace American estates without the intervention of foreign agents who charge a high rate of commission. It is also important to note that the period on the expiration of which property escheats to the State is short in some of the States of the Union. In the present case the deceased died in November 1960. Letters of administration were granted in December 1960 and the final discharge was filed in June 1963. On that date the property escheated to the State of California and claims of beneficiaries will be finally barred five years thereafter.

## SETTLEMENT OF DAMAGES
## LIMITATION OF COSTS

Judgment for £50,000 and costs was entered in favour of an infant plaintiff for damages for personal injury based on admitted negligence, with liberty to apply as to the disposal of all monies recovered by her or her behalf. Subsequently a deed of settlement of the damages was drawn up and the court ordered that the monies payable as damages be paid to a custodian trustee to be held on the terms of the settlement. On taxation the defendant objected to all the items of costs incurred in connection with the trust deed and its approval holding that the items were not properly part of a party and party bill of costs. The Taxing Master however allowed all the items and on review sustained his decision. Defendant applied to the Court for review relying on rule 28 (2) of the Supreme Court Rules 1959. Megaw J. considering Rule 28 (2) "there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the

rights of the party, whose costs are being taxed", and came to the conclusion that the costs of drawing and approving the deed of settlement were not properly chargeable to the defendant. The phrase "attainment of justice" meant the attainment of justice between the plaintiff and the defendant (Morey and Anor. *v.* Woodfield. *The Weekly Law Reports* 1963, July 29th).

Order 99 Rule 11 (2) of the Rules of the Superior Courts of this country which were introduced at the beginning of the year contain a like provision. It would seem that the position is not affected by giving liberty to apply as to the disposal of the monies, and therefore each item incurred in connection with the trust deed and its approval should be borne by the plaintiff.

## DECISIONS OF PROFESSIONAL INTEREST

*Rent Restrictions Act, 1960: Application under Section 20: No appeal to the Circuit Court.*

A member has supplied the facts of the following case decided recently in the Circuit Court in Dublin.

A tenant applied under Section 20 of the Rent Restrictions Act 1960 for a provisional order fixing the lawful rent of the dwelling. Section 21 provides for the procedure to be adopted by the District Justice in dealing with the application and also provides for the order which he may make. In certain circumstances the District Justice may "by order determine provisionally" (*a*) the lawful additions to basic rent (*b*) the lawful rent, or, in certain other circumstances (i) the basic rent of the dwelling under Section 9 (ii) the lawful additions thereto and (iii) the lawful rent. Sub-section 2 of that section provides as follows: "an appeal shall not lie to the Circuit Court from the determination by a District Justice on an application under Section 20 of this Act".

The District Justice notified the landlord of the proposed application pursuant to Section 21 (1) (*b*) and the landlord in reply to the notice served on him furnished certain information. As a result of this the application was listed for hearing and when it came on for hearing the District Justice refused to make a provisional order. Against this refusal the applicant appealed to the Circuit Court.

Counsel for the applicant contended that the word "determination" in Section 21 (2) should be construed as an actual determination of the rent and that a refusal by the District Justice to grant any provisional order would not come within the meaning of the word "determination" and that an appeal would accordingly lie in the ordinary way. It was held, however, that no appeal lay.

*Vendor and Purchaser—Property subject to a legal charge.*

By a written agreement dated 22nd February, 1961, incorporating the English National Conditions of Sale, 17th ed., the plaintiffs agreed to sell, and the defendant to buy, certain property. After the date of completion had passed, the plaintiffs gave notice to complete within twenty-eight days in accordance with Condition 22. The abstract of title showed a legal charge, on which was endorsed the receipt by the chargee by way of legal mortgage. That receipt, however was dated two days after the date of the conveyance by the mortgagor to a purchaser from him. The defendant objected that the receipt of the money secured by the legal charge operated as a transfer of the legal estate to the mortgagor, who had paid all the moneys, and it did not free the property from the legal charge; he contended that the plaintiffs did not have a good title and were in consequence unable to give a valid notice to complete under Condition 22 because they were not "able, ready and willing to complete". The plaintiffs, contending, *inter alia*, that by reason of the breaches laid by the defendant of the agreement they were no longer bound to perform it, claimed forfeiture of the deposit and a declaration that they were at liberty to resell the property.

Ungoed-Thomas J. said that, on the true construction of s. 115 of the Law of Property Act, 1925, the words "and where there is no right to keep the mortgage alive the receipt does not operate as a transfer" in subsection (3) of that section were subsidiary to subsection (3) alone, and did not apply to the previous subsections. Accordingly, the receipt of the money secured by the mortgage operated under s. 115 (2) to transfer the benefit of the mortgages to the then vendor who had in fact paid the money; so, by then reason of the doctrine that the acquisition of the legal estate "feeds" the estoppel, the benefit of the mortgage which the then vendor acquired after the conveyance was vested in the then purchaser. But since, on the true construction of s. 87 of the Law of Property Act 1925, a chargee by way of legal mortgage did not have a term, the then vendor did not acquire a legal estate when he paid the money secured by the legal charge, and there was in consequence no legal estate outstanding upon which the doctrine of feeding the estoppel could operate. Accordingly, the requirements of Condition 22 that the vendors should be able and willing to complete was satisfied. On the true construction of paragraph (2) of Condition 22 of the National Conditions of Sale, both parties had agreed to make time of the essence of the contract by virtue of that condition, so that the reasonableness or otherwise of the notice was immaterial and the plaintiffs were entitled to give such notice as they

did. Declaration accordingly. (Cumberland Court (Brighton), Ltd. *v.* Taylor. *Solicitors' Journal*, July 26th, 1963, page 594).

## THE REGISTRY

### Register A

SOLICITOR'S practice for sale in midlands. Box A204.

WANTED. Qualified assistant for large country practice. Reply stating qualifications and salary expected. Box A205.

### Register C

Will any person having information as to a Will of Agnes McGee, late of "The Eagle Bar", Arva in the County of Cavan, Licensed Vintner, who died on the 10th of October, 1963, please communicate with Patrick J. Connellan & Co., Solicitors, Longford.

## REGISTRATION OF TITLE ACTS 1891 AND 1942

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 11th day of November, 1963.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE

1. Registered Owner, William Harrold. Folio number 29. County Kildare. Lands of Baltracey in the Barony of North Naas containing 1a. 3r. 11p.

2. Registered Owner, Thomas Flanagan. Folio number 9389 (Lands No. 1). County Longford. Lands of Ballyminion in the Barony of Ardagh containing 9a. 2r. 30p.

3. Registered Owner, Thomas Joseph McGahern. Folio number 1413. County Longford. Lands of Carragh in the Barony of Granard containing 4a. 1r. 25p.

4. Registered Owner, John Lardner. Folio number 8706. County Galway. Lands of Claregalway and Curraghmore in the Barony of Clare containing 7a. 2r. 27p. and 2a. 3r. 22p. respectively.

5. Registered Owner James Hennigan (Junior). Folio number 3252. County Leitrim. Lands of Greaghnaglogh in the Barony of Drumahaire containing 15a. 1r. 9p.

6. Registered Owner Samuel Hutchinson. Folios 960 and 961. County Wicklow. Lands of Blackditch and Newcastle Middle respectively containing 6a. 0r. 0p. and 5a. 3r. 0p. respectively, both situate in the Barony of Newcastle.

## OBITUARY

Mr. JAMES P. COFFEY, Solicitor, died on the 14th September, 1963 at Louth County Hospital, Dundalk, Co. Louth.

Mr. Coffey served his apprenticeship with Mr. Louis C. Murphy, Dundalk, was admitted in Easter Sittings 1939 and practised at Dundalk.

COMDT. THOMAS M. MCMAHON, Solicitor, died on the 28th September, 1963 at Leopoldville, Congo.

Comdt. McMahon served his apprenticeship with the late Mr. James O'Doherty, Sligo, and was admitted in Hilary Sittings 1940. He was Judge-Advocate General with the United Nations Organization in the Congo.

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Vol. 57 No. 6 DECEMBER 1963

# THE GAZETTE

of the

## INCORPORATED LAW SOCIETY OF IRELAND

*President* DESMOND J. COLLINS

*Vice-Presidents* JOHN MAHER, PATRICK NOONAN

*Secretary* ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## COMPENSATION FUND CONTRIBUTIONS

The report of the Compensation Fund Committee covering the period 6th January, 1955 to 30th September, 1963 was considered by the Council at their meeting on November 21st.

The Council decided to reduce the Compensation Fund Contribution payable by solicitors admitted three years or longer from the present figure of £20 to £15. The contribution payable by a solicitor on taking out a practising certificate within the period of three years beginning on the day of his admission will be £5.

## PRACTISING CERTIFICATES, 1964-65 AND MEMBERS' SUBSCRIPTIONS

1. Members are reminded that practising certificates for the year to end 5th January, 1965 should be taken out on or after 6th January, 1964, and not later than 5th February, 1964, in order to operate as a qualification to practise from January 6th.

2. Under the provisions of the Solicitors Acts, 1954–60, the declaration to be lodged with the Society on applying for a practising certificate shall be completed and signed by the applicant personally unless the Registrar on the grounds of illness or some other sufficient cause dispenses with personal signature of the declaration. Forms of declaration will be mailed by the Society to solicitors who held practising certificates for the current practice year 1963–64. They should be completed and delivered to the Society by applicants in person or their Dublin agents. Under the provisions of the Solicitors Acts, 1954–60, the Society is not entitled to accept declarations sent in by post.

3. In accordance with the amendment to the Society's Bye-laws made at the Annual General Meeting on 18th May, 1963, members' subscriptions for the year 1964–65 will be payable on 6th January, 1964 on the issue of practising certificates. A receipt for the subscription will be issued with the practising certificate.

4. The composite amount of the Compensation Fund contribution registration, fee and membership subscription is as follows :—

Solicitors admitted three years or more on January 6th: Dublin, £22; Country, £19.

Solicitors admitted less than three years on January 6th: Dublin, £11 10s. 0d.; Country, £8 10s. 0d.

## THE PRESIDENT AND VICE-PRESIDENTS

Mr. Desmond J. Collins of Dublin has been elected President of the Society for the coming year. Mr. John Maher of Dublin and Mr. Patrick Noonan of Athboy have been elected Vice-Presidents.

## ORDINARY GENERAL MEETING

An Ordinary General Meeting of the Society was held in the Library, Solicitors' Buildings, Four Courts, Dublin, on 21st November, 1963. The President took the chair at 2.30 p.m.

The notice convening the meeting was by permission taken as read.

The Secretary read the minutes of the Ordinary General Meeting held on 18th May, 1963, which were confirmed and signed by the chairman.

The Secretary read the report of the scrutineers of the ballot for the Council for the year 1963–64. The President declared the result of the ballot in accordance with the scrutineers' report as follows :—

Provincial delegates returned unopposed :— Ulster, John C. O'Carroll; Munster, Edward Treacy; Leinster, Reginald J. Nolan; Connaught, Francis Armstrong.

Ordinary members. The following received the number of votes placed after their names :

John Carrigan, 445; Francis J. Lanigan, 438; John J. Nash, 410; Augustus Cullen, 406; Desmond J. Collins, 400; Niall S. Gaffney, 400; Thomas A. O'Reilly, 399; Ralph J. Walker, 397; Eunan McCarron, 396; Patrick Noonan, 384; Daniel J. O'Connor, 382; Peter E. O'Connell, 375; George A. Nolan, 366; Robert McD. Taylor, 365; George G. Overend, 351; William A. Osborne, 350; Patrick O'Donnell, 349; Thomas J. Fitzpatrick, 343; John Maher, 338; Dinnen B. Gilmore, 335; Thomas V. O'Connor, 335; William A. Tormey, 335; Brendan A. McGrath, 329; James W. O'Donovan, 323; Desmond Moran, 315; James R. C. Green, 310; Joseph P. Black, 300; Peter D. M. Prentice, 294; Edward J. C. Dillon, 280; Raymond A. French, 279; Thomas H. Bacon, 256.

The scrutineers returned the foregoing thirty-one members as duly elected ordinary members of the Council for 1963–64.

The following candidates also received the number of votes placed after their names :

Charles Hyland, 248; Gerald Y. Goldberg, 245; Samuel V. Crawford, 207; Paul Tighe, 205; Robert W. K. Johnston, 194; Mervyn H. Taylor, 145; Raymond V. H. Downey, 106.

The audited accounts and balance sheets for the year ended 30th April, 1963, circulated with the agenda were adopted. Messrs. Kevans & Sons were re-appointed as the Society's auditors.

The President moving the adoption of the report of the Council for the year 1962–63, said :

As your President it is my privilege and duty to

move the adoption of the report of the Council for the year 1962–63, and I do so with pleasure and with confidence of your approval.

I have first to record, with deep regret, the deaths of members of our Society which occurred during the past year. They are—George V. Moloney, Cavan; James L. McLoughlin, Dublin; Henry P. Mayne, Dublin; John E. Wallace, Mullingar; John Ryan, Dublin; Herbert McCloughlan, Donegal; Robert I. Archer, Dublin; Francis P. Johnston, Dundalk; Samuel R. C. Hemphill, Dublin; Patrick J. Little, Dublin; Michael E. Fitzgerald; Thomas E. F. Bennett, Dalkey; Bernard Darcy, Dublin; Michael J. McGuire, Longford; Arthur C. Houlihan, Tipperary; Martin A. Salmon, Naas; Mrs. William L. Carroll, Castlebar; James P. Coffey, Louth; Commdt. Thomas M. McMahon, solicitor, Advocate General with the United Nations Organization who died in the Congo.

Amongst the names I have mentioned, you will recall men who gave long service to the Society and to our profession. Henry P. Mayne was a member of the Council of this Society from 1926 to 1949 and was a distinguished president for the year 1939–40. May I, on my own behalf, and on behalf of my fellow Council members, express to their relatives and friends our sincere sympathy.

## Finance

The accounts and balance sheet of the Society have been in your hands for some time and show the financial position of the Society for the year ended 30th April, 1963.

Two years ago my distinguished predecessor, Mr. Ralph Walker, issued a word of warning and, having referred to a steadily decreasing profit, accurately predicted that the day to day working of the Society would entail considerable more expenditure, and this is reflected in the accounts before you which show an increase in expenditure under various heads.

The Finance Committee of your Society make each month a careful examination of the Society's financial position, and a check on its outgoings. There is, however, one item of expenditure over which neither this committee nor the Council have any control, namely the annual contribution which your Society must make of £510 to the Incorporated Council of Law Reportings. This is a service of a public nature and we feel that its activities should be financed out of public funds and not be a charge on the finances of this Society.

## Compensation Fund

The Compensation Fund set up by this Society has given full indemnity to any person who suffered loss through the dishonesty of a solicitor since the passing of the Solicitors Act, 1954, and there is a heavy burden on the members of our profession in so far as each one of us is obliged to contribute an annual sum of £20 towards this fund. This fund is administered by a committee of your Council who make careful and painstaking investigation into each claim which comes before them with a view to seeing that full compensation is paid to any member of the public unfortunate to suffer a loss, but at the same time to safeguard the fund. I think it right that the public should know that the Society has power to refuse to make or to limit a grant from the compensation fund where the claimant has contributed to the loss by his own negligence or conduct, or where he has employed a solicitor who does not hold a practising certificate. We are indeed indebted to the gentlemen on this committee for their very important and necessary work. When the yearly contribution of £20 from each solicitor was fixed, you were informed that as soon as it was warranted by the financial position of the fund, steps would be taken to reduce the contribution. I am very glad to inform you that your Council, with effect as from the 6th January next, have decided to reduce the yearly contribution from each solicitor from £20 to £15 whilst, at the same time, they are able to maintain in the fund a reserve in excess of the sum of £25,000 imposed by the Solicitors (Amendment) Act of 1960. I think our profession will find this reduction most welcome, not only from a financial aspect but as the tangible proof of the firm belief of your Council in the integrity of the vast majority of our members.

## Solicitors' Benevolent Association

I hope it is unnecessary to remind you that this is the centenary year of the Solicitors' Benevolent Association which is our own particular private and personal charity and I appeal to every solicitor who has not already done so, to join the Association to become a subscriber thereto. I had the privilege of speaking at the Ninety-ninth Annual General Meeting of the Association at the start of my presidential year and I then said, and think I must repeat, that a means test under Social Welfare legislation creates a problem in that there is no use in an Association such as ours giving liberally to some person by way of grant or annuity if this was simply to reduce the amount of State assistance that that person was then in receipt of. I can appreciate the difficulty in giving general exemption in cases of this sort, but relief could be given in our case as the recipients come from a very special and well defined class.

The directors of the Association have marked the

centenary of the Association by the founding of a centenary annuity which I commend to all of you in the certain belief that it will get your generous support.

## Circuit Court Costs

At the time of your last meeting in November, 1962, the Circuit Court Rules Committee had submitted to the Minister for Justice new scales of costs in the Circuit Court, including—amongst other matters—a scale to cover costs in hire-purchase litigation. The Minister indicated that he did not want to continue the principle of scales of costs in certain jurisdictions being linked to the scales applicable to the High Court.

With the permission of the Rules Committee your Council prepared new scales to cover the jurisdiction in question and same are now the subject of negotiations between your Council and the Minister. May I say that whilst we may differ in certain respects our relationship between the Minister for Justice on this, and other matters which arose during thel ast twelve months, has been extremely happy. I have always been received by him with courtesy and the views expressed by deputations on behalf of your Society have been sympathetically received. I trust that my successor may bring the present negotiations to a successful ending.

## Costs

The Rules of the Superior Courts, came into operation on the 1st January last and Appendix thereto prescribed new scales of costs applicable to all aspects of litigation in the High Court and Supreme Court. It is gratifying to note that the principle of fixing discretionary fees for a large number of items has been adopted, thus ensuring that there should be proper remuneration for work of an exceptionally difficult or complex character and further that the number of items has been reduced by two-thirds.

## District Court

During the year the District Court Rules have been modernised and scales of costs therein have been revised and I am glad to tell you that your Council has at present under consideration a proposal to abolish the default and special default procedure in the existing rules and substitute therefor provisions enabling a decree to be obtained in the office for liquidated demands without the necessity of an appearance in Court. This, we feel, particularly in the cities and larger towns, will materially assist our profession to give service to our clients in the fields covered by this procedure.

## Law Reform

Your Council has at all times had a keen appreciation of the programme of law reform initiated by our present Minister for Justice and, in so far as it has lain in their power, have done everything possible to assist this very worthy object. I feel, however, that one note of warning should be sounded namely —that our law should not be reformed purely for the sake of reform and that when any reform or new legislation entails the making of rules for the carrying out of the new procedure and the fixing of proper remuneration to the members of our profession acting thereunder, this legislation should not come into effect until the rules of procedure and fees to be charged are first made and approved.

Any law which has not got the support of the majority of our people is a bad law and needs reform, repeal or new legislation bringing matters up to date, but laws should not be changed solely for the sake of change; and we view, with concern, the proposal to take the Workmen's Compensation code from the control of our Courts in whose hands it has been for the last seventy years. This is one particular code of law which has served the people well, and has been of particular benefit to our workers who have been unfortunate enought to suffer injury whilst in their employment, and I say in all sincerity that the handing over of the administration of this code to the Civil Service is a retrograde step and one which we feel will have most adverse effect on the people it is intended to benefit.

## Legal education of apprentices

Your Council, as always, is very conscious of their responsibility in the legal education of solicitors' apprentices who will be the lawyers of the future. The course to be taken by each apprentice is, of necessity, long and arduous and would appear to become even longer for the future. At present a very technical Bill on Company Law is being considered by the Oireachtas and new legislation has been introduced with reference to law on patents and trade marks. The Commission on Practice and Procedure in Bankruptcy Matters is now sitting and no doubt their conclusions will involve a new Bankruptcy legislation.

Your Council appreciates that there are certain branches of the law with which the average solicitor is not concerned, and are considering the possibility of introducing courses in some of the more specialised matters and may include one or more of such matters as an optional subject to be taken by an apprentice at the final examination. This may well add to the burdens of the lecturers and examiners at the Society's examinations and may I take this opportunity of expressing the Society's appreciation

of the work done by these gentlemen during the past year.

## Post-graduate legal education

When my predecessor, Mr. Overend, addressed you in general meeting last year, he told you that arrangements would be made for a series of lectures by qualified lawyers on matters which had been the subject of legislative change during the year. I am glad to say that your Council have been able to make arrangements in this regard and in the near future—starting next month—lectures will be given in Tax Law, Company Law and Town Planning and these lectures will, if suitable, be subsequently published by the Society in booklet form.

Your Council is very sensible of the lack of legal textbooks and the difficulty in affording to our members up to date books dealing with our ever changing laws. I am, however, glad to note that a book on the Practice and Procedure in Administration and Mortgage Suits in Ireland has been published by Mr. John W. Scanlon, Barrister-at-Law, Examiner of the High Court, and I recommend this publication to you. It is also gratifying to note that the General Council of the Provincial Solicitors' Association have kept this very pressing problem in mind, and have published a very useful booklet by Mr. M. K. O'Connor, Barrister-at-Law, entitled "A Guide to the Death Duties in Ireland".

## Law Calendar and Directory

The Society's Law Calendar and Directory were first published over seventy-five years ago and over the years the matters necessarily included therein have rendered publication to be somewhat unwieldy. Your Council has, therefore, decided in future to issue this publication in two parts—the first of which will be called the Calendar and will include all the permanent matter not requiring revision from year to year, such as the Solicitors' Acts and the Charter under which your Council exists; but provision will be made to keep this volume up to date by the insertion of supplements as and when the occasion should arise.

The second part which will be called "the Directory" will contain the Register of Solicitors, lists showing the names of the judiciary, members of the Bar, the personnel of Government Departments and Offices and other matters of a changing character. It is hoped that by this revision the Council will have made its Calendar and Directory of greater use and assistance to the members of our profession.

## Membership of Society

The Council are grateful for the support which the members of the Society have been at all times ready to give for any proposal for the betterment of our professional lot. In this regard, may I stress the importance of every solicitor practising in the State being a member of the Society. Today an unorganised body can get nowhere and it has never been so important to achieve a position in which the Council may speak for the profession with one voice and with such authority to ensure that that voice will be heard.

## Bar Associations

I also appeal to each member of the Incorporated Law Society to be an active member of his local Bar Association. It is at local level that many of our problems are best solved and the harmony that exists between members of our profession is most striking in areas where there is a live energetic local association.

## Registration of Title Bill

You are, no doubt, aware of the introduction in Dáil Éireann of a new Registration of Title Bill which envisages the ultimate transfer to the Land Registry of dealings in land and property at present registered in the Registry of Deeds. Your Council are always ready to give their support and encouragement to any project which will enable the solicitors' profession to give better service to the community and while the passing of the Registry of Deeds will leave a nostalgic pang, we view the new proposal with interest. They, however, trust that before any additional work is placed upon the Registrar of Titles and his ever courteous and kindly staff, that due provision will be made to cope with the increased volume of business both as to the provision of personnel and the making available of suitable accommodation.

## Legal Aid

Regulations have been drafted pursuant to the Criminal Justice (Legal Aid) Act, 1962, and are at present the subject of discussion between your Council and officials of the Department of Justice. Your Council have informed the Minister that they view this novel subject as most important in the social legislation of the State and that they are anxious to evolve a scheme that will make it work and work well.

It is invisaged that each County Registrar shall prepare a panel of all solicitors practising in his area who are willing to act for persons who in criminal matters are granted certificates for free legal aid.

Your Council hope at a very early date to agree to proposals in the regulations regarding costs and expenses so that this important reform will soon be in force.

## Conclusion

My presidential year is now approaching its end and very shortly I shall hand over this insignia of office to my successor. May I say that for me it has been a very happy and interesting year and I am deeply grateful for the honour bestowed upon me by your Council when, last year, they elected me as president.

I have had the honour to represent your Society at numerous functions and have been entertained most hospitably by other institutions.

On numerous occasions I have been accompanied by my wife and everywhere we were treated as honoured guests—showing the position and esteem in which your Society is held. I have been entertained by the Northern Law Society in Belfast and my wife and I have been guests of the Scottish Law Society at Gleneagles and of the English Law Society at their annual conference at Harrogate.

I had the privilege as your president of addressing the National Conference of the English Law Society at their opening Plenary Session in October, 1963. I believe that this was the first occasion upon which our Society was so honoured. At this conference I endeavoured to explain the difference as between our laws and theirs and to show that ours in certain respects were better.

My colleagues on the Council have supported me with their advice and have shown patience with my shortcomings. In particular I should like to thank my vice-presidents, Mr. Desmond Collins and Mr. Patrick O'Donnell—both of whom have been always ready to ease my burdens. Mr. Plunkett has been a continuing source of help and assistance, and I am more than grateful to him. He is the chief executive officer of your Society and we are very fortunate to have him—not only for his smooth running of the day to day business of the Society but for his unflagging energy in watching at all times the interest of the profession.

Mr. Gavan Duffy in the Library has always met my enquiries with kindly interest and has been most helpful. To the office staff, I express my sincere gratitude for their ever willing assistance and lastly, I thank Mr. William O'Reilly who looked after me and my chain of office with his usual efficiency.

I think that I am the first State Solicitor to have held the office of president of your Society, and this I could not have done without the help, assistance and forbearance of the Attorney General and the Chief State Solicitor. To both of them I am very grateful. Judge Sean McD. Fawsitt, the Circuit Judge for the County of Carlow, has been more than considerate and so to have the Justices of the District Court before whom, during the last twelve months, I have appeared and very often have failed to appear.

Finally, I thank my colleagues in the Carlow Bar Association who understanding my problems had the greatest forbearance when my official duties interfered with the normal flow of legal work between professional colleagues.

During my year I have met a lot of old friends and have made new ones, and I look back with gratitude to the Society for having put me in a position so to do and to give me what has been one of the happiest years of my life.

It is now, with great pleasure, that I move the adoption of our report and I would ask Mr. Desmond Collins formally to second the proposal.

Mr. Desmond J. Collins seconded the adoption of the report and the motion was carried unanimously.

Mr. Edward J. Kenny proposed that the President should vacate the chair which was taken by Mr. Desmond Collins, Vice-President. Mr. Kenny then proposed a vote of thanks to the President for his distinguished services to the profession during his year of office.

The motion was carried with general acclamation. There was no further business.

## MEETINGS OF THE COUNCIL

OCTOBER 3RD: The President in the chair, also present Messrs. John J. Nash, Ralph J. Walker, Desmond Moran, G. G. Overend, James R. C. Green, Patrick Noonan, Thomas A. O'Reilly, Reginald J. Nolan, Niall S. Gaffney, George A. Nolan, James W. O'Donovan, John Carrigan, Desmond J. Collins, John Maher, William A. Tormey, Gerard M. Doyle, Richard Knight, Edward J. C. Dillon, W. R. Osborne, Eunan McCarron, Rory O'Connor, Augustus Cullen, John C. O'Carroll, R. A. French, Brendan A. McGrath, T. V. O'Connor and R. McD. Taylor.

The following was among the business transacted:

### Authentication of Documents for the United States Courts

Complaints were received of undue delay in having these documents completed and forwarded to the United States. It was decided that representations should be made to the President of the High Court.

### Same solicitor for purchaser/mortgagor

On a report from the Committee the Council expressed the opinion that the solicitor acting in both transactions is entitled to charge the full

commission scale fees in respect of the purchase and in respect of the mortgage provided that the work specified in the general orders is substantially carried out, but that it is not unprofessional to make a concession in the charges having regard to the duplication of work provided that it is not done for the purpose of attracting business.

## Commission on the Courts

It was decided that a memorandum would be submitted to the Commission on the Courts on the lines of the general memorandum to various Government Departments some years ago, and that the memorandum should include the following proposals :—

1. It should be possible to file pleadings in the High Court during the vacation periods.

2. The Probate and other offices in the High Court should be open during normal office hours during vacations instead of closing at 2 p.m. as at present.

## Probate Office free grants

The Council on a report from the Committee considered the question of delays in the Probate Office in conjunction with the free grant facilities given to the public without any limit as to the amount of the estate. It was decided that representations should be made to the Minister for Justice.

## Publication of judicial statistics

It was decided that the Department of Justice should be requested to resume the publication of the judicial statistics which was discontinued in 1938.

## Payment of deposit to auctioneers

It was reported to the Council that an auctioneer had altered conditions of sale prepared by solicitors to provide that the deposit should be paid to the auctioneer and had the conditions signed in that form.

The Society also received reports of difficulties which arise where deposits are received by auctioneers and advances are made by the auctioneers to the vendor from the deposit. In some cases auctioneers claimed the right to deduct shop debts from deposits received by them. It was decided that these matters should be taken up with the Irish Auctioneers, and Estates Agents, Association.

## Advertisements by solicitors

The Irish Auctioneers, and Estate Agents, Association drew the attention of the Council to a number of advertisements to the sale of property published over solicitors' names which they submitted were in contravention of the agreed statement published by the Society in the GAZETTE, February, 1958. It was decided that this matter be included in the agenda for a meeting in the near future with the Auctioneers' Association.

## Road widening schemes

Members drew the attention of the Society to a case in which the owner of land gave permission to a local authority to enter on the land for the purpose of road widening and accepted compensation at an agreed figure without consulting a solicitor. The document was prepared by a county engineer. The local authority subsequently refused to pay the agreed compensation because of alleged difficulties of title but the document signed contained no provision for furnishing of title or transfer of the lands and was merely a licence to enter. Two questions arose (1) whether the preparation of the document was in contravention of the Solicitors Act, 1954, Section 58; (2) whether any action is practicable in the interests of the public and the profession to prevent local authorities from obtaining the signatures of owners of documents of this kind without legal advice. It was decided to take the matter up with the Minister for the Department of Local Government.

## Medical reports

Members drew the attention of the Council to a case in which a medical practitioner in the whole-time service of a Health Authority refused to furnish a report or to give evidence in proceedings brought by the patient arising out of an accident for which he was being treated. No question of the medical practitioner's fee arose as the solicitor was willing to give an unqualified undertaking. It was decided to take the matter up with the Irish Medical Association.

## Dishonest defence

A member requested the guidance of the Council as to his professional duty. He acted for a client who owed a considerable sum for debts and instructed member not to give any undertaking for payment but to enter an appearance and defence to any process issued. Member is satisfied that all the debts are fairly due and that there is no defence and that the client intends to sell up and abscond. The Council advised member that he should inform the client that he would enter an appearance but would not enter a defence to any civil process issued.

OCTOBER 31ST: The President in the chair, also present Messrs. Desmond J. Collins, Desmond Moran, Thomas A. O'Reilly, Peter D. M. Prentice, James R. C. Green, Dinnen B. Gilmore, Ralph J. Walker, John C. O'Carroll, Brendan A. McGrath, R. McD. Taylor, Rory O'Connor, W. A. Osborne, Daniel J. O'Connor, Eunan McCarron, William A. Tormey, George G. Overend, Peter E. O'Connell, John Maher, Thomas J. Fitzpatrick, John Carrigan, Cornelius J. Daly, James W. O'Donovan, John J. Nash, T. V. O'Connor, Gerard M. Doyle and Raymond A. French.

The following was among the business transacted:

**Lessors—separate representation**

A, who recently died, was tenant for life of property and B and C are entitled immediately in remainder under the settlement. D is also a remainder man under a title derived through other persons. The remainder men wish to make leases of the property. The solicitor for B and C has the title deeds and can make title on behalf of his client which is straightforward. D wishes to be separately represented and his solicitors will deduce his title and will act for him in connection with the execution of the leases which will be drawn by the other solicitor. The Council were asked to arbitrate on the question as to how the costs should be divided and paid. The Council stated that if the lessees require the lessors to deduce title they must pay therefore under Schedule 2 to the several solicitors for the lessors. The Council further stated that the solicitors for B and C were entitled to charge the commission scale fee on the rent and should pay thereout to D's solicitors an appropriate fee for the approval and execution of each lease having regard to the scale fee payable by the lessee in each case.

**Registered land—discharge of equities**

Member acted for the vendor on the sale of registered property under a contract which did not preclude the purchaser from obtaining sufficient title to discharge the equity note. Member supplied such title as was asked for and accepted by the purchaser's solicitor but he was in some doubt as to whether the title so furnished would be sufficient to discharge the equity note and he has no knowledge as to whether the purchaser's solicitor made an application for the discharge thereof. He asked the Council for guidance as to the scale of costs chargeable against his own client the vendor. The Council stated that that if member supplied such title as was accepted by the purchaser's solicitor as sufficient to discharge the equity note member was entitled to charge the full commission scale fee.

**Certificate of discharge from death duties**

The Council on an enquiry from a member stated that the recent ruling that the vendor's solicitor is entitled to charge, in addition to the commission scale fee, against his own client, a fee for obtaining the income tax certificate under Section 6 of the Finance Act, 1928, would not apply to the certificate of discharge from death duties. The Council stated that the considerations applicable to a Section 6 Certificate were different to those applicable to a certificate on discharge of death duties, and accordingly that no fee over and above the commission scale fee would be chargeable against the vendor for obtaining the last mentioned certificate.

**Medical reports**

A member asked for guidance from the Council as to whether he would incur any professional liability when acting for a named client by writing a letter to a medical practitioner stating that he was instructed by the client whom he named, to request the practitioner to furnish a medical report. The Council stated that in their opinion such a letter would not impose any legal or professional liability.

NOVEMBER 21ST: The President in the chair, also present Messrs. R. McD. Taylor, D. J. O'Connor, Augustus Cullen, Peter E. O'Connell, W. A. Osborne, John Maher, Thomas H. Bacon, Edward J. Dillon, Brendan A. McGrath, Ralph J. Walker, D. B. Gilmore, John J. Nash, Peter M. M. Prentice, James W. O'Donovan, James R. C. Green, R. A. French, Desmond Moran, Niall S. Gaffney, George G. Overend, John Carrigan, Desmond J. Collins, Eunan McCarron, Patrick O'Donnell, Joseph P. Black and Reginald J. Nolan.

The following was among the business transacted:

**Probate Office, personal applications for grants**

The Council considered a report from a deputation which was received by the Minister for Justice and decided to make further representation urging that a value limit should be placed on the amount of the assets in cases in which the Probate Office provides facilities for personal applications for grants of probate in administration.

**Alteration of Circuits**

The Society received a letter from the Department of Justice advising the Council of the proposed transfer of County Sligo from the Northern Circuit to the Midland Circuit and County Laois from the Midland Circuit to the South Eastern Circuit as from

Easter Sittings, 1964. The Society had been in communication with the Bar Associations concerned and had received letters objecting to the proposal. It was decided to inform the Minister for Justice of the views of the Bar Associations and to request the Associations concerned to make a joint approach to the Department.

### Correspondence fee

A member referred to the Opinion No. 90 of the Council on the subject of search fees. He has been asked by another member to hand over an original document which he received from a client, and over which he has no lien for costs and enquired whether he would be entitled to charge a correspondence and attendance fee. The Council stated that the document should be handed over without payment of any fee.

### Town Planning searches

The Council stated that there is no professional objection to the issue of a circular to the profession by a solicitor holding a practising certificate offering to undertake searches in the Town Planning Department on a fee basis.

### Professional stationery

The Council stated in reply to an enquiry that they considered the printing of the names of assistant solicitors on professional stationery with the description "associates" as misleading and accordingly open to objection.

## ADMISSION CEREMONY

On 20th November, 1963, the President presented Certificates of Admission to the following solicitors at a ceremony in the Society's Library.

Addressing the newly admitted solicitors and their friends the President said:

Ladies and Gentlemen,

It is a happy privilege for me to come here today and to welcome my fellow solicitors who have newly joined our profession. You have completed a long and arduous course of training and in presenting to each of you your individual parchment of admission the Council, through me, wish to mark the official entry of your name on the roll of solicitors.

You are entering the profession at a difficult time but nevertheless at an exciting one. On the one hand we see steps envisaged to take away from our profession work that traditionally fell to be done by the lawyer but on the other hand there is the ever increasing need for our services in our modern society with its increasing complexity.

You will find that your clients will come to you and value your advice on social and other matters not entirely connected with the law and I feel sure the training you have undergone and the experience which you will achieve will enable you to fill in a most competent manner the role expected of an Irish lawyer in modern times.

In our country there is a firm and enduring belief that the rule of law must prevail and you are in the proud position of being the guardians of that rule. A Greek philosopher five hundred years before the birth of Christ advised his people to spring to the defence of their laws as they would to the defence of their city walls. This is an advice which holds good today even more so than at the time that it was given and we as lawyers have a special responsibility to uphold the rule of law and to see that justice is done between man and man.

Ireland in the past has been well served by lawyers fearless and competent to uphold the law and I have no doubt that you of the coming generation will maintain the great traditions of the past.

Some of you will pursue your professional work in our cities and larger towns, either individually or in some position in a larger firm. Others, like myself, will set up in the country. Wherever you may be, may I, on behalf of myself and my fellow members of the Council of the Incorporated Law Society of Ireland, wish you well and every success in your professional career.

## PRESENTATION OF ADMISSION PARCHMENTS

Henry O. Comerford, 9 William Street, Galway; Malachy F. Concannon, B.A., B.Comm., LL.B. (N.U.I.), Rockville, Lr. Salthill, Galway; James N. Dudley, B.A., The Garland, Mallow, Co. Cork (*Special Certificate*); Francis P. Gleeson, 9 Abbey Road, Thurles, Co. Tipperary (*Special Certificate*); James C. Glynn, Tuam, Co. Galway; Graham M. Golding, B.A. (Mod.), LL.B. (T.C.D.), 36 Exchequer Street, Dublin; Daniel J. Hamilton, Church Street, Mitchelstown, Co. Cork; James A. Harte, Sunnylawn, Castle Road, Kilkenny; Michael P. Houlihan, Cragleigh House, Ennis, Co. Clare; Dermot Loftus, 8 Washington Park, Templeogue, Co. Dublin; Michael G. L. O'Connell, B.C.L., Alta Villa, Listowel, Co. Kerry; Thomas J. M. O'Donoghue, Parkmore, Tuam, Co. Galway; Michael F. Purcell, Macroom, Co. Cork; Norman T. J. Spendlove, M.A., B.A.I., A.M.I.C.E.I. (T.C.D.), 18 Marine Drive, Sandymount, Dublin; James Gregory Tynan, Derreen, Ennis Road, Limerick.

The solicitors and their friends were subsequently entertained to tea in the Council Chamber.

## COMMITTEES OF THE COUNCIL, 1963-64

1. REGISTRAR'S:

Desmond Moran, Chairman; Augustus Cullen, Dinnen B. Gilmore, James R. Green, Brendan A. McGrath, William A. Osborne, Ralph J. Walker.

2. COMPENSATION FUND:

Desmond Moran, Chairman; Augustus Cullen, Dinnen B. Gilmore, James R. Green, Brendan A. McGrath, William A. Osborne, Ralph J. Walker.

3. FINANCE, LIBRARY AND PUBLICATIONS:

Niall S. Gaffney, Chairman; Francis Armstrong, Joseph P. Black, George Nolan, John C. O'Carroll, R. J. O'Connor, George G. Overend, C. J. Daly.

4. PARLIAMENTARY:

Senator Thomas J. Fitzpatrick, Chairman; Senator John J. Nash, Patrick O'Donnell, T.D.

5. PRIVILEGES:

Raymond A. French, Chairman; Thomas H. Bacon, John Carrigan, Edward Dillon, Gerard M. Doyle, George A. Nolan, Reginald Nolan, Edward Treacy, Gerald J. Moloney.

6. COURT AND OFFICES:

Daniel J. O'Connor, Chairman; Richard Knight, Senator J. J. Nash, Thomas V. O'Connor, James W. O'Donovan, John I. Horgan, John F. Foley.

7. COURT OF EXAMINERS:

Eunan McCarron, Chairman; Thomas A. O'Reilly, Peter D. M. Prentice, Robert McD. Taylor, William A. Tormey.

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

## EXTRAORDINARY MEMBERS OF THE COUNCIL OF THE INCORPORATED LAW SOCIETY OF IRELAND

### Southern Law Association

C. J. Daly, J. F. Foley, Gerald J. Moloney, John Ivor Horgan.

### Dublin Solicitors' Bar Association

Gerard M. Doyle, Richard Knight, Roderick J. O'Connor.

## DINNER DANCE

The Society's Annual Dinner Dance was held in the Shelbourne Rooms, Dublin, on 21st November, 1963; over 360 guests attended. This year for the first time a number of tickets were allocated for the Solicitors' Apprentices Debating Society who took up about 60 tickets and added to the gaiety and vigour of the proceedings. It is hoped to provide the same facility in future years for the members of the Debating Society.

## EXAMINATION DATES

| *Examination* | *Dates* | *Final date for entries* |
|---|---|---|
| 1st Law ... | ... 3rd and 4th Feb. | 13th Jan. |
| 2nd Law ... | ... 3rd and 4th Feb. | 13th Jan. |
| Preliminary ... | ... 4th and 5th Feb. | 14th Jan. |
| 3rd Law ... | ... 5th, 6th, 7th Feb. | 15th Jan. |
| 1st and 2nd Irish | ... 14th February | 24th Jan. |
| Book-keeping | ... 24th February | 3rd Feb. |

## SOLICITORS' REMUNERATION GENERAL ORDERS, 1884-1960.

### GROSS SUM BILL

In re: Shipping Construction Corporation, Ltd., the defendants instructed the plaintiffs who were then their solicitors to do work in relation to three matters (1) the promotion of the defendant company, (2) a mortgage debenture, (3) a contract known as the Mohawk contract, (4) a contract known as the Nevrata contract. The clients were entitled to indemnification by another company in respect of charge (4). The amount in the debenture at (2) was £3,900,000. The plaintiff-solicitors furnished a gross sum bill for £1,700 including counsel's fees in respect of charges (1), (2) and (3) which included a charge of £105 in respect of the mortgage debenture at charge (2). A separate gross sum bill was furnished in respect of the Nevrata contract charge (4) and no question arose as the clients and the company by which they were indemnified accepted the bill. The defendant company considered the charge of £1,700 at (1), (2) and (3) excessive and asked for details but their new solicitors stated that they would recommend the clients to pay the charge of £105 for the mortgage debenture at (2) and the Nevrata contract charge at (4). They stated that they would require a detailed bill before advising the clients. The plaintiff-solicitors furnished a detailed bill showing an amount greatly in excess of the sum of £1,700 charged in the gross sum bill for charges (1), (2) and (3). The defendants refused to sign the requisition to tax on the ground that

(i) the second bill was for a greater amount than the original and (ii) that it improperly included charges for the mortgage debenture in respect of which the defendants had agreed to pay the gross sum named, £105. The amount of the detailed bill was £5,800 subject to payments on account. The main issue in dispute between the parties was the charge in the detailed bill for the mortgage debenture which was greatly in excess of the sum of £105 named in the gross sum bill for the same work. The plaintiffs issued a special summons claiming that the detailed bill be referred to taxation and the order sought was made against the defendant company. The trial Judge referred to rule 6 of the Solicitors' Remuneration General Order, 1960, which he read as substituting as far as taxation was concerned the detailed bill for the original gross sum bill. He accepted the decision in re Taxation of Costs (1943.1.K.B.69) to the effect that the amount recoverable on foot of a detailed bill was not necessarily limited to the figure claimed in a previous gross sum bill. The correspondence revealed that the defendants sought a detailed bill in place of the gross sum bill and the plaintiffs' solicitors merely complied with the request and were entitled to have the detailed bill referred to taxation.

## RULES OF THE SUPERIOR COURTS (No. 2), 1963

### (S.I. No. 224 of 1963)

The attention of members is drawn to these rules which may be obtained from the Government Publications Sales Office, price 9d. The rules amend the rules of the Superior Courts, 1962, in certain respects including the scales of costs at appendix W of the principal Rules. Following the publication of the rules the Minister for Justice considered that the upper limits in certain of the costs items were too high and discussions followed between the Rules Committee, the Department and the Society. Agreement was reached on amendments substituting the following items for the corresponding items in appendix W:

| | | | | | |
|---|---|---|---|---|---|
| 7. | Drawing, filing and delivery to one party of statement of claim, defence (and counterclaim) answer to petition, reply or other pleading. | 1 | 10 | 0 | to |
| | | 7 | 0 | 0 | |
| 8. | Drawing, filing and delivery to one party of particulars of pleading, and drawing and delivery to one party of request for such particulars. | 1 | 0 | 0 | to |
| | | 5 | 0 | 0 | |
| 21. | Attending to obtain appointment to examine witness and on examination of witness before any commissioner, officer of the court or other person appointed to examine him, for each day of examination. | 4 | 0 | 0 | to |
| | | 12 | 0 | 0 | |
| | *Note:* The solicitor shall also be allowed travelling expenses reasonably incurred by him. | | | | |
| 23. | Attending sittings within 20 miles of the place where the solicitor practises, for purposes of— | | | | |
| | (*a*) trial or hearing of a cause, matter or appeal for each day— | | | | |
| | (i) on which cause, matter or appeal is included in list to be tried or heard but is not begun. | 1 | 10 | 0 | to |
| | | 5 | 0 | 0 | |
| | (ii) of trial or hearing. | 3 | 0 | 0 | to |
| | | 12 | 0 | 0 | |
| | (*b*) hearing reserved judgment. | 1 | 0 | 0 | to |
| | | 3 | 0 | 0 | |
| 24. | Attending sittings elsewhere for any purpose mentioned in item 23 for each day (except Sunday) on which solicitor is necessarily absent from his office. | 8 | 0 | 0 | to |
| | | 12 | 0 | 0 | |
| | *Notes to items 23 and 24:* | | | | |
| | (*a*) If the solicitor has to attend on more than one hearing or trial at the same time and place, the expense shall in such case be reasonably divided. | | | | |
| | (*b*) The solicitor shall also be allowed travelling expenses reasonably incurred by him. | | | | |
| | (*c*) These items do not relate to the attendances mentioned in item 26. | | | | |
| 32. | Attending taxation, completing bills, vouching, completing affidavit of tots and certificate of taxation. | 1 | 15 | 0 | to |
| | | 9 | 0 | 0 | |
| 52. | On transfer of stocks or securities in or out of Court under any order or direction of the Court. | 1 | 5 | 0 | to |
| | | 20 | 0 | 0 | |
| 57. | Necessary and proper attendances not provided for or allowed under any other item. | | 15 | 0 | to |
| | | 5 | 0 | 0 | |
| | *Note:* The solicitor shall also be allowed reasonable travelling expenses actually incurred. | | | | |

76. Perusing draft certificate, report, scheme or like document submitted for approval or examination by solicitor. £1 0 0 to £5 0 0

In Appendix W, Part V:

(*a*) The fee of £1 0s. 0d. in the third column of Table (1) (relating to Probates) shall be altered to £1 8s. 0d.

(*b*) The fee of £2 18s. 0d. in the fifth column of Table (3) (relating to Letters of Administration intestate) shall apply where the effects are sworn at or over £3,000 and under £50,000 and the fee of £4 14s. 0d. where the effects are sworn at or over £50,000.

The amendments do not affect the right of any party to apply to the Court in exceptional cases under order 99 rule 1 (5) in proceedings other than proceedings for the recovery of a penalty for an order for payment in addition to the costs as between party and party of all or any other costs, charges or expenses reasonably incurred for the purpose of the proceedings or the discretion of the Taxing Master to certify for special allowances on taxation between solicitor and client under order 99 rule 13 (2).

In substance the effect of the amendments is to reduce the upper limits in the following items of Appendix W, part I as follows:

Item 7: £10 0s. 0d. reduced to £7 0s. 0d.
Item 8: £10 0s. 0d. reduced to £5 0s. 0d.
Item 32: £12 0s. 0d. reduced to £9 0s. 0d.
Item 52: £25 0s. 0d. reduced to £20 0s. 0d.
Item 76: £10 0s. 0d. reduced to £5 0s. 0d.

Items 21 and 24 have been amended by deleting the reference to out of pocket expenses. Item 57 has been amended by substituting "travelling expenses" for "travelling and other expenses". In item 23, 20 miles is substituted for 10 miles. Other amendments of a minor character have been made in Appendix W, part V, table I (probates).

## RULES OF THE SUPERIOR COURTS, 1962

The attention of members is drawn to the provisions of order 99 rule 14 as to the date of commencement of the new scale of costs in Appendix W as amended by the Rules of the Superior Courts (No. 224 of 1963) mentioned above in this issue. The Rules of the Superior Courts, 1962, came into operation on 1st January, 1963. Order 99, rule 14 provides that in causes and matters pending at the time when the rules came into operation the previous scale of costs should continue to be applied unless the Court otherwise directs.

The President of the High Court has given a direction that in ward of Court matters the new scale of costs shall apply in respect of business transacted on or after 1st January, 1963, and a similar direction has been given in bankruptcy matters. These are general directions and no further individual applications are necessary.

Having regard to the particular character of administration matters and proceedings for winding up companies the Council have under consideration an application to the Court for a similar direction in regard to these matters.

## THE DISTRICT COURT

The following statutory instruments are now available:

1. District Court (Summary Judgment) Rules, 1963 (S.I. No. 213 of 1963), price 2s. 6d.

2. District Court (Hire Purchase) Rules, 1963 (S.I. No. 214 of 1963), price 9d.

## LAND COMMISSION

Mr. John Kelly, solicitor, practising under the style of Messrs. Callery & Kelly, Elphin, Co Roscommon, and a former member of the Council, has been appointed a Lay Commissioner of the Land Commission.

## NOTARY PUBLIC

A Government stockbroker carrying on business in partnership petitioned the High Court to be appointed a notary public. The petitioner had been in partnership with a stockbroker who was a notary public and who kept a shipping protest register for upwards of fifty years. It was stated that it was normal practice for captains of ships after voyages to the port of Dublin when damage occurred during the voyage to lodge a detailed protest in the register. The value of the register was considerable as commercial and insurance companies frequently sought extracts therefrom. The petitioner stated that he was not aware of any other notary in Dublin who kept such a register and he maintained that the register should be kept as formerly and he undertook to do so if appointed.

The petitioner's application was opposed by the Faculty of Notaries Public and by the Incorporated Law Society of Ireland. The opposition being based not on the character of the applicant but because the applicant was not a solicitor. The Chief Justice held that as there was no application for the vacancy from a solicitor and as the applicant's fitness to be appointed was certified by six solicitors supported by banking and shipping interests he should be appointed. Furthermore the association of the petitioner with deceased partner who maintained the protest register was a factor to be taken into consideration. Applicant was appointed on the undertaking that he would not engage in legal business of any description other than that peculiar to a notary public.

## A NOTICE OF INTENTION TO PROSECUTE UNDER THE ROAD TRAFFIC ACT IS VALID IF WRITTEN IN IRISH, EVEN IF THE DEFENDANT DOES NOT UNDERSTAND IRISH

A notice of intention under the Road Traffic Act 1933 (now the Act of 1961), to prosecute the defendants for dangerous driving was duly served on them, and the Guard explained to them in English the nature of the notice, which was only in Irish. When the case came for hearing before District Justice McGahon in Westport District Court, the solicitor for the defendants successfully contended that the defendants had not been served with a proper notice, as they could not understand it. On the application of the Attorney-General, the District Justice stated a case for decision by the High Court; and Mr. Justice Davitt, President of the High Court, upheld the view of the District Justice. A further appeal was taken to the Supreme Court, and, on the 10th May, 1963, the Supreme Court (O'Daly, C.J., Kingsmill-Moore and Walsh, J. J.) unanimously reversed the decision of the High Court and held:—

*Per the Chief Justice:*—Such a notice will be valid if written either in English or Irish; it follows that such a notice will not be invalid if the recipient does not understand either Irish or English, or is illiterate; in any such case, he can readily have the meaning of the notice explained to him.

*Per Kingsmill-Moore J.*—What was said by the Guard does not constitute a necessary warning under the Act, for it was not a warning given immediately after the commission of the offence. The District Justice, having correctly held this, considered that the words spoken by the Guard were of no importance in the case. I attach to them the greatest importance. The Guard, when delivering the document, conveyed to the defendants its nature, meaning and contents; there is no suggestion that this was not sufficient to put the defendants on notice. The meaning of Article 8 (3) of the Constitution is that either English or Irish may be used, unless provision has been made by law that one language only was to be used for some one or more official purposes. (*Attorney-General v. Wallace and Coyne*).

## DEATH DUTIES IN IRELAND

The General Council of Provincial Solicitors' Associations have published a booklet entitled "A Guide to the Death Duties in Ireland" by M. K. O'Connor, Barrister-at-Law—Price 15/6 per copy. Copies of this booklet may be obtained post free on application to Mr. Cornelius J. Daly, Solicitor, 19 South Mall, Cork. It is hoped to review this booklet shortly.

## HANDBOOK AND LAW DIRECTORY

The Hand Book Vol. I and Law Directory Vol. II for 1964 will be on sale in January and can be obtained from: the Incorporated Law Society of Ireland, Solicitors' Buildings, Four Courts, Dublin.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 30th day of December, 1963.

D. L. McALLISTER,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owners Patrick O'Callaghan and Julia O'Callaghan. Folio number 21051. County Cork. Lands of Coolmona in the Barony of Muskerry East containing 42a. 1r. 8p.

2. Registered Owner Patrick Maguire. Folio number 9905. County Cavan. Lands of Corrinshigo in the Barony of Tullygarvey containing 5a. 2r. 16p.

3. Registered Owner John Rourke. Folio number 14569. County Clare. Lands of Rine (No. 1) in the Barony of Burren containing 18a. 0r. 5p.

4. Registered Owner Edward Pender. Folio number 6898. County Clare containing 66a. 0r. 10p. and Folio number 6899 County Clare containing 21a. 0r. 15p. of the lands of Beneden both situate in the Barony of Islands.

## THE REGISTRY

### Register A

QUALIFIED ASSISTANT required Dublin Solicitor's Office. Possibility own practice. Box No. A 206.

REQUIRED for Cork city a solicitor with some experience. Please send full particulars to Box No. A 207.

QUALIFIED ASSISTANT required by Peebles Knox & Pigot, 21 Kildare Street, Dublin. Applicants please detail previous experience and state salary required.

DUBLIN PRACTICE for sale by solicitor about to retire. Figures available. Apply Box No. A 208.

### Register C

WANTED to purchase second-hand dictaphone, please give particulars to Box No. C 175.

In the goods of JAMES ROBINSON, deceased, late of 21 Richmond Hill, Cork. Commercial Traveller. Information is requested from any person having knowledge of a will made by the above. Murphy Murray & O'Shea, Solicitors, 27 South Mall, Cork.

Lost Deeds and Will of THE REV. BENJAMIN HENRY JOHNSON, d. January 22nd, 1877, relating to Nos. 29 and 43, South William Street, Dublin. Box No. C 176.

## OBITUARY

MR. SEAN GIBBONS, Solicitor, died on the 1st December, 1963, at the Mater Nursing Home, Dublin.

Mr. Gibbons served his apprenticeship with Mr. Martin Kelly, Kilkenny, was admitted in Trinity Sittings 1947 and practised under the style of Messrs. Gibbons & Butler, at 8 Trinity Street, Dublin.


## THE SOLICITORS' BENEVOLENT ASSOCIATION

The Association, which operates throughout the whole of Ireland, cares for Solicitors, their wives, widows and families, who have fallen on hard times.

Last year over £2,000 was distributed in relief. Additional subscriptions, donations and bequests are urgently needed to continue and extend the Association's work.

The active co-operation of the profession in the Association's good work is asked for, and all who are not members are urged to join without delay.

Membership subscription, £1 1s. 0d. (or 10s. 6d. if admitted less than 3 years) a year. £10 10s. 0d. life membership.

Address:
SECRETARY,
SOLICITORS' BENEVOLENT ASSOCIATION,
18, HUME STREET
DUBLIN.


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No. 7

JANUARY
1964

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

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FOR CIRCULATION AMONG MEMBERS

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## LECTURE ON THE COMPANIES ACT

A lecture on this subject will be given in the Society's Library for members and their apprentices on Thursday, February 6th at 8 p.m. by Mr. P. C. Kilroy, M.A. LL.B., Solicitor.

## MEETINGS OF THE COUNCIL

DECEMBER 5TH: Mr. Lanigan and afterwards Mr. Collins in the chair, also present Messrs. Ralph J. Walker, Dinnen B. Gilmore, Daniel J. O'Connor, Brendan A. McGrath, Patrick Noonan, Thomas H. Bacon, John Carrigan, William A. Osborne, William A. Tormey, Edward J. Dillon, John Maher, Augustus Cullen, Eunan McCarron, Thomas J. Fitzpatrick, Peter E. O'Connell, Robert McD. Taylor, Desmond Moran, James R. C. Green, Peter D. M. Prentice, Thomas V. O'Connor, Richard Knight, Francis Armstrong, Raymond A. French, James W. O'Donovan, George G. Overend, Desmond J. Collins, Francis J. Lanigan, Patrick O'Donnell, Niall S. Gaffney, John J. Nash, George A. Nolan.

The following was among the business transacted:

### Furnished letting

The Council adopted a report from a committee which stated that after considering opinion 1087 of the English Law Society's Digest (1954, vol. 1) they were of the opinion that the commission scale fee under schedule I, part 2, of the Solicitors' Remuneration General Orders is chargeable upon the whole rent of a lease of a furnished house.

### Co-operation between solicitors

A committee reported on certain suggestions as to the adoption of common procedures between solicitors with a view to saving time and unnecessary work. A statement on the subject is printed below.

### Publican's licence

On a report from a committee the Council raised no objection to the transfer to a solicitor-executor of an on licence attaching to premises forming part of the estate of the deceased.

### Two personal representatives—Separate representation

A member who acted for one of the personal representatives of a deceased person enquired whether a co-administrator is entitled to be independently represented by his own solicitor (upon which he insists) and if so whether the additional costs form part of the costs of administration. The administrators are also universal legatees.

On a report from a committee the Council stated that if the administration has been taken out there should be only one set of administration costs. If one of the universal legatees wishes he is entitled to separate legal advice but at his own expense.

### District Court Rules Committee

Mr. William A. Osborne was appointed as the Society's representative on the committee in place of Mr. John Kelly, who resigned.

### Bankruptcy commission

The Council passed a vote of thanks to Mr. Cyril Boyle and Mr. Oliver Fry for their services in connection with the Society's memorandum to the Bankruptcy Commission.

JANUARY 9TH: The President in the chair, also present Messrs. Ralph J. Walker, Dinnen B. Gilmore, John C. O'Carroll, Brendan A. McGrath, Robert McD. Taylor, Thomas H. Bacon, William A. Osborne, Richard Knight, Daniel J. O'Connor, William A. Tormey, Augustus Cullen, Patrick Noonan, Eunan McCarron, James R. C. Green, Gerard M. Doyle, Joseph Black, Desmond Moran, Peter D. M. Prentice, G. J. Moloney, R. A. French, George A. Nolan, Cornelius J. Daly, Thomas V. O'Connor, Peter E. O'Connell, John J. Nash, John Maher, George G. Overend.

The following was among the business transacted:

### Land Commission Costs

The Secretary reported on the present position of the negotiations with the Land Commission and the terms of a letter addressed to the Minister for Lands were approved.

### Standard contract and conditions of sale

A report from a committee on the suggestion that the Society should publish standard forms of contract and general conditions was considered and it was decided to discuss the matter with the Dublin Bar Association having regard to the standard contract and conditions already adopted by that Association.

### Formation of company by unqualified person

On a report from a committee the Council considered a press advertisement and circular issued by a limited company offering to undertake the work of company formation at cheap rates. It was ascertained that one of the directors is a chartered accountant. It was decided to submit the matter for consideration to the Institute of Chartered Accountants.

### Medical reports

The Council considered a report from a committee on a case in which a medical practitioner, who is a surgeon on the staff of a Health Authority hospital, refused to furnish medical reports on the condition of a patient in the hospital which were required for the purpose of proceedings. No question of the surgeon's fee arose and no reason could be ascertained for his refusal to co-operate. As he is not a member of the I.M.A. that body could take no action in the matter.

Member was advised to consider bringing the matter before the Medical Registration Council and if advised, taking the matter up with the Minister for Health insofar as the functions of the Health Authority are within the competence of his Department.

### Bank executor-trustee department

On a report from a committee the Council decided to take up with two banks the question of the proper procedure as regards wills deposited with the executor and trustee department for safe custody. In the cases concerned it was stated that closed envelopes containing wills deposited by solicitors had been opened by the executor and trustee departments without consultation with the solicitors concerned.

### Change of solicitor—Procedure

Member stated that he had received a notice from three clients instructing him to hand over documents to the same solicitor and he asked whether he might write to the clients concerned for an explanation before handing over the document. The Council on a report from a committee stated that member was entitled to write to the clients asking for verification of the instructions to hand over the documents but not further or otherwise.

### Conflict of interest

Members acted for S. the owner of the freehold and G. the lessee in 1960 on the purchase of the freehold reversion of a lease under which G. paid a yearly rent of 5/-. In 1963 proceedings were instituted by G. against H. in relation to a right of way claimed by H. over the property of G. the subject of the transaction in 1960. The solicitors who acted for G. in 1958 were instructed by H. in the present proceedings. G. objected to her former solicitors acting for H. alleging a conflict of interest. The Council on a report from a committee stated that if the right of way was not involved in the purchase of the freehold reversion in 1958 no conflict of interest appeared in the present matter, and the solicitors would now be entitled to act for H. in the pending proceedings.

### Registration of Title Bill, 1963

The Council approved of a memorandum to the Minister for Justice on various aspects of the Bill.

### Solicitors' remuneration

The Council decided to make an application to the various committees for an increase of 12½% to be added as a percentage to solicitors' bills of costs in all matters not included in the commission scale fees.

### High Court costs

The President of the High Court issued a direction sometime ago that in ward of court matters pending on 1st January, 1963, the scale of costs in appendix W of the Rules of the Superior Courts, 1962, is to apply to business transacted on or after that date. A similar direction has also been given in bankruptcy matters. The Council decided to make an application to the President of the High Court for a similar direction in regard to matters in the Examiner's office.

## BOOK-KEEPING FOR SOLICITORS' OFFICES

### Hand-written carbon copy ledger posting

It is very rare, nowadays, to come across a solicitor's office where no up-to-date aids to efficiency are in use. However, the facts show that, while modern machines and equipment have replaced quill pens and paraffin lamps, there has been very little mechanisation or modernisation in the cash office

Many solicitors are probably aware of the need to modernise their accounting procedures but hesitate to do anything about it because they feel that mechanisation will prove expensive. However, many hand-written procedures are, even today, highly efficient and, if properly designed, will not necessarily involve expensive equipment, but will include the majority of the benefits of mechanised systems.

Much can be done to ease the pressure on a cashier, but first it is necessary to ascertain how much of his work can be simplified or eliminated without having an adverse effect on the result. Once this has been done, a system can be designed which will ensure that all the necessary operations are carried out quickly and easily and which may, if required, increase the amount of information available, without increasing the work load.

The old, well tried and trusted methods are undoubtedly sound in principle but are now breaking

down under the strain of increased business. The book-keeping system in current use was designed in the days when the amount of work handled by a practice was comparatively small and it has not progressed as have other office systems. There are many reasons for this, but the principal one is that the majority of solicitors are not expert accountants and they would rather put up with a certain amount of inconvenience than attempt to improve a system whose working they do not fully understand.

This situation continues until some sort of crisis occurs; usually it is simply that the pressure of work on the cash office becomes so great that the books fall into arrears and consequently all the work of the practice is disrupted. When this happens something must be done and there are two alternatives. Either, additional staff are engaged to carry out the increased work or, an attempt is made to simplify the system by eliminating unnecessary operations so that the existing staff are adequate. The second of these alternatives is obviously the most sensible. Overheads must not be allowed to increase unchecked if the maximum profit is to be obtained.

Having made the decision that the system should, if possible, be made more efficient, all unnecessary operations in the system must be eliminated.

There are certain basic functions which should be performed in the cash office.

i. To keep all the books of account.
ii. To handle all money which comes into and goes out of the office.
iii. To collect the costs and keep the records of all delivered bills.
iv. To ensure that the Solicitors' Accounts Rules are observed at all times.
v. To pay staff wages and to keep all the necessary records relating to them.
vi. To prepare regular statements of the firm's financial position.

For the purposes of this article it will be assumed that all the records kept by the cashier are, in effect, bound books, even though loose-leaf stationery may be used. It must also be assumed that the volume of work in the cash office is not great enough to justify the introduction of an accounting machine.

Having agreed that none of the operations listed above can itself be eliminated, each must now be considered individually to find out what can be done to simplify them.

## i. Keeping the books of account

The information needed by the cashier for writing up the books is usually passed to him orally or on slips of paper. Neither method is satisfactory as the information is frequently incomplete and the cashier has to make further enquiries; thus time is wasted. This can be saved if the profit-earners are made responsible for passing complete details of receipts and payments to the cashier. So that this information is standard for all transactions, a printed slip should be designed for the purpose.

Having received the information the cashier writes up the books of account and, in conventional book-keeping systems, the details must first be written in a book of prime entry and then copied into one or more other books. It is here that a considerable amount of time can be saved by eliminating unnecessary copying operations. If the writing up of the books of prime entry is combined with the ledger posting at least one copying operation can be eliminated. Although the finished article will not be as neat as if the operation had been carried out on a book-keeping machine, the same result will be obtained if the posting is made in longhand. It may also be possible to eliminate other copying operations at the same time by doing away with books which do not serve any really useful purpose.

Apart from eliminating unnecessary copying operations, combining the ledger posting with writing up the books of prime entry also saves time in that checking the books to find and correct copying errors is unnecessary. Proving procedures can be designed which will eliminate the possibility of error almost entirely, provided the information passed to the cashier is correct.

## ii. Handling money

The cashier must always be responsible for handling the money which is received and paid out. Cheques and cash should not be passed around the office but should always be passed direct to the cashier as soon as they are received. Cheques should not be drawn by anyone but the cashier, nor should any other member of the staff handle petty cash.

The slips on which the posting information is passed to the cashier can be of great value in controlling the movement of money and can eliminate the necessity for keeping separate records. If suitable procedures governing the use of the slips are devised, a further saving of the cashier's time can be achieved.

## iii. Collecting costs and keeping records of delivered bills

Once a bill has been delivered, the collection of the costs due becomes the responsibility of the cashier. This is very necessary if the cashier is to exercise complete control over the firm's accounting pro-

cedures. The records must be as simple as possible and must not entail the writing up of separate books. If bills are drafted so that they comply with the Solicitors' Accounts Rules, the copy of the bill is the only record necessary. If the copy is put on a file of unpaid bills when it is delivered, and transferred to a file of paid bills when it is settled, there is no need to make entries in books, or to prepare lists of delivered bills, in order to maintain complete records.

A system should be devised for automatically rendering further accounts to clients in respect of outstanding bills after the period, decided by the partners, has elapsed. This will be a simple task if the unpaid bills are filed in date order and periodically checked by the cashier.

Simplifying the records of bills saves yet more time in the cash office.

### iv. Observing the solicitors' accounts Rules

The ultimate responsibility for ensuring that accounting procedures do not infringe the Rules rests with the partners, but the cashier must have a detailed knowledge of the Rules since his work is, of necessity, almost entirely unsupervised. The accounting system must, therefore, contain every possible safeguard against infringement. It is this factor which has, in the past, caused many accounting systems in use in solicitors' offices to become exceedingly complicated.

If it is properly designed and installed and carried out according to the designer's instructions, it can contain a built-in "insurance policy" which, as far as is humanly possible, eliminates any possibility of infringing the Rules. For this reason, when a system has been designed for a particular firm, it must be installed and operated without any modification whatever, beyond those made necessary by changing circumstances. For, a system should be designed so as to be flexible enough to accommodate any forseeable change in requirements.

### v. Wages

It is the responsibility of the cashier to pay staff wages and to keep the relevant records. All that needs to be said on this subject is that carbon copy principles can be applied which eliminate so many copying operations that the preparation of wages, even in a large firm, becomes a very simple and quickly completed task.

### vi. Financial statistics

Apart from being the record of a firm's financial transactions, the books of account provide a wealth of information concerning the day-to-day running of the office. Information should be regularly extracted and passed to the partners so that, for example, immediate action can be taken to check excessive expenditure. The details of past spending can form the basis of future budgeting, and the profitability of the various departments, individuals or types of work can easily be assessed. Full use should always be made of the books of account and the accounting system should be designed so that any statistics can be quickly and easily extracted.

Thus, much can be done to improve the methods employed in the cash office.

The main advantages of modern manual accounting methods are that more work can be done in the cash office without increasing the staff, errors arising from too many copying operations are reduced to an absolute minimum, if not eliminated completely, and all the information necessary for the efficient running of the practice, at least from a financial point of view, can be extracted from the books with the minimum of effort.

Hand-written carbon-copy ledger-posting must result in a saving of at least 25 per cent. of the time taken in writing up the books of account by conventional methods. If the whole system is redesigned so as to eliminate unnecessary books, there will be an even greater saving. It is doubtful whether the use of a book-keeping machine will increase the time saved. In fact, if the operator is not a proficient typist it may take more time to complete the books on the machine, than to do so by hand.

Carbon-copy ledger-posting systems use loose-leaf stationery and are very easily adapted to meet any requirements peculiar to a particular firm. The stationery itself must be designed so that the proving and other procedures are as simple as possible. Provision must be made for a running balance to be kept on all ledger accounts. Apart from being essential to the proving process this simplifies the task of extracting balances and provides the profit-earners with invaluable information. The most important advantage of a running balance is that the work of the cash office does not come to a halt while the books are being audited.

Designing the stationery so that carbon copy principles can be employed means that some old and universally accepted conventions must be discarded. One is that debits and credits change sides in the books of prime entry and are headed "receipts" and "payments". However, these minor points do not alter basic principles.

To achieve the maximum benefit from the introduction of a new accounting system, the books of account should include full details of every step taken during the course of each transaction so that there is a complete financial history of it always available.

In this article important advice is given regarding the modernisation and simplification of Accounting and Recording methods in Solicitors' offices. However, any Solicitor who is contemplating modification and alteration should avail of the opportunity to examine stationery and methods designed by specialists in the field of form design. A frank consultation with an expert in modern Accounting procedures, who can apply the forms to the problems of a particular office is an asset to a busy Solicitor.

In addition, where a new system is adopted, it is essential that staff are trained in its use, and the procedures fully explained by a competent demonstrator.

Interesting specimen records are available for inspection from the Business Forms Library, and the service described is available free, and entirely without obligation, upon application to :

DAVID MILLARD LTD., 19 Westland Row, Dublin 2. *Tel.:* 67256/7/8

Finally, if the possibility of error is to be reduced to a minimum an add/listing machine must be brought into use in the cash office. There are many cashiers who consider that the introduction of such a machine reflects adversely on their capabilities. This is not so, and to reject a machine which eases the burden of calculation in the cash office is as foolish as using a quill pen in preference to a typewriter for drafting. The cashier who can add up three columns at a time as quickly as an average person can read one of them is very rare indeed. Yet many machines are available which do so with complete accuracy and it is a waste of time and energy if one is not used. Such a machine can cost less than £40.

A simple modern system designed to replace an existing conventional system will be much more easily understood than a system which uses an unnecessarily large number of books. Thus, the loss of the cashier, either because he leaves the firm or falls ill, need no longer be a major catastrophe.

Nearly all the advantages of machine accounting can be achieved by carbon-copy ledger-posting systems at a fraction of the capital cost of mechanisation. The hand-written system described here can be installed for less than £100. Moreover, the day-to-day running costs of modern accounting systems are considerably less than those of conventional systems because loose-leaf stationery is very much cheaper than bound books.

Any solicitor who feels that his cash office is overloaded with work and that the solution to the problem lies in modernising its procedures should call on the services of someone who is properly qualified to recommend a system which is specifically designed to suit his requirements.

[The above article, composed by the Office Advisory Service, has been reproduced with the kind permission of the Law Society, London.]

## STAMPS BRANCH—POSTAL SERVICE

The attention of members is drawn to the fact that while the Revenue Commissioners regard the procedure for stamping documents on personal attendance as a facility provided for solicitors who wish to complete transactions without delay there is no rule against using the post office. Many Dublin and country solicitors do in fact transact business with the Stamps branch by post. Having regard to the delays which sometimes occur in stamping documents at the counter, members are reminded of the postal facilities. Postage should be pre-paid on mailing the documents to the Stamp Office. The stamped instrument is returned by registered post. The solicitor presenting the instrument for stamping has the option of sending it in for assessment before payment or forwarding the instrument accompanied by a guaranteed cheque or cash for the amount of the stamp duty. If any query arises on the instrument or the amount of the duty the solicitor will be notified. Solicitors who wish to avail of this service will no doubt consider the advisability of themselves insuring instruments against loss both ways. Registration is little more than proof of posting.

## STOCK TRANSFER ACT, 1964

The Act provides for a new form of stock or share transfer printed in the schedule to the Act. The adoption of the new form is optional and the parties may continue to use the ordinary form of stock transfer. The principal features of the new procedure are that (1) the execution of a stock transfer in the new form need not be attested, (2) where the transfer has been executed for the purpose of a stock exchange transaction (i.e., between members of the stock exchange acting for clients) a special form is provided. (3) The new procedure may be used for fully paid up registered securities of any description except securities of a company limited by guarantee or an unlimited company. Shares which are not fully paid up must be transferred in accordance with the old procedure.

(4) The Act does not affect any provisions in articles of association regulating the execution of documents by any particular company or body corporate. *Section* 4 which is intended for the protection of the revenue makes it an offence for any person to part with the possession of a blank transfer which has been delivered pursuant to a sale of securities before it has been completed. This is intended to prevent the sale and sub-sale of securities pursuant to blank transfers without paying the appropriate stamp duty on each transaction.

The Act will come into operation on a date to be appointed by Ministerial order.

## THE COURTS BILL, 1963

This Bill which was introduced by the Minister for Justice makes provision for the appointment of one extra Circuit Court Judge who shall be movable or fixed as the President of the Circuit Court shall direct. Section 3 makes provision for the alteration of circuits which shall be effected by the Minister acting in consultation with the President of the Circuit Court and the Judges of the Circuit Court if any, permanently assigned to the circuits to which the Order will relate. The Act also provides in Section 5 that the Justice of the District Court may take vacations at such times as may be approved of by the Minister for Justice.

## CASE LAW

*Civil Liability Act—apportionment of blame—costs*

Sections 24 and 42 of the Civil Liability Act, 1963 were considered in the case of O'Connor *v.* Nelligan by the President of the Circuit Court sitting at Killarney. It was found that in a claim for damages arising out of a collision of two vehicles in County Kerry, the defendant was 75% negligent and the plaintiff 25% negligent.

The President reduced the total amount of damages sustained by the plaintiff by 25% and gave a decree for the net amount (after the reduction of 25% from the gross damages), which decree amounted to £200 6s. 1d. The defendant had lodged in Court the sum of £151. Counsel for the defendant contended that the costs should follow the same proportion as the damages, and he referred to Section 42 of the Act. The submission of counsel for the plaintiff was that Section 42 applied only where a counterclaim had been brought by the defendant and its application was discretionary. He further argued that the costs should be costs simpliciter on the decree for £200 6s. 1d., as the reduction had already been made and the damages due to the 25% degree of negligence on the part of the plaintiff. The President, Judge O'Briain, held that on the facts and circumstances of the case the costs should be on the decree for £200 6s. 1d. simpliciter, as no counterclaim was in issue and accordingly Section 42 of the Civil Liability Act, 1961 did not apply.

(*Irish Law Times & Solicitors' Journal*, December 14th, 1963.)

*Arbitrators' fees*

In Government of Ceylon *v.* Chandris (1963. 2. All. E.R.1) Megaw J. considered the meaning of "tax" or "settle" in section 18, sub-section 1 of the Arbitration Act of 1950.

The case which concerned a dispute relating to a charter party went to arbitration and the arbitrators disagreed. An umpire was subsequently appointed who made no attempt to assess the value of the arbitrators' service or the remuneration which they could fairly claim to be paid for the work they had done. However, he did include in the award the fees which they had asked him to include, since he thought that this was in accordance with the usual practice in such cases. The learned Judge held that this amounted to "misconduct" and remitted the award for reconsideration of the question of the costs of the award.

Held: that the sub-section mentioned above gave the umpire the power to "tax" or "settle". These words meant the application of the umpire's own independent mind, to the fees demanded and the work done in order to be satisfied that they were fair and reasonable, bearing in mind, however, the interest of the party who would have to pay them, as well as the legitimate interest of the arbitrators. The section states that "unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof".

There might be cases where the umpire should satisfy himself that the fees put forward by the arbitrators have in fact been fixed and agreed between the parties whether the arbitrators have express authority from the respective parties so to agree or otherwise. In such case an umpire need not go behind the agreement to investigate the agreed fees. However, in the present case there was no suggestion that there had been any such agreement or authority on the part of the arbitrators to agree so as to bind the parties.

(*I.L.T.R. & S.J.*, December 7th, 1963.)

## COUNTY CLARE LAW ASSOCIATION

At the annual general meeting of the association held in Ennis on 12th December, 1963, the following officers were elected :—

*President :* Patrick J. Chambers, Ennistymon; *Vice-President :* Michael J. Walshe, Ennis; *Hon. Secretary and Treasurer :* Michael B. Houlihan, Ennis; *Committee :* Bryan McMahon, Daniel O. Healy, Thomas A. Lynch, T. F. O'Reilly, Michael J. McMahon.

## KERRY LAW SOCIETY

At the annual general meeting of the society held on 14th December, 1963, the following officers and committee were appointed for the year 1963/64 :—

*President :* Gerard Baily; *Vice-President :* John D. O'Connell; *Chairman :* Charles J. Dowling; *Secretary and Treasurer :* Donal M. King; *Committee :* Messrs. D. E. Brown, D. J. Courtney, W. A. Crowley, H. J. Dowling, J. J. Grace, M. L. O'Connell, J. J. O'Donnell, J. S. O'Reilly and D. Twomey.

## SOUTHERN LAW ASSOCIATION

The following are the officers of the association for the year 1963/64 : *President :* John G. Moloney; *Treasurer :* John Ivor Horgan; *Secretary :* Dermot J. Moloney.

## NOTICE

We are asked by Arthur Guinness Son & Co., to remind members in connection with the forthcoming scrip issue for which renounceable certificates will be posted to stockholders on January 24th that if a certificate is split or renounced a 6d. stamp must be affixed to the renunciation form.

## EXTRAORDINARY MEMBERS OF THE COUNCIL

The following extraordinary members of the Council have been appointed from the Council of the Incorporated Law Society of Northern Ireland : J. Owen Wylie, W. Brian Rankin, E. Malachy Doris, Henry J. Catchpole and Frederick H. Mullan.

## COMMISSION OF CHARITABLE DONATIONS AND BEQUESTS

### Board meetings

Hilary Term, 1964 : Tuesday, 7th January, 21st January, 4th February, 25th February, 10th March, 24th March.

## OBITUARY

Mr. JOHN D. O'CONNELL, Solicitor, died at Tralee, Co. Kerry.

Mr. O'Connell served his apprenticeship with the late Mr. John O'Connell, Tralee, was admitted in Trinity Sittings 1914 and practised at Tralee. He was a member of the Council of the Society from 1948 to 1950.

Mr. PATRICK J. MURPHY, Solicitor, died on the 22nd January 1964 at his residence, 2 Whitebeam Road, Clonskeagh, Dublin.

Mr. Murphy served his apprenticeship with the late Mr. Terence J. Liston, Tralee, Co. Kerry, was admitted in Easter Sittings, 1929 and practised at 51, St. Stephen's Green, Dublin as Finance Solicitor.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 30th day of January, 1964.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street.
DUBLIN.

SCHEDULE

1. Registered Owner, The Great Southern & Western Railway Company. Folio number 6986. County Tipperary. Lands of Eastlone in the Barony of Middlethird containing 1a. 1r. 0p.

2. Registered Owner, Anthony Bollard. Folio number 5184. County Dublin. Lands of Rush in the Barony of Balrothery East containing 0a. 3r. 20p.

3. Registered Owner, Patrick Flynn. Folio number 997. County Limerick. Lands of Clovers in the Barony of Coshlea containing 79a. 2r. 33p.

## THE REGISTRY

### Register A

FOR SALE as a going concern a fully equipped and long established Solicitor's practice, in a large provincial town in Munster. Box. No. A209.

### Register C

MEMBER requires up-to-date editions of the following: Underhill, Torts: Nelsons Probate Practice: Browning & Glover—Land Registry. Box No. C177.

WILL any person having knowledge of the Will of Edward McCrave, Dowdallshill, Dundalk, Co. Louth, who died 8th January 1964 contact Daniel O'Connell & Son., Solicitors, Dundalk.

## LECTURES ON RECENT CHANGES IN THE LAW

On December 5th, Mr. Matthew Purcell, M.A., LL.B., Law Agent, Dublin County Council, delivered a lecture for members in the Society's library on the Town Planning Act.

On January 9th, Mr. Vincent Grogan, B.L. delivered a lecture in the library on Tax Law dealing particularly with income tax and death duties. Both lectures were well supported by the members. The lectures were tape-recorded and will be available to bar associations requiring them for a hiring charge of £3 3s. 0d.

## SOCIETY'S PHOTOCOPYING SERVICE

Documents measuring 15"×10" will be copied within twenty-four hours. Charge 9d. per sheet. Larger documents will be copied in sections. Copies are on black on white. Coloured inks will be reproduced in black.

### Library service

Photocopies of law reports may be obtained from the library. Standard charges for this service are as follows:—

5 sheets or less, 2/6d.; 6 to 10 sheets, 3/6d.; 10 to 20 sheets, 7/6d.; over 20 sheets, 10/–.

Law reports are copyrighted and photocopies are issued on condition that they are for members, their clients or counsel and that they will not be given or lent to any other persons.

## PROCEEDINGS AGAINST SOLICITORS

On 15th November, 1963, the President of the High Court made an order on a report from the Disciplinary Committee directing that Edward Daly who practised at 151 Rathgar Road, be suspended from practice until further order.

## CO-OPERATION BETWEEN SOLICITORS

The Council some years ago produced a memorandum which was circulated to a number of Government Departments suggesting changes in business methods with the object of enabling solicitors to transact their clients' business more efficiently. Among other suggestions it was pointed out that the use of a standard foolscap size paper for pleadings and other documents filed in Court would facilitate the profession by enabling them to have documents more easily filed and photocopied. The Council wish to bring this suggestion again before the members of the profession as in their view there is no ground apart from historical reasons for the multifarious types of paper used in solicitors' offices. Indeed it is believed that solicitors are gradually turning over to the use of foolscap sized paper for all purposes including briefs.

The Estate Duty office has recently been asked to revise the estate duty forms and in particular to adopt the foolscap size for all forms where possible in all cases where it is not already used.

In the leisurely Victorian period some unknown practitioner thought of the idea which became a general practice of sending a carbon copy of the requisitions on title for the use of the vendor's solicitor but the idea was never developed any further.

The Waterford Law Society has recently suggested that solicitors might, as a matter of professional courtesy when writing letters to colleagues where copies would normally be made by the recipient for his client, send a carbon copy of each letter or other document originating in the sender's office which will be required for the client of the solicitor to whom it is addressed.

It is easy to think of other practices which if adopted by agreement by members of bar associations would help to speed up business. Solicitors acting for opposing clients in litigation might usefully consider holding a business conference at the initial stage of the proceedings to see how expense could be reduced. Originating documents such as summonses, pleadings, etc., might be typed in sufficient numbers for the originating and receiving offices so that documents would not have to be recopied for briefing, etc. Some offices use electric typewriters which can produce a large number of copies in one operation but even with a good modern non-electric machine it should be possible to produce six copies together. It would take a little time to translate these suggestions into practice but the advantages to the profession and their clients would be worth the effort.

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Vol. 57
No. 8

FEBRUARY
1964

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
DESMOND J. COLLINS

*Vice-Presidents*
JOHN MAHER
PATRICK NOONAN

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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### MEETINGS OF THE COUNCIL

JANUARY 30TH: The President in the chair. Also present Messrs. Dinnen, B. Gilmore, Brendan A. McGrath, John C. O'Carroll, Edward J. C. Dillon, William A. Osborne, Peter E. O'Connell, Richard Knight, Thomas H. Bacon, Daniel J. O'Connor, William A. Tormey, Rory O'Connor, Eunan McCarron, Patrick Noonan, Niall S. Gaffney, James W. O'Donovan, Desmond Moran, Raymond A. French, Gerard M. Doyle, Robert McD. Taylor, Ralph J. Walker, Thomas A. O'Reilly, Thomas J. Fitzpatrick, Peter D. M. Prentice, George A. Nolan, John Maher, James R. C. Green, George G. Overend, Thomas V. O'Connor, Patrick O'Donnell.

The following was among the business transacted:

**Conferences between counsel and clients**

The Council referred to the Privileges Committee for consideration and report the question of conferences between counsel at the Bar library and clients, including insurance officials, in the absence of the solicitors.

### Trade Union Act, 1941

The Council on a report considered the position of the Society under the Trade Union Act 1941 in carrying on negotiations on behalf of solicitors in the Local Government and other salaried employments of a public nature affecting their salaries and conditions of employment. It was decided to make an application to the Minister for Industry and Commerce for an exception order under section 6 of the Trade Union Act 1941 to enable the Society to negotiate on behalf of these solicitors.

### Law Clerks Joint Labour Committee

The Council appointed Mr. Brian J. Murphy of Cork as one of the Society's representatives on the committee in place of Mr. Timothy J. Buckley who resigned and thanked Mr. Buckley for his services.

### Circuit and District Court. Service by registered post

The Council in a reply to an inquiry from the Department of Justice stated that the Society would have no objection to legislation which would provide for automatic service by registered post in any district in which there are not adequate facilities for personal service provided that service will be effected through the office of the solicitor concerned.

### Compensation fund

Claims amounting to £169 were admitted for payment.

### Parking in the Four Courts

On a report from the Finance committee the Council decided in conjunction with the Bar Council to ask the Commissioners of Public Works to mark the parking spaces by white lines in the East and West courtyards and to exhibit notices that the yards are not public parking spaces.

### Company formation

A committee reported on communications received from members with respect to a circular issued by a firm of which one of the directors is a chartered accountant to the public offering certain facilities in connection with the formation of limited companies. It was decided to send the correspondence to the Institute of Chartered Accountants.

### Counsel transferring briefs

The Council considered a report of a conference between representatives of the Society and representatives of the Bar Council on the subject *inter alia* of cases in which counsel passed on briefs to other counsel without the permission of the instructing solicitor. The representatives of the Bar had stated that the practice of the Bar is well established and that counsel should not transfer a brief to another without the consent of the instructing solicitor and in any event the instructing solicitor should have reasonable time to consider the question of a new counsel. The Bar Council will if desired issue a reminder to the effect that where counsel is unable to hold a brief he should hold it at the instructing solicitor's directions or return it to him in sufficient time to enable the solicitor to instruct another counsel to make up the case adequately.

## THE LOCAL AUTHORITY SOLICITORS' ASSOCIATION

At a meeting of wholetime solicitors in local authorities held on 7th January, 1964 at the Solicitors' Buildings, Four Courts, Dublin, it was unanimously decided to form an association to be known by the above name to cater for wholetime solicitors appointed as such in any local authority in the Republic of Ireland. The following officers were elected :— *Chairman:* D. M. F. Walsh ; *Hon. Secretary and Treasurer:* M. J. Leech ; *Committee:* Messrs. D. Brilly, B. J. Carroll, M. Purcell.

A letter extending good wishes to the Association was received from Mr. A. B. Cullen, President of the State Solicitors' Association. The Chairman welcomed to the meeting the President of the Law Society Mr. D. J. Collins and the Secretary of the Law Society Mr. E. A. Plunkett. The Chairman said the President's presence was most encouraging. The Chairman outlining the aims of the Association assured the President of its loyalty to the Incorporated Law Society and said that the Association would work within the framework of the Incorporated Law Society. He congratulated the President on obtaining office and wished him a happy and successful year.

The President in reply said that on his own behalf and on behalf of the Council he was pleased to see wholetime solicitors coming together and forming an association. The President stated that the main object of the Law Society is to help the members of the profession and that the Council would continue to do so and the Association could rely on its support.

## SUMMONS SERVER—SWORDS AREA

Patrick E. Myles of Bridge Street, Balbriggan, Co. Dublin, has been appointed as Summons Server (Circuit Court and District Court) for the Swords area with effect as from 23rd January 1964.

Consequently, the Order made by His Honour Judge Conroy directing that Civil Bills and other originating documents be served by registered post in so far as the Swords area is concerned is now revoked.

## ROAD TRAFFIC PROSECUTIONS

The following letter was sent by direction of the Council to Dublin offices of the insurance companies listed at foot.

*Re Road Traffic Prosecutions*
6th February 1964

DEAR SIRS,

Further to previous correspondence with your Company in connection with the above, I am directed to state that the Society have adopted the following resolution and have recommended it to the local bar associations.

1. In the opinion of the Society £7 7s., is the minimum proper fee which should be accepted by a member of the Society for either (*a*) attending at 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 or (*c*) attending to observe such proceedings provided that, where proceedings are conducted in the town other than the town where the solicitor has his principal office there should be a reasonable addition for time and travelling expenses. A proper report of the result of the proceedings should be prepared by the solicitor.

2. A proper report of the proceedings means a report giving the names of the witnesses with a summary of the evidence given by each 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.

4. The members of the Society ought not to accept instructions or furnish reports except for payment of the adequate fees appropriate to the circumstances and in accordance with paragraph 1.

The Council ask me to forward the terms of this resolution to your Company and to refer to the Society's letter of 3rd July, 1962. They would be obliged for a reply from your Company.

Yours faithfully,
ERIC A. PLUNKETT,
Secretary.

The Ocean Accident & Guarantee Corporation Ltd.; The Hibernian Fire & General Insurance Co. Ltd.; The Insurance Corporation of Ireland Ltd.; Irish National Insurance Co. Ltd.; Shield Insurance Co. Ltd.; Alliance Assurance Company Ltd.; Atlas Assurance Co. Ltd.; The British General Insurance Company Ltd.; The British Oak Insurance Co. Ltd.; Car & General Insurance Corporation Ltd.; The Celtic Insurance Co. Ltd.; The Century Insurance Co. Ltd.; The Commercial Insurance Co. of Ireland Ltd.; Commercial Union Assurance Co. Ltd.; Cornhill Insurance Co. Ltd.; Eagle Star Insurance Co. Ltd.; Edinburgh Assurance Co. Ltd.; The Employers' Liability Assurance Corp. Ltd.; The Fire Art & General Insurance Co. Ltd.; General Accident, Fire & Life Assurance Corporation Ltd.; Guardian Assurance Company Ltd.; The Legal Insurance Company Ltd.; The Liverpool & London & Globe Insurance Co. Ltd.; The London & Lancashire Insurance Co. Ltd.; The London Assurance.; The Motor Union Insurance Co. Ltd.; National Employers' Mutual General Insurance Assoc. Ltd.; The Northern Assurance Co. Ltd.; Norwich Union Fire Insurance Society Ltd.; The Patriotic Assurance Co. Ltd.; Phoenix Assurance Co. Ltd.; Provincial Insurance Co. Ltd.; Railway Passengers' Assurance Co.; Royal Exchange Assurance; Royal Insurance Co. Ltd.; Scottish Insurance Corporation Ltd. Scottish Union & National Insurance Co.; The State Assurance Co. Ltd.; Sun Insurance Office Ltd.; Union Assurance Society Ltd.; The Yorkshire Insurance Co.; The Zurich Insurance Co.; Co-Operative Insurance Society Ltd. Caledonian Insurance; Co.; Lloyds Syndicates (Anchor, Eclipse, Service, British Standard H.P. and R.G.).

## STOCK TRANSFERS

Stock transfer forms for use by solicitors under the Stock Transfer Act 1963 are being printed for members and will be available shortly.

## DISTRICT COURT (HIRE PURCHASE) RULES 1963—S.I. No. 214 of 1963

The District Court (Hire Purchase) Rules 1963 will come into force on 2nd March 1964. These rules set out amended forms in relation to hire purchase transactions. Copies of this Order may be obtained for 9d. Postage must be prepaid.

## INTERNATIONAL UNIVERSITY OF COMPARATIVE SCIENCES

The attention of members is drawn to the programme of studies for the academic year 1964 for The International Faculty of Comparative Law at Luxembourg. The spring session extends from 2nd March to 25th April, and the Summer session from 6th July to 8th September. Details may be had from Julian Roden, Doctor of Laws, Secretary General International University of Comparative Sciences, 13 rue du Rost, Luxembourg.

## STATUTES PASSED BY OIREACHTAS 1963

| *No.* | TITLE | *Signed by President* |
|---|---|---|
| 1 | Official Secrets Act, 1963 | 5 February 1963 |
| 2 | Undeveloped Areas (Amendment) Act, 1963 | 19 February 1963 |
| 3 | Nitrigin Eireann Teoranta Act, 1963 | 19 February 1963 |
| 4 | Industrial Grants (Amendment) Act, 1963 | 20 February 1963 |
| 5 | National Gallery of Ireland Act, 1963 | 26 February 1963 |
| 6 | Restrictive Trade Practices (Confirmation of Orders) Act, 1963 | 12 March 1963 |
| 7 | Hotel Proprietors' Act, 1963 | 14 March 1963 |
| 8 | Irish Steel Holdings Ltd. (Amendment) Act, 1963 | 9 April 1963 |
| 9 | Trade Marks Act, 1963 | 8 April 1963 |

| No. | Title | Signed by President |
|---|---|---|
| 10 | Copyright Act, 1963 | 8 April 1963 |
| 11 | Central Fund Act, 1963 | 3 April 1963 |
| 12 | Coast Protection Act, 1963 | 20 May 1963 |
| 13 | Control of Imports (Amendment) Act, 1963 | 26 June 1963 |
| 14 | Electricity Supply (Amendment) Act, 1963 | 26 June 1963 |
| 15 | Air Navigation (Eurocontrol) Act, 1963 | 26 June 1963 |
| 16 | Taisci Stait Teoranta (State Guaranteed Companies Act) Act, 1963 | 9 July 1963 |
| 17 | Transport Act, 1963 | 9 July 1963 |
| 18 | Local Government (Temporary Reduction of Valuation) Act, 1963 | 10 July 1963 |
| 19 | Electoral Act, 1963 | 12 July 1963 |
| 20 | Export Promotion (Amendment) Act, 1963 | 16 July 1963 |
| 21 | Sea Fisheries (Amendment) Act, 1963 | 16 July 1963 |
| 22 | Tourist Traffic Act, 1963 | 16 July 1963 |
| 23 | Finance Act, 1963 | 30 July 1963 |
| 24 | Superannuation and Pensions Act, 1963 | 30 July, 1963 |
| 25 | Appropriation Act, 1963 | 3 August 1963 |
| 26 | Social Welfare (Miscellaneous Provisions) Act, 1963 | 3 August 1963 |
| 27 | Shannon Free Airport Development Company Limited (Amendment) Act, 1963 | 3 August 1963 |
| 28 | Local Government (Planning and Development) Act, 1963 | 7 August 1963 |
| 29 | Imposition of Duties (Confirmation of Orders) Act, 1963 | 19 November 1963 |
| 30 | Registration of Business Names Act, 1963 | 10 December 1963 |
| 31 | National Building Agency Limited Bill, 1963 | 17 December 1963 |
| 32 | Telephone Capital Act, 1963 | 17 December 1963 |
| 33 | Companies Act, 1963 | 23 December 1963 |
| 34 | Stock Transfer Act, 1963 | 24 December 1963 |
| 35 | Funds of Suitors Act, 1963 | 24 December 1963 |
| | PRIVATE ACTS | |
| 1 | Limerick Harbour (Bridge) Act, 1963 | 12 June 196 |

# INDEX OF STATUTORY INSTRUMENTS

Published since September 1963

## AGRICULTURE, LANDS AND FISHERIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Bacon Export Subsidy Orders—181/1963

Bovine Tuberculosis—Movement of Cattle by road prohibited from clearance Areas (Counties Cork, Kerry, Limerick, Waterford, Tipperary, and Kilkenny) into attested Areas (Remainder of State save under permit and on specified roads after 1 January 1964)—257/1963.

Bovine Tuberculosis (General Provisions) (Amendment) Order 1960 revoked and replaced by Bovine Tuberculosis (General Provisions) (Amendment) Order, 1963—238/1963

Committees of Agriculture (Salaries of Officers) (Amendment) Regulations, 1963—270/1963.

Pigs and Bacon Commission Grading Orders—267/1963, 194/1964, 10/1964, 12/1964.

Pigs and Bacon Commission Minimum Prices—196/1963, 273/1963.

Pigs and Bacon Commission Regulations—177/1963.

Wages (Agricultural) Minimum Rates in operation from 30 December, 1963—248/1963, 249/1963.

## COMMODITIES, GOODS AND SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Exported Live Stock (Insurance) Bound—Fees payable to Bound in respect of export of Cattle, Sheep, and Pigs after 1 November, 1963—210/1963.

Food Hygiene Regulations, 1950—Official Danish and Norwegian Meat Certificates recognised—184/1963.

Fair Trading Rules No. 22 relating to collective Restrictions affecting the supply and distribution for Resale of Proprietary Household Remedies, Infant and Invalid Foods, Non-Alcoholic Health Drinks and Toilet Preparations.

Retail Price (Specified Foods) must be displayed in shops after 11 November, 1963—218/1963.

Oil Heaters (Amendment) Regulations, 1963 in force from 16 September, 1963—178/1963.

Salmon Dealer's Licence—New form of licence under Fisheries (Consolidation) Act, 1959 after 1. November, 1963—228/1963.

Register of Trade Mark Agent's Rules 1964 in force from 1 April 1964—35/1964.

Trade Marks Act 1963 in operation from 1 April, 1964—34/1964.

Wexford Gas Order, 1963, increasing Gas charges from 13 December, 1963.

## CONTROL OF IMPORTS AND EXPORTS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Butter-oil declared a Milk Product under Dairy Produce Marketing Act, 1961—24/1964.

Boots and Shoes Leather Imports limited to 82,500 pairs to 30 June, 1964—252/1963.

Butter—Prohibition of Export under Dairy Produce Act, 1935 revoked, and substituted by Dairy Produce Marketing Act, 1961—27/1964.

Completely Assembled Motor Chassis with Bodies—Imports limited to 20 in 1964—232/1963.

Completely Assembled Motor Chassis without Bodies—Imports Limited to 50 in 1964—233/1963.

Completely Assembled Road Vehicle Bodies—Imports limited to 50 in 1964—234/1963.

Completely Assembled Mechanically Propelled Vehicles—Imports Limited to 26 in 1964—236/1963.

Electric Filament Lamps—Imports limited to 110,000 in 1964—225/1963.

Export of Many Miscellaneous Products Controlled after 1 March, 1964—33/1964.

Meat and Meat Products—Save where specified importation prohibited after 1 November, 1963—186/1963.

Motor Car Body Balloons—Imports limited to 10 to 31 December, 1964—235/1963.

Milk, Cream and Cheese—Prohibition of Export under Agricultural Products Act, 1947 revoked and substituted by Dairy Produce Marketing Act, 1961—26/1964.

Milk, Cream, Cheese and Butter. Export prohibited to all destinations save Great Britain and Northern Ireland except under licence—25/1964.

Rubber Boots and Shoes—Imports limited to 75,000 pairs to 30 June, 1964—253/1963.

Sparking Plugs—Import limited to 8,500 to 31 October, 1964—185/1963.

Sugar (Invert) and Sugar Syrups—Export controlled after 1 September, 1963—171/1963.

Women's Felt Hats, Caps, Hoods and Shapes—Imports limited to 36,500 articles to 31 December, 1964—255/1963.

Woven Woollen or Worsted Fabrics—Imports limited to 1,200,000 Square Yards to 31 August, 1963—254/1963.

Woven Cotton Piece hoods—Imports limited to 2,970,000 square yards in 1964—212/1963.

## COUNTY AND TOWN MANAGEMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Killarney U.D.C. May grant licences for Company—237/1963.
Local Government (Sanitary Services) Act, 1948 (Section 34) (Urban District of Killarney) Order, 1963—237/1963.

## CUSTOMS AND EXCISE—EMERGENCY AND OTHER DUTIES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Beehive Section of Wood—Customs Duty suspended after 11 September, 1963—176/1963.
Customs Tariffs—Subject to specified exceptions, general reduction of 10% imposed on tariffs after 1 January, 1964—262/1963.
Drinking Glasses—Customs Duty reduced to 7½% per article after 1 October, 1963—182/1963.
Floor Tiles (Specified)—Customs Duty reduced to 27½% (full) after 24 December, 1963—259/1963.
Imposition of Duties (No. 142) (Reduction of Rates of Customs Duties) Order, 1963—262/1963.
Iron or Steel Bars, Rods, Sections and Sheets (Specified) exempted from duty until 30 June, 1964—271/1963.
Single Yarn Flax in Ball Form—Customs Duty reduced to 40% after 24 December, 1963—261/1963.
Textile Floor Coverings (Specified)—Customs Duty reduced to 45% after 24 December, 1963—260/1963.
Wheat—Customs Duty revoked from 1 November, 1963—209/1963.
Wooden Furniture (Specified)—Customs Duty reduced to 33% (U.K. and Canada) after 1 October, 1963—183/1963.

## EMPLOYMENT REGULATIONS AND CONDITIONS OF EMPLOYMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

Apprenticeship Act, 1931 repealed from 31 August, 1963—172/1963.
Barbers' Shops in Athlone Urban District—Weekday Hours of Trading fixed after 1 February, 1964.
Brush and Broom Joint Labour Committee—New Minimum Rates and Conditions of Employment fixed after 2nd March, 1964—39/1964.
Conditions of Employment Act, 1936—(Prescribed Abstract) Regulations, 1964—6/1964.
C.I.E. Superannuation Scheme 1951 (Amendment), Scheme 1962 (Confirmation) Order, 1963—221/1963.
Coras Iompair Eireann Salaried Officers' and Clerks (G.S.R. Superannuation Scheme (Amendment) Scheme, 1962. (Confirmation) Order, 1963—220/1963.
Circular Knitting Machines—Women Operators may work them between 7 a.m. and 10.30 p.m.—195/1963.
Moquette Weaving Industry—Persons over 16 may be employed between 6 am. and 10 p.m.—251/1963.
Office Premises (Overcrowding) (Amendment) Regulations, 1963 in force from 1 September, 1963—175/1963.
Sugar Confectionery and Food Preserving Joint Labour Committee—New Minimum rates and conditions of employment fixed after 30 December, 1963—264/1963.

## FINANCE AND CENTRAL GOVERNMENT.

SUBJECT MATTER AND REFERENCE NUMBERS.

4½% Exchequer Stock, 1968—Conditions under which this stock may be accepted in payment of Death Duties—20/1964.
5¾% Exchequer Stock, 1984-1989—Conditions under which this Stock may be accepted in payment of Death Duties—21/1964.
Dail Elections, Presidential Elections and Referenda—New Forms prescribed—246/1963.
Electoral Act, 1963—Parts, 3, 4, 5, 7 and 8—and Schedules 2, 3 and 4 in force from 9 December, 1963—245/1963.
Electoral Act, 1963—Schedule to Order repeals 43 Acts—245/1963.
Land Bonds—Interest fixed at 6% in respect of purchases made by Land Commission in 1964—272/1964.
Oireachtas (Allowances to Members) (Amendment) Regulations, 1963 restricting telephone and postal facilities of members—276/1963.
State Guarantees Act, 1954—Guarantee of £50,000 may be given to Cork Opera House—23/1964.
Sea Fisheries (Amendment) Act, 1963—Powers transferred to Parliamentary Secretary to Minister for Lands—187/1963.
Stock Transfer Act, 1963 in force from 13 January, 1964—4/1964.
Stock Transfer Act, 1963—specified Stock Exchanges to be recognised Stock Exchange—5/1964.
Stock Transfer Act, 1963—Scottish Stock Exchange to be inserted instead of Aberdeen, Dundee, Edinburgh and Glasgow Exchanges—22/1964.
Turnover Tax—Exempt Activities—(Receipt from Repairing and servicing articles—1/1964; Fishing Boat and Equipment—9/1964; Sales to shipping and Air Transport companies of Goods required for their activities—208/1964.
Plant and Machinery for use in connection with Rail Transport—205/1963.
Water supplied by Local Authorities—206/1963; Hire of Articles—207/1963; Sales of Asphalt and Bitumen used in construction of roads—202/1963.
Sales of Structural Steel and Aluminium for Major Constructional Work—203/1963; Heavy Plant and Machinery used for major Building Operations—204/1963.

## HARBOURS AND HYDRO-ELECTRIC WORKS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Waterford Port and Harbour Rates increased after 11 November, 1963—215/1963.

## HEALTH.

SUBJECT MATTER AND REFERENCE NUMBERS.

Consultative Health Committees to be established in Dublin, Cork, Limerick and Waterford—241/1963.
Cork Health Authority—Extended Cork Dispensary, District formed after 18 November, 1963—211/1963.
Cork Health Authority—Boundaries of Blarney and Whitechurch Registrar's Districts modified—227/1963.
Dundrum (Co. Dublin) Central Mental Hospital (Visiting Committee Regulations), 1963—231/1963.
Infectious Diseases (Maintenance) Regulations, 1962 revoked and replaced by Infectious Diseases (Maintenance) Regulations, 1963—200/1963.

## JUSTICE, EXTERNAL AFFAIRS AND DEFENCE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Coroners Act, 1962—Fees and expenses prescribed after 1 January, 1963—145/1963.
District Court (Hire Purchase) Rules, 1963 in force from 2 March, 1964—214/1963.
Garda Siochana—Pay of Officers increased after 1 July, 1963—222/1963.
Howth, Co. Dublin and Longwood, Co. Meath—District Court Sittings fixed to alternate forth Thursdays—3/1964.

Kildare County divided into two Jury Districts (Athy and Naas) after 1 September, 1963—173/1963.
Kildare County—Criminal Trials Triable from panel of Jurors in either Naas or Athy Jury District—174/1963.
Sheriff's fees Order 1963, relating to Execution Order for Revenue Proceedings in the High Court or Circuit Court—230/1963.
Superior Court Rules (No. 1), 1964—38/1964.

### MISCELLANEOUS.

SUBJECT MATTER AND REFERENCE NUMBERS.

Curragh (Co. Kildare) Bye-Laws, 1964—7/1964.
Female Clerks Provident Fund (Amendment) Scheme (Confirmation) Order, 1964—17/1964.
Holidays (Employees) Act, 1961—6 January appointed a church Holiday unless it falls on Sunday—265/1963.
International Convention for the Prevention of Pollution of the Sea by Oil, 1954 accepted by the United Arab Republic, Jordan and the Dominican Republic—240/1963.
Internation Convention for the Safety of Life at Sea, 1948 accepted by Hungary, Mexico, Nigeria and Tunisia—239/1963.
Secondary Teachers' Superannuation (Married Women) (Amendment) (No. 2) Scheme, 1963—244/1963.
Vocational Education (Grants for Annual Schemes of Committees) Regulations, 1963—219/1963.

### POST OFFICE.

SUBJECT MATTER AND REFERENCE NUMBERS.

Broadcasting—Television Licences increased to £5 per annum and Radio Licences increased to £1 5s. 0d. per annum after 1 November, 1963—199/1963.
Inland Telegraph (Specified) Charges increased—179/1963.
Telegraph (Inland Written Telegram) Amendment (No. 8) Warrant, 1963—179/1963.
Wireless Telegraphy (Control of interference from Ignition Apparatus) Order, 1963—223/1963.

### SOCIAL SERVICES.

SUBJECT MATTER AND REFERENCE NUMBERS.

Social Welfare (Contributions) (Amendment) Regulations, 1963, in force from 6 January, 1964—263/1963.
Social Welfare (Disability, Unemployment and Marriage Benefit) (Amendment) Regs., 1963 in force from 6 January, 1964—258/1963.
Social Welfare (Overlapping Benefits) (Amendment) Regs., 1963 in force from 1 November, 1963—217/1963.
Social Welfare (Old Age) (Contributory Pension) (Transitional) (Amendment) Regs., 1963—229/1963, 247/1963.

### TRANSPORT AND TRAFFIC.

SUBJECT MATTER AND REFERENCE NUMBERS.

Castlebar (Co. Mayo) Parking Bye-Laws, 1963—11/1964.
Cement Acts, 1933-1958—Uses of Railway Sidings extended to subsidiaries and associates—243/1963.
Merchant Shipping—Certain Canadian Certificates of Competency recognised—180/1963.
Merchant Shipping—Increased fees payable in relation to Certificates and Surveys after 1 January, 1964—266/1963.
Road Traffic (Construction, Equipment and Use of Vehicles) Regs., 1963 in force from 27 October, 1963—190/1963.
Road Traffic (Lighting of Vehicles) Regs., 1963 in force from 27 October, 1963—189/1963.
Road Traffic (Public Services Vehicles) Regulations, 1963 in force from 27 October, 1963—191/1963.
Road Vehicle—Additional Index Marks prescribed for Dublin, Cork Corporation, Carlow and Louth—8/1964.
Warsaw Convention, 1929 relating to International Carriage by Air—Up-to-date list of High Contracting Parties—18/1964.
Road Traffic Act, 1961—Provisions relating to driving licences operated, and corresponding provisions of 1933 Act, repealed—28/1964.
Road Traffic (Licensing of Drivers) Regulations, 1964 in force from 18 March, 1964—29/1964.
Howth Road, Dublin, Parking, Temporary Rules, 1964—30/1964.

## CURRENT CASES

*Appeal from arbitrator's award on costs*

The principles on which an arbitrator has to act in relation to the awarding of costs in an arbitration are identical with those on which a judge in court has to act in awarding costs. The costs normally follow the event, but in the case of a court decision while the judge has a discretion he must nonetheless take account of the conduct of the parties in the course of the hearing and the question as to whether one particular facet of the claim failed on which a large amount of time had been spent. Furthermore, the court in depriving a successful claimant of his costs or a large part of them must normally indicate the reasons for following that course. If the judge applies a wrong principle his decision will be reversed on appeal. However in the case of an arbitration the arbitrator is not bound to state specifically the grounds upon which he bases his decision and even if his order is challenged in court the court is not entitled to require the arbitrator to state the reasons why he made a particular order. In the course of his judgment in Matheson & Co. Ltd. *v.* A. Tabah & Sons (1963. 2 Lloyds Rep. 270) Megaw J. stated that the court was entitled to look at the award alone. In the present case His Lordship stated that he had been asked to look beyond the award at the affidavits which had been put in by the parties in order to consider whether on the matters there shown there was material on which the arbitrator could have properly exercised his discretion in the fashion in which he did, In concluding his judgment Megaw J. stated the parties should realise that if they adopt arbitration procedure they will find that where the arbitrator makes an award as to costs which they regard as being unjust or unfair, the possibility of their being able to procure review and remedy for that in the Courts is very limited, almost to the point of non-existence unless the arbitrator himself sees fit, where the exercise of his discretion is challenged to state his reasons so that the Court can see whether they were sound in principle. That, however, was a matter for the parties.

(*The Law Times Vol.* 235, p. 16.)

*Withholding facts from the Court*

In Jakeman *v.* Jakeman and Turner (1964 2.W.L.R. 90) the co-respondent in a divorce case consulted a solicitor and instructed him to oppose the claim for damages against him, but the solicitor wrongly failed to do so and instead proposed a collusive bargain on the other side. This was rejected and at the hearing at which the co-respondent, on the solicitor's advice, did not appear and by the solicitor's fault was not represented, the husband claimed for £3,000 damages and was awarded £2,000 damages with costs against the co-respondent. On a subsequent motion it appearing that the decision as to damages might have been different if the co-respondent had been represented, it was held that there should be a re-hearing on this point alone and that the solicitor who had failed in his duty to both the co-respondent and the court should personally indemnify the husband against costs payable by him in respect of a petition and all costs between the co-respondent and his solicitor should be disallowed. Simon J. in his judgment stated *inter alia* that it was proper for solicitors to bargain about the quantum of damages payable by the co-respondent but that it was not permissible to bargain in such a way that part of the consideration is withholding from the court of material which may affect the court in the performance of its statutory duty to inquire.

*Kelly v. Cornhill Insurance Company Limited*

The House of Lords by a majority (Lords Dilhome, Reid and Morris) allowed an appeal from a decision of the Court of Session which had held that the appellant was not covered by a policy of insurance issued by the Cornhill Insurance Company Limited to his father in respect of a motor car when he was involved in an accident eight months after the death of his father, on the ground that the permission given by the insured, to his son to drive the car ceased with the death of the insured. The Lord Chancellor in his judgment stated *inter alia* "Permission to drive a car was consent to the use of the chattel. If a man consented to the use by another of a chattel of his for a period of six months, the use of the chattel for that period was lawful during that period and did not become unlawful in consequence of the death of the permittor in the course of the six months". The grounds of the minority judgment (Lords Hodson and Guest) was that permission to use a chattel is something that is revocable at any time, unless accompanied by a stipulation that it should continue for a stated period, and that the permission could not be assumed to continue once that control was removed by the death of the permissor.

(*Kelly v. Cornhill Insurance Co. Ltd.* 1964. 1 *All E.R.* 321.)

*Licensing application. Failure to lodge plans in time with Gardai.*

This was an application for a declaration pursuant to section 15 (1) of the Intoxicating Liquor Act, 1960 that premises if altered or reconstructed in accordance with the proposed plan of reconstruction would be fit and convenient to be licensed for the sale of intoxicating liquor subject to section 13 of the said Act which failed. The matter was first heard in the Circuit Court, where the application was refused and subsequently brought on appeal to the High Court. A notice of intention to make the application referred to a plan lodged therewith. A copy of the plan was lodged with the Superintendent of the Gardai, supposed to be in compliance with section 15 (3), (*c*). Objection was taken by the ground landlord, other residents and publicans in the neighbourhood. The Circuit Court judge refused the application on the ground that the premises were unsuitable. A new set of plans were presented at the appeal, but objection was taken that these had not been deposited with the Superintendent of the Gardai as required by section 15 (3), (*c*). The applicant had failed to notify the Superintendent that the plans were not similar to those lodged with the original application, furthermore they did not come to the notice of the Superintendent until after the appeal had been opened. The provisions of the section referred to are mandatory and failure to comply therewith is fatal to the application. The purpose of depositing a copy of the plan with the Gardai is to enable the Superintendent to consider the proposed alterations and assist the Court by objecting to the application in a proper case. So held by Murnaghan J. In the Matter of the Licensing Acts 1883 to 1960 and the Intoxicating Liquor Act 1960 Sections 15 & 13 and Courts of Justice Acts.

*Rookes v. Barnard and others*

The House of Lords reversing the Court of appeal and confirming the judgment of Sachs J. held that the respondents had committed the tort of intimidation and they were not protected by the Trade Disputes Act 1906, but the House ordered a new trial on the question of the £7,500 damages only. The appellant was employed by B.O.A.C. as a skilled draftsman in the drawing office. He was a member of a Trade Union to which all employees in that office

belonged. He became dissatisfied with the conduct of the Union and resigned from it. The Union anxious to preserve the position that no non-member should be employed in that office took energetic steps to get the appellant to re-join, but he refused. As a result of steps taken by the Union and its members (including a threat by the respondents to break their own contracts of service with B.O.A.C. unless B.O.A.C. terminated the appellants' contract), B.O.A.C. were induced, first to suspend the appellant, and then to terminate his employment after giving him due notice. The appellant had no remedy against B.O.A.C. as it neither broke a contract with him, nor committed any tort against him.

The House of Lords decided that the threat by the respondents in the employment of B.O.A.C. to break their own contracts, although admittedly in furtherance of a trade dispute, was an unlawful means which deprived the respondents of the protection of sections 1 and 3 of the Trade Disputes Act 1906. The decision in Cooper *v.* Millea and Others (1938. I.R.749) and Riordan *v.* Butler (1940.I.R.347) were applied Rookes *v.* Barnard (1964) 1 All. E.R.367).

## COMMISSIONERS' FEES

The attention of members is drawn to S.I. Nos. 38 of 1964 relative to the above which may be purchased from the Government Stationery Office, price 6d. These Rules make a number of amendments of a miscellaneous nature in the Rules of the Superior Courts (S.I. No. 72 of 1962) and, in particular, prescribe the fees payable to Commissioners for Oaths.

### FEES PAYABLE TO COMMISSIONERS FOR OATHS

| | £ | s. | d. |
|---|---|---|---|
| 1. On taking an affidavit, affirmation or declaration ... ... ... | | 5 | 0 |
| 2. On marking exhibits therein referred to and required to be marked— | | | |
| for each exhibit ... ... ... | | 2 | 0 |
| but not exceeding for all exhibits ... | 1 | 10 | 0 |

## REGISTRATION OF TITLE ACTS, 1891 AND 1942 ISSUE OF NEW LAND CERTIFICATE

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 29th day of February, 1964.

D. L. McALLISTER,
Registrar of Titles

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner Martin Ryan. Folio number 9843. County Tipperary. Lands of Boolatin in the Barony of Owney and Arra containing 151a. 2r. 35p.

2. Registered Owner Robert Scanlon and Johanna Mary Scanlon. Folio number 4407. County Wexford. Lands of Brandane in the Barony of Bargy containing 2a. 3r. 5p.

3. Registered Owner Patrick Kilcullen. Folio number 9294. County Mayo. Lands of Dooyeaghny or Cloonloughan in the Barony of Tireragh containing 88a. 3r. 16p.

4. Registered Owner Patrick McLoughlin. Folio number 559. County Leitrim. Lands of Cloonmeone Lower in the Barony of Drumahaire containing 60a. 0r. 10p.

5. Registered Owner Mary Flood. Folio number 2775. County Longford. Lands of Mullinroe containing 12a. 3r. 10p. and Lands of Culleenmore containing 0a. 3r. 6p. both situate in the Barony of Granard.


## THE REGISTRY

### REGISTER B

UNIVERSITY graduate, honours LL.B. wishes employment in solicitor's office, Dublin. Highly recommended and hard working. Replies to Box number B.273.

SOLICITOR requires to purchase small solicitor's practice in town in West of Ireland or would consider partnership. Box No. B.274.

## REGISTER C

WILL ANY person having information as to a Will of Patrick J. Coll, Sergeant, Garda Siochana, who died on the 12th January, 1964, was last stationed at Carrick-on-Bannow, County Wexford, and had a residence at 5 Fairfield Road, Glasnevin, Dublin, please communicate with F. Gallagher & Co., Solicitors, Donegal, Co. Donegal.

## OBITUARY

H. DEREK HURLEY, Solicitor, died on the 25th January, 1964 at the Adelaide Hospital, Dublin.

Mr. Hurley served his apprenticeship with Mr. Robert Hayes, 41, Nassau Street, Dublin, was admitted in Hilary Sittings 1935 and practised under the style of Messrs. Hayes & Sons at 15, St. Stephen's Green, Dublin.

HERBERT J. W. DOWNEY, Solicitor, died on 5th February, 1964 at his residence 17, Greenfield Park, Donnybrook, Dublin.

Mr. Downey served his apprenticeship with Mr. William S. Hayes of 24, Nassau Street, Dublin, was admitted in Trinity Sittings 1906 and practised under the style of Messrs. Downey, Leech & Vanston, 22, Kildare Street, Dublin.

PATRICK E. ROGERS, Solicitor, died on 8th February, 1964 at Ballyshannon, Co. Donegal.

Mr. Rogers served his apprenticeship with Mr. John C. Conroy of Galway, was admitted in Trinity Sittings 1914 and practised in his own name at Ballyshannon.

ALAN G. MURRAY, Solicitor, died on 16th February, 1964 at a Dublin Nursing Home.

Mr. Murray served his apprenticeship with Mr. Frederick G. Sharpe of 6, Dawson Street, Dublin, was admitted in Hilary Sittings 1931 and practised under the style of Messrs. Good & Murray at 3, Dawson Street, Dublin.

EDWARD MINOGUE, Solicitor, died on 13th February, 1964 at St. Luke's Hospital, Kilkenny.

Mr. Minogue served his apprenticeship with Mr. Joseph L. Reilly of Drogheda, Co. Louth, was admitted in Hilary Sittings 1953 and practised in his own name at Claremorris, Co. Mayo.

JOHN M. DUDLEY, Solicitor, died on 17th February, 1964 at his residence, The Garland, Mallow, Co. Cork.

Mr. Dudley served his apprenticeship with Mr. James J. Dudley of Mallow, Co. Cork, was admitted in the Easter Term 1928 and practised in his own name at Mallow, Co. Cork.

JOHN T. HANNON, Solicitor, died on 21st February, 1964 in Dublin.

Mr. Hannon served his apprenticeship with Mr. Tomas MacCathmaoil of Swinford, Co. Mayo, was admitted in Michaelmas Term 1933 and practised for some time in Ballina, Co. Mayo. Mr. Hannon was one of the Lay Commissioners in the Land Commission.

NIALL C. GIBBONS, Solicitor, died on 3rd March, 1964 at the Mater Nursing Home, Dublin.

Mr. Gibbons served his apprenticeship with Mr. John Gibbons of 8, Trinity Street, Dublin, was admitted in Trinity Term 1957 and practised as partner in the firm of Sean Gibbons & Son at 8, Trinity Street, Dublin.

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No. 9

MARCH
1964

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
DESMOND J. COLLINS

*Vice-Presidents*
JOHN MAHER
PATRICK NOONAN

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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|---|---|
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### MEETINGS OF THE COUNCIL

FEBRUARY 20TH: The President in the chair. Also present: Thomas H. Bacon, Augustus Cullen, Patrick Noonan, Peter E. O'Connell, Edward J. Dillon, Daniel J. O'Connor, Raymond A. French, Robert McD. Taylor, Dinnen B. Gilmore, Joseph P. Black, James R. C. Green, Thomas A. O'Reilly, Gerard M. Doyle, Eunan McCarron, John J. Nash, Niall S. Gaffney, James W. O'Donovan, Francis J. Lanigan, John Carrigan, John Maher, George G. Overend, Brendan A. McGrath, Niall S. Gaffney, Richard Knight.

The following was among the business transacted :

### Standard contract and conditions of sale

It was decided to send a case to counsel together with the standard forms used by the Dublin Solicitors' Bar Association with instructions to settle draft standard contracts and conditions of sale for use by members of the Society.

### Registered land voluntary transfer costs

On a report from the committee the Council expressed the opinion that the costs of a voluntary transfer in the second schedule, part I, of the Land Registration (Solicitors' Costs) Rules, 1962, include the remuneration for adjudication of stamp duty and stamping the transfer.

### Commission scale fee for administration work

On a report from a committee the Council stated that the gross assets for the purpose of calculating the commission scale fee include a holding (whether large or small) which may incidentally be sold in the course of the administration where the commission the scale fee under the Solicitors' Remuneration General Orders is also chargeable in respect of the sale. The question whether the commission scale fee is the proper basis of charge for the administration work or whether the work should be paid under schedule II, S.R.G.O. 1960 is a matter for the solicitor having regard to all the circumstances including the amount of work carried out in the administration. The commission charge is intended for use in normal cases where it would be approximate to the charges drawn under schedule II.

### Privilege—Section 103, Income Tax Act, 1918

The committee reported on an enquiry from a member who had received a letter from the Inspector of Taxes requiring particulars of all bank accounts with names of persons who were entitled to the interest on the accounts. The committee referred to the decided case, Commissioner of Inland Revenue *v.* West Walker (1954 New Zealand Law Reports 191) and advised member to rely on this decision. A précis of the case is printed in this issue.

### Patents Bill, 1963

The Parliamentary Committee reported on representations made to the Minister for Industry and Commerce on the subject of certain sections in the Bill which as introduced would enable unqualified persons to prepare deeds of assignment of patents and which would also confer a right of audience in the High Court on persons other than barristers instructed by solicitors as the result of the representations made, the sections were substantially modified to meet the views of the Society.

### Superior Courts Rules Committee

Mr. Ralph J. Walker was re-appointed as a member of the Superior Court Rules Committee.

MARCH 12TH: The President in the chair. Also present: Thomas J. Fitzpatrick, Thomas A. O'Reilly, Desmond Moran, Peter D. M. Prentice, Ralph J. Walker, Niall S. Gaffney, James R. C. Green, Dinnen B. Gilmore, Joseph P. Black, Robert McD. Taylor, Thomas H. Bacon, Peter E. O'Connell, Gerald J. Moloney, William A. Osborne, Augustus Cullen, Patrick O'Donnell, John C. O'Carroll, Daniel J. O'Connor, Thomas V. O'Connor, John J. Nash, Eunan McCarron, Francis J. Lanigan, George A. Nolan, John Carrigan, John Maher, Gerard M. Doyle, Richard Knight.

### Land Registration Rules Committee

Mr. Francis J. Lanigan was re-appointed as a member of the committee.

### Circuit Court Rules Committee

Mr. Eunan McCarron was re-appointed as a member of the committee.

### Compensation Fund

Claims amounting to £2,821 0s. 0d. were admitted for payment.

### Law Clerks Joint Labour Committee

Mr. D. J. O'Connor reported that the committee decided to make an order for an increase of 12% on the statutory minimum wage rates in solicitors' offices following the ninth round wage increase.

### Solicitors' remuneration

The Secretary reported that an application had been made to the Superior Courts Rules Committee and the statutory body under the Solicitors' Remuneration Act, 1881, for an increase of 12% on solicitors' profit remuneration and applications were also being made to the Circuit and District Court Rules Committees, the Land Registration Rules Committee and the committee which regulates costs in Land Commission proceedings. The application is in respect of all charges other than the commission scale fees in conveyancing matters.

## COUNTY AND CITY OF LIMERICK SESSIONAL BAR ASSOCIATION

At the annual general meeting of the above association held on 28th October, 1963, the following officers were elected.

*President:* Niall S. Gaffney; *Hon. Treasurer:* Thomas E. O'Donnell; *Hon. Secretary:* James I.

Sexton; *Committee:* Michael Cussen, William Lee, Martin Tynan, William Leahy, Caleb McCutcheon.

## EXAMINATION RESULTS

At examinations held on the 14th February under the Solicitors Act, 1954, the following candidates passed:

*First Examination in Irish:* James S. Baylor, Judith M. A. Bernal, Patrick Cafferky, Eamon J. Clancy, Rose Mary Durcan, Patrick D. Fallon, Thomas F. Farrell, Gerald A. Fitzgerald, Thomas F. Figgis, Robert M. Flynn, John N. McM. Glynn, Paul D. Guinness, Gerald M. Halley, Anthony Hanahoe, Elizabeth Heffernan, James W. Houlihan, William A. James, Damian C. MacGarry, James N. McKenna, Matthew D. O'Donohoe, Maoleachlain S. O'Cathain, Anthony F. O'Rourke, Richard J. Rice, Mary Roden, Garrett Sheehan, William B. R. B. Somerville, B.A.; Harold Waterman.

27 candidates attended; 27 passed.

*Second Examination in Irish:* John G. Black, Laurence A. Farrell, Finola M. Foley, Thomas F. Griffin, Margaret Harvey, B.C.L.; Paul W. Keogh, John M. W. Lenehan, B.C.L.; Vincent O. Morrin, Mary P. Tighe.

9 candidates attended; 9 passed.

At the book-keeping examination for apprentices to solicitors held on 24th February, the following candidates passed:

Philomena F. Armstrong, Brian A. Carroll, B.C.L.; Yvonne Fagan, William B. Glynn, Thomas Griffin, Patrick J. Lavan, John M. W. Lenehan, Peter F. R. Murphy, Christopher T. N. O'Meara, Thomas J. O'Reilly.

17 candidates attended; 10 passed.

At the First Law Examination for apprentices to solicitors held on the 3rd and 4th days of February, the following candidates passed:

William S. Barrett, Mary T. Hayes, Alan V. Kelly, John B. Lacy, Richard B. Lovegrove, Brian J. Magee, Patrick J. McMahon, Josephine M. D. O'Meara Elenor O'Rourke, Anne O'Toole, Mary P. Tighe.

34 candidates attended; 11 passed.

At the Second Law Examination for apprentices to solicitors held on the 3rd and 4th days of February, the following candidates passed:

William M. Cahir, Thomas J. Colgan, B.C.L.; Ian Q. Crivon, Joseph T. A. Deane, Thomas W. Enright, Michael B. Hegarty, Eugene P. Hunt, B.A.; Paul W. Keogh, Donnchadh D. Lehane, Colm C. Murphy, Brian M. McMahon, Michael P. McMahon, B.A.; Thomas A. O'Donnell, Patrick F. O'Donnell, Brendan D. Walsh.

30 candidates attended; 15 passed.

At the Third Law Examination for apprentices to solicitors held on the 5th, 6th and 7th days of February, the following candidates passed:

*Passed with merit:* Michael V. O'Mahony, B.C.L., LL.B.

*Passed:* Henry C. P. Barry, John G. Black, B.C.L.; Brendan P. Byrne, B.C.L.; Thomas O. Boyle, B.C.L.; Michael A. Buckley; Anthony E. Collins, B.A., B.Comm.; Stuart L. Cosgrave; Michael G. Daly, B.C.L., LL.B.; Peter B. Fagan, John Fanning, John F. P. Glynn, B.A.; William B. Glynn, Denis M. Murnaghan, Brendan A. J. Murrin, B.C.L.; Patrick J. J. MacGrath, Bryan M. E. McMahon, B.C.L., LL.B.; William F. O'Driscoll, B.C.L.; Martin J. Ruane, B.C.L.; Edmond M. Veale, B.C.L.

28 candidates attended; 20 passed.

On the combined results of the Second and Third Law Examinations the Council has awarded a Silver Medal to Michael V. O'Mahony.

## STAMPS BRANCH—POSTAL SERVICE

Further to the article on this matter appearing in Vol. 57, No. 7 (January 1964) we are informed that it is possible for all solicitors to lodge documents (together with duty) for stamping at the local branch of the post office by either personal attendance or through that of an agent. The instrument will be accepted by the Post Master who will issue a receipt for same and also for the duty paid. The particulars in regard to each instrument must be inserted by the applicant on a form supplied by the Post Office which will be receipted. The documents when accepted by the Post Master are forwarded to Dublin by registered post and returned from Dublin to the Post Master in a similar fashion. Normal time from the date of lodgment until the document is ready to be taken from the local branch of the Post Office is in some cases as little as four days. The service is free of charge.

## SOLICITORS AND AUCTIONEERS

Arising out of a recent meeting with the Auctioneer's and Estate Agent's Association relating to matters of interest to both solicitors and auctioneers, the Council have directed republication of an article which appeared in Vol. 51, No. 8, February, 1958, page 84, which they felt ought to be brought to the attention of members.

The Council have been in correspondence with the Irish Auctioneers' and Estate Agents' Association on the subject of their respective fields of professional activity of solicitors and auctioneers. In a recent issue of the GAZETTE members are informed that proceedings have been instituted by the Society against a house agent who had drawn up an agreement for letting of a furnished flat, his remuneration consisting of the usual commission on the making of a letting. As the house agent refused to give an undertaking to discontinue this practice, proceedings were instituted against him by the Society and were subsequently withdrawn on his giving the desirable undertaking and indemnifying the Society against the costs of the proceeding. The Council wrote the Irish Auctioneers' and Estate Agents' Association to notify them of the proceedings and asking them to advise their members thereof, which the Association agreed to do. The Association have drawn the Council's attention to their view that solicitors should not undertake work which the Council of the Association considered to be the proper responsibility of the auctioneers and estate agents. They referred particularly to the practice of solicitors advertising properties for sale and letting by private treaty and also undertaking work normally dealt with by estate agents. The Council have replied stating that they would be unable to find themselves in agreement with the Association, if it were suggested that solicitors should not undertake land agency and rent collection work which has always been part of the normal practice of solicitors, although they cannot claim an exclusive right in it any more than auctioneers, accountants, or members of the public.

With regard to the question of advertisements by solicitors offering property for sale or letting, the Council of the Society are in agreement with the Association that in the interest of the respective bodies and their members, solicitors should not hold themselves out as undertaking such work. It has, however, been pointed out to the Association that there is no legal prohibition which would prevent solicitors or any other person from advertising property for sale or letting on the instructions of clients, and that cases do occur in which clients may direct solicitors to perform this work. The Council have stated that members of the Society who have been so instructed by their clients could not legitimately refuse to accept instructions having regard to the particular relations which exist between solicitors and their clients. Subject thereto, the Council wish to recommend to members of the Society that solicitors should not undertake the work of advertising property for sale or letting without direct instructions from clients. The Association have already at the Society's request sent out a circular drawing the attention of their members to the fact that it is illegal for an unqualified person to draw up a contract for sale, lease or other document relating to real or personal estate directly or indirectly in expectation of fee or award.

## GUARDIANSHIP OF INFANTS ACT, 1963

This Act contains very little new matter, it being largely a question of consolidation of previous statutes. However, Section 6 provides that the father and mother of an infant shall be guardians of the infant jointly. This being the logical outcome of the Supreme Court judgment in Tilson Case (1951) I.R. 1. Provisions of Section 8 which are termed to be new really make provision for the appointment and removal of guardians by the Court. Section 11, which deals with applications to the Court, makes provision that the Court may order the infant to have a right of access to his father or mother and that the father or mother may be required to pay towards the maintenance of the infant, such weekly or periodical sum having regard to the means of the father or mother the Court considers reasonable. Such an order may be made on the application of either parent notwithstanding the fact that the parents are residing together, but an order as to the custody and maintenance shall not be enforcible and no liability shall accrue while they reside together. Section 12 provides that the Court may vary or discharge any order previously made by the Court under Part 2 of the Act, which deals with guardianship.

## WORK COVERED BY RETAINER

On 4th March, 1964, Mr. Justice Wilberforce ruled in the High Court in England that the Electrical Trades Union had succeeded in principle in its action against its former solicitor, Mr. Maurice Aaron Tarlo. The Union had sought a declaration that Mr. Tarlo was entitled only to a retainer of £1,500 a year while in the Union's employment. Mr. Tarlo, who had been provided with an office and staff had his superannuation contributions paid by the Union, contended that he was also entitled to profit costs appropriate to a solicitor in private practice. It was said after the case that the Union would be entitled to recover approximately £17,000 from Mr. Tarlo. The judge also awarded the Union the costs of the seven days' hearing except a small portion attributable to the costs of an accountant called by the Union. The Costs are expected to amount to about £10,000. The Judge found that Mr. Tarlo's work on contentious matters

was covered by his £1,500 a year retainer. He was not entitled to the profit costs of the 1961 ballot rigging action and the other actions in which he acted for the Union. The Judge said he would allow Mr. Tarlo half his profit costs concerning accident claims, from which should be deducted 20 per cent. of his retainer. He described the case as a "backwash" of the ballot rigging affair of 1961.

*Daily Telegraph & Morning Post*, Thursday, March 5th, 1964.

## LAW REFORM

*Law Reform Now*. Edited by Gerald Gardiner and Andrew Martin. London: Gollancz, 1963. 30/-.

Lord Gardiner has assembled a leading group of Labour lawyers to present the views of the British Labour Party on law reform. As there are different contributors to the various topics, the book is rather uneven, but, at its best, it is excellent. Members may not agree with many of the reforms mentioned, but at least this volume will give them plenty of food for thought.

Strong support is given in renaming the Lord Chancellor's Office the Ministry of Justice, and that the Court of Criminal Appeal should consist of appellate judges only. There would be five full-time law commissioners who would supervise law reform.

As regards the law of evidence, it is pointed out that, if civil juries are abolished, there is nothing to prevent the amendment of the rules excluding hearsay, secondary evidence of documents, and relevant evidence tendered on behalf of an accused. The fact that there can be no well-founded criticism of judicial proceedings on account of antiquated contempt of court rules is severely criticised.

In contract, standard form contracts which have to be accepted are rejected on the ground of no proper negotiation; these documents should be construed according to equity. The suppression of the doctrine of consideration is advocated while the doctrine of mistake is said to be full of abstruse technicalities. Specific performance should be granted as of right in cases of breach of contract. Except in regard to property transactions, infants should be able to contract at 18.

In tort, negligence should be concerned not with punishing carelessness, but in compensating the injured, and an appropriate insurance scheme should be considered. Could criminal prosecutions and civil claims for negligence not be combined?

As regards property, easements are said to be a confusing morass of ancient rules. Property developers and builders should be compelled to include the following in their contracts: (1) A warranty that the house is fit for human habitation, where a purchaser moves into new property; and (2) an implied term that there is liability for all defects appearing in the property within 2 years from erection. A tenant should have the right to determine the lease and not pay rent if the premises no longer exist owing to fire, enemy action or inevitable accident.

In commercial law, the problem of consumer protection is urgent. The defects of the rule "Nemo dat quod non habet" and its current exceptions are fully exposed. In a motor care hire-purchase transaction, the dealer should be vested with the full obligations of a seller, and the finance company should be made the dealer's principal and surety. Exorbitant interest rates in such transactions should be severely curtailed. Insurance proposal forms are described as traps for the unwary, as most people are not aware that the truthfulness of the answers is the basis of the policy. In company law, the transfer of assets from one private subsidiary company to another, all being subsidiaries of a public company, makes the accounts of public companies more than usually incomprehensible to its shareholders. In the case of an amalgamation, or the sale of assets of a company, the directors should be bound to compensate their employees for loss of employment. Arbitrary expulsions, as well as unjustified expulsion from trade unions, should be liable to heavy penalties.

In criminal law, the age limit for criminal responsibility for children should be raised to 14, the McNaghten Rules should be thoroughly revised; the death penalty and the doctrine of constructive malice in murder should be abolished. The Courts should have no power to declare that particular acts are public mischiefs. The detention of accused by the police for questioning is described as illegal and most objectionable; instead suspects should be brought before a justice for questioning, where he need not answer incriminating questions. As regards bail, it is an undeserved hardship for an innocent man to be sent to prison to await trial, and the defence of the accused is made more difficult. Magistrates are too often ready to refuse bail when the police oppose it without reason, and this is often used as a weapon to procure unjustified information from the prisoner. If bail is refused, sentences should date from the first day of imprisonment.

As regards Revenue law, the principle of "One Taxpayer—One Assessment" should be applied; the taxpayer should be assessed on the basis of the current year. As regards legal education, the continuing tendency in law teaching to look to the past rather than to the present, and to extol antiquated rules and practices is deplored; more

study should be made of comparative law, business law in its broadest aspect, and Revenue law.

This summary of some of the proposals advocated will show that the editors have considered the problem of law reform in all important aspects, and, whether one agrees with their suggestions or not, they have presented logical arguments in support of their case. However, their proposals for the reform of family law cannot be commended.

## S.I. No. 44 of 1964
## COMPANIES (FEES) ORDER, 1964

1. The following fees are hereby prescribed for the purposes of Section 103 of the Companies Act, 1963.

| | £ | s. | d. |
|---|---|---|---|
| For registering a charge required to be registered under Part IV (excluding section 112) of the Act: | | | |
| Where the amount of the charge does not exceed £200 ... ... | | 10 | 0 |
| Where it exceeds £200 ... ... | 1 | 0 | 0 |
| For registering particulars of a series of debentures under Part IV of the Act: | | | |
| Where the total amount secured by the whole series does not exceed £200 ... ... ... ... | | 10 | 0 |
| Where it exceeds £200 ... ... | 1 | 0 | 0 |
| For registering particulars of charges under Section 112 of the Act ... | | 5 | 0 |
| For inspecting the Register of charges for each inspection ... ... ... | | 1 | 0 |

2. The fee for furnishing a copy of a report in accordance with section 169 of the Act shall be £2 per copy.

3. The Order, S.R. & O., 1909, No. 326/L.13, made on the 29th day of March, 1909, by the Board of Trade, is hereby revoked.

GIVEN under my Official Seal, this 2nd day of March, 1964.

JOHN LYNCH,
Minister for Industry and Commerce.

## LIBRARY ACQUISITIONS

*List of Books acquired in the Library since March 1963.*

### I—ACQUISITIONS

Aldridge, T. M.—*Boundaries, Walls and Fences*, 1963; Atiyah, P. S.—*Introduction to Law of Contract*, 1961; Atiyah, P. S.—*The Sale of Goods*, 2nd Edn., 1963; Bailey, J.—*The Law of Wills*, 1957 (1963), (Extra copy); Bartle, R.—*Introduction to Shipping Law*, 2nd Edn., 1963.

Carver, J. H.—*Carriage by Sea*, 2 vols., 11th Edn., 1963; Chalmers, M.—*The Bills of Exchange Acts*, 13th Edn., 1964; Chalmers, M.—*The Sale of Goods Acts*, 14th Edn., 1963; Charlesworth, J.—*Mercantile Law*, 10th Edn., 1963; Cockle, E.—*Cases and Statutes on Evidence*; Coleman, J. W.—*The Property Owner's Handbook*, 1963; Collins, J.—*Local Government*, 2nd Edn., 1963; Coote, B.—*Exception Clauses in Contract*, 1964; Cross, R.—*Law of Evidence*, 2nd Edn., 1963; Cross, R.—*Precedent, in English Law*, 1961; *Current Legal Problems*, 1963: *A Symposium on English Law and the Common Market.*

Delaney, V. T. H.—*A Commentary on the Superior Court Rules*, (Ireland) 1963; De Smith (S.A.)—The New *Commonwealth and its Constitutions* 1964; *English Catholic Directory*, 1964; *English and Empire Digest*, Third Cumulative Supplement, 2 vols., 1963; *English and Empire Digest* Replacements—Vol. 34 (*Master and Servant*), 1963; Vol. 33 *Local Government to Mines and Minerals*), 1963; Vol. 35 (*Misrepresentation to National Insurance*), 1963; Vol. 32 (*Libel and Slander to Loan Societies*), 1964. Farrand, J. T.—*Contents of a Conveyance*, 1963; Farrand, J. T.—*Stamp Duties for Conveyancers*, 1963; Fitzgerald, P. J.—*Criminal Law and Punishment*, 1962.

Gardiner, G. and A. Martin, eds.—*Law Reform Now*, 1963; Garner, J. F.—*Administrative Law*, 1963; Glanville-Williams—*The Proof of Guilt*, 3rd Edn., 1963; Graham, G. B.—*Covenants, Settlements and Taxation*, 2nd Edn., 1959; Graveson, R. H.—*Status in Common Law*, 1953; Green, J.—*The Death Duties*, 5th Edn., 1963; Griffith, J. A. and H. Street—*Principles of Administrative Law*, 3rd Edn., 1963; Halsbury, Lord—*The Laws of England*, 3rd (Simonds) Edn., Vol. 40, *Consolidated Table of Cases*, 1963; Halsbury, Lord—*The Laws of England*, 3rd (Simonds) Edn., 1963—Vol. 41, *General Index*, A–K; Vol. 42, *General Index*, L–Z, 1963; Hames, J. H.—*Applications under Section 17 of the Married Women's Property Act*, 1882–1961; Harding-Boulton, W.—*Business Consortia*, 1963; Hood-Phillips—*Constitutional and Administrative Law*, 1962; Hooper, A. C.—*Law of Voluntary Liquidation*, 4th Edn., 1963.

Incorporated Law Society of Ireland, *Calendar*—Vol. 1 (Loose-leaf containing Charter and Orders, 1964; Ireland—*Irish Statutes*, 1961 (Bound Volume); James, P.—*Introduction to English Law*, 5th Edn., 1962; Josling, J. F.—*Periods of Limitation*, 2nd Edn.; Josling, J. F. and D. Caplin—*Apportionments for Executors and Trustees*, 3rd Edn., 1963; Keenan, P.—*Study Guide to Real Property*, 1963; Keenan, P.—*Study Guide to Equity*, 1963; Keating, D.—*Law of Building Contracts*, 2nd Edn.; Keeton, G. M.—*Law of Trusts*, 8th Edn., 1963 with Irish Supplement by L. S. Sheridan; Kerr, W.—*The Law and Practice as to Receivers*, 13th Edn., 1963; Ker, J. S.—*Wills*,

*Probate and Administration*, 1959 (Extra copy); *Law List*, 1963; Leach, J.—*Practical Points on Leases*, 1961; Lloyd, D.—*Public Policy*, 1953.

McHugh, E.—*The Amalgamation of the Legal Profession in Ireland*, 1915; Maurice, S. G.—*Family Provision Practice*, 2nd Edn., 1962; Moeran, E.—*Practical Conveyancing*, 3rd Edn., 1963; Morcom, B.—*Estate Duty Saving*, 2nd Edn., 1963.

O'Connell, D. P.—*The Law of State Succession*, 1956; O'Connor, M. K.—*A Guide to the Death Duties in Ireland*, 1963. Odgers, R.—*Principles of Pleading and Practice*, 18th Edn., 1963. Park, W. D.—*Collection of Debts*, 1961; Parker, A.—*Modern Conveyancing Precedents*, 1964; Paton, G. W.—*Textbook of Jurisprudence*, 3rd Edn., 1964; Payne, H.—*Law of Carriage of Goods by Sea*, 7th Edn., 1963; Phillips, W.—*Probate Practice*, 6th Edn., 1963; Phipson, S. L.—*Law of Evidence*, 10th Edn., 1963; Pinson, B.—*Revenue Law*; Potter, (D. C.), H. H. Monroe and S. Bates—*Tax Planning*, 4th Edn., 1963.

Rideout, J.—*The Right to Membership of a Trade Union*, 1963; Rimmer, E. J.—*The Law Relating to the Architect*, 2nd Edn., 1964; Robertson, A. H.—*Human Rights in Europe*, 1963; Ruoff, T.—*Land Registration Forms*, 1962; Russell, J.—*The Law of Arbitration*, 17th Edn., 1963; Scanlon, J. W.—*Practice and Procedure in Administration and Mortgage Suits in Ireland*, 1963; Smith, K. and D. J. Keenan—*English Law*, 1963; Starke, J.—*Introduction to International Law*, 5th Edn., 1963; Street, H.—*Law of Torts*, 3rd Edn., 1963 (Two Copies); Sutton, R. and N. Shannon—*Law of Contracts*, 6th Edn., 1963.

Temperley, R.—*Merchant Shipping Laws*, 6th Edn., 1963; Theobald, H. S.—*The Law of Wills*, 12th Edn., 1963; Treagus, B., H. J. Rainbird and R. Harvey—*Introduction to Solicitors' Costs*, 1963; Tolstoy, D.—*Law of Matrimonial Causes*, 5th Edn., 1963; Underhill, M.—*The Licensing Guide*, 3rd Edn., 1962.

Wade, H. W. R.—*Administrative Law*, 1961; Walton, P. and J. Amos—*Introduction to French Law*, 2nd Edn., 1963; *Whittaker's Almanack*, 1964; Wilkinson, G. S.—*Affiliation Law and Practice*, 1958; Wilkinson, G. S.—*Road Traffic Offences*, 4th Edn., 1963; Wilkinson, G. S.—*Summary Matrimonial and Guardianship Orders*, 2nd Edn., 1962; Winfield, P. H.—*The Law of Torts*, 7th Edn., 1963; Wisdom, A. S.—*The Law of Rivers and Watercourses*, 1962; Wontner, J.—*Land Registry Practice*, 7th Edn., 1963; *Writers and Artists Yearbook* 1964; Wurtzburg, E. and J. Mills—*Building Societies Law*, 2nd Edn., 1964; Yardley, D. M.—*Source Book of English Administrative Law*, 1963; *Supplements* (1963)—Charlesworth on Negligence; Clerk and Lindsell on Torts; Cordery on Solicitors; Butterworth's Costs; McCleary's County Court Precedents; Bingham's Motor Claim Cases; Hill and Redman's Law of Landlord and Tenant. Rowlands—*Trust Accounts*, 3rd Edn., 1964.

## II—DONATIONS AND EXCHANGES

*Australian and New Zealand Law List*, 1962; *Dublin University* (*Trinity College*) *Calendar*, 1963–64; *Glasgow University Calendar*, 1963–64; Institute of Chartered Accountants in Ireland—*List of Members*, 1963; *International Law List*, 1963; *Ireland and National Income and Expenditure*, 1962; *London University Calendar*, 1963–64; *Manchester University Calendar*, 1963–64; *National University of Ireland Calendar*, 1963; New York State—*Second Report of the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates*, 1963; *New South Wales Law Almanac*, 1963; *Royal Institute of Architects of Ireland Yearbook*, 1963; *Scottish Law List*, 1963; *University College Cork, Calendar*, 1963–64; *University College, Dublin, Calendar* 1963–64; *University of Wales Calendar*, 1963–64; *West's Law Finder* (*U.S.A.*), 1963.

## SUPPLEMENTARY ACQUISITIONS AND EXCHANGES

European Court of Human Rights, Strasbourg, *The Lawless Case* (Pleadings, Oral Arguments and Documents, 1960–61); Borrie, G., and Diamond, A. L.—*The Consumer! Society and the Law*, 1964; England—*Public General Acts of* 1963; England—*Law Reform Committee—Tenth Report on Innocent Misrepresentation*, 1962; Ireland—*Report of Commission on Workmen's Compensation*, 1962; Ireland—*Reports of Irish Land Commission from* 1957 *to* 1962; Ireland—*Report of Commission on Driving while under the influence of Drink*, 1963; Ireland—*Report of Commission on Itinerants*, 1963; *Revue Algerienne des Sciences Juridiques*, 1963; England—*Moloney, Final Report of the Committee on Consumer Protection*, 1962; Wilson and Kelly—*Irish Income Tax—Fifth Cumulative Supplement covering Finance Acts* 1958 *to* 1962, *and Sixth Cumulative Supplement covering Finance Act*, 1963.

## SOLICITOR-CLIENT PRIVILEGE

Members have reported queries raised by Inspectors of Taxes regarding amounts of moneys held by solicitors on behalf of clients. Members are referred to Vol. 57, No. 3, July, 1963 of the GAZETTE which quoted the *Dáil Debates* of 9th July, 1963, cols. 443–445, dealing with proposed amendment to Section 16 of the Finance Bill, 1963. Therein it was stated *inter alia* by the Minister for Finance "that this (section) can be administered

only by the Revenue Commissioners and not by an Inspector". He further stated "the Revenue Commissioners would have to give an order to an Inspector to prosecute a solicitor, if he claimed privilege. It is not likely that they will do that".

A similar matter was considered by the Court of Appeal of New Zealand in Commissioner of Inland Revenue *v.* West-Walker (1954 N.Z.L.R. 191). Here a formal notice signed by the Commissioner of Taxes was served on the defendant, a solicitor, at his office, requiring him to furnish the information and produce the books or documents concerning a client's transactions, which the Commissioner of Taxes (as the Commissioner of Inland Revenue was then styled) required from him under s. 163 of the Land and Income Tax Act, 1923 (as re-enacted by s. 12 of the Finance Act (No. 2) 1948), and demanding that he should "give all information and produce all books, correspondence and "documents in (his) knowledge, possession, or control relating to the income, financial position, financial transactions or trust account, and in particular, relating to transactions in property" of the client.

The defendant refused to furnish or to produce such information, or any books, correspondence or documents, which were in his possession or control, without his client's authority, and he expressed such refusal by letter to the Commissioner.

The defendant was charged with the offence under s. 149 of the (New Zealand) Land and Income Tax Act, 1923, of failing or refusing to furnish in writing information and to produce documents which the Commissioner considered necessary or relevant for a purpose relating to the administration or enforcement of that Act or any other Act imposing taxes or duties.

At the hearing of the information against the defendant, the Magistrate stated a case for the opinion of the Supreme Court on the following points of law:

> "Whether, in the circumstances and notwithstanding the provisions of the Land and Income Tax Act, 1923, and its amendments the defendant in his capacity as a solicitor, is privileged and excused in law, and if so to what extent, from furnishing the information and producing the books and documents sought by the Commissioner in exercise of his authority under the said Act until such time as he has his client's authority to do so?"

Held by the members of the Court of Appeal, Fair, Gresson, Hay and North, J.J. (Stanton, J., dissenting), That the question propounded by the Case Stated should be answered in the affirmative.

Further information as to this decision will be supplied by the Society to any member requiring it.

## THE REGISTRY

### Register A

SOLICITORS practice for sale in Midlands. Box No. A 210.

PARTNERSHIP available in substantial Southern practice. Apply Box No. A211.

### Register B

UNIVERSITY graduate, honours LL.B., wishes employment in solicitor's office, Dublin. Highly recommended and hard working. Replies to Box number B.273.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942

### Issue of New Land Certificate

Applications have been received from the registered owners mentioned in the Schedule annexed hereto, for the issue of Certificates of Title in substitution for the original Certificates issued in respect of the lands specified in the said Schedule, which original Certificates, it is alleged, have been lost or inadvertently destroyed.

A new Certificate will be issued in each case, except a case in respect of which notification is received in this Registry within 28 days from the publication of this notice, that the Certificate of Title is still in existence, and in the custody of some person other than the registered owner. Any such notification should state the grounds on which such Certificate is being held.

Dated the 13th day of April, 1964.

D. L. MCALLISTER,
Registrar of Titles.

Central Office,
Land Registry,
Chancery Street,
DUBLIN.

SCHEDULE.

1. Registered Owner Bridget Campbell. Folio number 5570. County Donegal. Lands of Ardara in the Barony of Banagh containing 3a. 2r. 21p.

2. Registered Owner Bruree Estate Limited. Folio number 14400. County Limerick. Lands of Bruree in the Barony of Connello Upper containing 19a. 0r. 6p.

3. Registered Owner George Casey. Folio number 6118. County Dublin. Lands of Cruagh in the Barony of Uppercross containing 28a. 1r. 39p.

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No. 10

APRIL
1964

# THE GAZETTE

*of the*

## INCORPORATED LAW SOCIETY OF IRELAND

*President*
DESMOND J. COLLINS

*Vice-Presidents*
JOHN MAHER
PATRICK NOONAN

*Secretary*
ERIC A. PLUNKETT

FOR CIRCULATION AMONG MEMBERS

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## MEETINGS OF THE COUNCIL

APRIL 2ND: The President in the chair, also present Messrs. Reginald J. Nolan, Brendan A. McGrath, R. McD. Taylor, Peter D. M. Prentice, John I. Horgan, Francis J. Lanigan, James W. O'Donovan, John Maher, Peter E. O'Connell, William A. Tormey, John C. O'Carroll, Thomas J. Fitzpatrick, George G. Overend, Eunan McCarron, John J. Nash, Ralph J. Walker, R. A. French, Thomas A. O'Reilly, Richard Knight.

The following was among the business transacted:

### Sale-lease

The Council were asked to decide, as between the parties, in two cases whether the transactions were in substance sales within the meaning of the decision in Sims-Clarke *v.* Ilet Ltd. In one case premises in Dublin were demised by lease dated 28th June, 1963, for a term of 98 years in consideration of a fine of £1,700 and a yearly rent of £50. In the other premises in Carlow were demised by lease dated

1st October, 1963, for a term of 21 years in consideration of fine of £735 and a weekly rent of £6 0s. 0d. The Council expressed the opinion in each case that the transaction was substantially a sale and that each party should pay his own costs.

### Search fee

A client of a member purchased a property in 1941 and member retained the documents of title for safekeeping until the death of the client in 1962. The owner died intestate and his widow took out a grant of administration and consulted other solicitors. She gave them in authority to take up the documents of title from the first mentioned solicitor. The Council were asked to decide whether as between the parties the solicitors who hold the documents of title are entitled to a fee for getting them up and satisfying themselves as to the title of the administratrix. The Council decided that members are under an obligation to hand over the documents to the personal representative of the deceased owner free of charge.

### Lodgment in satisfaction of counter-claim

On the suggestion of the Dublin Solicitors' Bar Association the Council decided to make representations to the appropriate authorities that rules should be made permitting a lodgment in satisfaction of a counter-claim in an action for negligence.

### Professional negligence

Members acted as solicitors for a bank who were appointed executors of a will and took out a grant of probate. The assets included Government stock issued subject to the condition that the stock could be tendered in satisfaction of death duties. At the material date the market value of the stock was below par. Neither the executors nor the solicitor had adverted to this fact and the beneficiaries held the executors responsible for the amount which could be saved in death duties if the stock had been duly tendered. The bank-executors suggested that the solicitors should bear half of the loss and the matter was submitted to the Council for a decision. The Council expressed the opinion that the solicitors should as a matter of professional practice bear half the loss. Each of the parties had agreed to accept the ruling of the Council.

### Professional privilege

Members were requested by an inspector of taxes to supply the name and address of a client so that the inspector could communicate with the client on the subject of possible liability for tax. The member asked the Council for guidance and the Council expressed the opinion that the information should not be given without the permission of the client.

### Solicitors' remuneration

The Council considered the draft of the Solicitors' Remuneration General Order, 1964, received by the Society from the statutory body under the Solicitors' Remuneration Act, 1881, and directed that the draft order should be returned to the statutory body with the comments of the Council pursuant to section 3 of the Act.

## SITTINGS OF THE CIRCUIT COURT. EASTERN CIRCUIT.

By direction of His Hon. Judge Deale the sittings of the Circuit Court fixed for Drogheda commencing 15th June and 14th October, 1964, have been transferred to Dundalk. All future sittings after 14th October, 1964 which would ordinarily have been held at Drogheda have been transferred to Dundalk and all business of the Court ordinarily returnable for hearing at Drogheda is returnable at Dundalk until further order.

## COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS BOARD MEETINGS

(EASTER AND TRINITY TERMS)

| | | | |
|---|---|---|---|
| Tuesday | ... | ... | 14th April, 1964 |
| „ | ... | ... | 28th „ „ |
| „ | ... | ... | 12th May, „ |
| „ | ... | ... | 26th „ „ |
| „ | ... | ... | 9th June, „ |
| „ | ... | ... | 23rd „ „ |
| „ | ... | ... | 7th July, „ |
| „ | ... | ... | 28th „ „ |

## CRIMINAL JUSTICE ACT, 1964

The above Act passed by both Houses of the Oireachtas on 18th March, 1964, is a short Act of eleven sections. The Act in following the current trend in social thinking restricts the death penalty to treason and capital murder. The Act contains a number of amendments to previous statutes covering a period from the Piracy Act, 1883, to the Geneva Conventions Act of 1962. It should be noted that the Act does not abolish the death penalty completely but merely restricts same.

## RULES OF THE SUPERIOR COURTS (No. 2) 1964

### S.I. No. 96 of 1964

The Rules of the Superior Courts (No. 2), 1964, prescribe procedures in respect of applications under the Companies Act, 1963, and replace Order 75 and Appendix N of the Rules of the Superior Courts, 1962. Copies may be obtained from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1, for 2/- each, plus postage.


THE LAW
OF
STAMP DUTIES"

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## POWER OF JUSTICES TO AMEND CHARGES

Questions about the jurisdiction of a district justice in amending charges were answered recently by the Supreme Court. The court was giving judgment in an appeal against the decision of the President of the High Court in a case submitted to him for his opinion by a District Justice. The Supreme Court (O'Dalaigh, C. J. and Walsh, J., Kingsmill Moore, J. dissenting) upheld the President's judgment.

The appeal was on behalf of Malachi Higgins of Wyckham Park, Dundrum, Co. Dublin, and the questions resulted from an objection made by his counsel in the district court to an application of the Assistant State Solicitor, to amend three of four charges against Mr. Higgins under the Road Traffic Act of 1933.

The complaints related to the driving of a motor car at Dublin on September 10th, 1959 and it appeared from the charge sheet that Mr. Higgins had first been before the court on charges on September 11th of that year and had, from time to time, been remanded on bail.

On October 31st, 1960, the solicitor, who was conducting the prosecution, applied to have three of the charges amended by adding to the end of each of them the words: "Contrary to the Statute in that case made and provided".

Counsel for Mr. Higgins objected to such amendments, and after hearing his submissions and those of the prosecuting solicitor, the District Justice submitted a number of questions to the President of the High Court for his opinion.

The principal questions asked by the District Justice were whether he had jurisdiction to amend the charges as requested; whether he had discretion to grant or refuse the proposed amendments, and, if he had a discretion, on what principles it should be exercised.

To these questions the President said that the District Justice had such jurisdiction and that in general he had a discretion to grant or refuse the proposed amendments, and that in every case a point might be reached where the discretion could be exercised only in one way if justice was to be done. In this case there was no reason why the amendment asked should be refused. In regard to the principles in which the discretion should be exercised, the President answered that it was so as to ensure that the real issue between the complainant and defendant might be decided and the complaints heard and determined in accordance with law. The Supreme Court made no order as to costs.

(*Irish Times*, 19th March, 1964.)

## DECISIONS OF PROFESSIONAL INTEREST

*State Privilege*

In Mericks and Another *v.* Nott-Bower & Others the plaintiffs, Police Officers, claimed declarations that, *inter alia*, their transfer was in breach of the principles of natural justice, and also damages for libel in respect of a minute relating to that transfer. The defendants, a present and former Commissioner of the Metropolitan police and another, applied to strike out the statement of claim, producing

a certificate of the Home Secretary claiming privilege for the police minute covering the transfer. The matter on which application was refused by the High Court on appeal from the Master, was then appealed to the Court of Appeal which allowed the appeal. Lord Denning stated that it seemed that a declaration might serve some useful purposes and should not be rejected out of hand. The Minister's certificate had used words which Lord Simon had used in a previous case but which he would not have wished to be used as if they were words of an Act of Parliament. His Lordship did not think that the certificate was sufficient to claim protection and he would not on that ground strike out the cause of action in libel; he would dismiss the appeal. Harman and Salmon, L. JJ., delivered concurring judgments. (1964) 1. All Eng. R. 717.

The case gave rise to a question by Mr. Dingle Foot in the Commons on 25th February, 1964.

*Disciplinary jurisdiction—Procedural error*

The Court of Appeal (Willmer, Danckwerts, Diplock, L. JJ.), dismissed the application of Ivan Weisz for an order of certiorari to bring up and quash a determination of the Disciplinary Committee of the General Medical Council whereby his name was erased from the General Medical Register. The complaint against Dr. Weisz was originally prepared in 1961 by a Dr. Castillo. Dr. Castillo died on May 8 but his widow and personal representatives continued to press the complaint. On the case being called before the Disciplinary Committee on February 27, 1962, Mr. Boydell, then instructed by solicitors for the personal representatives of Dr. Castillo, drew the attention of the committee to rule 18 of the General Medical Council Disciplinary Committee (Procedure) Rules, 1958, which provided: "In cases relating to conduct, where the practitioner appears the following order of proceedings shall be observed. . . .

(*a*) If a complainant appears, he shall open the case against the practitioner. Subject to any directions given by the President or the Committee, if no complainant appears the solicitor shall present the facts on which the complaint or information is based." Mr. Boydell pointed out that the complainant being dead, it could not be suggested that the complainant appear and he suggested the proper procedure was for him to be instructed by the Solicitor to the General Medical Council rather than the complainant's solicitors.

The legal assessor to the Disciplinary Committee thought that it was unnecessary and advised that on the directions of the committee Mr. Boydell should present the case on behalf of the personal representative. Counsel then appearing for Dr. Weisz not only acquiesced in that course but expressed agreement with the ruling of the legal assessor. The committee decided that some of the charges were not made out but held that other charges were proved and instructed that Dr. Weisz's name be erased from the register.

Subsequent appeal to the judicial committee of the privy council failed and Dr. Weisz was erased from the register on 29th January, 1963. In consequence of something said during the hearing before the judicial committee Dr. Weisz conceived the idea that because of certain irregularities he might be entitled to an order of certiorari. The present application for certiorari before the Court of Appeal was that the committee lacked jurisdiction to proceed with the inquiry because Mr. Boydell was instructed formally by the widow and personal representatives of Dr. Castillo and not by the solicitor.

The divisional court had pointed out that error could not make any difference to the conduct of the case or the result and was simply a technical error in procedure.

The present case did not in the court's view fall into the category of lack of jurisdiction by the disciplinary committee but into the category of error of procedure. In the present case the irregularity was one of procedure by an inferior tribunal of acting within its "jurisdiction" in the strict sense, of primary consideration was whether the party aggrieved had been prejudiced by the irregularity. In the present case, the procedure was in no way contrary to natural justice and Dr. Weisz was not in the least prejudiced by it.

Appeal dismissed.

The recent case of Sivarajah *v.* General Medical Council was an appeal from the determination of the Disciplinary Committee of the General Medical Council dealing with defects in the conduct of the enquiry. A Mrs. F. made a complaint against the appellant, a medical practitioner, and in support thereof made a statutory declaration as required by the acts governing the medical profession in England, a copy of which was duly sent to the appellant. The charge against the appellant was one of professional misconduct. During the period in which the misconduct was alleged to have occurred the appellant stood in professional relationship with Mrs. F. At the hearing before the Disciplinary Committee of the General Medical Council (at which the appellant did not appear) a document was produced purporting to be a letter from the appellant to the Committee stating that he wished the hearing to take place in his absence; to that was

attached a statement of replies to the statutory declaration, which included *inter alia* a denial of professional misconduct and a statement that Mrs. F. did not stand in a professional relationship during part of the period alleged in the charge. Mrs. F. was the only witness before the committee. The legal assessor to the committee advised that they might infer from the appellant's replies that he was not prepared to deny the misconduct. In the course of the hearing before the Disciplinary Committee counsel for the complainant mentioned the statutory declaration which at the invitation of the legal assessor was circulated to the committee who read it. Mrs. F. was questioned on it. The declaration contained a number of facts prejudicial to the appellant including hearsay evidence as to his character.

The appellant was found guilty of infamous conduct in a professional respect. The matter was subsequently appealed to the Judicial Committee of the privy council who held that the principle on which they must act was that the appeal must fail unless there was some defect in the conduct of the inquiry, by way of admission or rejection of evidence or otherwise, that might fairly be thought to have been of sufficient significance to the result to invalidate the disciplinary committee's decision and the finding should stand because :—

(*a*) Although it would have been preferable if the legal assessor's advice had been that the letter was capable of constituting corroboration and if it had been left to the committee to decide whether it in fact corroborated Mrs. F's evidence, the advice tendered did not amount to such a defect as invalidated the finding.

(*b*) Although the statutory declaration was not evidence in the case, in the circumstances taken as a whole its production was not sufficient ground for invalidating the finding.

Accordingly the appeal was dismissed. (1964) 1. W.L. R. 112.

*Overloading—Car insurance*

In Clarke *v.* National Insurance & Guarantee Corporation Limited the court considered the case of a Ford Anglia carrying nine passengers including the driver which came into collision with another vehicle. The Insurance Company paid the damages which had been awarded in the Court of first instance in respect of the death of the driver of the other car, and then claimed that it was entitled to be reimbursed by the insured (who was the driver responsible for the accident) on the ground that a clause in the insurance policy exempted the company from liability if the car was "being driven in an unsafe or unroadworthy condition". Davies, L. J. (decision [1963] 2 All. E.R. 470) held that this clause was inapplicable and that the insured did not have to reimburse the company. While having no doubt that the insurers' negligence in overloading the car and driving it when overloaded, he would not say that in the circumstances it was unsafe to drive, that was quite different from saying that it was in an unsafe or un-roadworthy condition. The overloading was something extrinsic to the condition of the vehicle, as was the manner of driving it when overloaded. The decision which has been reversed by the Court of Appeal (*The Times*, 12th July, 1963). Harman, L. J., stating that when considering road worthiness one should take into account whether the car was overloaded. It could be driven safely, but not at over 25 miles an hour, as it was when the accident occurred. It is agreed that, being driven slowly, it could perform a journey down a steep hill and around bends in safety; but for ordinary purposes the car was unsafe. The car had to be regarded as it was, proceeding along the road, not immediately before it was loaded, when it was safe and mechanically sound. The important words in the clause were "being driven" and when it was being driven it was unsafe and unroadworthy. While there might be nothing wrong with the intrinsic character of the vehicle it was nonetheless defective as to condition while on the journey.

Leave to appeal to the House of Lords was given. (1964) I.Q.B. 199.

*Medical testimony*

In Dalton *v.* Clarke and Flynn Ltd. (*The Times*, 19th July, 1963) Glynn Jones, J., appears to have felt that some such violent measure as incarceration of medical witnesses might be justified in some circumstances. In the case referred to, counsel complained that the defendants sometimes could not see hospital notes before trial, but it has been known for the plaintiff to be in ignorance of the hospital records until the hearing—with catastrophic results—simply because his doctor had refused to produce them until forced to attend on *sub-poenae*. It is true that there may be many matters on which doctors cannot agree as medicine is not an exact science and there is often room for more than one opinion in the same case; the judge or jury as the case may be must come to their conclusions after hearing the different views tested by cross examination in the light of the impression made by the witnesses, including that of their experience and the authority they command in the witness box. The practice which angered the judge was the withholding of medical reports in order to gain the advantage of surprise. It is felt that medical evidence

should as far as possible be regarded as impartial and therefore equally available to both sides. Altogether apart from leading to protracted litigation of which medical witnesses not infrequently complain, the task of judge, jury, counsel and solicitors is made more difficult, where the application of a little common sense ought not to be above the high standard of the profession.

*Summons heard in absence of defendant*

A husband left his wife in July, 1956 and in October 1956, she applied to the High Court, for maintenance on the ground of his wilful neglect to maintain her. By November, 1957, affidavits were filed, but the proceedings were then left in abeyance. In March, 1963, the wife complained to justices that her husband had deserted and wilfully neglected to maintain her. The husband's solicitors informed the justices' clerk of the High Court proceedings which were still pending and asked for an adjournment of the hearing. The clerk wrote back granting an adjournment for four weeks but the husband's solicitors had no record of its receipt and it was possible that it went astray in their office. Accordingly only the wife and her solicitors appeared at the adjourned hearing, when the justices found that the husband had deserted and wilfully neglected to maintain the wife a maintenance order was made against him.

The husband appealed on the grounds that the justices should not have heard the complaint since (1) High Court proceedings on the same issue were pending, (2) he was not present or represented at the hearing :—

Held, (1) that the issues were the same in the proceedings before the High Court as they were in the maintenance proceedings before the magistrates since, although the High Court would have to determine whether the husband was guilty of wilfully neglecting to maintain his wife in 1956, whereas the magistrates would have to determine whether he was so guilty in 1963, once liability had been established, in either case the quantum would have to be ascertained on the basis of the present circumstances of the party.

(2) That, where High Court proceedings were pending on the same issue, justices had a discretion to proceed or to adjourn; and that in all other than exceptional cases they should, as a matter of obvious convenience and public policy, exercise their discretion to adjourn the proceedings until the High Court proceedings were disposed of that, since they had not considered whether the present case was one of those exceptional cases where they could nevertheless proceed, they had failed to exercise their discretion; and that, therefore, a rehearing would be ordered.

An application was made by the husband for an order that the costs falling on him should be paid by his former solicitor.

Sir Jocelyn Simon P. dealing with this matter stated that the court would make no order on this aspect of the matter in view of the fact that the husband had rights at common law should he choose to test them and enforce them.

(Kaye *v.* Kaye, 1964, 2 W.L.R. 672.)

*Trade Unions—trade dispute—conspiracy*

(Trade Dispute Act, 1906 (6 Edw. 7, c. 47), ss. 1, 3.) Defendant trade union officials, whose union was in dispute with an associate of the plaintiff company, "blacked" the plaintiffs' barges by prohibiting union members from working them. Marshall, J. held that the defendants were *prima facie* guilty of conspiracy, and granted an interlocutory injunction against them ((1964) 2 C.L. 387). Held, allowing the defendants' appeal, (1) that the defendants were *prima facie* not guilty of conspiracy; (2) that their conduct was in contemplation of furtherance of a trade dispute and, since they had merely threatened to induce their members to break their contracts of employment (as opposed to threatening to break such contracts) they were protected by the provisions of ss. 1 and 3 of the Trade Disputes Act, 1906; (3) that there was in any event no *prima facie* case of intimidation; and (4) that the defendants were *prima facie* not guilty of inducing the breach of contracts other than contracts of employment—J. T. Stratford & Son *v.* Lindley. (1964) 3 C.L.

*Backing of Warrants*

In view of the passing of the Extradition Bill 1963 through the Houses of the Oireachtas, the question raised therein regarding the backing of warrants and the case of R. *v.* Metropolitan Police Commissioner *ex parte* Hammond may be of interest to members.—(1964) 2 W.L.R. 777.

The applicant, an Englishman domiciled in England, was arrested in London on a warrant issued in Éire reciting that a complaint had been made on oath and in writing that the applicant, within six months, at an address in Dublin, had wilfully neglected two children of whom he had custody in such a manner likely to cause them unnecessary suffering or injury to their health contrary to s. 12 of the Children Act, 1908, as amended by an Irish statute of 1957. It was signed by a justice of a District Court in County Dublin, and authorised the execution of the warrant by a constable of the metropolitan police force; the signature

was proved by affidavit and the warrant was indorsed for execution in the London Metropolitan Police District by the deputy commissioner of the Garda Síochána. A metropolitan police magistrate backed the warrant without receiving any evidence other than the affidavit proving the signature, and without reference to the applicant, who was granted, by Streatfield, J., a writ of *habeas corpus ad subjiciendum*. On the return it was contended by the metropolitan police commissioner that neither the magistrate nor the court had jurisdiction to inquire into the facts, and that the magistrate was bound to back a warrant issued by a justice of the peace of Éire whose signature was proved.

Paull, J., said that the Indictable Offences Act 1848 Section 12 did not impose an imperative duty upon a magistrate to indorse any warrant once the signature was proved; it was merely a right to indorse. Furthermore he stated that the warrant was presumably issued under the Petty Sessions (Ireland) Act, 1851, of which section 27 sub-section 3 provided that "it shall be lawful" for the Inspector General or deputy Inspector General to indorse a warrant issued in Ireland, and "it shall thereupon be lawful" for an English magistrate to indorse it on proof of the handwriting of the Irish signature; that procedure was not complied with here because no subsequent provision substituted the deputy commissioner of the Garda Síochána for the inspector general or deputy inspector general.

Held the indorsement was not valid since the magistrate had not exercised his discretion to assure himself that *prima facie* the technicalities had been observed, that there was a *prima facie* case of an offence having been committed in Éire, and that there had been shown to be, *prima facie*, an element of escape.

This case brings the problem of backing warrants into relief in as much as Irish Courts heretofore have been well disposed to backing warrants issued in England but it would seem that in certain circumstances reciprocity does not exist.

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### Register C

IN the Goods of Michael O'Gorman, deceased. Will any person having information as to a Will of Michael O'Gorman late of Ballycosgey, Ballyhea, Charleville, County Cork and formerly of Rosefield Terrace, Cork City and late employee of Messrs. Atkins & Co., Ltd., Cork, please communicate with Roger Fox & Co., Solicitors, Kilmallock, County Limerick.

## REGISTRATION OF TITLE ACTS, 1891 AND 1942
### Notice

Folio 8540. County WEXFORD.

REGISTERED OWNERS: Robert Westley Hall-Dare, Charles Grafton Hall-Dare, John Valentine Adair, Arthur James Beatty.

The Surviving Registered owners have applied for a New Certificate of Title specified in the Schedule hereto and original of which is stated to have been lost or inadvertently destroyed.

A New Certificate will be issued unless notification is received in this Registry within 28 days from the date of this Notice that the Original Certificate is in the custody of a person not the Registered Owner. Such notification should state the grounds on which the Certificate is retained.

Dated this 10th day of May, 1964.

D. L. MCALLISTER,
Registrar of Titles.

SCHEDULE.

Land Certificate of Robert Westley Hall-Dare, Charles Grafton Hall-Dare, John Valentine Adair and Arthur James Beatty to oa. 2r. 13p., 6a. 1r. 27p. and 1a. 2r. 14p. of the Lands of Clohamon, Castlequarter and Knockanure respectively all situate in the Barony of Scarawalsh and County of Wexford being the Lands comprised in said Folio.

## OBITUARY

MR. NICHOLAS J. COSGRAVE, Solicitor, died on 23rd April, 1964, at the Meath Hospital, Dublin.

Mr. Cosgrave served his apprenticeship with the late Mr. Francis P. Long, 1 Lower Ormond Quay, Dublin, was admitted in Trinity Sittings, 1940, and practised under the style of Nicholas J. Cosgrave & Co. at 39 Nassau Street, Dublin.

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